



INTRODUCTION

ORGALIME GENERAL CONDITIONS FOR THE SUPPLY OF SPECIALLY DESIGNED AND MANUFACTURED COMPONENTS – SC96

Brussels, January 1996

The SC 96 General Conditions are intended for use in industrial subcontracting. The term "Component" refers to a product which is to be incorporated in the Purchaser's product and which is not normally intended to be used independently.

SC96 are specially suited for castings, forgings, and other products made of different materials where specifically designed patterns, tools or models are used in the production. They can also be used for the supply of other components which answer to the above definition. If, however, SC96 are used for the supply of standard components which are available from alternative suppliers, the conditions should be amended, at least as regards the rules governing late delivery.

OTHER ORGALIME CONDITIONS RELEVANT FOR COMPONENTS' SUPPLY

SC 96 are not suitable for all products which are incorporated in other products. The **Orgalime General Conditions for Supply of Mechanical, Electrical and Associated Electronic Products, S92** are more appropriate for products which can be used in different applications such as pumps or motors.

In other cases where the supplier is the sole designer of the product, the **Orgalime Model Form of OEM Contract** may be a better basis for the contract.

SC96 are not intended for processing contracts. The parties are instead recommended to use the **Orgalime Model Form of a Processing Contract**.

LONG TERM CONTRACTS – SERIAL DELIVERIES

When SC96 apply to a contract for serial deliveries they need to be supplemented and amended. Appendix 1 contains a model form for the contracts relating to serial deliveries. Above all, the parties should define their respective obligations regarding production planning, such as forecasts, delivery schedules and call-off procedures. Where the parties intend to rationalise procedures by using Electronic Data Interchange (EDI) this should also be covered by a separate agreement.

DIVISION OF RESPONSIBILITY FOR DESIGN

Clause 36 in SC96 states that the supplier shall be liable for design defects to the extent that he is responsible for the design. If the parties cooperate in the design of the products ("design partnership") they should try to clarify their respective responsibility for the design, making clear each party's input in the design.

FAIR BALANCE

Orgalime represents the interests of both purchasers and suppliers and the conditions have been drawn up with a view achieving a fair balance between the interests of the parties.



GENERAL CONDITIONS
for the
SUPPLY OF SPECIALLY DESIGNED AND MANUFACTURED COMPONENTS
Brussels, January 1996

PREAMBLE

1. These General Conditions shall apply when the parties agree in writing or otherwise thereto. When the General Conditions apply to a specific agreement, modifications of or deviations from them must be agreed in writing.
The objects to be supplied under these conditions are hereinafter referred to as the "Products".

PRODUCT INFORMATION

2. All information and data contained in brochures and price lists are binding only to the extent that they are by reference expressly included in the agreement.

PATTERNS, TOOLS AND EQUIPMENT

3. Unless otherwise agreed, patterns, special tools and equipment provided by the Supplier to be used exclusively in fulfilment of the agreement, shall be paid by the Purchaser and shall, when fully paid, become his property.

The Supplier shall clearly mark patterns, special tools and equipment belonging to the Purchaser.

Patterns, special tools and equipment provided by the Purchaser, shall remain the Purchaser's property. The Purchaser shall pay the Supplier for any work necessary to adapt or supplement such patterns, special tools and equipment.

4. Where, according to the agreement, the Supplier shall provide patterns, special tools or equipment, the Purchaser shall reimburse the Supplier's costs for replacement or repair of these due to normal wear and tear or other causes for which the Supplier is not responsible.
5. The supplier shall be entitled to retain patterns, special tools or equipment that he has provided under the

agreement, when it can be reasonably concluded that his technical know-how will otherwise be disclosed and that the disclosure will cause significant loss to the Supplier. The Supplier shall in such case reimburse the Purchaser the value of that which he retains.

