

**1. GENERAL.** M.A.C Solutions (UK) Ltd (Company) only do business based upon the following Conditions of Sale and all orders are accepted and executed on the understanding that these Conditions are incorporated into any Contract with a Customer. The Contract shall be to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer. Your instructions to proceed with the transaction will amount to your acceptance of these Conditions of Sale

**2. LEGAL FRAMEWORK.** Unless otherwise agreed in writing or laid out in this document the ORGALIME S 2012 General Conditions for the Supply of Mechanical, Electrical and Electrical Products and ORGALIME SW 14 General Conditions for Computer Software shall apply as appropriate to all transactions unless otherwise set out in these Conditions of Sale. In the event of an inconsistency between these Conditions of Sale and the ORGALIME S 2012 General Conditions for the Supply of Mechanical, Electrical and Electrical Products or ORGALIME SW 14 General Conditions for Computer Software these Conditions of Sale will prevail. The ORGALIME S 2012 and SW 14 terms and conditions are available to registered users via our website: <http://www.mac-solutions.net> or by contacting order administration by phone, fax or email.

**3. END OF LIFE DISPOSAL.** Customer is responsible for correctly disposing of items purchased from the Company in accordance with applicable WEEE regulations

**4. PRICES.** All orders will be invoiced at prices set out in the quotation or the price ruling at the Checkout for on-line orders with additional charges for Carriage and VAT at the applicable rate.

**5. DELIVERY.** Every attempt will be made to meet quoted delivery times but time shall not be of the essence unless specifically agreed in writing.

**6. GOODS RETURNED FOR CREDIT.**

**6.1** Goods can only be returned for credit in the following circumstances:

(a) Software Goods:

(i) license code has either not yet been provided by the Company to the Customer or not used by the Customer; and

(ii) 30 days has not passed from the invoice date.

(b) Hardware Goods:

(i) if the original manufacturers purchase terms has a returns policy and the Customer has complied with the terms of such policy; and

(ii) the Hardware Goods are undamaged with packaging intact.

**6.2** Providing point 6.1 is complied with, Returns will only be accepted after the Company has issued written agreement to the Customer setting out any conditions for the acceptance of the goods returned.

**6.3** Each return accepted by the Company will be subject to a restocking fee payable by the Customer of 15% of the net price paid excluding VAT and any Carriage will be at the Customers expense. The restocking fee may be deducted from the monies already received from the Customer, and any balance shall then be repaid to the Customer.

**6.4** No returns will be accepted by the Company if the Customer has accessed the license code, and no refund will be made for any engineer time used.

**7. CANCELLED ORDERS.** Unless otherwise agreed the Customer shall only be entitled to cancel its order for products by providing the Company written notice at least thirty (30) days prior to the scheduled shipment date, and then only in accordance with ORGALIME S 2012 General Conditions for the Supply of Mechanical, Electrical and Electrical Products.

**8. PAYMENT TERMS.**

**8.1** For Customers with a credit account, payments terms shall be in accordance to those set out in ORGALIME S 2012 General Conditions for the Supply of Mechanical, Electrical and Electrical Products or those agreed in writing.

**8.2** For Customers purchasing on-line, Orders are processed only when cleared funds have been received.

**8.3** Any invoice outstanding beyond the agreed period will be referred to external collection agencies and will be subject to an administration surcharge payable by the Customer of 17.5% of the total invoice value plus VAT to cover the collection costs incurred.

**8.4** This surcharge together with all other charges and legal fees incurred on any collection action (pre and post the start of court action) will be the responsibility of the Customer and will be payable by the Customer on demand and on an indemnity basis.

**8.5** In addition to the surcharge, interest will accrue on any late payment at 8% per annum.

## 9. RETENTION OF TITLE.

9.1 The legal and beneficial title of Software Goods shall not pass to the Customer until:

9.1.1 The license code has been supplied or made available to the Customer by the Company; and

9.1.2 The Company has received in cash or cleared funds payment in full of the Contract Price of the Goods and any other goods supplied by the Company and the Customer has repaid all moneys owed to the Company, regardless of how such indebtedness arose.

