



**PALFINGER MARINE**

**GENERAL SALES CONDITION  
FOR GOODS AND SERVICE**

**Revision December 2022**

Palfinger Marine – General Sales Condition for Goods and Service

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**Table of Contents**

<b>1</b>	<b>General .....</b>	<b>3</b>
1.1	General comments.....	3
<b>2</b>	<b>Standard clauses from Orgalime S 2012.....</b>	<b>4</b>
<b>3</b>	<b>Special clauses.....</b>	<b>5</b>

## **1 GENERAL**

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### **1.1 General comments**

All offers, quotations, supplies and services (hereinafter together or individually also referred to as "Product(s)") of the Palfinger Marine group company (hereinafter referred to as "Palfinger" or the "Supplier") shall be governed exclusively by these special conditions and the general conditions of ORGALIME S 2012.

## **2 STANDARD CLAUSES FROM ORGALIME S 2012**

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Both the special conditions as well as the general conditions of ORGALIME S 2012 shall form an integral part of every contract between the Purchaser and the Supplier (hereinafter referred to as the "Contract") and shall take precedence over all other documents relating to the Product, unless otherwise agreed by both parties and signed by handwritten or certified electronic signature. In the event of inconsistencies or discrepancies between the special conditions and the conditions of ORGALIME, the special conditions shall prevail.

Any Purchaser's general terms and conditions shall expressly be excluded.

**3 SPECIAL CLAUSES**

These Special Terms and Conditions shall complete and/or supplement the provisions of Orgalime S 2012, General conditions for the supply of mechanical, electrical and electronic products (hereinafter "Orgalime S 2012").

The provisions of these Special Terms and Conditions shall prevail in the event of conflict with any of the provisions of Orgalime S 2012.

<b>DELIVERY. PASSING OF RISK</b>	
<i>Clause 10, add after last sentence</i>	<p>Compliance with delivery dates is subject to the timely receipt of all preliminary services to be provided by the Purchaser, in particular specifications, the timely provision of parts or components, the timely provision of approvals or documents by the Purchaser and compliance with the terms of payment, otherwise the delivery date shall be postponed by the duration of the delay incurred.</p> <p>The Purchaser is obliged to inspect the delivered Products immediately and completely. Any defects found must immediately be notified by phone and by registered letter. If the Purchaser does not comply with this obligation or does not do so within the deadline set or to the required extent, a claim under warranty for defects of this kind shall be excluded.</p> <p>If any defects occur later, the Purchaser shall also notify these to Supplier by phone and by registered letter with the same legal consequences.</p> <p>If the Purchaser has wrongly notified a defect, the Supplier shall be entitled to charge the Purchaser for the costs incurred in connection with the inspection carried out.</p>

<b>TIME FOR DELIVERY. DELAY</b>	
<i>Clause 18, add after last sentence</i>	<p>Compliance with delivery dates is subject to the timely receipt of all preliminary services to be provided by the Purchaser, in particular specifications, the timely provision of parts or components, the timely provision of approvals or documents by the Purchaser and compliance with the terms of payment, otherwise the delivery date shall be postponed by the duration of the delay incurred.</p> <p>In the event of a delay not caused by the Supplier but due to Force Majeure or due to the Purchaser, its contractors/suppliers or customer(s), the prices shall be adjusted to cover all additional costs by Supplier, including the increase in the cost of production of the Products.</p> <p>In the event of a delay in delivery caused by the Purchaser, its contractors/suppliers or customer(s) resulting in a claim against the Supplier, the Purchaser shall defend, indemnify and hold the Supplier harmless from any such claim.</p>

**PAYMENT**

<i>Clause 19, add after last sentence</i>	The Purchaser shall not be entitled to a right of retention of payment or set-off with counterclaims. Claims under warranty or guarantee shall not entitle the Purchaser to withhold any payments due.
<i>Clause 21, add after last sentence</i>	<p>In the event of default in payment, the Supplier shall also be entitled as follows:</p> <ul style="list-style-type: none"><li>A. to demand immediate payment of all its claims by the Purchaser; and/or</li><li>B. at the Supplier's request, Purchaser shall provide an on-demand bank guarantee for the remaining instalments issued by a bank acceptable to the Supplier or confirmed by Supplier's bank; and/or</li><li>C. if the parties have agreed on a warranty retention or a retention bond, the Supplier shall be entitled to withdraw from this agreement granting the Purchaser a right of retention; and</li></ul> <p>the Purchaser shall cover the entire costs of collecting the debt, including any legal costs as well as compensation for loss and damages.</p>

