



GUIDE ON ORGALIME GENERAL CONDITIONS

WHICH FOR WHAT PURPOSE ?

July 2002

INTRODUCTION

ORGALIME – WHO WE ARE

Orgalime was founded in 1954. With its secretariat in Brussels, Orgalime provides liaison between the central trade associations of the mechanical, electrical, electronic and metalworking industries of 21 European countries. They represent some 100.000 companies employing 7.200.000 people and having an annual turnover of around 1.200 billion euros.

The Orgalime legal committee has, since the start, concentrated its work on providing the European engineering industry with publications which can help industry draw up adequate contracts and giving practical advice on frequently occurring legal questions.

The first Orgalime legal publication was issued in the fifties and the current list of legal publications includes 22 titles, some of which have been revised several times in order to adapt to new legislation and changing business practices.

TYPES OF PUBLICATIONS

Orgalime's publications fall into three different categories :

- * General Conditions
- * Model Contracts
- * Guides

The General Conditions, the Model Contracts and some of the Guides are written to provide practical assistance for companies when they draw up different types of contracts which are commonly used in international trade. The Guides also cover other contractual and legal issues of particular importance for the engineering industry.

All General Conditions and Model contracts have been designed to reflect normal contract practice in industry. It should be noted that Orgalime represents the interests of both buyers and sellers, licensors and licensees, etc. as the engineering industry is its own main customer. For this reason, Orgalime has tried to achieve a fair balance and allocation of risk between the contracting parties.

WHY THIS GUIDE ?

This guide is intended to help companies to choose which set of General Conditions is appropriate for a particular purpose. A full list of Orgalime publications and members is given in Appendices I (Other publications) and II (How to order Orgalime publications).

HISTORICAL BACKGROUND

The first Orgalime General Conditions

The first Orgalime General Conditions were issued in 1992 and consequently named S 92. They are a logical development arising from the first major international general conditions, ECE 188.

ECE 188

The United Nations Economic Commission for Europe (ECE) decided in 1950 to explore the possibility of achieving some form of standardisation in the field of standard contracts for delivery of machinery and similar industrial products. The intention was to simplify international trade in investment goods, one reason being that such trade was essential when rebuilding Europe after World War II.

A first draft was produced by the secretariat with the help of some experts. Thereafter the ECE gathered a "Group of Experts on Contract Practices in

Industry"¹ which was given the task to finalise the text. The result was issued in 1953 under the title "General Conditions for the Supply of Plant and Machinery for Export", they were given the administrative reference number 188, and have thus come to be known as ECE 188, UN 188, etc. or the Geneva Conditions.

The final text of the conditions was the result of compromises and the group of experts also decided to leave some rather important questions such as the guarantee period, the weekly rate of price reduction for delay, etc. to be completed by the users. In spite of these shortcomings it must be said that the project has been successful and the conditions have come to be used extensively in international trade, not only in Europe.

Before Orgalime launched its S 92 conditions, ECE 188 were considered to be the only truly international conditions for the type of contracts which they cover. They have also been used as a model for other standard contracts so that these, even if they contain material differences, are more easily comparable and thus more transparent for the users.

The clauses left open in the ECE conditions have caused many industry organisations to issue supplements to the conditions specifying these terms of the contract and often adjusting other terms of the conditions. The result is that the ECE conditions cannot be considered as a single standard contract: users are confronted with conflicting supplements. On the other hand, the use of supplements is likely to have contributed to the wide acceptance of the ECE conditions, and has probably helped the ECE conditions to survive as the necessary adaptations to new laws and contract practice have been made in the supplements.

Orgalime's General conditions, on the other hand have aimed to arrive at standard documents, which the parties can use without having to complete

or adjust. This greatly contributes to their ease of use and account in a large measure for the increasing success of these documents.

