

## Components of the contract and their order of precedence

The contract consists of the following components:

- a) The present Contract/Offer including appendices, including the direct below-stated clause involving Construction and Erection All Risks Insurance;
- b) FM Bulk Handling A/S Amendment to ORGALIME SI 14;
- c) The General Conditions for the SUPPLY AND INSTALLATION OF MECHENICAL, ELECTRICAL AND ELECTRONIC PRODUCTS – ORGALIME SI 14

In the event of contradictions between different components of the Contract/Offer, the higher-ranking one in the sequence above shall take precedence. In the event of contradictions between the documents grouped together to form the individual components of the contract, those issued at a later date shall take precedence over earlier ones.

The provisions of this Agreement supersede in their entirety any proposal, purchase order or similar instrument issued by the Purchaser in respect of the Products an each such proposal, purchase order or similar instrument will be deemed to be null and void.

In addition to the Amended clauses listed below, the Purchaser must observe the following which shall be a part of any contractual relation with FM Bulk Handling A/S:

In any event Purchaser is obligated to obtain and maintain, and cause their respective subcontractors to obtain and maintain, insurance coverage for;

Construction and Erection All Risks Insurance

FM Bulk Handling A/S will draw up their own insurance policy, should FM Bulk Handling A/S be the main contractor and proof of insurance can be delivered upon request.

In the event that the Purchaser is the main contractor, the Purchaser must insure that the above-mentioned All Risks Insurance is setup in such a way that Purchaser waives any right to subrogation towards the Seller for risk of loss, damage of injury associated directly or indirectly with Purchasers business activities. Purchasers must draw up their own insurance for business activities under a Commercial General Liability insurance.

In any event, Supplier can under this clause only be held liable up to the amount actually received payment of the insurance coverage. The rest must be covered by the Buyer.



## FM Bulkhandling A/S Amendment to ORGALIME SI 14

- §§ 6 – 9 shall not apply for the Contract/Offer
- § 30 – ORGALIME SI 14 phrasing changed to below stated:  
The risk of loss of or damage to the Plant shall pass to the Purchaser in accordance with any agreed trade term, which shall be construed in accordance with the INCOTERMS® in force at the date of formation of the Contract. If no trade term has been specifically agreed, delivery of the Plant shall be Free Carrier (FCA) Skive Denmark at the place named by the Contractor. Any risk of loss of or damage to the Works not covered by the first paragraph of this Clause shall pass to the Purchaser on taking-over of the Works. Any loss of or damage to the Plant and Works after the risk has passed to the Purchaser shall be at the risk of the Purchaser, unless such loss or damage results from the Contractor's negligence.
- § 41 – ORGALIME SI 14 phrasing changed to below stated:  
If the Contractor anticipates that he will not be able to fulfil his obligations for taking-over before or at the time for taking-over, he shall forthwith notify the Purchaser thereof In Writing, stating the reason and, if possible, the time when taking-over can be expected. In this event, the Purchaser shall not be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.
- § 44 – ORGALIME SI 14 phrasing changed to below stated:  
If the delay is such that the Purchaser is entitled to maximum liquidated damages under Clause 43 and if the Works are still not ready for taking-over, the Purchaser may In Writing demand completion of the Works within a final reasonable period which shall not be less than one week. If the Contractor does not complete the Works within such final period and this is not due to any circumstance which is attributable to the Purchaser, then the Purchaser may by notice In Writing to the Contractor terminate the Contract in respect of such part of the Works as cannot in consequence of the Contractor's failure be used as intended by the parties. If the Purchaser terminates the Contract, he shall be entitled to compensation for the loss he suffers as a result of the Contractor's delay, however not including any consequential and indirect loss. The total compensation, including the liquidated damages which are payable under Clause 43, shall not exceed 15 per cent of that part of the Contract Price which is attributable to the part of the Works in respect of which the Contract is terminated. The Purchaser shall also have the right to terminate the Contract by notice In Writing to the Contractor if it is clear from the circumstances that there will occur a delay in taking-over of the Works which under Clause 43 would entitle the Purchaser to maximum liquidated damages. In case of termination for this reason, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this Clause 44.
- § 53 – ORGALIME SI 14 phrasing changed to below stated:  
The Contractor shall be liable for any damage to the Works which occurs before the risk has passed to the Purchaser. This applies irrespective of the cause of the damage, unless the damage has been caused by the Purchaser or anyone for whom he is responsible in connection with performance of the Contract. If the Contractor is not liable for the damage to the Works in accordance with this



Clause, the Purchaser may still require the Contractor to remedy the damage, be it at the Purchaser's cost.