**RETENTION OF TITLE**

<i>Clause 22, add after last sentence</i>	<p>In the event of default in payment, the Products may be collected by the Supplier at any time. In this case, the Purchaser shall be obliged to reimburse the Supplier for all related transport costs, charges, taxes and customs duties.</p> <p>In the event of processing, transformation or combination of the Products, the Supplier shall become a joint owner of the new item in proportion to the value of the Products supplied by the Supplier, which the Purchaser shall keep safe on behalf of the Supplier to this extent.</p> <p>The resale of Products subject to retention of ownership shall only be permitted if the retention of ownership is maintained. In this event, the Purchaser shall assign all rights to which it is entitled from the sale (purchase price claims, retentions of title, etc.) to the Supplier upon conclusion of the resale contract. At the Supplier's request, the Purchaser shall be obliged to hand over all documents about the resale and to settle all outstanding claims immediately.</p>
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<b>LIABILITY FOR DEFECTS</b>	
<i>Clause 29, add after last sentence</i>	<p>Defective parts shall be stored at the Purchaser's premises for inspection by the Supplier at the Purchaser's expense. After a reasonable period, which shall not be less than thirty (30) days, the Purchaser may request the defective parts to be destroyed. However, the Purchaser shall not destroy such parts if the Supplier agrees to cover the storage costs at cost or to ship them at the Supplier expense to the Supplier's place of business or any other place designated by Supplier.</p> <p>In the event of legal proceedings or the risk of such proceedings, the defective parts shall be stored at the Purchaser's expense as long as it is necessary for the proceedings.</p>
<i>Clause 32, delete clause and replaced with the following</i>	<p>Unless otherwise agreed, necessary transport of the Product or parts thereof 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 Purchaser. The Purchaser shall follow the Supplier's instructions regarding such transport.</p>
<i>Clause 33, add after last sentence</i>	<p>At the request of the Supplier, the Purchaser shall position and prepare the Product for warranty repair by or on behalf of the Supplier either himself or through a third party in control of the Product. In the event of delay and/or waiting time for the service personnel, the Purchaser shall cover all additional costs incurred as a result of the delay, including labor costs for waiting time.</p>
<i>Clause 35, delete clause and replaced with the following</i>	<p>Before making a warranty claim, the Purchaser shall duly verify whether the claim is covered by the Supplier's warranty. A warranty claim is unjustified when the claim is not covered by the Supplier's warranty.</p> <p>In the event of repair of the Product by the Supplier or by a third party on behalf of the Supplier in connection with an unjustified warranty claim by the Purchaser, the Purchaser shall bear all costs resulting out of or in connection with such warranty claim, including without limitation the travel and living expenses of the persons carrying out the repair and/or replacement, as well as the labor costs for working and travelling time.</p> <p>If the Purchaser requests a customer to address a warranty claim directly to the Supplier without properly examining whether the claim is covered by the Supplier's warranty, the Supplier may charge the Purchaser for the cost of the repair.</p> <p>If the Supplier realizes that the claim is unjustified because the defect in question is not covered by the warranty, the Supplier may demand an advance payment and the repair and/or replacement shall not be started before receipt of the advance payment, without any liability for the Supplier.</p> <p>Unless otherwise agreed in writing, in the event of repairs being carried out by the Purchaser or a third party not expressly authorized by the Supplier, the Supplier shall not assume any responsibility or liability for the repair, the consequences thereof or the payment thereof and any warranty or guarantee shall be null and void.</p> <p>The Purchaser shall defend, indemnify, and hold the Supplier harmless against all unjustified warranty claims.</p>

**ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT***Clause 40, add after last sentence*

Product liability claims for damages to Products used by companies for business purposes shall be excluded. The Products are purchased by the Purchaser within the scope of its business.

With regards to services, the Supplier shall only be liable if it is responsible for the service and the service is performed by the Supplier or by service personnel specifically appointed by the Supplier. The Supplier shall not be liable for any damage, injury or death resulting from the acts or omissions of any third party, including lack of maintenance, improper installation and/or faulty repair.

