

**General Terms and Conditions for the delivery of machines, plants, devices, spare parts and tools
abroad and, in individual cases, contractually agreed commissioning and training abroad as well
as for independent installation and repair orders**

(as of October 2018)

**Following ORGALIME SI 14 General Terms and Conditions for the delivery and installation of
mechanical, electric and electronic products**

Brussels, as of January 2014

Whereas

1. these General Terms and Conditions apply if they have been agreed by the parties in writing or in any other way. When applied to a specific contract any modifications or deviations from the General Terms and Conditions must be in writing.

The installation services at the installation site described in these General Terms and Conditions shall only be provided in connection with the purchase of a delivery item if they have been contractually agreed in individual cases within the framework of commissioning, training and production support. In case of doubt, the manufacturer's services shall be regarded as independent installation and repair orders.
2. In the absence of a special agreement, a contract shall be concluded with the manufacturer's order confirmation in text form. Any deviating contractual terms and conditions of the purchaser shall not become part of the contract even upon acceptance of the order.
3. Unless expressly agreed otherwise in individual cases, the focus of the manufacturer's performance shall be the transfer of ownership of a delivery item. Installation and commissioning is a subordinate service within the scope of a special customer service.

DEFINITION OF TERMS

4. In these General Terms and Conditions, the following terms are to be understood as follows:

“**Contract**” shall mean the agreement made in writing between the parties regarding the delivery of the delivery item and/or the performance of the works and all annexes, including any agreed supplements and additions to the aforesaid documents.

“**Contractual price**” shall mean the price to be paid for the works. If installation is to take place within a certain period, the contractual price shall consist of the price of the delivery item plus 10 per cent or such other percentage as may be agreed by the parties.

“**Gross negligence**” shall mean any act or omission in which the party concerned either failed to exercise due diligence as to the occurrence of serious consequences which a responsible party would normally have foreseen, or deliberately failed to consider the consequences of such act or omission.

“**Written**” means by means of a document signed by both parties or by letter, fax, email or other means agreed by the parties.

“**Text form**” is a legible statement that identifies the person making the declaration, e.g. an e-mail.

“**Delivery item**” includes any machine, any accessories and any other materials and items to be delivered by the manufacturer in accordance with the contract.

“**Installation site**” shall mean the place where the delivery item is to be erected or set up within the company and shall also include the adjacent areas necessary for unloading, storing and internal transport of the delivery item and the installation equipment. In the case of an independent repair or installation order, the installation site is the location outside the manufacturer's plant where the repair or delivery item is located.

“**Works**” shall include both the delivery item and the installation and any other work to be performed by the manufacturer under the contract. If the contract provides for acceptance of the works in several sections intended for independent use, these terms shall apply separately to each section. The term “works” then refers to the relevant section.

“Used goods” shall mean any delivery item which is not new and which the parties have designated as used. All exchange parts are used delivery items, as are all delivery items designated as reconditioned or overhauled.

“Attributable” are all acts in which there is a direct, causal and reasonable connection between an act and a consequence.

“Appropriate” shall mean any relationship which, in the normal view of life of an objective, informed third party, is not entirely outside experience and expectation.

“Intermediary” shall mean any buyer who does not purchase the delivery item or works as an end user.

“End user” shall mean any person who uses the delivery item or the works for the intended purpose for production.

“Qualified operating staff” shall mean any person trained by the manufacturer or by a person demonstrably trained by the manufacturer on a specific machine or who have been demonstrably instructed in the handling of the machine by a person so trained.

“Defect” shall mean the deviation of the actual condition from the nominal condition of the delivery item or the works.

“Independent installation and repair services” shall mean any services provided by the manufacturer which are independent of other services provided by the manufacturer, in particular sales contracts.

PRODUCT INFORMATION

5. The details and information contained in general product documentation and price lists - whether in electronic or other form - are binding only to the extent that they are expressly referred to in the contract.

DRAWINGS AND DESCRIPTIONS

6. If one party provides the other party with drawings and/or technical documents relating to the works before or after conclusion of the contract, these shall remain the property of the submitting party. If one party receives drawings, technical documents or other technical information, it may only use these for the intended purpose without the consent of the other party. They may not be used for other purposes, copied, reproduced, passed on to third parties or disclosed without the consent of the submitting party.
7. At the latest at the time of acceptance, the manufacturer shall make available to the purchaser free of charge (operating) instructions and drawings enabling the purchaser to commission, use and maintain the works. The agreed number of such instructions and drawings shall be handed over, but at least one copy each. The instructions and drawings may also be made available in digital form; if and to the extent that information relevant to the protection of health and safety is involved, they shall be handed over separately in paper form. The purchaser shall not receive any workshop drawings for the delivery item or spare parts.