6. The Supplier shall store patterns, special tools and equipment until deliveries under the agreement have been completed. Patterns, special tools and equipment belonging to the Purchaser which remain the Supplier's care after deliveries under the agreement have been completed, shall be stored by the Supplier at the Purchaser's risk and expenses.
7. The Supplier shall, at the Purchaser's request, insure patterns, special tools and equipment in his care which are the Purchaser's property. The Purchaser shall reimburse the Supplier the cost of such insurance.
8. The Supplier shall not, without the Purchaser's consent, use the Purchaser's patterns, special tools or equipment for any other purpose than fulfilment of the agreement. Nor shall such patterns, special tools or equipment be handed over to or otherwise be brought to the knowledge of a third party.
9. The Purchaser shall bear the risk and expense of all transport of patterns, special tools and equipment to and from the Supplier.
10. The Purchaser shall indemnify and hold the Supplier harmless against all claims based on infringement of patents, design patents, trademarks or other property rights, where such claims result from the manufacture of the Products by using a specification, drawing, sample, pattern, special tool or other equipment provided by the Purchaser.
11. All the Supplier's obligations regarding patterns, special tools and equipment shall finally cease three years after the deliveries under the agreement have been completed. Where practicable, the Supplier shall inform the Purchaser before disposing of patterns, special tools and equipment.

DRAWINGS AND DESCRIPTIONS

12. All drawings and technical documents relating to the Products or their manufacture submitted by one party to the other, prior or subsequent to the formation of the agreement, shall remain the property of the submitting party.

The Supplier shall not be obliged to provide manufacturing drawings for the Products or the spare parts.

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 purposes than those for which they were handed over, such as assembly, installation and maintenance of the Products. Without the consent of the party submitting the information, they shall not otherwise be used or copied, reproduced, transmitted or communicated to a third party.

13. If either party wants a modification of the technical specifications of the Products he shall submit his proposals in writing to the other party who shall respond in writing within 30 calendar days.

PRICE

14. Prices for the Products are those stipulated in the agreement. Unless otherwise stated they are exclusive of sales, excise duties, VAT or similar taxes.

INSPECTION

15. The Purchaser may during normal working hours inspect the Supplier's final test facilities to be used in the performance of the agreement, and inspect and test the Products in respect of materials and workmanship. The Purchaser shall give the Supplier one week's notice of the inspection. Inspections and tests shall not unduly interfere with the performance of work.

PRODUCTION SAMPLE

16. Products manufactured in series shall be in conformity with the production sample approved by the Purchaser, and production shall not start before the Supplier has received the Purchaser's written approval of such sample.

ACCEPTANCE TESTS

17. Unless otherwise agreed, acceptance tests provided for in the agreement shall be carried out at the place of manufacture during normal working hours. If not otherwise specified in the agreement, the tests shall be carried out in accordance with general practice in the

relevant branch of industry in the country of manufacture.

18. The Supplier shall notify the Purchaser of any agreed acceptance test 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.
19. If the acceptance tests show that the Products deviate from the requirements of the agreement, the Supplier shall, unless the Purchaser accepts the deviation, without delay ensure that the Products comply with the agreement. New tests shall then be carried out at the Purchaser's request, unless the deviations were insignificant.
20. The Supplier shall bear all costs for any agreed acceptance tests carried out at the place of manufacture. All travelling and living expenses for the Purchaser's representatives in connection with such tests shall be born by the Purchaser.

DELIVERY - PASSING OF RISK

21. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the agreement.

If no trade term is specifically agreed, the delivery shall be Ex Works (EXW).

If, in the case of delivery Ex Works, the Supplier, at the request of the Purchaser, undertakes to send the Products to their destination, the risk shall pass no later than at the time when the Products are handed over to the first carrier.

Unless otherwise agreed, partial shipments shall be permitted.

PACKAGING AND TRANSPORT

22. Within 30 days after delivery the Purchaser shall at his own expense return containers, crates, pallets and other reusable packaging materials belonging to the Supplier. If the Purchaser fails to do so, the Supplier is entitled to be reimbursed for the value of such packaging materials.

If, under the agreement, the Purchaser shall provide packaging materials, he shall provide them in good condition to the Supplier at the time and the site specified by the Supplier.

23. The Purchaser shall on arrival of the Products examine whether the Products' time of arrival, condition and quantity conform to the dispatch note. The Purchaser shall immediately inform the Supplier of any discrepancies or possible claims against the transporter.

TIME FOR DELIVERY – DELAY

24. If, instead of specifying the date for delivery, the parties have specified a period of time on the expiry of which delivery shall take place, such period shall start to run on the date when the Supplier receives the Purchaser's order or the date of formation of the agreement, whichever is the later.
25. If the Supplier anticipates that he will not be able to deliver the Products at the time for delivery, he shall forthwith notify the Purchaser thereof in writing, stating the reason and, if possible, the time when delivery can be expected.
26. If delay in delivery is caused by any of the circumstances mentioned in Clause 52 or by an act or omission on the part of the Purchaser, including suspension under Clause 34 or 55, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.
27. If the products are not delivered at the time for delivery (as defined in Clauses 24 and 26), the Purchaser is entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages shall be payable at a rate of 0.5 per cent of the purchase price for each completed week of delay. The liquidated damages shall not exceed 7.5 per cent of the purchase price.

