



**GENERAL CONDITIONS FOR THE REPAIR OF MACHINERY
AND EQUIPMENT (R02)**

July 2002

INTRODUCTORY NOTE

GENERAL CONDITIONS FOR THE REPAIR OF MACHINERY AND EQUIPMENT (R02)

Scope of use

The General Conditions for the repair of machinery and equipment (including parts of these) 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 drafted general conditions for maintenance of this type (ORGALIME-M2000-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.

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, who is no longer obliged to repair under a warranty obligation, but it may also be another company.

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 analyze 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 basis and not agree on a fixed price. A Customer will, however, 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 the time 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 separately in writing. Among the points to be covered are:

- A reference which makes clear that these General Conditions apply
- A description of the specific machinery and/or equipment which is subject to the repair work
- A description of the defect to be repaired or the repair work to be undertaken
- A lump sum, if the parties decide not to apply the time basis-system
- Technical documentation to be provided by the Customer

For some of the items in the General Conditions 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 27.

Amendments should however not be undertaken without expert legal advice.

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

GENERAL CONDITIONS FOR THE REPAIR OF MACHINERY AND EQUIPMENT (R02)

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 Contractor and the Customer concerning repair work 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 repair 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.

SCOPE OF THE REPAIR WORK

3. Unless otherwise agreed upon In Writing between the parties, the scope of the repair work shall consist of the following:

- fault tracing
- remedying of the defect
- 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 provide the Customer with a price estimate after fault tracing, but before undertaking any remedying or other work. The price 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.

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 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, then 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 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. Where the repair work is to be carried out at the premises of the Customer, the Customer shall ensure that the following conditions are satisfied before the agreed date for the commencement of the repair work:

a. The Contractor’s personnel shall be 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 reasonable time, work may be performed outside normal working hours to the extent deemed necessary by the Contractor.

b. Before repair work is started the Customer shall inform the Contractor of all relevant safety regulations in force at its premises. The repair work shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken before repair work is started and shall be maintained during the repair work.

c. The Customer shall make available to the Contractor free of charge at the proper time on the Customer’s premises all necessary cranes, lifting equipment and equipment for transport on its 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 available on the premises.

d. The Customer shall make available to the Contractor free of charge necessary storage facilities, providing protection against theft and deterioration of the tools and repair equipment, and the personal effects of the Contractor's personnel.

TRANSPORT OF EQUIPMENT AND RISK OF LOSS AND DAMAGE TO EQUIPMENT WHERE REPAIRS ARE CARRIED OUT ELSEWHERE THAN AT THE CUSTOMER'S PREMISES

7. 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 the negligence of the Contractor.

8. The Contractor shall give appropriate notice In Writing to the Customer about the time and means of transport of the repaired Equipment from and to the Customer's premises.

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

TECHNICAL DOCUMENTATION

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

TIME FOR COMPLETION

11. A time agreed for completion shall be binding only to the extent that this has been expressly stipulated as such In Writing.

12. 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 commencement or completion of the repair work shall then be extended accordingly.

TESTING OF THE REPAIR WORK

13. When the Contractor has completed the repair work he shall notify the Customer thereof In Writing. The Contractor shall thereafter assist the Customer to carry 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

14. If the Contractor fails to complete the repair work within any binding time for completion and such delay is due to the Contractor's negligence, the Customer shall be entitled to liquidated damages as agreed upon, or failing such agreement 0.15 percent of the repair price for each day of delay, without however exceeding a total of 5 percent of the repair price.

15. If the Contractor's delay is such that the Customer has become entitled to the maximum liquidated damages under Clause 14 and the repair work is still not completed, the Customer may In Writing demand the repair work to be completed within a final reasonable period, which shall not be less than one week.

16. If the Contractor fails to complete the repair work within such final period the Customer may -having notified the Contractor thereof- employ others to carry out the repair work. If the delay is due to the Contractor's negligence, the Contractor shall reimburse the Customer for any additional costs he reasonably incurs for such repair work. The Contractor shall, regardless of the cause of the delay, repay the amount he may have received for any repair work, which has not been carried out by him.