SOFTWARE USAGE

8. If software is included in the scope of delivery of the delivery item, the purchaser shall be granted a non-exclusive right to use the delivered software including its documentation. It shall be made available for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.
9. The purchaser may only copy, revise, translate or convert the software from the object code to the source code to the extent permitted by law (Cl. 69 a et seq. *German Copyright Act* [Urheberrechtsgesetz, UrhG]). The purchaser undertakes not to remove or alter manufacturer's details - in particular copyright notices - without the prior express consent of the manufacturer.
10. All other rights to the software and the documentation including copies shall remain with the manufacturer or the software supplier. Sublicensing is not permitted.

PRE-SHIPMENT TESTING

11. Unless otherwise agreed, any tests agreed in the contract prior to shipment ("preliminary acceptance test") shall be carried out at the place of manufacture during normal working hours. If the contract does not contain any provisions on technical requirements, the tests shall be carried out in accordance with the general practice of the industrial sector concerned in the country of manufacture.
12. The manufacturer shall notify the purchaser in writing of the preliminary acceptance test in sufficient time to enable the purchaser to be represented at the preliminary acceptance test. If the purchaser is not represented, he shall receive the test report from the manufacturer, the accuracy of which he can no longer dispute. If the preliminary acceptance test is delayed due to circumstances for which the purchaser is responsible, the manufacturer shall not be in default as long as this is the case. The manufacturer shall be entitled but not obliged to dispatch the delivery item without prior acceptance.
13. If the delivery item proves to be in breach of contract at the time of preliminary acceptance, the manufacturer shall immediately remedy any defect in order to achieve the contractual condition of the delivery item. The purchaser may only demand that the preliminary acceptance test be repeated in cases of major defects. By carrying out the preliminary acceptance test without complaint, the purchaser acknowledges that the delivery item is in the condition stipulated in the contract at the time of delivery.
14. The test material required for the preliminary acceptance test shall be made available in good time by the purchaser at his own expense in accordance with the manufacturer's instructions. In addition, the purchaser shall bear all travel and living expenses incurred in connection with the pre-acceptance tests for his representatives. Customer-specific tests as part of the preliminary acceptance test will be invoiced to the purchaser. All additional costs required for the standard acceptance tests carried out at the place of manufacture shall be borne by the manufacturer.

DELIVERY/SHIPMENT

15. In the absence of a separate agreement, delivery of the delivery item shall be effected EXW Sindelfingen (Incoterms 2010) and in accordance with the following provisions. If the transport of the delivery item is executed by the manufacturer, this shall, in the absence of an express agreement, be by order, at the expense and risk of the purchaser. In the absence of a deviating agreement, the delivery item shall also be transported in accordance with sentence 1 and sentence 2 in case of any purchase contract with an obligation to install the item. The manufacturer shall not commence his assembly work until the concrete installation site of the delivery item has been reached.
16. The delivery time ("delivery date") shall be determined by the agreements between the contracting parties. Compliance with the delivery date by the manufacturer shall be subject to all commercial and technical questions between the parties having been clarified and the purchaser having fulfilled all his obligations, such as, for example, obtaining the necessary official certificates or permits or making a partial payment. If this is not the case, the delivery period shall be extended appropriately. This shall not apply if the manufacturer is responsible for the delay.
17. Compliance with the delivery time shall be subject to correct and punctual delivery by the manufacturer's suppliers. The manufacturer shall notify the purchaser as soon as possible of any delays which become apparent.
18. Unless and to the extent agreed by the parties, the delivery period shall be deemed to have been observed if the purchaser has been notified that the goods are ready for dispatch and the delivery item has been made available for collection or the delivery item has left the manufacturer's plant by the end of the period.
19. If dispatch of the delivery item is delayed for reasons for which the purchaser is responsible, he shall be charged the costs incurred by the delay, commencing one month after notification that the delivery item is ready for dispatch.
20. If non-compliance with the delivery period is due to force majeure, industrial disputes or other events beyond the control of the manufacturer, the delivery period shall be extended accordingly. The manufacturer shall notify the purchaser of the beginning and end of such circumstances as soon as

