

INTRODUCTORY NOTE

ORGALIME GENERAL CONDITIONS FOR MAINTENANCE - M 2000

Scope of use

The General Conditions for Maintenance 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 certain period. The conditions replace the Orgalime publication titled Model Form of Maintenance Contract.

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 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 or corrective maintenance is included.

According to Clause 19 the corrective maintenance shall, unless otherwise agreed, be paid on a time basis. If the parties wish to include the corrective maintenance in a fixed fee, they may want to limit the extent the corrective maintenance that is covered by 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.

The General Conditions are not, however, intended for situations where the Contractor undertakes only to remedy a specific defect, which has already occurred. In such situations the Orgalime General Conditions for Repair are recommended.

Contents of the individual contract

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 clear that the General Conditions apply to the contract
- A description of the Equipment, which is subject to maintenance
- The extent to which the Contractor shall carry out preventive and corrective maintenance
- A detailed description of what is comprised in the preventive maintenance (for example the extent of the functional checks), and a time schedule for its performance

- A list of wearing 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 8)
- Technical documentation to be provided by the Customer (Clause 12)
- The fee for preventive maintenance and the terms of payment (Clauses 18 and 21)
- The duration of the contract and the required length of notice of termination (Clause 30)

For some of the above listed points the General Conditions specify a rule, which will apply where no other agreement is reached. But an individual agreement is normally to be preferred.

There are also other 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 liability for damage under Clause 27, or they may agree on a fixed fee to cover both preventive and corrective maintenance, or that there is no obligation to use original parts (Clause 7).

Amendment of the basic liability rules should not, however, be undertaken without expert legal advice.

No guarantee as to results

The Contractor's obligations consist primarily of using proper care and skill in performing the work described in the contract and that the parts, which he installs, are free of defects. There is no guarantee that the work will have a certain result.

If the parties agree that the Contractor shall guarantee a certain result, for example the availability of the equipment, they may still use the general conditions as a basis for the contract, but they will have to clearly specify the terms of the guarantee. Important points to cover are the conditions under which the guarantee will apply, how the fulfilment shall be measured and the remedies available to the Customer if the guarantee is not fulfilled. Such a guarantee is, however, rather complicated and the text must be considered carefully.



GENERAL CONDITIONS FOR MAINTENANCE – M 2000

Brussels, September 2000

PREAMBLE

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

DEFINITIONS

2. In these General Conditions the following terms shall have the meaning hereinafter assigned to them:

"Contract" shall mean the written agreement between the parties concerning maintenance to be performed by the Contractor, and all appendices, including agreed amendments and additions to the said documents.

"Equipment" shall mean the specific equipment, which is subject to maintenance under the Contract.

"Gross Negligence" shall mean an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

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

"Wearing Parts" shall mean those parts of the Equipment, which shall be replaced under the preventive maintenance. The Contract shall identify the Wearing Parts and the intervals at which they shall be replaced.

SCOPE OF THE MAINTENANCE

3. Contractor undertakes to perform preventive and corrective maintenance of the Equipment to the extent specified in the Contract.

PREVENTIVE MAINTENANCE

4. Preventive maintenance shall be carried out at the times or with the intervals specified in the Contract. Unless otherwise agreed the preventive maintenance shall include:
 - checking the condition of the Equipment
 - functional check
 - adjustments
 - provision and replacement of Wearing Parts
 - cleaning and necessary lubrication

CORRECTIVE MAINTENANCE

5. Corrective maintenance shall be undertaken in order to remedy any functional defects which have arisen in the Equipment. It shall be commenced with all speed or within the time specified in the Contract. Unless otherwise agreed the corrective maintenance shall include:
 - fault tracing
 - remedying of the defect
 - provision and replacement of spare parts
 - functional check

CONTRACTOR'S MAINTENANCE REPORT

6. The Contractor shall make a report In Writing containing his observations and the measures taken. The Contractor shall provide a copy of the report to the Customer each time he has performed maintenance work. The report shall, unless otherwise agreed, be in the same language as the Contract.

ORIGINAL PARTS

7. 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.

CUSTOMER'S DAILY CARE. LOG

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

CONTRACTOR'S EXCLUSIVE RIGHT

9. The Customer shall not, except as specified in Clauses 17 and 27, without the Contractor's consent, himself 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 concerning 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 seriously affect the Contractor's obligations, and 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. The Contractor shall in case of such termination also be entitled to compensation under Clause 32.

WORKING CONDITIONS

11. The Customer shall ensure that the maintenance is not carried out under dangerous or unhealthy conditions, and shall take all necessary measures to protect the Contractor's personnel from exposure to any safety or health hazard.

The Customer shall ensure that the Contractor's personnel are informed of any safety regulations in force at the place where the maintenance is carried out.