The Supplier shall not be liable for any defect, damage, injury or death resulting from supply or performance in conformity with technical or other requirements from the Purchaser, its customer, any governmental authority, a supervisory institution or a classification institution.

The Purchaser is obliged to inform the Supplier in due time of any technical specifications required by the Purchaser, the customer, a public authority, a supervisory institution, or a classification institution. In the event of a breach of this obligation, the Purchaser shall not be entitled to make any claim for non-conformity with such specifications and the Purchaser shall defend, indemnify, and hold the Supplier harmless.

In the event of offshore activities under the Contract, each party to the Contract shall be solely responsible for any loss of (including consequential losses) or damage to its own property and for personal injury to or death of its respective personnel arising out of or in connection with the performance or non-performance of the Contract and each party waives all rights of recourse against the other party and shall indemnify, defend and hold the other party harmless in respect of any such claim, damage, cost, loss, injury or death even if caused by the slight negligence of the other party or its personnel.

**FORCE MAJEURE***Clause 43, add after last sentence*

If the Supplier is unable to perform a Contract due to Force Majeure or if a Contract is terminated due to Force Majeure, the Purchaser shall pay the Supplier pro rata for the supplies and work already performed by the Supplier, including purchases made by the Supplier and the parts of the Product already manufactured in accordance with the production schedule and in stock, and, in the case of the provision of services, the costs of the service personnel.



**DISPUTABLE LAW**

<p><i>Clause 46, delete clause and replaced with the following</i></p>	<p>The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and will be construed in accordance with the law of the place of business of the contracting Supplier company. Each party irrevocably submits to the exclusive jurisdiction of the courts at the seat of the contracting Supplier company to settle any dispute or claim that arises out of or in connection with this Contract, its subject matter or formation (including non-contractual disputes or claims).</p>
<p><i>Clause 47, delete clause and replaced with the following</i></p>	<p>In the event of a lack of conformity alleged by the Purchaser, the parties accept the appointment of an independent technical expert by DNV (<a href="http://www.dnv.com">www.dnv.com</a>) at the request of either party. The expert shall submit a technical report in English language on the alleged lack of conformity, propose solutions and give an opinion. Unless otherwise agreed in writing, the expert shall not be a national of the countries of the parties and the opinion shall not be binding on the parties. Either party may apply directly to the competent jurisdiction/arbitration as described in clause 16.1. The Purchaser shall arrange for the survey to be carried out by the expert. The failing party shall cover the expert's fees and costs. If the expert is of the opinion that both parties are responsible, the fee shall be shared equally between the parties.</p>
<p><i>Clause 46 and 47, after last sentence add the following</i></p>	<p>Both parties agree that accepted mediation solution or arbitral decision or court decision may be automatically enforced in all countries, in particular in any country where the party concerned has assets. The parties undertake not to oppose the enforcement of such a solution or decision. The unsuccessful party shall bear all legal costs incurred by the successful party. The tribunal may, in its reasonable discretion, reduce the legal costs to be reimbursed if the successful party cannot enforce all his claims. The unsuccessful party shall cover all costs of enforcement.</p> <p>If provisions of a Contract between the Supplier and the Purchaser should be or become invalid or unenforceable, the remaining provisions of the Contract shall remain unaffected. In this event, the invalid or unenforceable provisions shall be replaced by the provision which comes closest to the originally intended purpose.</p> <p>Subsidiary agreements or amendments which go beyond these Palfinger Marine General Sales Conditions for Goods and Services shall only be valid if confirmed by authorized representatives of the Supplier with their own handwritten or certified electronic signature.</p> <p>The Purchaser hereby confirms that it is aware of the Code of Conduct published on <a href="http://www.palfinger.ag/en/code-of-conduct">www.palfinger.ag/en/code-of-conduct</a> and declares that it shall comply with its provisions.</p>

**SUSPENSION**

## NEW CLAUSE

*The following new clause to be added:*

The Purchaser shall have the right to suspend the whole or any part of the Product for its convenience by giving written notice to the Supplier. The notice shall specify which part of the Product shall be suspended, the effective date of the suspension and the expected date for resumption of the Product.