21. The purchaser may rescind the contract without notice if the manufacturer is definitively unable to perform the entire performance prior to the passing of risk. In addition, the purchaser may rescind the contract if, in the case of an order, the execution of part of the delivery becomes impossible and he has a justified interest in refusing the partial delivery. If this is not the case, the purchaser shall pay the contractual price attributable to the partial delivery. The same shall apply in the event of the manufacturer's inability to perform.
22. If the impossibility or inability to perform occurs during the delay in acceptance or if the purchaser is solely or predominantly responsible for these circumstances, he shall remain obliged to render consideration.
23. If the manufacturer is in default with the delivery and the purchaser suffers damage as a result thereof, the purchaser shall be entitled to demand a lump-sum compensation for delay. It shall amount to 0.5 per cent for each full week of delay, but in total not more than 5 per cent of the value of that part of the total delivery which cannot be used in time or in accordance with the contract as a result of the delay. In the case of a purchase contract with an obligation to install the delivery item, the calculation shall, in case of doubt, be made on the basis of the contractual price of the delivery item within the meaning of Clause 4.
24. If the purchaser sets the manufacturer - taking into account the statutory exceptions - a reasonable deadline for performance after the due date and the deadline is not met, the purchaser shall be entitled to rescind the contract within the framework of the statutory provisions. At the manufacturer's request, the purchaser undertakes to declare within a reasonable period whether he will exercise his right to rescind the contract.
25. Further claims arising from delay in delivery shall be governed exclusively by Clause 53 of these Terms and Conditions.

PREPARATORY WORK AND WORKING CONDITIONS

26. If installation is owed by the manufacturer, the manufacturer shall deliver in good time the drawings for installation of the delivery item and all instructions necessary to bring the necessary equipment to the installation site and to establish all necessary connections to the plant.
27. The purchaser shall make all equipment available in good time and shall ensure that the conditions necessary for the installation of the delivery item and for the proper use of the works are fulfilled. This shall not apply to preparatory work to be carried out by the manufacturer under the contract.
28. The purchaser shall carry out the preparatory work in accordance with the drawings and instructions supplied by the manufacturer pursuant to Clause 26. The work shall be completed in time. In any case, the purchaser shall ensure that the foundations and the ground conditions are suitable as a permanent location for the delivery item and, in particular, that they can withstand reasonable loads. If the purchaser is obliged to transport the delivery item to the installation site, he shall ensure that the delivery item arrives there in good time.
29. The manufacturer shall bear all costs for necessary remedial measures which become necessary due to incorrect or incomplete drawings or instructions in accordance with Clause 26, provided that the manufacturer discovers the defectiveness or incompleteness of the drawing or instruction within the period referred to in Clause 67 or the manufacturer is notified thereof in writing within this period.
30. The purchaser must ensure that:
 - a) the manufacturer's staff has the opportunity to commence work in accordance with the agreed schedule and to work uninterruptedly and trouble-free during normal working hours. The work may be performed outside normal working hours if this appears necessary to the manufacturer and if the purchaser has been informed thereof in writing within a reasonable period.
 - b) he informs the manufacturer in writing in good time before the start of assembly of all relevant safety regulations applicable at the installation site. Installation shall not be carried out in an unhealthy or dangerous environment. All necessary safety and protective measures shall be taken prior to commencement of installation and shall be maintained during installation.
 - c) the manufacturer's staff has the opportunity to be adequately accommodated and cared for in the vicinity of the installation site and has access to sanitary facilities and medical care in accordance with international standards.

