



ORGALIME

ORGALIME SC 06

**GENERAL CONDITIONS
for the
MANUFACTURE AND SUPPLY OF SPECIALLY DESIGNED COMPONENTS
Brussels, April 2006**

PREAMBLE

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

The objects to be supplied under these conditions are hereinafter referred to as the "Products".

Wherever these General Conditions use the term "in writing", this shall mean by document signed by the parties, or by letter, fax, electronic mail and by such other means as are agreed by the parties.

PRODUCT INFORMATION

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

PATTERNS, TOOLS AND EQUIPMENT

3. Unless otherwise agreed, patterns, special tools and equipment provided by the Supplier to be used exclusively in fulfilment of the contract, shall be paid by the Purchaser and shall, when fully paid, become his property.

The Supplier shall clearly mark patterns, special tools and equipment belonging to the Purchaser.

Patterns, special tools and equipment provided by the Purchaser, shall remain the Purchaser's property. The Purchaser shall pay the Supplier for any work necessary to adapt or supplement such patterns, special tools and equipment.

4. Where, according to the contract, the Supplier shall provide patterns, special tools or equipment, the Purchaser shall reimburse the Supplier's costs for replacement or repair of these due to normal wear and tear or other causes for which the Supplier is not responsible.

5. The Supplier shall be entitled to retain patterns, special tools or equipment that he has provided under the contract, when it can be reasonably concluded that his technical know-how will otherwise be disclosed and that the disclosure will cause significant loss to the Supplier. The Supplier shall in such case reimburse the Purchaser the value of that which he retains.

6. The Supplier shall store patterns, special tools and equipment until deliveries under the contract have been completed. Patterns, special tools and equipment belonging to the Purchaser which remain in the Supplier's care after deliveries under the contract have been completed, shall be stored by the Supplier at the Purchaser's risk and expense.

7. The Supplier shall, at the Purchaser's request, insure patterns, special tools and equipment in his care which are the Purchaser's property. The Purchaser shall reimburse the Supplier the cost of such insurance.

8. The Supplier shall not, without the Purchaser's consent, use the Purchaser's patterns, special tools or equipment for any other purpose than fulfilment of the contract. Nor shall such patterns, special tools or equipment be handed over to or otherwise be brought to the knowledge of a third party.

9. The Purchaser shall bear the risk and expense of all transport of patterns, special tools and equipment to and from the Supplier.

10. The Purchaser shall indemnify and hold the Supplier harmless against all claims based on infringement of patents, design patents, trademarks or other industrial property rights, where such claims result from the manufacture of the Products by using a specification, drawing, sample, pattern, special tool or other equipment provided by the Purchaser.

11. All the Supplier's obligations regarding patterns, special tools and equipment shall finally cease three years after the deliveries under the contract have been completed. Where practicable, the Supplier shall inform the Purchaser before disposing of patterns, special tools and equipment.

DRAWINGS AND DESCRIPTIONS

12. All drawings and technical documents relating to the Products or their manufacture submitted by one party to the other, prior or subsequent to the formation of the contract, shall remain the property of the submitting party.

The Supplier shall not be obliged to provide manufacturing drawings for the Products or for spare parts.

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

13. If either party wants a modification of the technical specifications of the Products he shall submit his proposal in writing to the other party who shall respond in writing within 14 calendar days.

PRICE

14. Prices for the Products are those stipulated in the contract. Unless otherwise stated they are exclusive of sales, excise duties, VAT or similar taxes.

INSPECTION

15. The Purchaser may during normal working hours inspect the Supplier's final test facilities to be used in the performance of the contract, and inspect and test the Products in respect of materials and workmanship. The Purchaser shall give the Supplier one week's notice of the inspection. Inspections and tests shall not unduly interfere with the performance of work.

PRODUCTION SAMPLE

16. Products manufactured in series shall be in conformity with the production sample approved by the Purchaser, and production shall not start before the Supplier has received the Purchaser's written approval of such sample.

DELIVERY - PASSING OF RISK

17. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the contract.