9.2 The legal and beneficial title of Hardware Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the Contract Price of the Goods and any other goods supplied by the Company and the Customer has repaid all moneys owed to the Company, regardless of how such indebtedness arose.

## 10. LIMITATION OF LIABILITY

10.1 Subject to the provisions of ORGALIME S 2012 General Conditions for the Supply of Mechanical, Electrical and Electrical Products and the ORGALIME General Conditions for Computer Software the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

10.1.1 any breach of these Terms and Conditions or the Contract;

10.1.2 any use made (including but not limited to modifications) or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and

10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Terms and Conditions excludes or limits the liability of the Company:

10.3.1 for death or personal injury caused by the Company's negligence;

10.3.2 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

10.3.3 for fraud or fraudulent misrepresentation.

10.4 Subject to sub-Clauses 10.2 and 10.3:

10.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and

10.4.2 the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 11 SUPPORT PERIOD

11.1 Article 27 of the ORGALIME S 2012 shall not apply for Computer Software transactions instead the Company will offer a 90 day support period from the date of invoice ('Support Period') for the Customer in accordance with this clause 11. In the case where a software supplier offers more than 90 days support then the original software suppliers support period shall apply.

11.2 The Company agrees to provide online and telephone technical guidance and advice throughout this Support Period to the Customer. Telephone support is provided between the hours of 08:45 and 17:15 GMT/BST and is not available on UK national holidays and Company shutdown periods.

11.3 The Customer must, by written notice, inform the Company of their support needs within 2 working days of the problem arising, the Company will then in their absolute discretion assess what support is required and will provide what support they deem appropriate. Time shall not be of the essence. No liability is accepted by the Company for support given under this clause 11 save in the case of negligence or breach of contract in which case such liability will be limited in accordance with clause 10.

11.4 The Company will not provide free support during the Support Period for those problems that the Company considers have been caused by Customer negligence, deliberate error or due to lack of understanding in the use of the Goods supplied.

11.5 Any support requested by the Customer or provided by the Company not in accordance with this clause will be charged at the Company's standard rates.

**Bank Details:**

**GBP ACCOUNT DETAILS (BACS PAYMENT).**

**Bank Address:** HSBC Bank, 47 High Street, Bromsgrove, Worcestershire, B61 8AW

**Account Name:** M.A.C Solutions (UK) Ltd

**GBP Sort Code:** 40-15-07    **Account No:** 81352377

**GBP IBAN No:** GB87MIDL40150781352377

**EURO ACCOUNT DETAILS:**

**Bank Address:** HSBC Bank–International Branch, 60 Fenchurch Street, London, EC3M 4BA

**Account Name:** M.A.C Solutions (UK) Ltd

**EURO Sort code:** 40-05-15    **EURO Account No:** 69284302    **EURO Swift Code:** MIDLGB22

**EURO IBAN No:** GB79MIDL40051569284302

**U.S. DOLLAR ACCOUNT DETAILS:**

**Bank Address:** HSBC Bank–International Branch, 60 Fenchurch Street, London, EC3M 4BA

**Account Name:** M.A.C Solutions (UK) Ltd

**USD Sort Code:** 40-05-15    **USD Account No:** 69283424    **USD Swift Code:** MIDLGB22

**USD IBAN No:** GB20MIDL40051569283424



## 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.



ORGALIME

**GENERAL CONDITIONS FOR COMPUTER SOFTWARE**  
**Supplementary conditions for computer software included in products**  
**delivered under Orgalime S 2012 or Orgalime SI 14**

Brussels, March 2014

**PREAMBLE**

1. This supplement contains conditions which regulate the rights and obligations in respect of computer software, which is included in respectively the Product or the Works (in this supplement referred to as the Product). The supplement complements the conditions in Orgalime S 2012 or Orgalime SI 14 respectively and shall apply when the parties agree thereto In Writing or otherwise. The term Supplier, which is used hereinafter, shall, when Orgalime SI 14 apply, refer to the Contractor.

**TYPES OF COMPUTER SOFTWARE**

2. Computer software which is covered by these supplementary conditions is referred to as follows:

2.1. The *Computer Software* is the computer software which is included in the Product, and consists of Supplier's Software and/or Sublicensed Software.