If, in the case of partial deliveries, only part of the Products is delayed, the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the Products as can not, in consequence of the delay, be used as intended by the parties.

The liquidated damages become due at the Purchaser's written demand but not before delivery has been completed or the agreement is terminated under Clause 28.

The Purchaser shall forfeit his right to liquidated damages if he has not lodged a claim for such damages within six months after the time when delivery should have taken place.

28. If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 27 and if the Products are still not delivered, the Purchaser may in writing demand delivery within a final reasonable period which shall not be less than one week.

If the Supplier does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible, then the Purchaser may by

notice in writing to the Supplier terminate the agreement in respect of such part of the Products as can not, in consequence of the Supplier's failure to deliver, be used as intended by the Parties.

If the Purchaser terminates the agreement he shall be entitled to compensation for the loss he has suffered as a result of the Supplier's delay. The total compensation, including the liquidated, including the liquidated damages which are payable under Clause 27, shall not exceed 15 per cent of that part of the purchase price which is attributable to the part of the Products in respect of which the agreement is terminated.

29. Liquidated damages under Clause 27 and termination of the agreement with limited compensation under Clause 28 are the only remedies available to the Purchaser in case of delay on the part of the Supplier. All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of gross negligence.

In these conditions, 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.

30. If the Purchaser anticipates that he will be unable to accept delivery of the Products at the delivery time, he shall forthwith notify the Supplier thereof stating the reason, and if possible, the time when he will be able to accept delivery.

If the Purchaser fails to accept at the delivery time he shall nevertheless pay any part of the purchase price which becomes due on delivery as if delivery had taken place. The Supplier shall arrange for storage of the Products at the risk and expense of the Purchaser. The Supplier shall also, if the Purchaser so requires, insure the Products at the Purchaser's expense.

31. Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 52, the Supplier may by notice in writing require the Purchaser to accept delivery within a final reasonable period.

If, for any reason for which the Supplier is not responsible, the Purchaser fails to accept delivery within such period, the Supplier may by notice in writing terminate the agreement in whole or in part. The Supplier shall then be entitled to compensation for the loss he has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the purchase which is attributable to that part of the Products in respect of which the agreement is terminated.

PAYMENT

32. Unless otherwise agreed, the purchase shall be paid with one third at the formation of the agreement and one third when the Supplier notifies the Purchaser that the Products are ready for delivery. Final payment shall be made when the Products are delivered.
33. Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been fully and irrevocably credited.
34. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which payment was due. The rate of interest shall be as agreed between the parties. If the parties fail to agree on the rate of interest, it shall be 12 per cent per annum.

In case of late payment, the Supplier may, after having notified the Purchaser in writing, suspend his performance of the agreement until he receives payment.

If the Purchaser has not paid the amount due within three months the Supplier shall be entitled to terminate the agreement by notice in writing to the Purchaser and to claim compensation for the loss incurred. The compensation shall not exceed the agreed purchase price.

RESERVATION OF TITLE

35. The Products shall remain the property of the Supplier until paid for in full to the extent that such reservation of title is valid under the applicable law.

The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Products in the country concerned.

The reservation of title shall not affect the passing of risk under Clause 21.

LIABILITY FOR DEFECTS

36. Pursuant to the provisions of Clauses 39-50 inclusive, the Supplier shall remedy any defect resulting from faulty materials or workmanship. To the extent the Supplier is responsible for design, the same obligation applies to any defect resulting from faulty design.
37. The Supplier's liability is limited to defects which appear within a period of one year from delivery.

38. When a defect in the Products or a part thereof has been remedied, the Supplier shall be liable for defects in what has been remedied under the same terms and conditions as those applicable to the original Products during a period of one year.
39. The Purchaser shall without undue delay notify the Supplier 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 37 as extended by Clause 38.

Where the defect is such that it may cause damage, the notice shall be given immediately.

The notice shall contain a description of the defect.

If the Purchaser does not notify the Supplier of a defect within the time-limits set forth in this Clause, he shall lose his right to have the defect remedied.

40. On receipt of the notice in writing under Clause 38 the Supplier shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 36-50 inclusive.