- d) he makes available to the manufacturer free of charge and punctually at the installation site all necessary cranes, lifting equipment and means of transport within the installation site, ancillary equipment, machines, materials and supplies (including oils, greases and other materials, electricity, compressed air, heating, light, Internet, test plates, etc.) as well as the purchaser's measuring and testing equipment available at the installation site. The manufacturer shall inform the purchaser in writing no later than two weeks before the agreed start of installation which cranes, lifting equipment, measuring and testing equipment and means of transport he requires within the installation site.
 - e) the manufacturer's staff are provided with a place to stay and change clothes in the immediate vicinity of the installation site;
 - f) to protect the delivery item, the tools and equipment necessary for assembly and the personal belongings of the manufacturer's staff against theft and deterioration, he shall provide the manufacturer with the necessary storage facilities free of charge.
 - g) the access routes to the installation site are suitable for the necessary transport of the manufacturer's delivery item, parts or equipment.
31. At the manufacturer's timely request, the purchaser shall make available to the manufacturer, free of charge, assistants and qualified operating staff if agreed in the contract or if reasonably required for the purposes of the contract. The persons made available by the purchaser in accordance with this Clause shall provide their own tools. The manufacturer shall not be liable for such staff provided by the purchaser or for their actions or omissions.
32. Upon request, the purchaser shall provide the manufacturer with comprehensive support in the import and re-export of the manufacturer's equipment and tools; this shall also apply to customs formalities. This support shall be provided without any further costs.
33. The purchaser shall provide the necessary assistance to ensure that the manufacturer's staff receives visas and other official entry, exit or work permits in good time and any tax certificates required in the purchaser's country as well as access to the installation site. This support shall be provided without any further costs.

FAILURE TO PERFORM ON THE PART OF THE CUSTOMER

34. If the purchaser is able to foresee that he will not fulfil his obligations necessary for the performance of the installation, in particular in accordance with the conditions of Clauses 27 et seq., in due time, he shall inform the manufacturer thereof immediately and in text form, stating the reason, and if possible inform the manufacturer of the time at which he will be able to fulfil his obligations.
35. If the purchaser does not fulfil his obligations necessary for the performance of the installation free from defects and in due time, in particular under the conditions of Clauses 27 et seq., notwithstanding the rights of the manufacturer under Clause 36, the following shall apply:
- a) The manufacturer may, at his own discretion, perform the purchaser's obligations or have them performed by a third party or take such other measures as are appropriate in the circumstances to avoid or limit the effects of the purchaser's failure to perform.
 - b) The manufacturer may suspend performance of the contract in whole or in part. The manufacturer shall immediately notify the purchaser in writing of such suspension.
 - c) If the delivery item is not at the installation site, the manufacturer shall store the delivery item at the purchaser's risk. At the request of the purchaser, the manufacturer shall insure the delivery item.
 - d) If performance of the contract is delayed due to the purchaser's failure to perform, the purchaser shall pay to the manufacturer that part of the contractual price which would have been due without the delay.
 - e) The purchaser shall indemnify the manufacturer against all reasonable costs, even those not covered by Clauses 57 et seq., incurred by the manufacturer as a result of any action taken under Subclauses a), b) or c) of this Clause.
36. If any acceptance due is prevented by the purchaser's failure to perform under Clause 35 and such failure is not due to any of the circumstances referred to in Clause 79, the manufacturer may further

If, for any reason beyond the control of the manufacturer, the purchaser fails to remedy his failure to perform within such period, the manufacturer shall be entitled to rescind the contract in whole or in part by notice in writing. The manufacturer shall then be entitled to compensation for any loss suffered as a result of the purchaser's failure to perform. This shall also apply to indirect damage and consequential damage. The compensation shall not exceed that part of the contractual price which corresponds to that part of the works in respect of which the contract is terminated.

DECLARATION OF CONFORMITY, REQUESTS FOR MODIFICATION

37. The manufacturer shall ensure that the delivery item has been manufactured in accordance with the EC declaration of conformity.
38. The manufacturer must be informed of any desired deviations of the delivery item prior to conclusion of the contract. Subsequent modifications shall be checked by the manufacturer for feasibility, in particular whether they can be implemented in accordance with the EC Declaration of Conformity. Costs resulting from the feasibility study and the implementation of the deviations shall be borne by the purchaser.

TRANSFER OF RISK

39. The risk of loss of or damage to the delivery item shall pass to the purchaser in accordance with the agreed commercial clauses, which shall be interpreted in accordance with the INCOTERMS valid at the time of conclusion of the contract.

Unless otherwise agreed, delivery of the delivery item shall be "ex works" EXW Sindelfingen (Incoterms 2010). Clause 15 shall apply mutatis mutandis. Any risk of loss of or damage to the works not covered by the first paragraph of this Clause shall pass to the purchaser upon acceptance of the works. After transfer of risk, the purchaser shall bear the risk for any loss of or damage to the delivery item, unless such loss or damage is due to the negligent conduct of the manufacturer.

ACCEPTANCE TESTS

40. If installation of the delivery item is owed on the basis of a purchase contract with an obligation to install the delivery item, acceptance tests shall be carried out after completion of the installation to the extent contractually agreed in order to determine whether the installation services comply with the contractual provisions.