ORGALIME WORK ON NEW GENERAL CONDITIONS

If in the 1950s, the Orgalime Legal Affairs Committee produced model contracts and guides on contractual issues to serve as practical tools for industry when entering into different types of contracts, such as licence agreements, distribution and agency contracts, etc in the area of general conditions for delivery, the Orgalime Legal Affairs Committee for a long period considered that the ECE conditions satisfied the existing need. The ECE conditions have, however, come under increasing criticism, not only for the above-mentioned original shortcomings, but also because they have in many respects become out of date. At the same time the steadily increasing volume of international trade has made these imperfections harder to accept.

For these reasons, and also with a view to having readily acceptable conditions to simplify trade in the European Single Market, the Orgalime Legal Affairs Committee in 1990 decided to start work on a modern alternative to ECE 188. The first draft was based on the Nordic conditions NL 85, because they were in fact a modern version of ECE 188, complete and updated.

The new Orgalime conditions were finished in 1992 and were given the title "General Conditions for the Supply of Mechanical, Electrical and Associated Electronic Products, S 92". They have been well received and since their introduction, they have taken an increasing share of "the market" from ECE 188.

¹ The Group of Experts still exists and from time to time issues guides on different topics. Since around 1990, the work has been exclusively devoted to legal problems affecting the so called transition economies of Central and Eastern Europe.

GENERAL CONDITIONS

The Orgalime General Conditions can be applied to a contract without amendments or additions. The parties should however always satisfy themselves that the conditions are suitable for their individual contract. There are nine sets of General Conditions:

1. General Conditions for the Supply of Mechanical, Electrical and Electronic Products - S 2000
2. General Conditions for the Supply and Erection of Mechanical, Electrical and Electronic Products - SE 01
3. General Conditions for Computer Software - SW 01, supplement to Orgalime S2000 & Orgalime SE01 (ex-SE94)
4. Supplementary Conditions for the Supervision of Erection of mechanical, electrical and electronic Products – S2000S – *delivered in accordance with S2000*
5. General Conditions for the Supply of Specially Designed and Manufactured Components - SC 96
6. General Conditions for Series Processing - SP99
7. General Conditions for the Provision of Technical Personnel Abroad
8. General Conditions for the Repair of Machinery and Equipment – R02
9. General Conditions for Maintenance - M2000

DESCRIPTION OF THE INDIVIDUAL GENERAL CONDITIONS

1. GENERAL CONDITIONS FOR THE SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS - S 2000

August 2000

These conditions which are an updated version of the original S92 conditions are primarily intended for use in international contracts for delivery of engineering industry products in general. They can also be used for national contracts, but they are not suitable for use in consumer contracts.

If Orgalime's S2000 conditions have been drawn up on the same basic principles as UN ECE 188, there are substantial differences both as regards structure and content. The most obvious difference is that Orgalime S 2000 are complete and do not need a separate agreement on basic terms, such as the length of the defects liability period and the extent of the seller's liability for late delivery.

Orgalime S 2000 are available in English, French, German, Spanish, Italian, Portuguese and Russian. There is a special annex which should be used in contracts when German law applies.

A guide on the use of these General Conditions which is intended for use by lawyers who come across S 2000 in connection with disputes or otherwise has also been recently published. It provides detailed comments and explanations of the provisions of these conditions and has been drafted by a number of the writers of Orgalime's General Conditions S2000.

2. GENERAL CONDITIONS FOR THE SUPPLY AND ERECTION OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS - SE 01

September 2001

The General Conditions SE 01 (an update of Orgalime's SE94 conditions) are intended for deliveries where the obligations of the supplier (contractor) include erection on site of the equipment that he delivers, normally to the purchaser's premises.

SE 01 are based on S2000 which means that, for example, the clauses dealing with liability for defects and for late delivery are substantially the same. SE 01 deviates from S 2000 only where necessary to cover the contractual aspects of erection and taking-over. This makes the application and the interpretation of the conditions easier.