The Purchaser shall compensate the Supplier of any extra expenses necessarily and directly incurred by the Supplier as a result of such suspension, provided, however, where extra expenses are claimed, the Supplier shall furnish the Purchaser with such supporting documentation as the Purchaser may reasonably require.

to the Supplier in respect of such suspension.

The Supplier shall, during suspension, properly protect and secure any materials or equipment used in the performance of the Product.

**CANCELLATION/TERMINATION OF CONTRACT**

## NEW CLAUSE

*The following new clause to be added:*

The Purchaser reserves the right to cancel the Contract in whole or in part at any time by notice in writing.

If the Purchaser cancel the contract, the Supplier shall be paid in full for the proportion of the Product completed in accordance to the Contract up to the date of such cancellation, and reimbursed for all reasonable documented demobilization costs. Including also in the event of a Cancellation for Force Majeure.

**INDEMNIFICATION**

## NEW CLAUSE

*The following new clause to be added:*

Purchaser shall protect, indemnify and hold harmless the Supplier and its subsidiaries and affiliates from any loss, cost, damage, or expense arising from any and all claims by reason of injury or death to person, or damage to property of the Purchaser. Notwithstanding the aforesaid, in the event Supplier causes any damage to the Product, Supplier shall be solely liable and shall indemnify the Purchaser for all losses, expenses and claims resulting there from.

**VARIATIONS**

## NEW CLAUSE

*The following new clause to be added:*

If requested by the Purchaser or necessary for improving the Products, the Purchaser is entitled to request a change in the quality, quantity or characteristics of the Products and/or the time schedule. A change must be reasonable, i.e. it must not exceed what could reasonably be expected at the time of signing the order confirmation. In the event of an increase of the work to be performed by the Supplier or in the order, the Purchaser shall pay the additional costs on demand against presentation of the additional invoice. The prices shall be based on the prices and labor costs at the time of execution of the change order. If the Supplier is unable to carry out the increase in the requested time, it shall inform the Purchaser without delay and propose another deadline. This deadline shall be deemed agreed unless the parties agree in writing on another deadline, or the Purchaser withdraws its change order by immediate notice to the Supplier.

In the event of a reduction or suspension of the work or order, the Supplier will immediately cease production of the part of the order which can be ceased, use his best endeavors to reduce his costs and inform the Purchaser of the new price without undue delay.

The Purchaser shall pay all costs of the Supplier which cannot be reduced. The Purchaser shall pay, including without limitation, for all Products manufactured in stock and services performed, parts of partially manufactured Products and all components and materials ordered. Such costs shall also include the cost associated with the dismissal of personnel and/or the termination of subcontracts required as a result of the change order and the administrative costs of implementing the change order.

The delivery schedule shall remain unchanged unless the parties agree in writing on a new delivery schedule and new milestones due to the required changes.

In the event of a change order, the Purchaser shall indemnify and hold the Supplier harmless.

**TOTAL LIABILITY**

## NEW CLAUSE

*The following new clause to be added:*

The total overall liability, including liquidated damages of Supplier to the Purchaser under the contract, shall under any circumstances not exceed 100% of the contract price.

**CONTRACT PRICE**

## NEW CLAUSE

*The following new clause to be added:*

The prices and discount rates quoted by the Supplier shall only apply to the respective individual order. Unless expressly agreed otherwise in writing, the prices are net prices without VAT, without delivery and without discount, in Euro. If the Purchaser has special requests regarding packaging, these shall be invoiced separately.

The prices are subject to any price increases due to higher production costs, increased customs duties, changes in the official exchange rates or other charges. Such increases shall be subject to the Purchaser's obligation to pay. A right of withdrawal cannot be derived from such price increases.

**CONDITIONS FOR SERVICES**

## NEW CLAUSE

*The following new clause to be added:*

The Supplier's services include testing, commissioning, maintenance, repair, periodic inspection and rectification. These services are subject to a specific contract or specific contractual clauses in a purchase contract.

Unless otherwise agreed in writing, services shall be invoiced in accordance with the Supplier's rates and conditions in force at the time the service is performed.

When ordering a service, the Purchaser shall provide the Supplier with a detailed description of the service to be performed so that the Supplier can dispatch the correct service personnel, determine the date and place of performance and, if necessary, order any special utilities/spare parts. Additional costs, including labor costs, arising from an unclear or incomplete description shall be covered by the Purchaser.