The Purchaser is obligated under this Clause to have drawn up a Construction and Erection All Risks Insurance with sufficient coverage to cover any damage the Contractor may cause under this Clause.

- § 72 – ORGALIME SI 14 phrasing changed to below stated:  
The supplier shall be liable in accordance to the practices of Danish law, but any liability under this clause shall be limited to the insurance amount drawn up on the applicable insurance.  
If the Contractor incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Contractor harmless. If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof In Writing. The Contractor and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Works. The liability between the Contractor and the Purchaser shall however be settled in accordance with Clause 78-81. The limitation of the Contractor's liability in the first paragraph of this Clause shall not apply where the Contractor has been guilty of Gross Negligence.

In any event, Contractor can under this clause only be held liable up to the amount actually received payment of the insurance coverage. The rest must be covered by the Buyer.

In no event shall the Contractor be liable for consequential losses suffered under this clause, be it loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

- § 78 - ORGALIME SI 14 phrasing changed to below stated:  
This Contract is governed by and interpreted exclusively in accordance with the laws of Denmark without regard to conflicts of laws principles therein; however Danish International Private Law shall not apply.
- § 79 - ORGALIME SI 14 phrasing changed to below stated:  
The Contractor reserves the right to *either* resolve a dispute by arbitration *or* by judicial review. This is also applicable should the Purchaser decide to file suit. In this case, Contractor has 10 days from notice to inform the Purchaser whether the dispute should be solved either by arbitration or by judicial review.
- § 80 added to ORGALIME SI 14:  
Dispute resolution by arbitration, including any disputes regarding the existence, validity or termination thereof, shall be settled by arbitration administered by the Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by the Danish Institute and in force at the time when such proceedings are commenced. Should one of the Parties not be domiciled in Denmark, the language agreed upon for the proceedings of the arbitration is English. The place of arbitration and the arbitral tribunal shall be in Copenhagen, Denmark unless otherwise agreed In



Writing. The findings of the tribunal are final, and the proceedings and findings of the tribunal are to remain undisclosed to the public.

- § 81 added to ORGALIME SI 14:

Should the Contractor decide to settle any dispute arising from this Contract by judicial review the venue is The Maritime and Commercial Court in Copenhagen, Denmark, If the dispute is within the purview of the court. Should the dispute not be covered by the purview of the court, the dispute is to be settled by the court closest to where the Contractor is domiciled.



– Original text –

## ORGALIME SI 14

### **GENERAL CONDITIONS for the SUPPLY AND INSTALLATION OF MECHANICAL, ELECTRICAL ANDELECTRONIC PRODUCTS** Brussels, January 2014

#### **PREAMBLE**

1. These General Conditions shall apply when the parties agree In Writing or otherwise thereto. Any modifications of or deviations from them must be agreed In Writing.

#### **DEFINITIONS**

2. In these General Conditions the following terms shall have the meanings hereunder assigned to them: - “Contract”: the agreement In Writing between the parties concerning delivery and performance of the Works and all appendices, including agreed amendments and additions In Writing to the said documents; - “Contract Price”: the payment to be made for the Works. If installation is to be carried out on a time basis and has not been completed, the Contract Price for the purposes of Clauses 21, 43, 44 and 51 shall be the price for the Plant with the addition of 10 per cent or of any other percentage that may have been agreed by the parties; - “Gross Negligence”: 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 an act or omission; - “In Writing”: communication by document signed by both parties or by letter, fax, electronic mail and by such other means as are agreed by the parties; - “Plant”: the machinery, apparatus, materials, articles, documentation, software and other products to be supplied by the Contractor under the Contract; - “Site”: the place where the Plant is to be installed, including as much of the surrounding area as is necessary for unloading, storage and internal transport of the Plant and installation equipment; - “Works”: the Plant, installation of the

Plant and any other work to be carried out by the Contractor under the Contract. If the Works shall according to the Contract be taken over by separate sections intended to be used independently from each other, these Conditions shall apply to each section separately. The term “Works” shall then refer to the section in question.

#### **PRODUCT INFORMATION**

3. All information and data contained in general product documentation and price lists shall be binding only to the extent that they are by reference In Writing expressly included in the Contract.

#### **DRAWINGS AND TECHNICAL INFORMATION**

4. All drawings and technical documents relating to the Works 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.

5. The Contractor shall, not later than at the date of taking-over, provide free of charge information and drawings which are necessary to permit the Purchaser to commission, operate and maintain the Works. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Contractor shall not be obliged to provide manufacturing drawings for the Plant or for spare parts.