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

TECHNICAL DOCUMENTATION

12. The Customer shall provide the technical documentation (e.g. up to date drawings, descriptions, charts and instructions) in his possession, which is necessary for carrying out the agreed maintenance. The Customer shall further provide the log referred to in Clause 8. The Contractor may not use such documentation for any purpose other than to fulfil the Contract.

NOTICE OF PREVENTIVE MAINTENANCE

13. 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

14. If corrective maintenance is carried out shortly before preventive maintenance is due, the Contractor may, with the Customer's consent, thereby also 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.

CONTRACTOR'S ACCESS TO THE EQUIPMENT. WORKING HOURS

15. The Customer shall ensure that the Contractor has access to the Equipment at the agreed or notified time for maintenance.

Unless otherwise agreed, the maintenance shall be carried out during the Contractor's normal working hours.

CUSTOMER'S DELAY

16. The Customer shall immediately notify the Contractor if he cannot let the Contractor carry out the maintenance at the agreed or notified time.

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.

CONTRACTOR'S DELAY

17. If the Contractor fails to carry out the maintenance at the agreed or notified time and such delay is not due to the Customer, the following shall apply:
- In case of late preventive maintenance the Customer shall fix a final period within which the Contractor shall have carried out the maintenance. If the Contractor fails to do so, the Customer may carry out the maintenance himself or employ others to do so.
 - In case of late corrective maintenance the Customer may – having notified the Contractor thereof – carry out the maintenance himself or employ others to do so.

Unless the delay is due to force majeure as defined in Clause 29, the Contractor shall reimburse the Customer any additional costs he incurs for such maintenance. The Contractor shall, regardless of the cause of the delay, repay the amount he may have received for the maintenance in question.

Except as specified in this Clause 17 the Customer shall not be entitled to any compensation for the Contractor's delay.

FEE FOR PREVENTIVE MAINTENANCE

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

If the Contractor's personnel are required to work outside normal working hours or to wait due to circumstances for which the Customer is responsible, the costs therefore shall be invoiced separately in accordance with the norms currently applied by the Contractor.

The agreed fee is exclusive of any taxes or dues levied on the invoice in the Customer's country.

PAYMENT FOR CORRECTIVE MAINTENANCE

19. Unless otherwise agreed the corrective maintenance carried out by the Contractor shall be paid on a time basis. The Contractor's invoice for corrective maintenance shall specify the following items separately:
- working time
 - time and costs for travel, board and lodging and transport costs
 - payment for spare parts
 - payment for other material which has been used
 - waiting time and over time caused by the Customer.

The charges for each item shall be in accordance with the norms and price lists currently applied by the Contractor. The specified amount is exclusive of any taxes or dues levied on the invoice in the Customer's country.

PRICE ESTIMATE

20. In case of corrective maintenance the Contractor shall, at the Customer's request, provide a price estimate after fault tracing but before undertaking any other work. The estimate shall not be binding, but the Contractor shall inform the Customer if it becomes apparent that the final price will exceed the estimate by more than 10 percent. If the Customer, after receiving the price estimate or such last mentioned notice, chooses not to proceed, he shall nevertheless pay the Contractor for the work he has performed.

PAYMENT. INTEREST ON LATE PAYMENT

21. Unless otherwise agreed the fee for preventive maintenance shall be paid before the start of each contract period. Payment shall be made against invoice no later than 30 days after the date of the invoice.

Any other payment shall be made against invoice no later than 30 days after the date of the invoice.

If the Customer fails to pay by the due date, the Contractor shall be entitled to interest from the date when the payment became due. The rate of interest shall be as specified in the Contract or as otherwise agreed. 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 addition the Contractor may, after having notified the Customer thereof, suspend his performance of the Contract until he receives payment. The Customer shall then further compensate the Contractor for any additional costs incurred when resuming the maintenance.

LIABILITY FOR DEFECTS

22. If the Contractor has failed to correctly perform the maintenance specified in the Contract, or if there is a defect in a part which he has provided under the Contract, the Contractor shall, after receipt of a notice under Clause 24 or after he himself discovered the defect, without delay at his own cost remedy the defect.

LIABILITY PERIOD

23. Unless otherwise agreed the Contractor shall be liable for the preventive maintenance work during the currency of the contract and for a period of six months after the contract has expired. The Contractor shall be liable for corrective maintenance work for a period of six 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 he installed the part in question in the Equipment, or – if the Contractor has not installed the part – after he delivered it to the Customer.

NOTICE OF DEFECTS

24. The Customer shall without undue delay notify the Contractor In Writing of any defect, which appears in the work performed, or 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

25. If the Contractor fails to fulfil his obligations under Clause 22 within a reasonable time, the Customer may, having notified the Contractor thereof In Writing, himself undertake or employ a third party to undertake necessary remedial work at the risk and expense of the Contractor, provided that the Customer proceeds in a reasonable manner.