The Purchaser shall provide utilities and facilities (electricity, water, premises, machineries, tools etc.) as well as technical assistance on site and translators at the place of performance of the service, unless the local population has a good knowledge of English or a Scandinavian language, for the performance of the service.

The Purchaser shall actively cooperate in obtaining all necessary public permits from the immigration authorities or any other authority required for the provision of the services by the service personnel at the place of performance.

The Purchaser shall be responsible for ensuring that the working and living conditions of the service personnel are safe and secure.

In the event of breach of these obligations, the Purchaser shall be liable for all consequences, including costs. The Purchaser shall defend, indemnify and hold the Supplier harmless.

The Purchaser may inspect the performance of the service, request a test if necessary and shall prepare a report to be signed by both parties before the service personnel leave the place where the service was performed. Unless expressly stated otherwise in such a service report, the service shall be deemed to have been duly performed and the Purchaser shall have no right to claim.



## GENERAL CONDITIONS for the SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS

Brussels, March 2012

### 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 supply of the Product and all appendices, including agreed amendments and additions In Writing to the said documents;

- **“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;

- **“the Product”**: the object(s) to be supplied under the Contract, including software and documentation.

### 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 Product or its manufacture 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 Supplier shall, not later than at the date of delivery, provide free of charge information and drawings which are necessary to permit the Purchaser to install, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

### ACCEPTANCE TESTS

6. Acceptance tests 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 Supplier shall notify the Purchaser In Writing of the acceptance 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 acceptance tests show the Product not to be in accordance with the Contract, the Supplier shall without delay remedy any deficiencies in order to ensure that the Product complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.

9. The Supplier shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

### DELIVERY. PASSING OF RISK

10. Any agreed trade term shall be construed in accordance with the INCOTERMS® in force at the formation of the Contract.

If no trade term has been specifically agreed, the delivery shall be Free Carrier (FCA) at the place named by the Supplier.

If, in the case of delivery Free Carrier, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier.

Partial delivery shall not be permitted, unless otherwise agreed.

### TIME FOR DELIVERY. DELAY

11. If the parties, instead of specifying the date for delivery, have specified a period of time within which delivery 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.

12. If the Supplier anticipates that he will not be able to deliver the Product 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.

If the Supplier 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.

**13.** If delay in delivery is caused by any of the circumstances mentioned in Clause 41, by an act or omission on the part of the Purchaser, including suspension under Clauses 21 and 44, or any other circumstances attributable to the Purchaser, the Supplier shall be entitled to extend the time for delivery by a period which is necessary having regard to all the circumstances of the case. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

**14.** If the Product is not delivered at the time for delivery, the Purchaser shall be 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 commenced week of delay. The liquidated damages shall not exceed 7.5 per cent of the purchase price.

If only part of the Product is delayed, the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the Product as cannot in consequence of the delay be used as intended by the parties.

The liquidated damages shall become due at the Purchaser's demand In Writing but not before delivery has been completed or the Contract is terminated under Clause 15.

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 delivery should have taken place.

**15.** If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 14 and if the Product is 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 circumstances which are attributable to the Purchaser, then the Purchaser may by notice In Writing to the Supplier terminate the Contract in respect of such part of the Product as cannot in consequence of the Supplier's failure to deliver 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 Supplier's delay, including any consequential and indirect loss. The total compensation, including the liquidated damages which are payable under Clause 14, shall not exceed 15 per cent of that part of the purchase price which is attributable to the part of the Product 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 Supplier, if it is clear from the circumstances that there will occur a delay in delivery which, under Clause 14, 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 15.

**16.** Liquidated damages under Clause 14 and termination of the Contract with limited compensation under Clause 15 shall

be 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.

**17.** If the Purchaser anticipates that he will be unable to accept delivery of the Product at the time for delivery, he shall forthwith notify the Supplier In Writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery.

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

**18.** Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 41, the Supplier may by notice In Writing require the Purchaser to accept delivery within a final reasonable period.

If, for any reason which is not attributable to the Supplier, the Purchaser fails to accept delivery within such period, the Supplier may by notice In Writing terminate the Contract in whole or in part. The Supplier 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 purchase price which is attributable to that part of the Product in respect of which the Contract is terminated.