## TESTS BEFORE SHIPMENT

6. Tests before shipment of the Plant 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.

7. The Contractor shall notify the Purchaser In Writing of these 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.

8. If the tests show the Plant not to be in accordance with the Contract, the Contractor shall without delay remedy any deficiencies in order to ensure that the Plant complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.

9. The Contractor shall bear all costs for tests before shipment of the Plant. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

## PREPARATORY WORK AND WORKING CONDITIONS

10. The Contractor shall in good time provide drawings showing the manner in which the Plant is to be installed, together with all information required for preparing suitable foundations, for providing access for the Plant and any necessary equipment to the Site and for making all necessary connections to the Works.

11. The Purchaser shall in good time undertake preparatory work to ensure that the conditions necessary for installation of the Plant and for the correct operation of the Works are fulfilled. This shall not apply to preparatory work which

according to the Contract shall be performed by the Contractor.

12. The preparatory work referred to in Clause 11 shall be carried out by the Purchaser in accordance with the drawings and information provided by the Contractor under Clause 10. In any case the Purchaser shall ensure that the foundations are structurally sound. If the Purchaser is responsible for transporting the Plant to the Site, he shall ensure that the Plant is on the Site before the agreed date for starting the installation work.

13. If an error or omission in the drawings or information referred to in Clause 10 is discovered by the Contractor or notified to him In Writing before expiry of the period referred to in Clause 59, the costs of any necessary remedial work shall be borne by the Contractor.

14. The Purchaser shall ensure that: a) the Contractor's personnel are able to start work in accordance with the agreed time schedule and to work during normal working hours. Provided that the Purchaser has been given notice In Writing in reasonable time, work may be performed outside normal working hours to the extent deemed necessary by the Contractor; b) he has, in good time before installation is started, informed the Contractor In Writing of all relevant safety regulations in force at the Site. Installation shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken before installation is started and shall be maintained; c) the Contractor's personnel are able to obtain suitable and convenient board and lodging in the neighborhood of the Site and have access to internationally acceptable hygiene facilities and medical services; d) he has made available to the Contractor free of charge at the proper time on the Site all necessary cranes, lifting equipment and equipment for transport on the Site, 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 Purchaser available on the Site. The Contractor shall specify In Writing his requirements concerning such cranes, lifting equipment, measuring and testing instruments and equipment for transport on the Site at the latest one month before the agreed date for starting the installation work; e) he has made available to the Contractor free of charge sufficient offices on the Site, equipped with telephone and access to the Internet; f) he has made available to the Contractor free of charge necessary storage facilities, providing protection against theft and deterioration of the Plant, the tools and equipment required for installation and the personal effects of the Contractor's personnel; g) the access routes to the Site are suitable for the required transport of the Plant and the Contractor's equipment.

15. Upon the Contractor's request in good time, the Purchaser shall make available to the Contractor, free of charge, such labor and operators as may be specified in the Contract or as may reasonably be required for the purpose of the Contract. The persons made available by the Purchaser under this clause shall provide their own tools. The Contractor shall not be liable for such labor provided by the Purchaser or for any acts or omissions of the persons concerned.

16. If the Contractor so requires, the Purchaser shall give all necessary assistance required for the import and re-export of the Contractor's equipment and tools, including assistance with customs formalities. The assistance as such shall be provided free of charge.

17. The Purchaser shall give all necessary assistance to ensure that the Contractor's personnel 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. The assistance as such shall be provided free of charge.

18. The parties shall, no later than when the Contractor gives notice that the Plant is ready for dispatch from the place of manufacture, each appoint a representative In Writing to act on their

behalf during the work on the Site. The representatives shall be present on or near the Site during working hours. Unless otherwise specified in the Contract, the representatives shall be authorized to act on behalf of their respective party in all matters concerning the installation work. Wherever these General Conditions stipulate that a notice shall be given In Writing, the representative shall always be authorized to receive such notice on behalf of the party he represents.

#### **PURCHASER'S DEFAULT**

19. If the Purchaser anticipates that he will be unable to fulfil in time his obligations necessary for carrying out installation, including complying with the conditions specified in Clauses 11, 12 and 14-17, he shall forthwith notify the Contractor In Writing, stating the reason and, if possible, the time when he will be able to carry out his obligations.