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

If, in the case of delivery Ex Works, the Supplier, at the request of the Purchaser, undertakes to send the Products to their destination, the risk will pass no later than at the time when the Products are handed over to the first carrier.

Partial shipments shall be permitted unless otherwise agreed.

PACKAGING AND TRANSPORT

18. Within 30 days after delivery the Purchaser shall at his own expense return containers, crates, pallets and other reusable packaging materials belonging to the Supplier. If the Purchaser fails to do so, the Supplier is entitled to be reimbursed for the value of such packaging materials.

If, under the contract, the Purchaser shall provide packaging materials, he shall provide them in good condition to the Supplier at the time and the site specified by the Supplier.

19. Unless otherwise agreed, the Purchaser shall on arrival of the Products examine whether the Products' time of arrival, condition and quantity conform to the dispatch note. The Purchaser shall immediately inform the Supplier of any discrepancies or possible claims against the transporter.

TIME FOR DELIVERY – DELAY

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

21. If the Supplier anticipates that he will not be able to deliver the Products 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.

22. If delay in delivery is caused by any of the circumstances mentioned in Clause 49 or by an act or omission on the part of the Purchaser, including suspension under Clauses 30 or 52, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

23. If the products are not delivered at the time for delivery (as defined in Clauses 20 and 22), the Purchaser is entitled to liquidated damages from the date on which delivery should have taken place.

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

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

The liquidated damages become due at the Purchaser's demand in writing but not before delivery has been completed or the contract is terminated under Clause 24.

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

24. If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 23 and if the Products are 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 circumstance for which the Purchaser is responsible, then the Purchaser may by notice in writing to the Supplier terminate the contract in respect of such part of the Products 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 has suffered as a result of the Supplier's delay. The total compensation including the liquidated damages which are payable under Clause 23, shall not exceed 15 per cent of that part of the purchase price which is attributable to the part of the Products 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 which, under Clause 23 would entitle the Purchaser to maximum liquidated damages.

In case of termination on this ground, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this Clause 24.

25. Liquidated damages under Clause 23 and termination of the contract with limited compensation under Clause 24 are 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.

In these General Conditions, gross negligence shall mean an act or omission, implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

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

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

27. Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 49, the Supplier may by notice in writing require the Purchaser to accept delivery within a final reasonable period.

If, for any reason for which the Supplier is not responsible, 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 has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the purchase which is attributable to that part of the Products in respect of which the contract is terminated.

PAYMENT

28. Unless otherwise agreed, the purchase price shall be paid with one third at the formation of the contract and one third when the Supplier notifies the Purchaser that the Products are ready for delivery. Final payment shall be made when the Products are delivered.

Payments shall be made within 30 days of the date of the invoice.

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

30. 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. The rate of interest shall be as agreed between the parties. If the parties fail to agree on the rate of interest, it shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.

In case of late payment, the Supplier may, after having notified the Purchaser in writing, suspend his performance of the contract until he receives payment.

If the Purchaser has not paid the amount due within three months, the Supplier shall be entitled to terminate the contract by notice in writing to the Purchaser and to claim compensation for the loss he has incurred. The compensation shall not exceed the agreed purchase price.

RETENTION OF TITLE

31. The Products shall remain the property of the Supplier until paid for in full to the extent that such retention of title is valid under the applicable 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 Products in the country concerned.

The retention of title shall not affect the passing of risk under Clause 17.

LIABILITY FOR DEFECTS

32. Pursuant to the provisions of Clauses 35-47 inclusive, the Supplier shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty materials or workmanship. To the extent the Supplier is responsible for design, the same obligation applies to any defect resulting from faulty design.

33. The Supplier's liability is limited to defects which appear within a period of one year from delivery.

34. When a defect in a Product or a part thereof has been remedied, the Supplier shall be liable for defects in the repaired or replaced part or the replaced Product under the same terms and conditions as those applicable to the original Product during a period of one year.

35. The Purchaser shall without undue delay notify the Supplier in writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 33, where applicable as extended by Clause 34.

The notice shall contain a description of the defect.

