



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

**Hennef / Germany, April 2007**

**PREAMBLE**

1. All deliveries and performances are based on these General Conditions and on any special contractual agreements that might have been concluded. Any differing purchasing conditions of the Purchaser shall be negotiated separately. If no special agreement is set up, the contract is concluded by the Supplier's written order confirmation.

The object(s) to be supplied under these General Conditions is (are) hereinafter referred to as the Product.

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.

**DRAWINGS AND DESCRIPTIONS**

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

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

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 erect, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

**ACCEPTANCE TESTS**

5. 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.

6. 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.

7. 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 only be carried out at the Purchaser's request, if the deficiency was significant.

8. 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**

9. 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 in the contract, 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 product to its destination, the risk will pass not later than when the Product is handed over to the first carrier.

Partial shipments shall be permitted unless otherwise agreed.

**TIME FOR DELIVERY, DELAY**

10. 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.

11. 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.

12. If delay in delivery is caused by any of the circumstances mentioned in Clause 39 or by any act or omission on the part of the Purchaser, including suspension under Clause 18 and Clause 40, 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.

13. Any claims of the Purchaser with regard to the Supplier in case of non-delivery by the Supplier cannot be asserted.

14. If the Purchaser anticipates that he will be unable to accept delivery of the Product at the delivery time, 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 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 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.

15. Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 37, 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 price which is attributable to that part of the Product in respect of the which the contract is terminated.

## **PAYMENT**

16. The terms of payment are agreed upon in the order.

17. Regardless of 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.

18. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which the 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**

19. The Product shall remain the property of the Supplier until paid for in full all claims of the Supplier to the Purchaser resulting out of this business relationship including all future claims that may result out of contracts concluded at the same time or later. This also applies when part of the Supplier's claims or the total of it were incorporated in a current invoice and the balance has been drawn and accepted. In case the Purchaser behaves contrary to the contract, especially in case of default in payment, the Supplier is entitled to take back the delivered Product. If the Supplier takes back the Product or seizes it, this action is only regarded as withdrawal from the contract, if he has clearly expressed this in writing to the Supplier, unless the Law of Repayment is applied. The Purchaser has to inform the Supplier immediately in writing about seizures or any other actions of third party.

The Supplier is entitled to insure the Product against theft, breaking, fire, water and other damage at the Purchaser's expense, unless the Purchaser can prove that he has concluded such an insurance himself.

The Purchaser is entitled to further sell the supplied Product in a proper business. He however cedes right now to the Supplier all claims that will arise from the further disposal to the buyer or to third party and regardless whether the reserved goods are sold again without or after disposal. The Purchaser is entitled to include these claims even after the cession. The Supplier's right to collect the claims on his own remains unaffected hereof, but he engages himself not to collect the claims as long as the Purchaser fulfils his obligation to pay properly. The Supplier may demand the Purchaser to inform him about the ceded claims and their debtors, to give all necessary information for the collection, to give him all necessary documents and to inform the debtors about the cession. If the supplied good is sold with other goods that are not the Suppli-

er's property, the Purchaser's claim against the buyer at the amount of the delivery price agreed upon between Supplier and Purchaser is deemed being transferred.

The processing and reconstruction of reserved goods is always carried out by the Purchaser on behalf of the Supplier. If a combination of the reserved good with other items that are not property of the Supplier is agreed upon, the Supplier gains joined property of the new item in proportion to the value of the reserved good to the other processed goods at the time of processing. The same is applied for the new item stemming from the processing as for reserved goods. For the item produced in processing the same applies as for the reserved good.

The supplier commits himself to release the securities that he is entitled to as far as their value exceeds the claims that are still to ensure and have not yet been settled by more than 25 %.

### LIABILITY FOR DEFECTS

20. Pursuant to the provisions of Clauses 21-35, the Supplier shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials or workmanship.

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

22. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of one year. For the remaining parts of the Product the period mentioned in Clause 21 shall be extended only by a period equal to the period during which the Product has been out of operation as a result of the defect.

23. The Purchaser shall without undue delay notify the Supplier in writing of any defect which appears. Such notice shall under no circumstance be given later than two weeks after the expiry of the period given in Clause 21.