SE 01 are a modern alternative to the UN ECE 188A issued in 1957. What has been said in the comparison between S2000 and ECE 188 also applies to SE 01 as compared with ECE 188A. Apart from that there is also a marked difference in that SE 01 more clearly stipulates the conditions for and the consequences of taking-over the Products.

Orgalime SE 01 are available in English, French, German, Italian, Spanish, Portuguese and Russian. There is a special annex which should be used in contracts when German law applies.

3. GENERAL CONDITIONS FOR COMPUTER SOFTWARE - SW 01

March 2001

These conditions are a supplement to Orgalime's General Conditions S2000 or SE01. They can therefore not be used as stand alone conditions.

They regulate the rights and obligations of parties to a contract in respect of computer software, which is included in respectively the product (S2000) or the works (SE01).

They are published in English, French, German, Italian, Portuguese and Spanish.

4. SUPPLEMENTARY CONDITIONS FOR THE SUPERVISION OF ERECTION OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS - S2000S

August 2000

These are Supplementary conditions for the supervision of erection of mechanical, electrical and electronic products for equipment which is supplied according to General Conditions S2000. They can therefore not be used as stand alone conditions.

They are aimed at meeting a situation in between S2000 which is limited to the supply of equipment and SE01 which includes both the supply and the provision of full erection services for the equipment supplied.

They are published in English, French, German, Italian, Portuguese and Spanish.

5. GENERAL CONDITIONS FOR THE SUPPLY OF SPECIALLY DESIGNED AND MANUFACTURED COMPONENTS - SC 96

January 1996

SC 96 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.

SC 96 are specially suited for castings, forgings and other products 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, SC 96 are used for supply of standard components which are available from alternative suppliers, the conditions should be amended, at least as regards the rules on late delivery.

SC 96 are not suitable for all products which are incorporated in other products. They contain an introduction which more fully explains their scope of use.

Where the supplier is the sole designer of the product, the Orgalime Model Form of OEM Contract may be a better basis.

SC 96 are also not intended for processing contracts. The parties are instead recommended to use the Orgalime General Conditions for Series Processing (SP 99).

SC 96 contains one appendix which amends the conditions when they apply to a contract for serial deliveries. There is also one appendix to be used for agreements on price revision.

SC 96 are available in English, French and German.

6. GENERAL CONDITIONS FOR SERIES PROCESSING - SP 99

December 1999

SP 99 are intended for use in series processing when a manufacturer entrusts a particular task to a processor for a certain quantity of work to be performed over a defined period for a given price per unit or operation.

The work to be undertaken by the Processor for the Customer will be carried out according to the technical specifications agreed upon between the parties with the processor using the materials supplied to him for processing by the Customer.

The patterns, tools and equipment used in the processing may either be provided by the Processor or by the customer.

SP99 are specially suited for the carrying out of batch processing of different materials and sub assemblies.

This publication is available in English, French, German and Spanish.

7. CONDITIONS FOR THE PROVISION OF TECHNICAL PERSONNEL ABROAD

October 1995

The Conditions for the Provision of Technical Personnel are intended primarily for contracts in which the provision of technical personnel is independent of any other transaction, i.e. the contractor does not supply goods which are the subject of the work to be done by the personnel. The conditions are thus suitable for example for erection work and repair.

The conditions should not be used to supplement the General Conditions SE 01, as this may create contradictions and misunderstandings.

The conditions are divided into General Conditions which apply in all cases and Special Conditions where the parties must choose between Alternative A for contracts based on a schedule of rates and Alternative B for lump sum contracts. In both cases the parties need to complete some clauses which are normally negotiated individually in the General Conditions and in the Special Conditions.

The Conditions for the Provision of Technical Personnel abroad are available in English, French and German.

8. GENERAL CONDITIONS FOR THE REPAIR OF MACHINERY AND EQUIPMENT – R02

July 2002

The conditions are intended to be used primarily when a contractor is asked by his customer to repair mechanical, electrical and electronic plant and equipment. The repair work may be carried out on site or at the contractor's premises. When the work is carried out on site the Conditions for the Provision of Technical Personnel (No 6) can be used as an alternative.