## **PAYMENT**

**19.** Payment shall be made within 30 days after the date of invoice.

Unless otherwise agreed, the purchase price shall be paid with one third at the formation of the Contract and one third when the Supplier notifies the Purchaser that the Product, or the essential part of it, is ready for delivery. The remaining part of the purchase price shall be paid when the entire Product is delivered.

**20.** Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been irrevocably credited for the amount due.

**21.** 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 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 Supplier 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 Supplier shall be entitled to terminate the Contract by notice In Writing to the Purchaser and, in addition to the interest and compensation for recovery costs according to this Clause, to claim compensation for the loss he incurs. Such compensation shall not exceed the agreed purchase price.

## RETENTION OF TITLE

22. The Product shall remain the property of the Supplier until paid for in full to the extent that such retention of title is valid under the relevant 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 Product.

The retention of title shall not affect the passing of risk under Clause 10.

## LIABILITY FOR DEFECTS

23. Pursuant to the provisions of Clauses 24-39, the Supplier shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials or workmanship.

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

25. The Supplier shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product.

26. The Supplier 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, incorrect installation or faulty repair by the Purchaser or to alterations carried out without the Supplier's consent In Writing. The Supplier shall neither be liable for normal wear and tear nor for deterioration.

27. The Supplier's liability shall be limited to defects which appear within a period of one year from delivery. If the use of the Product exceeds that which is agreed, this period shall be reduced proportionately.

28. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of one year. For the remaining parts of the Product the period mentioned in Clause 27 shall be extended only by a period equal to the period during which and to the extent that the Product could not be used as a result of the defect.

29. The Purchaser shall without undue delay notify the Supplier 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 27 or the extended period(s) under Clause 28, where applicable.

The notice shall contain a description of the defect.

If the Purchaser fails to notify the Supplier 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 Supplier In Writing. The Purchaser shall bear the risk of damage to the Product resulting from his failure so to notify. The Purchaser shall take reasonable measures to minimise damage and shall in that respect comply with instructions of the Supplier.

30. On receipt of the notice under Clause 29 the Supplier shall at his own cost remedy the defect without undue delay, as

stipulated in Clauses 23-39. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.

Repair shall be carried out at the place where the Product is located unless the Supplier deems it more appropriate that the Product is sent to him or a destination specified by him.

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 Supplier may demand that the defective part is sent to him or a destination specified by him. In such case the Supplier 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.

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

32. Unless otherwise agreed, necessary transport of the Product or parts thereof 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. The Purchaser shall follow the Supplier's instructions regarding such transport.

33. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for remedying the defect caused by the Product being located in a place other than the destination stated at the formation of the Contract for the Supplier's delivery to the Purchaser or – if no destination has been stated – the place of delivery.

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

35. If the Purchaser has given such notice as mentioned in Clause 29 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he incurs as a result of the notice.

36. If the Supplier does not fulfil his obligations under Clause 30, the Purchaser may by notice In Writing fix a final reasonable period for completion of the Supplier's obligations, which shall not be less than one week.

If the Supplier 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 Supplier.

Where successful repair work has 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.

37. Where the Product has not been successfully repaired, as stipulated under Clause 36,

a) the Purchaser shall be entitled to a reduction of the purchase price in proportion to the reduced value of the Product, 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 Contract as regards the Product or a substantial part of it, the Purchaser may terminate



the Contract by notice In Writing to the Supplier in respect of such part of the Product 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 purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

**38.** Notwithstanding the provisions of Clauses 23-37 the Supplier shall not be liable for defects in any part of the Product for more than one year from the end of the liability period referred to in Clause 27 or from the end of any other liability period agreed upon by the parties.

**39.** Save as stipulated in Clauses 23-38, 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.

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

**40.** The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is 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 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 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 Product. The liability between the Supplier and the Purchaser shall however be settled in accordance with Clause 46.

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.

#### **FORCE MAJEURE**

**41.** 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.

**42.** 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 Supplier for expenses incurred in securing and protecting the Product.

**43.** 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 41 for more than six months.

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

**44.** 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**

**45.** Save as otherwise stated in these General 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 contracts or for any other consequential or indirect loss whatsoever.

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

**46.** 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.

**47.** The Contract shall be governed by the substantive law of the Supplier's country.