20. Without prejudice to the Contractor's rights under Clause 21, if the Purchaser fails to fulfil, correctly and in time, his obligations necessary for carrying out installation, including to comply with the conditions specified in Clauses 11, 12 and 14-17, the following shall apply:

a) The Contractor may at his own discretion choose to carry out or employ a third party to carry out the Purchaser's obligations or otherwise take such measures as are appropriate under the circumstances in order to avoid or alleviate the effects of the Purchaser's default.

b) The Contractor may suspend in whole or in part his performance of the Contract. He shall forthwith notify the Purchaser In Writing of such suspension.

c) If the Plant has not yet been delivered to the Site, the Contractor shall arrange for storage of the Plant at the Purchaser's risk. The Contractor shall also, if the Purchaser so requires, insure the Plant.





d) The Purchaser shall pay any part of the Contract Price which, but for the default, would have become due.

e) The Purchaser shall reimburse the Contractor for any costs not covered by Clause 47 or 48, which are reasonably incurred by the Contractor as a result of measures under a), b) or c) of this Clause.

21. If taking-over is prevented by the Purchaser's default as referred to in Clause 20 and this is not due to any such circumstance as mentioned in Clause 73, the Contractor may also by notice In Writing require the Purchaser to remedy his default within a final reasonable period. If, for any reason which is not attributable to the Contractor, the Purchaser fails to remedy his default within such period, the Contractor may by notice In Writing terminate the Contract in whole or in part. The Contractor shall then be entitled to compensation for the loss he suffers by reason of the Purchaser's default, including any consequential and indirect loss. The compensation shall not exceed that part of the Contract Price which is attributable to that part of the Works in respect of which the Contract is terminated.

#### **LOCAL LAWS AND REGULATIONS**

22. The Contractor shall ensure that the Works are carried out and are in accordance with any laws, regulations and rules which are applicable to the Works. If required by the Contractor, the Purchaser shall provide the relevant information on these laws, regulations and rules In Writing.

23. The Contractor shall carry out any variation work necessary to comply with changes in laws, regulations and rules, referred to in Clause 22, or in their generally accepted interpretation, occurring between the date of submission of the tender and taking-over. The Purchaser shall bear the extra costs and other consequences resulting from such changes, including variation work.

24. If the parties are unable to agree on the extra costs and other consequences of changes in laws, regulations and rules, referred to in Clause 22,

the Contractor shall be compensated for any variation work on a time basis.

#### **VARIATIONS**

25. Subject to the provisions of Clause 29, the Purchaser is entitled to request variations to the scope, design and construction of the Works until the Works have been taken over. The Contractor may suggest such variations In Writing.

26. Requests for variations shall be submitted to the Contractor In Writing and shall contain an exact description of the variation.

27. As soon as possible after receipt of a request for a variation or after having himself made a proposal for a variation, the Contractor shall notify the Purchaser In Writing whether and how the variation can be carried out, stating the resulting alteration to the Contract Price, the time for taking-over and other terms of the Contract. The Contractor shall also give such notice to the Purchaser when variations are required as a result of changes in laws, regulations and rules referred to in Clause 22.

28. If taking-over is delayed as a result of disagreement between the parties on the consequences of variations, the Purchaser shall pay any part of the Contract Price which would have become due if taking-over had not been delayed.

29. Save as provided in Clause 23, the Contractor shall not be obliged to carry out variations requested by the Purchaser until the parties have agreed on how the variations will affect the Contract Price, the time for taking-over and other terms of the Contract.

#### **PASSING OF RISK**

30. The risk of loss of or damage to the Plant shall pass to the Purchaser in accordance with any agreed trade term, which shall be construed in accordance with the INCOTERMS® in force at the date of formation of the Contract. If no trade term has been specifically agreed, delivery of the Plant shall be Free Carrier (FCA) at the place named by the Contractor. Any risk of loss of or





damage to the Works not covered by the first paragraph of this Clause shall pass to the Purchaser on taking-over of the Works. Any loss of or damage to the Plant and Works after the risk has passed to the Purchaser shall be at the risk of the Purchaser, unless such loss or damage results from the Contractor's negligence.

#### **TAKING-OVER TESTS**

31. When installation has been completed taking-over tests shall, unless otherwise agreed, be carried out to determine whether the Works are as required for taking-over according to the Contract. The Contractor shall notify the Purchaser In Writing that the Works are ready for taking-over. He shall in this notice give a date for taking-over tests, giving the Purchaser sufficient time to prepare for and be represented at these tests. The Purchaser shall bear all costs of taking-over tests. The Contractor shall however bear all costs relating to his personnel and his other representatives.

32. The Purchaser shall provide free of charge any power, lubricants, water, fuel, raw materials and other materials required for the taking-over tests and for final adjustments in preparing for these tests. He shall also install free of charge any equipment and provide any labor or other assistance necessary for carrying out the taking-over tests. 33. If, after having been notified in accordance with Clause 31, the Purchaser fails to fulfil his obligations under Clause 32 or otherwise prevents the taking-over tests from being carried out, the tests shall be regarded as having been satisfactorily completed at the starting date for taking-over tests stated in the Contractor's notice.

