



ORGALIME

SUPPLEMENTARY CONDITIONS

for the

**SUPERVISION OF INSTALLATION OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS
DELIVERED UNDER ORGALIME S 2012**

Brussels, March 2014

PREAMBLE

1. These Supplementary Conditions shall supplement the Orgalime S 2012 General Conditions when the parties agree In Writing or otherwise thereto.

THE SUPPLIER'S OBLIGATIONS

2. The Supplier shall, upon notification by the Purchaser in accordance with Clause 4, provide the services of one or more competent supervisors

a) to give to the Purchaser or his site representative mentioned in Clause 13 of these Supplementary Conditions the necessary instructions for the installation of the Product and, if provided in the contract, for its commissioning by the Purchaser,

and

b) to supervise the manner in which the Supplier's instructions are carried out.

The number and qualifications of the Supplier's staff and the estimated duration of installation shall be agreed separately.

The Supplier's obligation shall cease if he has not received such notification from the Purchaser within one year following delivery under S 2012.

THE PURCHASER'S OBLIGATIONS

3. Installation shall be carried out by the Purchaser who shall at his own expense provide the skilled and unskilled labour, all equipment and everything necessary for the installation of the Product.

NOTIFICATION OF READINESS OF THE SITE

4. The Purchaser shall give the Supplier at least one month's notice of the date at which the site will be ready for the installation work and the commencement of supervision.

LOCAL LAWS AND REGULATIONS

5. The Purchaser shall in due time provide the Supplier with such information concerning local laws and regulations as is necessary for the proper execution of the Supplier's obligations.

The Supplier shall ensure that his staff complies with these laws and regulations.

WORKING CONDITIONS

6. The Purchaser shall ensure that the following conditions are satisfied:

a) The supervision shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken before supervision is started and shall be maintained during the time of supervision.

b) The Supplier's staff shall be able to obtain suitable and convenient board and lodging in the neighbourhood of the site and shall have access to internationally acceptable hygiene facilities and medical services.

c) The Purchaser shall make available to the Supplier free of charge necessary storage facilities, providing protection against theft and deterioration of the personal effects of the Supplier's staff.

d) The Purchaser shall make available to the Supplier free of charge sufficient offices on the site, equipped with telephone and access to the Internet.

e) The Purchaser shall give all necessary assistance to ensure that the Supplier's staff obtain in good time visas and any official entry, exit or work permits and (if necessary) tax certificates required in the Purchaser's country, as well as access to the site.

SAFETY REGULATIONS

7. Before commencement of supervision, the Purchaser shall notify the Supplier of all relevant safety regulations in force at the site and the Supplier shall secure the observance of such safety regulations by his staff.

8. If a breach of these regulations by the Supplier's staff come to the notice of the Purchaser, he may require them to be noted forthwith in the site register which the Supplier is obliged to keep in accordance with Clause 13.

9. The Supplier shall inform the Purchaser of any special risks which the execution of the installation may entail.

SUPERVISION PAID FOR ON A TIME BASIS

10. Where the parties have agreed that supervision shall be paid for on a time basis, the following shall apply:

10.1. The rates to be paid by the Purchaser are those stipulated in the contract. These rates shall be paid from the date of departure from the Supplier's premises until the date of return, including non-working days and the time needed for preparation and formalities incidental to the outward and homeward journeys.

10.2. Payment shall be made against monthly invoices concerning the supervision carried out. Payment shall be made within 30 days from the date of the invoice.

- 10.3. The following items shall be separately charged:

a) all travelling expenses incurred by the Supplier in respect of his staff and the transport of their equipment and personal effects using the means and class of travel specified in the contract;

b) cost of board and lodging and other living expenses, including any appropriate allowances, of the Supplier's staff for each day's absence from their homes, including non-working days and holidays. The daily allowances shall be payable even during incapacity caused by sickness or accident;

c) overtime and work on locally recognised days of rest and local public holidays and outside normal working hours shall be charged at special rates. The rates shall be as agreed in the contract, or, failing agreement, as normally charged by the Supplier;

d) time necessarily spent on daily travel between lodgings and the site if it exceeds half an hour each way;

e) any costs incurred by the Supplier in accordance with the contract, in connection with the provision of equipment by him;

f) any taxes or dues levied on the invoice and payable by the Supplier or his staff in the country where supervision takes place.

SUPERVISION PAID FOR BY A LUMP SUM

11. Where the parties have agreed that the supervision shall be paid for on the basis of a lump sum and the lump sum is not included in the price for the Product, the payment shall be made against invoices of 10% at the signature of the contract, 30% at the notification according to Clause 4 and the remaining part of the lump sum when the supervision has been finished.

