



ORGALIME

**GENERAL CONDITIONS FOR COMPUTER SOFTWARE**  
**Supplementary conditions for computer software included in products**  
**delivered under Orgalime S 2012 or Orgalime SI 14**

Brussels, March 2014

**PREAMBLE**

1. This supplement contains conditions which regulate the rights and obligations in respect of computer software, which is included in respectively the Product or the Works (in this supplement referred to as the Product). The supplement complements the conditions in Orgalime S 2012 or Orgalime SI 14 respectively and shall apply when the parties agree thereto In Writing or otherwise. The term Supplier, which is used hereinafter, shall, when Orgalime SI 14 apply, refer to the Contractor.

**TYPES OF COMPUTER SOFTWARE**

2. Computer software which is covered by these supplementary conditions is referred to as follows:
- 2.1. The *Computer Software* is the computer software which is included in the Product, and consists of Supplier's Software and/or Sublicensed Software.
- 2.2. The *Supplier's Software* is computer software to which the Supplier holds the intellectual property rights.
- 2.3. *Sublicensed Software* is computer software to which a third party holds the intellectual property rights and to which the Supplier, with the property right holder's permission, grants a right of use.

**THE PURCHASER'S RIGHT TO USE THE COMPUTER SOFTWARE**

3. Unless otherwise agreed In Writing, the following shall apply in respect of the Purchaser's right to use the Computer Software:

3.1. *Supplier's Software*

The Purchaser acquires the non-exclusive right to use the Supplier's Software only in the use of the Product. The Purchaser may transfer this right of use to subsequent owners or leaseholders of the Product. The Supplier retains the intellectual property rights to the Supplier's Software even when such software has been produced specially for the Purchaser.

The Purchaser shall be entitled, at his own responsibility, to make changes to the Supplier's Software to the extent that they are consistent with the general purpose for which the Product is intended and with the requirements of the applicable safety regulations.

The Supplier shall not be obliged to provide the source code for the Supplier's Software.

3.2. *Sublicensed Software*

Subject to any limitations which have been agreed between the Supplier and the holder of the intellectual property rights, the Purchaser acquires the non-exclusive right to use the Sublicensed Software only in the use of the Product and to transfer this right of use to subsequent owners or leaseholders of the Product. The Supplier shall inform the Purchaser In Writing of any such limitations before the agreement regarding delivery of the Product is entered into. If the Supplier fails to inform the Purchaser of such limitations, the Supplier shall hold the Purchaser harmless against any claim of a third party, based on the infringement of such limitation, resulting from the Purchaser's use of the Sublicensed Software.

**UPDATING THE COMPUTER SOFTWARE**

4. Unless otherwise agreed In Writing, the Supplier shall not be obliged to provide the Purchaser with updated versions of the Computer Software.

**INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**

5. The Supplier shall, in accordance with Clauses 6-10, hold the Purchaser harmless against any claim of a third party, based on infringement of copyright or other intellectual property rights existing at the time of delivery, resulting from the Purchaser's use of the Computer Software.
6. The Supplier shall not, however, be liable for any claim in respect of infringement which is based on:
- use of the Computer Software by the Purchaser in a manner or place which has not been agreed and which the Supplier should not reasonably have foreseen, or
  - changes to the Computer Software undertaken by the Purchaser.
7. Defence against claims of infringement referred to in Clause 3.2 or Clause 5 shall be for the Supplier's account. He shall indemnify the Purchaser against such amounts as the latter is obliged to pay under a settlement approved by the Supplier or a final award.
- The Supplier shall only be liable, however, if the Purchaser without delay notifies the Supplier In Writing of any claim which he receives and lets the Supplier decide how the claim shall be dealt with in litigation and out of court negotiations.
8. If an infringement of intellectual property rights occurs and the conditions under Clause 7, second paragraph, are fulfilled, the Supplier shall, within a reasonable time, at his option:
- provide for the Purchaser the right to continue to use the Computer Software,
  - change the Computer Software so that the infringement ceases,
- or
- replace the Computer Software with other software having an equivalent function, the use of which does not result in an infringement.
9. If the Supplier fails to rectify the infringement in due time as described in the previous Clause 8, Clauses 36, 37 and 39 of Orgalime S 2012 or Clauses 68, 69 and 71 of Orgalime SI 14 respectively, as the case may be, shall apply.
10. Except as specified in Clauses 5-9, the Supplier shall have no liability towards the Purchaser for any infringement of third parties' rights caused by the Purchaser's use of the Computer Software. This limitation of the Supplier's liability shall, however, not apply if he has been guilty of gross negligence.

**OTHER DEFECTS IN THE COMPUTER SOFTWARE**

11. In case of other defects in the Computer Software than those causing infringement of copyright or industrial property rights, Clauses 23-39 of Orgalime S 2012 or Clauses 55-71 of Orgalime SI 14 respectively, as the case may be, shall apply.

**CONSEQUENTIAL LOSSES**

12. Save as otherwise stated in these Supplementary Conditions there shall be no liability on the Supplier 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 SW 14 regarding the application of German law**

Where the Contract is governed by German Law (cf. clause 47 of the ORGALIME Supply Conditions S 2012 or clause 79 of the ORGALIME Supply and Installation Conditions SI 14 respectively), the present Appendix shall apply jointly with the Supplementary Conditions SW 14 in order to pay due regard to the provisions of the German Civil Code BGB concerning standard business conditions.

### **Regarding clause 10 (new sentence 2 and additional supplements):**

"This limitation of liability shall not apply in the case of intent or Gross 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, the liability shall be limited to reasonably foreseeable damage which is intrinsic to the contract. 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 12 (new para 2 added):**

"This 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 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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