MEASURES TO PREVENT DAMAGE

26. If defects in the Contractor's work or parts provided by him may cause damage, the Customer shall take any immediate measures, which are necessary to prevent or mitigate such damage. The Contractor shall compensate the Customer for the necessary costs for such measures.

LIABILITY FOR DAMAGE TO THE CUSTOMER'S PROPERTY

27. The Contractor shall be liable for damage to the Customer's property 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 50 000 EUR or the corresponding amount in the currency of the Customer's country, or five times the yearly fee specified in the Contract, if this is a higher amount.

LIMITATION OF LIABILITY

28. The Contractor's liability under Clauses 22 and 26 does not cover defects or damage due to circumstances for which the Contractor is not responsible, such as incorrect use of the Equipment, incorrect daily care by the Customer (Clause 8), faulty maintenance by the Customer as referred to in Clause 17 or incorrect measures under Clause 26. Nor shall the Contractor be liable for normal wear and tear.

The Contractor shall have no liability for defective work, defective parts provided under the Contract or otherwise for his negligence except as stated in Clauses 22, 25, 26 and 27. This also applies to any loss, which may be caused in connection therewith such as loss of production, loss of use, loss of profit or any other consequential economic loss. This limitation of the Contractor's liability shall not apply, however, where he has been guilty of Gross Negligence.

If the Contractor incurs liability towards any third party for loss or damage arising in connection with performance of the Contract, the Customer shall indemnify, defend and hold the Contractor harmless to the extent that the Contractor's liability is limited as stated in this Clause.

If a claim for loss or damage as described in this Clause is lodged against one of the parties, the latter party shall forthwith inform the other party thereof In Writing.

FORCE MAJEURE

29. 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 or work by sub-contractors caused by any such circumstances 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.

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.

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 this Clause for more than six months.

CONTRACT PERIOD. NOTICE OF NEW FEE

30. Unless otherwise agreed, the Contract is concluded for a period of one year and shall be prolonged 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 fee is to be adjusted according to an index clause, the Contractor may demand an increase of the agreed fee, provided that he informs the Customer In Writing of the fee he requires for the coming contract period at least three months before the expiry of the current contract period.

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 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.

TERMINATION

32. In addition to what is specified in Clauses 10, 29 and 30 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 or under Clause 10, the party terminating the Contract shall be entitled to compensation for the loss he has suffered. Except as stated in Clause 28, third paragraph, such compensation shall, unless otherwise agreed, not exceed five times the yearly fee specified in the Contract.

DISPUTES. APPLICABLE LAW

33. 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.

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

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Appendix attached to the

ORGALIME GENERAL CONDITIONS M 2000

Where the Contract is governed by German Law (cf. clause 33 of the ORGALIME Conditions), the present Amendment shall apply jointly with the ORGALIME Conditions in order to pay due regard to the provisions of the German Civil Code BGB concerning standard business conditions.

Regarding clause 17 last paragraph (to be replaced by the following):

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

Regarding clause 23 first paragraph (to be replaced by the following):

"Unless otherwise agreed the Contractor shall be liable for period of twelve months for the preventive maintenance work during the currency of the contract, up to a period of no more than 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."

Regarding 27 (amendment):

"This limitation of the Contractor's liability shall not apply if he has been guilty of intent or gross negligence as defined in clause 2 or if the Contractor negligently causes damage to life, body or health.

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

Nor shall the said limitation of liability apply in the cases of strict liability under the Product Liability Act ("Produkthaftungsgesetz"), for defects of the Product causing death or personal injury, or damage to items of property used privately. Furthermore, the said limitation of liability shall not apply in the case of defects the Contractor has fraudulently concealed or whose absence he has guaranteed."

Regarding clause 28 last para (to be replaced by the following):

The Contractor shall have no liability for defective work, defective parts provided under the Contract or for any other reasons for which he can be held responsible except as stated in Clauses 22, 25, 26 and 27. This also applies to any loss which may be caused in connection therewith, such as loss of production, loss of use, loss of profit or any other consequential economic loss. "This exclusion of the Contractor's liability shall not apply if he has been guilty of intent or gross negligence as defined in clause 2 or if the Contractor negligently causes damage to life, body or health. Furthermore, it shall not apply in cases of negligent breach of a condition which goes to the root of the contract ("wesentliche Vertragspflichten"). In the case of a slightly negligent breach of a condition which goes to the root of the contract, the Contractor shall be liable only for reasonably foreseeable damage which is intrinsic to the contract.

Nor shall the limitation of liability apply in the cases of strict liability under the Product Liability Act ("Produkthaftungsgesetz"), for death or personal injury, or damage to items of property used privately. Neither does the said exclusion apply in the case of damage attributable to fraudulent concealment or despite specific guarantees."

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