If the Purchaser fails to notify the Supplier in writing of a defect within the time-limits set forth in the first paragraph of this Clause, he loses his right to have the defect remedied.

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

36. On receipt of the notice under Clause 35 the Supplier shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 32-47 inclusive.

Repair shall be carried out at the Supplier's premises unless he finds it appropriate to have the repair carried out where the Product is located. The Purchaser shall at the request of the Supplier arrange for transport of the Product to the Supplier. The Purchaser shall follow the Supplier's instructions regarding such transport. The Supplier has fulfilled his obligations in respect of the defect when he delivers to the Purchaser a duly repaired or replaced Product.

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

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

39. Unless otherwise agreed, necessary transport of the Product and/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.

40. Unless otherwise agreed, the Purchaser shall reimburse any additional costs which the Supplier incurs for repair and transport as a result of the Product being located in a place other than the destination stated in the contract or – if no destination is stated – the place of delivery.

41. Defective Products or parts thereof which have been replaced shall be made available to the Supplier and shall be his property.

42. If, within a reasonable time, the Supplier does not fulfil his obligations under Clause 36, the Purchaser may by notice in writing fix a final time for completion of the Supplier's obligations.

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

Where successful remedial works have 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.

43. Where the defect has not been successfully remedied, as stipulated under Clause 42,

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

b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the contract, the Purchaser may terminate the contract by notice in writing to the Supplier. The Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 15 per cent of the purchase price.

44. The Supplier is not liable for defects arising out of materials provided or specified by the Purchaser.

45. The Supplier is liable only for defects which appear under the conditions of operation provided for in the contract and under proper use of the Products.

The Supplier's liability does not cover defects which are caused by faulty maintenance, incorrect assembly or installation or faulty repair by the Purchaser, or by alterations carried out without the Supplier's consent in writing.

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

46. Notwithstanding the provisions of Clauses 32-45 the Supplier shall not be liable for defects in any part of the Products for more than two years from the beginning of the period given in Clause 33.

47. Save as stipulated in Clauses 32-46, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit, and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of gross negligence as defined in Clause 25.

ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT

48. The Supplier shall not be liable for any damage to property caused by the Products after their delivery and whilst they are 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 damages 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 Products.

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 as defined in Clause 25.

FORCE MAJEURE

49. Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances : industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-suppliers 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.

50. The party claiming to be affected by force majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance.

If force majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Products.

51. 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 49 for more than six months.

ANTICIPATED NON-PERFORMANCE

52. Notwithstanding other provisions in these General Conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the contract, where it is clear from the circumstances that the other party will not be able to perform his obligations. A party suspending his performance of the contract shall forthwith notify the other party thereof in writing.

CONSEQUENTIAL LOSSES

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

DISPUTES AND APPLICABLE LAW

54. All disputes arising 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.

55. The contract shall be governed by the substantive law of the Supplier's country.

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APPENDIX TO GENERAL CONDITIONS SC 06 FOR SERIAL DELIVERIES CONTRACT

When serial deliveries are agreed between the parties the General Conditions SC 06 shall apply supplemented and amended as follows:

A. ENTERING INTO FORCE OF THE CONTRACT

The contract shall not enter into force until it has been signed and all authorisations required for its performance have been obtained, including any authorisations required for the transfer of currency and licences to permit export and delivery of the Products to the Purchaser.

B. PURCHASERS FORECAST AND PURCHASE ORDERS

1. The Purchaser shall submit to the Supplier ... weeks in advance a forecast for each period of ... months, indicating the quantity of Products to be delivered during that period with an indication of the schedule of delivery. The Purchaser shall, during that period, be obliged to take delivery of a minimum quantity which shall be ... % of the forecast for each individual type of product.
2. Orders issued by the Purchaser shall refer to this contract and specify quantities, destinations and required delivery dates.
3. Within 7 calendar days from the receipt of the Purchaser's order, the Supplier shall notify the Purchaser in writing whether he can comply with the order. If he can not comply, he shall state the reason and state when he can deliver.
4. The Supplier is entitled to refuse to deliver in so far as the quantity of purchases ordered exceeds the forecast for the current period by more than ... % for each individual type of product.
5. If the Purchaser takes delivery of less than the minimum quantity referred to in article 1, the Supplier is entitled to be paid liquidated damages equal to ... % of the difference between the price of what has been delivered and of the minimum quantity for each individual type of product.