If, in exceptional cases, the manufacture of the works is owed, acceptance tests shall be conducted after completion of the installation to determine whether the works comply with the contractual provisions.

41. The manufacturer shall inform the purchaser in text form that the works are ready for acceptance. This notification shall include a date for the acceptance tests which shall give the purchaser sufficient time to prepare for the tests and to be represented at them.
42. The purchaser shall bear all costs for the acceptance tests. The manufacturer, on the other hand, shall bear all costs incurred by his staff and other representatives. The costs for a customer-specific acceptance test shall be charged to the purchaser. The purchaser shall make available at his own expense an Internet connection, energy, lubricants, raw materials as well as test material and all other materials insofar as these are necessary for conducting the acceptance tests and the final adjustments during the preparation of the acceptance tests. He shall also set up equipment at his own expense and make available the manpower or aids necessary for conducting the acceptance tests.
43. If the purchaser has received notice in accordance with Clause 41 and fails to perform his obligations under Clause 42 or otherwise prevents the performance of the acceptance tests, the tests shall be deemed to have been successfully performed on the date specified as the date for the acceptance tests in the manufacturer's notice.
44. Acceptance tests shall be carried out during normal working hours. If the contract does not contain any provisions on technical requirements, the tests shall be conducted in accordance with the general practice of the industrial sector concerned in the country of the purchaser.
45. The manufacturer shall draw up a report of the acceptance tests and submit it to the purchaser for

acceptance tests after having been notified in accordance with Clause 41, he shall no longer be entitled to dispute the accuracy of the acceptance report.

46. If, during the acceptance tests, the works prove to be in breach of contract, the manufacturer shall remedy any defect without delay. At the immediate written request of the purchaser, new tests shall be conducted in accordance with Clauses 40-45. This shall not apply in cases of minor defects.

ACCEPTANCE

47. In the event of a case of Clause 40, the work shall be deemed accepted,
- a) if the acceptance tests have been successfully completed or are deemed to have been successfully completed in accordance with Clause 43; or
 - b) if the purchaser has received written notice from the manufacturer that the works have been completed, provided that the works comply with the provisions of the contract relating to acceptance, but only in cases where the parties have not agreed to conduct acceptance tests but the contents of the contract so require.

Minor defects which do not affect the performance of the works shall not constitute grounds for refusal of acceptance.

The manufacturer's obligation, if any, to install the delivery item at the installation site shall be deemed fulfilled upon acceptance of the works in accordance with this Clause 47, without prejudice to any obligation to remedy minor defects.

48. If acceptance is required, the purchaser shall not be entitled to use the works or any part thereof prior to acceptance. Otherwise the works shall be deemed to have been accepted by the purchaser unless the written consent of the manufacturer has been obtained. In the case of sentence 1, the manufacturer shall then no longer be obliged to conduct acceptance tests.
49. If acceptance of the works has been successfully carried out or if acceptance is deemed to have been successfully carried out in accordance with Clause 43, the period described in Clause 67 shall commence. At the manufacturer's written request, the purchaser shall issue a certificate confirming the date of acceptance of the works. If the purchaser does not nevertheless issue such a certificate, this shall not affect acceptance.

FAILURE TO PERFORM ON THE PART OF THE MANUFACTURER

50. If acceptance is required and if the parties have agreed on a period instead of an acceptance date on the expiry of which acceptance is to take place, such period shall commence as soon as the contract has been concluded and all agreed preconditions incumbent on the purchaser have been fulfilled, e.g. with regard to official formalities, all payments due upon conclusion of the contract or any agreed securities.
51. If the manufacturer can foresee that he will not be able to fulfil his obligations for acceptance by the acceptance date, he shall immediately inform the purchaser thereof in writing, stating the reasons and, if possible, the expected acceptance date.

If the manufacturer fails to give such notice, the purchaser shall be entitled to claim compensation for any additional costs it incurs as a result of not having received such notice.

52. The manufacturer shall be entitled to an extension of the acceptance period if a delay is attributable to:
- a) any circumstance specified in Clause 79 et seq. or
 - b) alteration work in accordance with Clause 38, or
 - c) the suspension of fulfilment in accordance with Clauses 35, 82, or
 - d) any action or omission on the part of the purchaser or any other circumstance attributable to the purchaser.