2.2. The *Supplier's Software* is computer software to which the Supplier holds the intellectual property rights.

2.3. *Sublicensed Software* is computer software to which a third party holds the intellectual property rights and to which the Supplier, with the property right holder's permission, grants a right of use.

**THE PURCHASER'S RIGHT TO USE THE COMPUTER SOFTWARE**

3. Unless otherwise agreed In Writing, the following shall apply in respect of the Purchaser's right to use the Computer Software:

3.1. *Supplier's Software*

The Purchaser acquires the non-exclusive right to use the Supplier's Software only in the use of the Product. The Purchaser may transfer this right of use to subsequent owners or leaseholders of the Product. The Supplier retains the intellectual property rights to the Supplier's Software even when such software has been produced specially for the Purchaser.

The Purchaser shall be entitled, at his own responsibility, to make changes to the Supplier's Software to the extent that they are consistent with the general purpose for which the Product is intended and with the requirements of the applicable safety regulations.

The Supplier shall not be obliged to provide the source code for the Supplier's Software.

3.2. *Sublicensed Software*

Subject to any limitations which have been agreed between the Supplier and the holder of the intellectual property rights, the Purchaser acquires the non-exclusive right to use the Sublicensed Software only in the use of the Product and to transfer this right of use to subsequent owners or leaseholders of the Product. The Supplier shall inform the Purchaser In Writing of any such limitations before the agreement regarding delivery of the Product is entered into. If the Supplier fails to inform the Purchaser of such limitations, the Supplier shall hold the Purchaser harmless against any claim of a third party, based on the infringement of such limitation, resulting from the Purchaser's use of the Sublicensed Software.

**UPDATING THE COMPUTER SOFTWARE**

4. Unless otherwise agreed In Writing, the Supplier shall not be obliged to provide the Purchaser with updated versions of the Computer Software.

**INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**

5. The Supplier shall, in accordance with Clauses 6-10, hold the Purchaser harmless against any claim of a third party, based on infringement of copyright or other intellectual property rights existing at the time of delivery, resulting from the Purchaser's use of the Computer Software.

6. The Supplier shall not, however, be liable for any claim in respect of infringement which is based on:

- use of the Computer Software by the Purchaser in a manner or place which has not been agreed and which the Supplier should not reasonably have foreseen, or
- changes to the Computer Software undertaken by the Purchaser.

7. Defence against claims of infringement referred to in Clause 3.2 or Clause 5 shall be for the Supplier's account. He shall indemnify the Purchaser against such amounts as the latter is obliged to pay under a settlement approved by the Supplier or a final award.

The Supplier shall only be liable, however, if the Purchaser without delay notifies the Supplier In Writing of any claim which he receives and lets the Supplier decide how the claim shall be dealt with in litigation and out of court negotiations.

8. If an infringement of intellectual property rights occurs and the conditions under Clause 7, second paragraph, are fulfilled, the Supplier shall, within a reasonable time, at his option:

- provide for the Purchaser the right to continue to use the Computer Software,
  - change the Computer Software so that the infringement ceases,
- or
- replace the Computer Software with other software having an equivalent function, the use of which does not result in an infringement.

9. If the Supplier fails to rectify the infringement in due time as described in the previous Clause 8, Clauses 36, 37 and 39 of Orgalime S 2012 or Clauses 68, 69 and 71 of Orgalime SI 14 respectively, as the case may be, shall apply.

10. Except as specified in Clauses 5-9, the Supplier shall have no liability towards the Purchaser for any infringement of third parties' rights caused by the Purchaser's use of the Computer Software. This limitation of the Supplier's liability shall, however, not apply if he has been guilty of gross negligence.

**OTHER DEFECTS IN THE COMPUTER SOFTWARE**

11. In case of other defects in the Computer Software than those causing infringement of copyright or industrial property rights, Clauses 23-39 of Orgalime S 2012 or Clauses 55-71 of Orgalime SI 14 respectively, as the case may be, shall apply.

**CONSEQUENTIAL LOSSES**

12. Save as otherwise stated in these Supplementary Conditions there shall be no liability on the Supplier for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.