If the Purchaser takes delivery of less than 50% of the minimum quantity for any individual type of product as referred to in article B.1, the Supplier is entitled – in addition to liquidated damages under the first paragraph of this Clause B.5 – to terminate the contract forthwith by notice in writing.

C. PRICE ADJUSTMENT

If the parties have agreed on the use of a price adjustment formula, the prices of the Products shall only be adjusted each time the application of this formula leads to an increase /decrease of at least 3% of the current price.*

D. PAYMENT

Unless otherwise agreed, orders shall be paid at the latest 30 days after the date of the invoice but not before delivery has taken place.

E. LIQUIDATED DAMAGES FOR DELAY

Liquidated damages for delay in delivery shall be calculated on the basis of Products in actual delay with 0,1 per cent per calendar day of delay but otherwise as stated in Clause 23.

F. DEFECTS

The Supplier is responsible according to Clauses 32-47 only to the extent that the Products deviate from the accepted sample.

G. DURATION OF THE AGREEMENT

1. Unless otherwise agreed, the duration of the contract shall be one year from the entering into force of the contract.
2. The contract shall be automatically prolonged for successive periods of one year unless three months prior notice in writing of termination has been submitted by one party to the other.

H. TERMINATION

Without prejudice to any express provision for termination contained herein, the contract may be terminated immediately by registered letter in case of any fundamental breach of the contract. Such termination may also take place where the legal structure or ownership of one of the parties has changed in such a way as seriously to affect the result that the other party could reasonably expect from the contract.

* This means that if the formula results in an adjustment which is less than 3% the price remains the same, but if the adjustment is 3% or greater the full adjustment is made.

PRICE ADJUSTMENT CLAUSE¹

Should any change occur in the cost of the relevant materials and/or wages during the period of execution of the contract, the agreed prices shall be subject to adjustment on the basis of the following formula:

$$P1 = \frac{PO}{100} (a + b \frac{M1}{M0} + c \frac{S1}{S0})$$

where :

P1 = final price for invoicing

P0 = initial price of Products, as stipulated in the agreement and as prevailing at the date of²

M1 = the prices (or price indices) for (type of materials concerned) months before delivery

M0 = prices (or price indices) for the same materials at the date stipulated above for P0

S1 = the labour costs or relevant indices in respect of (specify categories of labour) months before delivery

S0 = labour costs or relevant indices in respect of the same categories at the date stipulated above for P0

a, b, c represent the contractually agreed percentage of the individual elements of the initial price, which add up to 100 (a+b+c = 100)³

a = fixed proportion (in % of total price) = ...

b = percentage proportion of materials = ...

c = percentage proportion of labour costs = ...

Where necessary, b (and if need be, c) can be broken down into as many partial percentages (b1, b2, b3 ...) as there are variables taken into account (b1 + b2 bn = b).

Documentation

For the purpose of determining the values of materials and wages, the parties agree to use the following documents as sources of reference :

1. Materials : prices (types of materials)
(or price indices)
published by

2. Labour costs : (or relevant indices)
published by
under the headings⁴

¹ This clause is based on the one issued by the United Nations Economic Commission for Europe as part of the General Conditions ECE 188 and 188A

² It is recommended that the parties should, as far as possible, adopt as the initial price, the price prevailing at the date of the agreement and not at an earlier date. This is normally the contract price less cost of packing, transport and insurance.

³ The parties may often wish to adjust the price only in relation to the fluctuations in the price of a certain metal or other material which is an important part of the cost of the product. In order to achieve this the parties can define b) as the percentage of the cost that the material in question represents, to define a) as 100 minus b) and c)=0.

⁴ Indices relating to the supplier's branch of industry should be used as far as possible.