Repair shall be carried out at the Supplier's premises unless he finds it appropriate to have the repair carried out where the Products are located. The Purchaser shall at the request of the Supplier arrange for transport of the Products to the Supplier. The Purchaser shall follow the Supplier's instructions regarding such transport. The Supplier has fulfilled his obligations in respect of the defect when he delivers to the Purchaser duly repaired or replaced Products.

41. If the Purchaser has given such notice as mentioned in Clause 39, and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he has incurred as a result of the notice.
42. The Purchaser shall at his own expense arrange for any dismantling and reassembly of equipment other than the Products, to the extent that this is necessary to remedy the defect.
43. Unless otherwise agreed, necessary transport of the Products to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Supplier.
44. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for repair and transport as a result of the Products being located in a place other than the destination stated in the agreement or – if no destination is stated – the place of delivery.
45. Defective Products which have been replaced shall be made available to the Supplier and shall be his property.

46. If, within a reasonable time, the Supplier does not fulfil his obligations under Clause 40, the Purchaser may, by written notice, fix a final time for completion of the Supplier's obligations.

If the Supplier fails to fulfil his obligations within such final time, the Purchaser may himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of the Supplier.

Where successful remedial works have been undertaken by the Purchaser or a third party, reimbursement by the Supplier of reasonable costs incurred by the Purchaser shall be in full settlement of the Supplier's liabilities for the said defect.

Where the defect has not been successfully remedied,

- a) the Purchaser is entitled to a reduction of the purchase price in proportion to the reduced value of the Products, provided that under no circumstances shall such reduction exceed 15 per cent of the purchase price, or
 - b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the agreement, the Purchaser may terminate the agreement by written notice to the Supplier. The Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 15 per cent of the purchase price.
47. The Supplier is not liable for defects arising out of materials provided or specified by the Purchaser.
48. The Supplier is liable only for defects which appear under the conditions of operation provided for in the agreement and under proper use of the Products.

The Supplier's liability does not cover defects which are caused by faulty maintenance, incorrect assembly or installation or faulty repair by the Purchaser, or by alterations carried out without the Supplier's consent in writing. Finally, the Supplier's liability does not cover normal wear and tear or deterioration.

49. Notwithstanding the provisions of Clauses 36-50 the Supplier shall not be liable for defects in any part of the Products for more than two years from the beginning of the period given in Clause 37.
50. Save as stipulated in Clauses 36-49, the Supplier 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 Supplier's liability shall not apply if he has been guilty of gross negligence as defined in Clause 29.

DIVISION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT

51. The Supplier shall not be liable for any damage to property caused by the Products after their delivery and whilst they are in the possession of the Purchaser. Nor shall the Supplier 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 Supplier 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 Supplier harmless.

If a claim for damages 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 Supplier 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 Products.

The limitation of the Supplier's liability in the first paragraph of this Clause shall not apply where the Supplier has been guilty of gross negligence as defined in Clause 29.

FORCE MAJEURE

52. Either party shall be entitled to suspend performance of his obligations under the agreement 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 (whether declared or not), extensive military mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-suppliers caused by any such circumstances referred to in this Clause.

A circumstance referred to in this Clause which had occurred prior to the formation of the agreement shall give a right to suspension only if its effect on the performance of the agreement could not be foreseen at the time of the formation of the agreement.

53. 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 force majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Products.

54. Regardless of what might otherwise follow from these general conditions, either party shall be entitled to terminate the agreement by notice in writing to the other party if performance of the agreement is suspended under Clause 52 for more than six months.

ANTICIPATED NON-PERFORMANCE

55. Notwithstanding other provisions in these conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the agreement, where it is clear from the circumstances that the other party will not be able to perform his obligations. A party suspending his performance of the agreement shall forthwith notify the other party thereof in writing.

CONSEQUENTIAL LOSSES

56. Save as elsewhere stated in these conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of agreements or for any consequential, economic or indirect loss whatsoever.

DISPUTES AND APPLICABLE LAW

57. All disputes arising in connection with the agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules, supplemented as necessary by the procedural rules of the law of the Supplier's country.
58. The agreement shall be governed by the substantive law of the Supplier's country.

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MODEL FORM OF SERIAL DELIVERIES AGREEMENT

When serial deliveries are agreed between the parties the general conditions shall apply supplemented and amended as follows :

entitled – in addition to liquidated damages – to terminate the agreement forthwith by giving notice in writing.

