



INTRODUCTORY NOTE

ORGALIME GENERAL CONDITIONS FOR MAINTENANCE OF MECHANICAL, ELECTRICAL AND ELECTRONIC EQUIPMENT - M 17

SCOPE OF USE

The ORGALIME-General Conditions for Maintenance of mechanical, electrical and electronic equipment (M 17) are intended to be used where one company, the customer, employs another company, the contractor, to carry out technical maintenance of the customer's equipment, under a contract which runs for a definite or indefinite period.

The General Conditions divide the services into preventive maintenance, i.e. measures taken in order to ensure the continued functioning of the equipment, and corrective maintenance, i.e. measures taken in order to remedy a defect which has occurred. The contractor's obligations will usually comprise both preventive and corrective maintenance, but the conditions can also be used if only preventive maintenance is included.

The maintenance work performed under ORGALIME M 17 mainly consists of traditional technical work. But since computer software today often forms a part of machinery and other industrial equipment, maintenance work may as well partly or solely consist of updating or adapting computer software, at least as far as corrective maintenance is concerned. Such work is also covered by ORGALIME M 17.

According to Clause 25 the corrective maintenance shall, unless otherwise agreed, be paid on a time and cost basis. If the parties wish to include the corrective maintenance in a fixed fee, they may want to limit the extent of the corrective maintenance which is included in the fee. This can be done in several ways, for example by specifying the maximum number of hours of work or the maximum number of occasions.

These General Conditions are not intended for situations where no specific maintenance contract exists, i.e. where the contractor accepts to remedy a specific defect on an ad hoc-basis. In such situations the use of the ORGALIME-General Conditions for repair - R 17 - is recommended.

Sometimes the contractor assigns to a third party to carry out the contractor's obligations towards the customer. This is explicitly regulated in Clause 42. Such arrangements are fairly common, e.g. when a contractor delivers a product to a purchaser and at the same time enters into a contract with the purchaser to carry out preventive maintenance of the product. If the product, for example, is delivered to a place geographically out of reach of the contractor's normal service organization, the contractor may find it more practical to subcontract the maintenance work to a third party. However, for the contractual relationship between the contractor and this third party, M 17 cannot be used. Neither can any other standard conditions supplied by ORGALIME. For

this situation, the parties are instead recommended to draft an individual contract and should for this purpose consider to seek expert legal advice.

CONTENTS OF THE INDIVIDUAL CONTRACT BETWEEN THE CUSTOMER AND THE CONTRACTOR

The parties must of course specify the extent of their respective obligations. They should do so in a separate written contract. Among the points to be covered are:

- a reference which makes it clear that M 17 apply to the contract;
- a specification of the equipment, which is subject to maintenance;
- whether and to what extent the contractor shall carry out both preventive and corrective maintenance;
- a detailed description of what is comprised in the preventive maintenance (for example the extent of the functional checks) and the time schedule for its performance;
- a list of wear parts, which are included in the preventive maintenance (see Clause 2);
- the number of hours/days within which the contractor shall commence corrective maintenance;
- the extent to which the customer shall keep a log of the operation and care of the equipment (Clause 7);
- technical documentation to be provided by the customer (Clause 18);
- the remuneration for preventive maintenance and the terms for payment (Clauses 24 and 28).

There are sometimes points where the parties may prefer to have a different rule from the one specified in the General Conditions. They may, for example, specify a different amount for the Contractor's maximum liability for damage under Clause 35 or they may agree on a fixed fee to cover both preventive and corrective maintenance.

Amendments should however not be undertaken without expert legal advice.

The contractor is advised to seek adequate insurance to cover his liability.

If the parties have their domicile in the same country, they may consider to have possible disputes arising in connection with the Contract settled by the ordinary courts of their country. Court proceedings may often be cheaper and more practical than arbitration administered by the International Chamber of Commerce. By deleting the first paragraph of Clause 44, arbitration would be excluded in favour of settlement of disputes by the competent national courts. In that case the parties should preferably appoint a specific court.