12. The quoted lump sum price shall be deemed to include all the items mentioned in Clause 10.3. a) to e). If the supervision is delayed due to a cause for which the Purchaser or any contractor other than the Supplier is responsible, the Purchaser shall compensate the Supplier for:

a) extra work resulting from the delay;

b) waiting time and time spent on extra journeys to and from the site;

c) costs as a result of the Supplier having to keep his equipment at the site for a longer time than expected;

d) additional costs for journeys and board and lodging for the Supplier's staff;

e) other documented costs incurred by the Supplier as a result of changes in the supervision programme.

SITE REPRESENTATIVES AND SITE REGISTER

13.1. Each of the parties shall by notice In Writing appoint a representative to act on his behalf during the supervision. Such appointment shall be made at the latest on the date of notification under Clause 4.

Unless otherwise specified in the contract, they shall be authorised to act on behalf of their respective party in all matters concerning the installation work and the supervision.

Wherever these Supplementary Conditions stipulate that notice In Writing shall be given, the representative shall be authorised to receive such notice on behalf of the party he represents.

13.2. The Supplier shall keep a site register in which he shall note all installation and supervision work carried out and problems encountered. This site register shall be completed and signed daily by the representatives of the parties.

The representatives shall be authorised to sign the site register.

WORK NOT COVERED BY THE CONTRACT

14. The Purchaser shall not be entitled to use the Supplier's staff to perform any work not covered by the contract without the previous consent In Writing of the Supplier.

SUSPENSION OF SUPERVISION

15. The Supplier shall be entitled without prior notice, to suspend the supervision and withdraw his staff, if an invoice is not paid at the due date.

16. If the installation work is suspended for a cause for which the Supplier is not responsible:

a) the Purchaser shall be entitled to send home the Supplier's staff, provided he pays the expenses resulting therefrom;

b) the Supplier shall be entitled to recall his staff at the expense of the Purchaser if the suspension of installation work exceeds a period of two weeks.

If the Supplier's staff is sent home or recalled, the contract is not terminated and its performance is merely suspended until the Purchaser has required the return of the Supplier's staff to the site by giving at least one month's notice or as may be agreed.

If the suspension of the installation work lasts longer than three months the Supplier shall be entitled to terminate the supervision contract.

SUPPLIER'S LIABILITY

17. The Supplier shall be liable for any damage to the Product and to the property of the Purchaser caused by the Supplier's negligence during the supervision and for any defects in the installation work resulting from the Supplier's failure to adequately perform his obligations under Clause 2. The liability of the Supplier shall in this respect however be limited to the agreed price for the supervision work.

The Supplier shall in case of any extra installation work resulting from the Supplier's negligence or failure be obliged to perform any related supervision work at no charge.

18. Save as otherwise stated in these Supplementary Conditions there shall be no liability on the Supplier towards the Purchaser for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.



Appendix attached to the ORGALIME SUPPLEMENTARY CONDITIONS S 2012 S regarding the application of German law

Where the Contract is governed by German Law (cf. clause 47 of the ORGALIME Conditions S 2012), the present Appendix shall apply jointly with the "Supplementary Conditions for the Supervision of Installation of Mechanical, Electrical and Electronic Products" in order to pay due regard to the provisions of the German Civil Code BGB concerning standard business conditions.

Regarding clause 17 (new para 2 added between "... for the supervision work." and "The Supplier shall in case..."):

"The limitation of liability shall not apply in the case of intent, gross negligence or where an injury or the death of a person is caused through negligence. Furthermore, it shall not apply in cases of negligent breach of a fundamental condition of contract ("*wesentliche Vertragspflichten*"). In the case of a slightly negligent breach of a fundamental condition of contract, liability shall be limited to 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 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 Supplier has fraudulently concealed or whose absence he has guaranteed."

Regarding clause 18 (new para 2 added):

"This exclusion of liability shall not apply in the case of intent, gross negligence or where an injury or the death of a person is caused through negligence. Furthermore, it shall not apply in cases of negligent breach of a fundamental condition of contract ("*wesentliche Vertragspflichten*"). In the case of a slightly negligent breach of a condition which goes to the root of the contract, the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract. Nor shall the exclusion of liability apply in cases of strict liability under the Product Liability Act ("*Produkthaftungsgesetz*"), for defects causing death or personal injury, or damage to items of property used privately. Furthermore, the said exclusion shall not apply in the case of damage attributable to fraudulent concealment or under a specific guarantee granted."

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