The period shall be extended by a reasonable period depending on the respective circumstances. This provision shall apply irrespective of whether the reason for the delay occurs before or after the agreed acceptance date.

53. The delay on the part of the manufacturer shall entitle the purchaser, after setting a reasonable time limit starting from the date at which the works should have been completed, to payment of the liquidated damages.
- The liquidated damages shall be fixed at 0.5 per cent of the contract value for each full week of delay. The liquidated damages shall not exceed 5 per cent of the contract value. In the case of a purchase contract with an obligation to install the delivery item, the calculation shall, in case of doubt, be made on the basis of the contractual price of the delivery item within the meaning of Clause 4.
- If only part of the works is delayed, the liquidated damages shall be determined on the basis of that part of the contractual price which corresponds to that part of the works which cannot be used as intended due to the delay.
- The liquidated damages shall become due upon written enforcement by the purchaser, but not before acceptance has been completed or the contract has been terminated in accordance with Clause 54.
54. If the length of the delay entitles the purchaser to claim the maximum liquidated damages under Clause 53 and if the works are still not ready for acceptance, the purchaser may set the manufacturer in writing a final reasonable time limit of at least one week for completion of the works.
- If the manufacturer fails to complete the works within such final period and fails to do so for a reason not attributable to the purchaser, the purchaser may, by notice in writing to the manufacturer, withdraw from the contract in respect of such part of the works as cannot be used as intended due to the manufacturer's delay.
- If the purchaser withdraws from the contract, he shall be entitled to compensation for any damage suffered as a result of the delay by the manufacturer, including indirect and consequential damage. The total amount of such compensation, including the liquidated damages under Clause 53, shall not exceed 15 per cent of the part of the contractual price corresponding to that part of the works in respect of which the contract was terminated. In the case of a purchase contract with an obligation to install the delivery item, the calculation shall, in case of doubt, be made on the basis of the contractual price of the delivery item within the meaning of Clause 4.
- The purchaser shall also be entitled to terminate the contract by notice in writing to the manufacturer if it is clear from the circumstances without any doubt that acceptance of the works will be delayed for such period as would entitle the purchaser to the maximum rate of damages under Clause 53. If the contract is terminated for such reason, the purchaser shall be entitled to the maximum damages and compensation under the third paragraph of this Clause 54.
55. The purchaser shall not be entitled to any further claim in excess of the liquidated damages under Clause 53 and the rescission of the limited-compensation contract under Clause 54 in the event of delay by the manufacturer. All other claims against the manufacturer in respect of such delay shall be excluded, except in cases of culpable breach of essential contractual obligations, wilful misconduct or gross negligence on the part of the manufacturer under Clause 4 on the part of the manufacturer.

PAYMENTS

56. In the absence of a special agreement, the prices are "ex works" EXW Sindelfingen (Incoterms 2010) including loading at the works, but excluding packaging. Value-added tax at the respective statutory rate shall be added to the prices. Payment shall be made without any deduction to the manufacturer's account in accordance with the order confirmation. The manufacturer shall be entitled to demand an appropriate pre-payment or payment in advance or the provision of a security upon conclusion of the contract.
57. The following items shall be invoiced separately for installation according to calculation of time as well as for independent repair and assembly services:
- a) Any travel expenses incurred by the manufacturer for his staff and the costs of transporting his tools and personal luggage to a reasonable extent in accordance with the type and class of means of transport agreed in the contract, if any;
 - b) Lodging and other living expenses, including reasonable daily allowances, for each day of absence of the installation staff from their place of residence, including rest days and public

holidays; daily allowances shall also be paid in the event of prevention due to illness or accident;