34. The taking-over tests shall be carried out 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 Purchaser's country.

35. The Contractor shall prepare a report of the taking-over tests. This report shall be sent to the Purchaser. If the Purchaser has not been represented at the taking-over tests after having been notified in accordance with Clause 31, the test report shall be accepted as accurate.

36. If the taking-over tests show the Works not to be in accordance with the Contract, the Contractor shall without delay remedy the deficiencies. If the Purchaser so requires In Writing without delay, new tests shall be carried out in accordance with Clauses 31-35. This shall not apply when the deficiency was insignificant.

#### **TAKING-OVER**

37. Taking-over of the Works shall be considered to take place: a) when the taking-over tests have been satisfactorily completed or are regarded under Clause 33 as having been satisfactorily completed, or b) where the parties have agreed not to carry out taking-over tests, when the Purchaser has received a Contractor's notice In Writing that the Works have been completed, provided that the Works are as required for taking-over according to the Contract. Minor deficiencies which do not affect the efficiency of the Works shall not prevent taking-over. The Contractor's obligation to install the Plant at the Site is fulfilled when the Works are taken over pursuant to this Clause 37, notwithstanding his obligation to remedy any remaining minor deficiencies.

38. The Purchaser is not entitled to use the Works or any part thereof before taking-over. If the Purchaser does so without the Contractor's consent In Writing, the Works shall be deemed to have been taken over. The Contractor is then relieved of his duty to carry out taking-over tests.

39. As soon as the Works have been taken over in accordance with Clause 37 or 38, the period referred to in Clause 59 shall start to run. The Purchaser shall, at the Contractor's request In Writing, issue a certificate stating when the Works have been taken over. The Purchaser's failure to



issue a certificate shall not affect taking-over according to Clauses 37 and 38.

#### CONTRACTOR'S DELAY

40. If the parties, instead of specifying the date for taking-over, have specified a period of time within which taking-over shall take place, such period shall start to run as soon as the Contract is entered into and all agreed preconditions to be fulfilled by the Purchaser have been satisfied, such as official formalities, payments due at the formation of the Contract and securities.

41. If the Contractor anticipates that he will not be able to fulfil his obligations for taking-over before or at the time for taking-over, he shall forthwith notify the Purchaser thereof In Writing, stating the reason and, if possible, the time when taking-over can be expected. If the Contractor fails to give such notice, the Purchaser shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

42. The Contractor shall be entitled to an extension of the time for taking-over if delay occurs: a) because of any of the circumstances referred to in Clause 73, or b) as a result of variation work under Clause 23, or c) as a result of variations under Clauses 25-29, or d) as a result of suspension under Clauses 20, 51 or 76, or e) by an act or omission on the part of the Purchaser or any other circumstances attributable to the Purchaser. The extension shall be as necessary having regard to all the relevant circumstances. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for taking-over.

43. If the Works are not completed at the agreed time for taking-over, the Purchaser shall be entitled to liquidated damages from the date on which taking-over should have taken place. The liquidated damages shall be payable at a rate of 0.5 per cent of the Contract Price for each commenced week of delay. The liquidated damages shall not exceed 7.5 per cent of the Contract

Price. If only part of the Works is delayed, the liquidated damages shall be calculated on that part of the Contract Price which is attributable to such part of the Works as cannot in consequence of the delay be used as intended by the parties. The liquidated damages become due at the Purchaser's demand In Writing, but not before taking-over has taken place or the Contract is terminated under Clause 44. The Purchaser shall forfeit his right to liquidated damages if he has not lodged a claim In Writing for such damages within six months after the time when taking-over should have taken place.

44. If the delay is such that the Purchaser is entitled to maximum liquidated damages under Clause 43 and if the Works are still not ready for taking-over, the Purchaser may In Writing demand completion of the Works within a final reasonable period which shall not be less than one week. If the Contractor does not complete the Works within such final period and this is not due to any circumstance which is attributable to the Purchaser, then the Purchaser may by notice In Writing to the Contractor terminate the Contract in respect of such part of the Works as cannot in consequence of the Contractor's failure be used as intended by the parties. If the Purchaser terminates the Contract, he shall be entitled to compensation for the loss he suffers as a result of the Contractor's delay, including any consequential and indirect loss. The total compensation, including the liquidated damages which are payable under Clause 43, shall not exceed 15 per cent of that part of the Contract Price which is attributable to the part of the Works in respect of which the Contract is terminated. The Purchaser shall also have the right to terminate the Contract by notice In Writing to the Contractor if it is clear from the circumstances that there will occur a delay in taking-over of the Works which under Clause 43 would entitle the Purchaser to maximum liquidated damages. In case of termination for this reason, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this Clause 44.