17. Except as specified in Clauses 14 and 16 the Customer shall not be entitled to any compensation for the Contractor's delay.

PAYMENT

18. Unless the parties have agreed on a lump sum for the repair work, the repair work shall be carried out on a time basis. In that case the Contractor's invoice shall specify the following items separately:

- labour costs;
- time and costs for 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.

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

19. When repair work is to be carried out on a lump sum basis, the quoted 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 being the Contractor's negligence, 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.

20. When the repair work is to be carried out on a lump sum basis, 30% of the lump sum shall be paid at the formation of the Contract. The remaining part shall be paid after completion of the repair work. Payment shall be made against invoice not later than 30 days after the date of the invoice.

When the repair work is to be carried out on a time basis, payment shall be made against weekly invoices no later than 30 days after the date of the invoice.

The price for the repair work, be it on a lump sum or time basis, shall be exclusive of any value added taxes and any other taxes, duties and dues levied on the invoice in the Customer's country.

21. If the Customer fails to pay by the due date, the Contractor shall be entitled to interest from the date when 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, and, after completion of the repair work, retain the Equipment and other property of the Customer which is still in his possession, as far as allowed under the applicable law. The Customer shall in case of suspension compensate the Contractor for any additional costs incurred due to the suspension of the repair work.

LIABILITY PERIOD

22. Unless otherwise agreed the Contractor shall only be liable for the repair 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

23. 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.

LIABILITY FOR DEFECTS

24. If the Contractor has failed to correctly perform the repair work 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 23 or after he himself discovered the defect, without delay and at his own cost remedy the defect.

CONTRACTOR'S FAILURE TO REMEDY DEFECTS

25. If the Contractor fails to fulfill his obligations under Clause 24 within a reasonable time, the Customer may, after having notified the Contractor thereof In Writing, employ a third party to undertake necessary remedial work at the risk and expense of the Contractor, provided that the remedial work is performed at reasonable cost.

MEASURES TO PREVENT DAMAGE

26. If defects in the Contractor's work or parts provided by him may cause damage to property, 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 to the extent that the Contractor would have been liable for the damage.

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 repair 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.

LIMITATION OF LIABILITY

28. The Contractor's liability under Clauses 24, 25, 26 and 27 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, faulty maintenance by the Customer 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 24, 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.

COMPENSATION BY CUSTOMER

29. If, during performance of the repair work outside the Contractor's premises, the Contractor's equipment is damaged at the place of repair due to any circumstance for which the Customer is responsible, the Customer shall compensate the Contractor for the damage concerned. Damage resulting from normal wear and tear shall however not be compensated.

FORCE MAJEURE

30. 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 mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by subcontractors 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 three months.

ASSIGNMENT

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.

DISPUTES. APPLICABLE LAW

32. All disputes arising in connection with the Contract shall be finally settled by the competent court(s) of the Contractor's country.

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 R 02

Where the Contract is governed by German Law (cf. clause 32 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 (amendment):

„..., except in the case of negligent breach of a condition which goes to the root of the contract (*“wesentliche Vertragspflichten*), intent or gross negligence pursuant to clause 2 on the part of the Contractor“.

regarding clause 22, first sentence (to be replaced by the following):

“Unless otherwise agreed the Contractor shall only be liable for the repair work for a period of twelve months after the work was performed.”

regarding clause 27 (amendment):

„The said limitation of liability shall not apply in the case of intent or gross negligence under Clause 2. Furthermore, the exclusion 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 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 apply in the case of strict liability under the Product Liability Act (*“Produkthaftungsgesetz*“) based on 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.”

regarding clause 28, 2nd para, 3rd sentence (to be replaced by the following):

„The exclusion of the Contractor’s liability shall not apply in the case of intent or gross negligence under Clause 2 or if the Contractor negligently causes damage to life, body or health. Furthermore, the exclusion 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 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 apply in the case of strict liability under the Product Liability Act (*“Produkthaftungsgesetz*“) based on 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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