The conditions should not be used when the contractor, as a part of a longer term maintenance contract, undertakes to repair defects which may occur in the equipment he has undertaken to maintain. In such cases the General Conditions for Maintenance – M2000 should be used.

The conditions contain a fairly extensive introduction which fully explains their use and gives guidelines on possible problem areas in repair contracts.

The conditions are available in English, French and German.

9. GENERAL CONDITIONS FOR MAINTENANCE - M2000

September 2000

This set of General Conditions replaces the Conditions of Contract which Orgalime had first published in 1980.

They are aimed for use by companies employing a third party to carry out maintenance of their equipment for a certain period.

These conditions cover both preventive maintenance, i.e. measures taken to ensure continuous functioning of equipment, and corrective maintenance i.e. measures taken to remedy a defect which has occurred.

This publication is today available in English, French, German, Spanish and Portuguese.

APPENDIX 1: OTHER ORGALIME LEGAL PUBLICATIONS

Model Forms

These provide help when drawing up contracts, which cannot be standardised to the same extent as General Conditions. They therefore contain alternatives from which the parties can choose. Most are now available in a package including paper copies and diskette:

Agency contract

A model for contracts between manufacturers and independent commercial agents who negotiate contracts in the name, and on behalf, of the manufacturer.

International technology licence agreement

Model existing in 2 versions, one for use essentially inside the EU/EEA, the other internationally. It can be used as the basis for pure know-how and pure patent licensing agreements, as well as mixed agreements.

Exclusive Agreement with Distributors Abroad: Used for contracts between manufacturers (or other suppliers) with distributors who buy and sell in their own name and for their own account.

Consortium agreement: Used when two or more companies agree to cooperate for the duration of a specific project.

Original Equipment Manufacturer (OEM): Used when the supplier has developed a product, which the purchaser (the OEM) integrates into equipment which he sells to the final customer under his own label.

Guides and other publications

Guide for drawing up an international development contract

The guide explains the main elements of a development contract. It treats the problems usually encountered and examines possible solutions.

Guide on S2000: A guide for intended for both users of S2000 and lawyers.

Commercial agency law In the EU/ EFTA countries.

Bank guarantees : Deals with problems arising from demand-guarantees and suggests appropriate wording.

Drawings and technical documents: Covers the obligations of parties with regard to drawings and technical documents in engineering contracts.

Security for payment in credit sales : A collection of short studies on the provisions of members' systems of law relating to security for payment where equipment is supplied on deferred payment terms.

Combating counterfeiting

A practical guide offering advice for engineering companies on how to combat counterfeiting

APPENDIX 2: HOW TO ORDER ORGALIME GENERAL CONDITIONS

All Orgalime [publications](#) are available from the Orgalime member association(s) based in your country (see list below).

AUSTRIA	FEEI
	FMWI
BELGIUM	AGORIA
DENMARK	DI
FINLAND	MET
FRANCE	FIEEC
	FIM
GERMANY	VDMA
	ZVEI
GREAT BRITAIN	BEAMA
	GAMBICA
	METCOM
IRELAND	IEEF
ITALY	ANIE
	ANIMA
LUXEMBOURG	ILTM

THE NETHERLANDS	FME-CWM
	METAALUNIE
NORWAY	TBL
PORTUGAL	ANEMM
SPAIN	CONFEMETAL
SWEDEN	VI
SWITZERLAND	SWISSMEM
HUNGARY	MAGOSZ
SLOVENIA	MPIA
ESTONIA	EML
CZECH REPUBLIC	ELA

If you are based outside these countries, please contact Orgalime directly: [Nathalie Riche](#) (nathalie.riche@orgalime.org).

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Further information on Orgalime publications can be found on Orgalime's web site at www.orgalime.org