45. Liquidated damages under Clause 43 and termination of the Contract with limited compensation under Clause 44 shall be the only remedies available to the Purchaser in case of delay on the part of the Contractor. All other claims against the Contractor based on such delay shall be excluded, except where the Contractor has been guilty of Gross Negligence.

#### **PAYMENT**

46. Unless otherwise agreed, payment shall be made within 30 days after the date of the invoice as follows: a) when installation is carried out on a time basis: - one third of the agreed price for the Plant at the formation of the Contract, - one third when the Contractor notifies the Purchaser that the Plant or the essential part of it is ready for dispatch from the place of manufacture and - the final third on arrival of the Plant at the Site. Payment for installation shall be made against monthly invoices. b) when installation is included in the lump sum Contract Price: - 30 per cent of the Contract Price at the formation of the Contract, - 30 per cent when the Contractor notifies the Purchaser that the Plant or the essential part of it is ready for dispatch from the place of manufacture, - 30 per cent on arrival of the Plant at the Site, - the remaining part of the Contract Price on taking-over.

47. When installation is carried out on a time basis the following items shall be separately charged:

a) all travelling expenses incurred by the Contractor in respect of his personnel and the transport of their equipment and personal effects (within reasonable limits) in accordance with the specified method and class of travel where these are specified in the Contract;

b) cost of board and lodging and other living expenses, including any appropriate allowances of the Contractor's personnel 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) the time worked, which shall be calculated by reference to the number of hours certified as worked in the timesheets signed by the Purchaser. Overtime and work on Sundays, holidays and at night shall be charged at special rates. The rates shall be as agreed in the Contract or, failing agreement, as normally charged by the Contractor. Save as otherwise provided, the hourly rates cover the normal wear and tear of the Contractor's tools and light equipment;

d) time necessarily spent on: - preparation and formalities incidental to the outward and homeward journeys of the Contractor's personnel, - the outward and homeward journeys and other journeys to which the personnel are entitled in accordance with current law, regulations or collective agreements in the Contractor's country, - daily travel of the Contractor's personnel between lodgings and the Site, if it exceeds half an hour each way and there are no suitable lodgings closer to the Site, - waiting when work is prevented by circumstances which are not attributable to the Contractor;

e) any expenses incurred by the Contractor in accordance with the Contract in connection with the provision of equipment by him, including where appropriate a charge for the use of the Contractor's own heavy equipment;

f) any taxes or dues levied on the invoice and payable by the Contractor in the country where installation takes place;

g) any costs which could not reasonably be foreseen by the Contractor and are caused by a circumstance which is not attributable to the Contractor;

h) any extra costs resulting from the applicability of mandatory rules of the Purchaser's country in the social field;

i) any costs, expenses and time spent resulting from extra work which is not attributable to the



Contractor. If these costs are time-related, they shall be charged at the rates referred to in this Clause 47 under c).

48. When installation is to be carried out for a lump sum, the Contract Price shall be deemed to include all the items mentioned in Clause 47, a) through e). Any items mentioned in Clause 47, f) through i), shall be deemed to be excluded from the Contract Price and shall therefore be charged separately. If these costs are time-related, they shall be charged at the rates referred to in Clause 47 under c).

49. If installation is delayed due to a cause which is attributable to the Purchaser, the Purchaser shall compensate the Contractor for any resulting additional costs, including but not limited to:

- a) waiting time and time spent on extra journeys;
- b) costs and extra work resulting from the delay, including removing, securing and setting up installation equipment;
- c) additional costs, including costs as a result of the Contractor 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 Contractor's personnel;
- e) additional financing costs and costs of insurance;
- f) other documented costs incurred by the Contractor as a result of changes in the installation programme.

If these costs are time-related, they shall be charged at the rates referred to in Clause 47 under c).

50. Whatever the means of payment used payment shall not be deemed to have been affected before the Contractor's account has been irrevocably credited for the amount due.

