



## INTRODUCTORY NOTE

### ORGALIME GENERAL CONDITIONS FOR THE REPAIR OF MECHANICAL, ELECTRICAL AND ELECTRONIC EQUIPMENT - R 17

#### SCOPE OF USE

The ORGALIME-General Conditions for the repair of mechanical, electrical and electronic equipment (R 17) are intended to be used where one company, the customer, employs another company, the contractor, to carry out the repair of a defect which has occurred in the customer's equipment. It is this single service which determines the type of contract. A clear distinction must be made from a maintenance contract, which is generally entered into on a long term basis and which may, apart from preventive maintenance, provide for corrective maintenance to be performed if a defect occurs during the contract period. ORGALIME has also drafted general conditions for maintenance of this type (ORGALIME M 17 conditions).

Neither should these General Conditions be used in a situation where a supplier of goods under a sales contract is obliged to repair defects during any warranty period, which has been agreed upon. In this situation, the respective obligations of the parties will be defined in the sales contract and in the general conditions often being part of this contract. The parties may use the ORGALIME-supply conditions (S 2012 and SI 14) in that respect.

These General Conditions for repair are meant for situations where the contractor performs repair at the cost of the customer. The contractor may be the original supplier of the equipment, who is no longer obliged to repair under a warranty obligation, but it may also be another company.

The repair work performed under ORGALIME R 17 mainly consists of traditional technical work. But since computer software today often forms a part of machinery and other industrial equipment, repair work may as well partly or solely consist of updating or adapting computer software. Such work is also covered by ORGALIME R 17.

#### PRICE FOR REPAIR SERVICES

When a defect occurs, it is sometimes difficult to trace the cause of the defect. It may take much time to analyse the defect (test runs may for instance be necessary) and to decide on an adequate way to remedy the defect. It is therefore usually appropriate for a contractor to charge his repair services on a time and cost basis and not agree on a fixed price. A customer will, however, often prefer a fixed price.

Although these General Conditions allow for an agreement on a lump sum price, they start from the assumption that the parties have agreed on a time and cost basis-system. In order to decrease the uncertainty for the customer on the total price to be charged, the conditions provide for a price estimate by the contractor after fault tracing, but before undertaking any remedial or other work. The customer may then decide not to proceed with the repair work.

#### CONTENTS OF THE INDIVIDUAL CONTRACT

The parties must 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 the R 17 apply to the contract;
- a specification of the equipment which is subject to the repair work;
- a description of the defect to be repaired or the repair work to be undertaken;
- the lump sum, if the parties decide not to apply the time and cost basis-system;
- technical documentation to be provided by the customer.

For some of the items in R 17 the parties may prefer to have a different rule from the one specified in the General Conditions. They may, for example, provide for a different liability period than the one specified in Clause 22 or change the liability of the contractor for damage to the customer's property under Clause 26.

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 33 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 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.