A. ENTERING INTO FORCE OF THE AGREEMENT

The agreement shall not enter into force until it has been signed and all authorisations required for its performance have been obtained, including any authorisations required for the transfer of currency and licences to permit export and delivery of the Products to the Purchaser.

C. PRICE ADJUSTMENT

If the parties have agreed on the use of a price adjustment formula as specified in Appendix 2, the prices of the Products shall only be adjusted each time the application of this formula leads to an increase /decrease of at least 3% of the current price.

B. PURCHASES FORECAST AND PURCHASE ORDERS

1. The Purchaser shall submit to the Supplier ... weeks in advance a forecast for each period of ... months, indicating the quantity of Products to be delivered during that period with an indication of the schedule of delivery. The Purchaser shall, during that period, be obliged to take delivery of a minimum quantity which shall be ... % of the forecast for each individual type of product.
2. Orders issued by the Purchaser shall refer to this agreement and specify quantities, applicable prices and characteristics of the purchase, as well as destinations and required delivery dates.
3. Within 7 calendar days from the receipt of the Purchaser's order, the Supplier shall notify the Purchaser in writing whether he can comply with the order. If he can not comply, he shall state the reason and state when he can deliver.
4. The Supplier is entitled to refuse to deliver in so far as the quantity of purchases ordered exceeds the forecast for the current period by more than ... % for each individual type of product.
5. If the Purchaser takes delivery of less than the minimum quantity referred to in article 1, the Supplier is entitled to be paid liquidated damages equal to ... % of the difference between the price of what has been delivered and of the minimum quantity for each individual type of product.

If the Purchaser takes delivery of less than 50% of the minimum quantity for any individual type of product as referred to in article 1, the Supplier is

D. PAYMENT

Unless otherwise agreed, orders shall be paid at the latest 30 days after submission of the invoice but not before delivery has taken place.

E. LIQUIDATED DAMAGES

Liquidated damages shall be calculated on the basis of Products in actual delay with 0,1 per cent per calendar day of delay but otherwise as stated in Clause 27.

F. DEFECTS

The Supplier is responsible according to Clauses 36-50 only to the extent that the Products deviate from the accepted sample.

G. DURATION OF THE AGREEMENT

1. Unless otherwise agreed, the duration of the agreement shall be one year from the entering into force of the agreement.
2. The agreement shall be automatically prolonged for successive periods of one year unless three months prior written notice of termination has been submitted by one party to the other.

H. TERMINATION

Without prejudice to any express provision for termination contained herein, the agreement may be terminated immediately by registered letter in case of any fundamental breach of the agreement. Such termination may also take place where the legal structure or ownership of one of the parties has changed in such a way as seriously to affect the result that the other party could reasonably expect from the agreement.

PRICE REVISION CLAUSE

Should any change occur in the cost of the relevant materials and/or wages during the period of execution of the agreement, the agreed prices shall be subject to revision on the basis of the following formula :

$$P1 = \frac{PO}{100} (a + b \frac{M1}{M0} + c \frac{S1}{S0})$$

where :

P1 = final price for invoicing

P0 = initial price of Products, as stipulated in the agreement and as prevailing at the date of¹

M1 = the prices (or price indices) for (type of materials concerned) months before delivery

M0 = prices (or price indices) for the same materials at the date stipulated above for P0

S1 = the labour costs or relevant indices in respect of (specify categories of labour) months before delivery

S0 = labour costs or relevant indices in respect of the same categories at the date stipulated above for P0

a, b, c represent the contractually agreed percentage of the individual elements of the initial price, which add up to 100 (a+b+c = 100)

a = fixed proportion = ...

b = percentage proportion of materials = ...

c = percentage proportion of labour costs = ...

Where necessary, b (and if need be, c) can be broken down into as many partial percentages (b1, b2, b3 ...) as there are variables taken into account (b1 + b2 bn = b).

Documentation

For the purpose of determining the values of materials and wages, the parties agree to use the following documents as sources of reference :

1. Materials : prices (types of materials)
(or price indices)
published by

2. Labour costs : (or relevant indices)
published by
under the headings²

¹ It is recommended that the parties should, as far as possible, adopt as the initial price, the price prevailing at the date of the agreement and not at an earlier date. This is normally the contract price less cost of packing, transport and insurance.

² Indices relating specifically to the supplier's branch of industry should be used as far as possible.