51. If the Purchaser fails to pay by a stipulated date, the Contractor shall be entitled to interest from the day on which payment was due and to

compensation for recovery costs. The rate of interest shall be as agreed between the parties or otherwise 8 percentage points above the rate of the main refinancing facility of the European Central Bank. The compensation for recovery costs shall be 1 per cent of the amount for which interest for late payment becomes due. In case of late payment and in case the Purchaser fails to give an agreed security by the stipulated date the Contractor may, after having notified the Purchaser In Writing, suspend his performance of the Contract until he receives payment or, where appropriate, until the Purchaser gives the agreed security. If the Purchaser has not paid the amount due within three months, the Contractor shall be entitled to terminate the Contract by notice In Writing to the Purchaser and, in addition to the interest and compensation of recovery costs according to this Clause 51, to claim compensation for the loss he incurs. Such compensation shall not exceed the Contract Price.

#### **RETENTION OF TITLE**

52. The Plant shall remain the property of the Contractor until paid for in full, including payment for installation of the Plant, to the extent that such retention of title is valid under the relevant law. The Purchaser shall at the request of the Contractor assist him in taking any measures necessary to protect the Contractor's title to the Plant. The retention of title shall not affect the passing of risk under Clause 30.

#### **LIABILITY FOR DAMAGE TO PROPERTY BEFORE TAKING-OVER**

53. The Contractor shall be liable for any damage to the Works which occurs before the risk has passed to the Purchaser. This applies irrespective of the cause of the damage, unless the damage has been caused by the Purchaser or anyone for whom he is responsible in connection with performance of the Contract. If the Contractor is not liable for the damage to the Works in accordance with this Clause, the Purchaser may still require the Contractor to remedy the damage, be it at the Purchaser's cost.



54. The Contractor shall be liable for damage to the Purchaser's property occurring before taking-over of the Works only if it is proved that such damage was caused by negligence on the part of the Contractor or anyone for whom he is responsible in connection with the performance of the Contract. The Contractor shall however under no circumstances be liable for loss of production, loss of profit or any other consequential or indirect loss.

#### **LIABILITY FOR DEFECTS**

55. Pursuant to the provisions of Clauses 56-71, the Contractor shall remedy any defect or non-conformity (hereinafter termed defect(s)) in the Works resulting from faulty design, materials or workmanship.

56. The Contractor shall not be liable for defects arising out of materials provided or a design stipulated or specified by the Purchaser.

57. The Contractor shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Works.

58. The Contractor shall not be liable for defects caused by circumstances which arise after the risk has passed to the Purchaser, e.g. defects due to faulty maintenance or faulty repair by the Purchaser or to alterations carried out without the Contractor's consent In Writing. The Contractor shall neither be liable for normal wear and tear nor for deterioration.

59. The Contractor's liability shall be limited to defects in the Works which appear within a period of one year from taking-over. If the use of the Works exceeds that which is agreed, this period shall be reduced proportionately. If taking-over has been delayed for reasons which are attributable to the Purchaser, the Contractor's liability for defects shall not, except as stated in Clause 60, be extended beyond 18 months after delivery of the Plant.

60. When a defect in a part of the Works has been remedied, the Contractor shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Works for a period of one year. For the remaining parts of the Works the period mentioned in Clause 59 shall be extended only by a period equal to the period during which and to the extent that the Works could not be used as a result of the defect.

61. The Purchaser shall without undue delay notify the Contractor In Writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 59 or the extended period(s) under Clause 60, where applicable. The notice shall contain a description of the defect. If the Purchaser fails to notify the Contractor In Writing of a defect within the time limits set forth in the first paragraph of this Clause, he shall lose his right to have the defect remedied. Where the defect is such that it may cause damage, the Purchaser shall immediately inform the Contractor In Writing. The Purchaser shall bear the risk of damage to the Works resulting from his failure so to notify. The Purchaser shall take reasonable measures to minimize damage and shall in that respect comply with instructions of the Contractor.

62. On receipt of the notice under Clause 61 the Contractor shall at his own cost remedy the defect without undue delay, as stipulated in Clauses 55-71. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities. Remedial work shall be carried out at the Site, unless the Contractor deems it more appropriate, having regard to the interests of both parties, that the defective part or the Plant is sent to him or a destination specified by him. Where remedial work is carried out at the Site, Clauses 14- 17 and 54 shall apply correspondingly. If the defect can be remedied by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, the Contractor may





demand that the defective part is sent to him or a destination specified by him. In such case the Contractor shall have fulfilled his obligations in respect of the defect when he delivers a duly repaired part or a part in replacement to the Purchaser.

63. The Purchaser shall at his own expense provide access to the Works and arrange for any intervention in equipment other than the Works, to the extent that this is necessary to remedy the defect.

64. Unless otherwise agreed, necessary transport of the Plant or parts thereof to and from the Contractor in connection with the remedying of defects for which the Contractor is liable shall be at the risk and expense of the Contractor. The Purchaser shall follow the Contractor's instructions regarding such transport.

65. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Contractor incurs for remedying the defect caused by the Works being located in a place other than the Site.

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

67. If the Purchaser has given such notice as mentioned in Clause 61 and no defect is found for which the Contractor is liable, the Contractor shall be entitled to compensation for the costs he incurs as a result of the notice.

68. If the Contractor does not fulfil his obligations under Clause 62, the Purchaser may by notice In Writing fix a final reasonable period for fulfilment of the Contractor's obligations, which shall not be less than one week. If the Contractor fails to fulfil his obligations within such final period, the Purchaser may himself undertake or employ a third party to undertake necessary repair work at the risk and expense of the Contractor. Where successful repair work has been undertaken by the Purchaser or a third party, reimbursement by the Contractor of reasonable costs incurred by the

Purchaser shall be in full settlement of the Contractor's liabilities for the said defect.

69. Where the defect has not been successfully remedied, as stipulated under Clause 68:

a) the Purchaser shall be entitled to a reduction of the Contract Price in proportion to the reduced value of the Works, provided that under no circumstances shall such reduction exceed 15 per cent of the Contract Price, or, where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract as regards the Works or a substantial part of it,

b) the Purchaser may terminate the Contract by notice In Writing to the Contractor in respect of such part of the Works as cannot in consequence of the defect be used as intended by the parties.

The Purchaser shall then be entitled to compensation for his loss, costs and damages up to a maximum of 15 per cent of that part of the Contract Price which is attributable to the part of the Works in respect of which the Contract is terminated.

70. Notwithstanding the provisions of Clauses 55-69 the Contractor shall not be liable for defects in any part of the Works for more than one year from the end of the liability period referred to in Clause 59 or from the end of any other liability period agreed upon by the parties.

71. Save as stipulated in Clauses 55-70, the Contractor 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 Contractor's liability shall not apply if he has been guilty of Gross Negligence.

#### **ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE WORKS**

72. The Contractor shall not be liable for any damage to property caused by the Works after taking-over and whilst the Works are in the possession of the Purchaser. Nor shall the Contractor be liable for any damage to products



manufactured by the Purchaser or to products of which the Purchaser's products form a part. If the Contractor incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Contractor harmless. If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof In Writing. The Contractor and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Works. The liability between the Contractor and the Purchaser shall however be settled in accordance with Clause 78. The limitation of the Contractor's liability in the first paragraph of this Clause shall not apply where the Contractor has been guilty of Gross Negligence.

#### **FORCE MAJEURE**

73. 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 Force Majeure, meaning 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, currency and export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts 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.

74. 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 a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice. If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Contractor for expenses incurred in securing and protecting the Works.

75. 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 73 for more than six months.

#### **ANTICIPATED NON-PERFORMANCE**

76. 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 is not going to perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof In Writing.

#### **CONSEQUENTIAL LOSSES**

77. Save as otherwise stated in these General Conditions there shall be no liability on 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.

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

78. 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.

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





## **Appendix to the ORGALIME GENERAL CONDITIONS SI 14 regarding the application of German law**

Where the Contract is governed by German Law (cf. clause 79 of the ORGALIME Conditions), the present Appendix 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. Furthermore, users should take into account that the UN Convention on the International Sale of Goods (CISG) may be applicable in addition to ORGALIME SI 14 (cf. clause 79). If this is not the intention of the Parties, a stipulation to the contrary will have to be expressly mentioned and agreed upon.

regarding clause 43, para 5: is deleted regarding clause 45, second sentence (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 fundamental condition of the contract (“wesentliche Vertragspflicht”), intent or Gross Negligence according to Clause 2.” regarding clause 71 (to be replaced by the following): “Save as stipulated in Clauses 55-70, the Contractor 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 Contractor’s liability shall not apply if he has been guilty of intent or Gross Negligence according to Clause 2 or where an injury or the death of a person is caused through negligence. Furthermore, the limitation of liability shall not apply in cases of a negligent breach of a fundamental condition of the contract (“wesentliche Vertragspflicht”). 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 limitation of liability apply in the case of strict liability under the Product Liability Act (“Produkthaftungsgesetz”) for defects of the Works 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 72: is deleted regarding clause 77 (amendment): “The said exclusion of liability shall not apply in the case of intent or Gross Negligence according to Clause 2 or where an injury or the death of a person is caused through negligence. Furthermore, the exclusion of liability shall not apply in cases of negligent breach of a fundamental condition of the contract (“wesentliche Vertragspflicht”). In the case of a slightly negligent breach of a fundamental condition of the contract, the Contractor 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 of the Works 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.”