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.

24. On receipt of the notice under Clause 25 the Supplier shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 20-35 inclusive.

Repair shall be carried out at the place where the Product is located unless the Supplier deems it appropriate that the defective part or the Product is returned to him for repair or replacement.

The Supplier is obliged to carry out dismantling and reinstallation of the part if this requires special knowledge. If such special knowledge is not required, the Supplier has fulfilled his obligations in respect of the defect when he delivers to the Purchaser a duly repaired or replaced part.

25. If the Purchaser has given such notice as mentioned in Clause 23 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.

26. 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.

27. 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. The Purchaser shall follow the Supplier's instructions regarding such transport.

28. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for repair, dismantling, installation 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.

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

30. If, within a reasonable time, the Supplier does not fulfil his obligations under Clause 24, 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.

31. Where the defect has not been successfully remedied, as stipulated under Clause 30,

a) the Purchaser is entitled to a reduction of the purchase price in proportion to the reduced value of the Product, provided that under no circumstance shall such reduction exceed 10 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.

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

33. 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 Product.

The Supplier's liability does not cover defects which are caused by faulty maintenance, incorrect erection 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.

34. Notwithstanding the provisions of Clauses 20-33, the Supplier shall not be liable for defects in any part of the Product for more than two years from the beginning of the period given in Clause 21.

35. Save as stipulated in Clauses 22-34, 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 13 or in case of culpable injury of life, body or health. The limitation of liability shall further not apply in case of culpable injury of fundamental contractual obligations. In case of minor negligence, the Supplier is only liable for the contractually typical damage that can be reasonably foreseen. The limitation of liability shall further not apply in those cases where there is liability according to the Law of Product Liability where the supplied goods have faults for personal damages or damages to property for items that are used in private. It shall also not apply for defects that the Supplier has cunningly concealed or in cases where he has guaranteed the absence of such defects.

## **TRANSPORT DAMAGES**

36. If the trade term is „freight prepaid“, the Supplier has to check the packing of the goods for external damages on receipt of the goods in presence of the haulier. Damages or distortions of the transport packing, even if very minor, must be reported IMMEDIATELY on the acknowledgement of receipt presented by the deliverer. The Supplier has to be informed immediately about the damage using this acknowledgement and, if possible, also photos. If receipt is refused, the transport damage has to be clearly indicated as reason for refusal and has to be documented. Damages that are found in un-

packing the goods have to be reported in writing to the sender IMMEDIATELY upon unpacking, if possible with photos. The delivery shall not be sent back without the Supplier's expressive request. The packing then shall not be further removed or disposed. The whole item including its packing has to be stored in a way that any further damage is excluded. In case of non-compliance the Supplier is not liable for the settlement of any damages.

## **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 any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstance 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 Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.

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 39 for more than six months.

## **ANTICIPATED NON-PERFORMANCE**

40. 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**

41. 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.

This limitation of the Supplier's liability shall not apply if he has been guilty of gross negligence as defined in Clause 13 or in case of culpable injury of life, body or health. Further it shall not apply in case of culpable injury of fundamental contractual obligations. In case of minor negligent injuries of fundamental contractual obligations, the Supplier is only liable for the contractually typical damage that can be reasonably foreseen.

The limitation of liability shall further not apply in those cases where there is liability according to the Law of Product Liability where the supplied goods have

faults for personal damages or damages to property for items that are used in private. It shall further not apply in case of damages caused by fraud or despite of special guarantees that were given.

#### **DISPUTES AND APPLICABLE LAW**

42. 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.

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

If German Law is applied to the contract (acc. to Clause 43 of these Conditions), the legal regulations of the ORGALIME conditions are valid with regard to the General Trade Conditions (AGB) of the German Civil Code (BGB) including this additional agreement.

Incidentally, it should be taken into consideration that possibly the Viennese UN purchase law (CISG) has to be applied. If this is not desired, it has to be expressly excluded.

**These General Conditions are based on the ORGALIME S 2000 conditions.** ORGALIME Brussels is a loose combine of the leading business associations of the mechanical, electrical and the metal-processing industries from eighteen European countries.



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