- c) The hours worked, calculated on the basis of the hours confirmed as time worked by the purchaser's signature on the respective time-sheets. The absence of a signature does not exclude the calculation of the manufacturer's services according to the information provided by its installation and service staff. Overtime, work on Sundays and public holidays, and night work shall be charged at special rates. The rates are based on the agreement made in the contract. In the absence of such an agreement, they shall be based on the rates demanded by the manufacturer in accordance with the manufacturer's applicable service and installation guidelines. Unless otherwise agreed, the hourly rates shall include wear and tear of the manufacturer's tools and light equipment;
- d) The time required for:
 - preparation and formalities for the outward and return journeys of the manufacturer's staff;
 - outward and return journeys and other journeys to which the staff is entitled under applicable law, regulations or collective agreements in the country of the manufacturer;
 - the daily return journey of the manufacturer's staff between the accommodation and the installation site, if this exceeds half an hour and there is no adequate accommodation closer to the installation site;
 - bridging of times when work is prevented due to circumstances not attributable to the manufacturer;all such items being subject to the rates set out in (c) above;
- e) Contractual expenses of the manufacturer for the provision of equipment by him and, if applicable, a fee for the use of his heavy tools;
- f) Taxes and duties to be paid by the manufacturer on the invoice amount in the country of installation;
- g) Costs which could not reasonably have been foreseen by the manufacturer and which are due to circumstances not attributable to the manufacturer;
- h) Additional costs due to compulsory social legislation in the country of the purchaser;
- i) Costs, expenses and expenditure of time due to additional work not attributable to the manufacturer.

58. In the case of installation at a lump sum price as well as independent repair and installation services, the contractual price shall include all items listed under Clause 57 (a) up to and including (f). Items listed in Clause 57 (g) up to and including (i) shall be deemed not to be included in the contractual price and shall therefore be invoiced separately on a time basis. Costs on a time basis shall be invoiced on the basis of the rates in accordance with the applicable service and installation guidelines of the manufacturer.

59. If installation is delayed for reasons attributable to the purchaser, the purchaser shall indemnify the manufacturer for any additional costs incurred, including, but not limited to:

- a) waiting times and additional travel times;
- b) costs and additional work due to the delay, including dismantling, securing and erection of the installation equipment;
- c) additional costs, in particular costs incurred by the manufacturer as a result of the manufacturer's equipment being tied to the installation site for longer than intended;
- d) additional lodging and living expenses and travel expenses for installation staff;
- e) additional financing and insurance costs;
- f) other documented costs incurred by the manufacturer as a result of deviations from the installation programme.

Costs on a time basis shall be invoiced on the basis of the rates in accordance with the applicable service and installation guidelines of the manufacturer.

60. Irrespective of the means of payment used, payment shall not be deemed to have been made until the amount due has been irrevocably credited to the manufacturer's account

61. If the purchaser is in arrears with his payments, the manufacturer may claim default interest and reimbursement of collection costs from the due date. The interest rate shall be fixed by the parties. In the absence of such a provision, an interest rate of 9 percentage points above the rate of the marginal lending facility of the European Central Bank applicable at the time the payments fall due shall be deemed to have been agreed. The collection costs to be reimbursed shall be 1 per cent of the amount for which default interest is due.

In the event of delayed payment or the late provision of an agreed security by the purchaser, the manufacturer may, after giving written notice to the purchaser, suspend performance of its own obligations until payment is received or the security is provided.

If the purchaser is more than three months in arrears with payments due, the manufacturer may, by notice in writing to the purchaser, rescind the contract and, in addition to interest and reimbursement of collection costs under this Clause, claim compensation from the purchaser for any damage suffered. Compensation shall not exceed the contractual price.

RETENTION OF TITLE

62. The delivery item shall remain the property of the manufacturer until payment has been made in full, including payment for installation of the delivery item, insofar as such retention of title is legally effective. In addition to these provisions, the "Agreement on extended retention of title" shall apply.

At the request of the manufacturer, the purchaser shall provide him with comprehensive support in his efforts to protect the manufacturer's title to the delivery item. The retention of title shall not affect the provisions concerning the passing of risk under Clause 39.

63. In the case of repair and installation services, the following shall apply, in deviation from Clause 62:

The manufacturer shall retain title to all accessories, spare parts and replacement units used until all payments under the repair or installation contract have been received. Further security agreements can be made.

The manufacturer shall be entitled to a lien on the item of repair or installation of the purchaser which has come into his possession on the basis of the contract on account of his claim under the repair and installation contract. The lien may also be asserted in respect of claims arising from work carried out earlier, deliveries of spare parts and other services insofar as they are connected with the item to be repaired or installed. The lien shall only apply to other claims arising from the business relationship insofar as these are undisputed or legally binding.

In the absence of a separate agreement, in the case of installation services in a previous purchase contract with an obligation to install the delivery item, it is to be assumed that the installation was preceded by a purchase contract and consequently Clause 62 determines the scope of the retention of title or lien. If this is not the case, Clause 63 shall apply *mutatis mutandis*.

LIABILITY FOR DAMAGE TO PROPERTY BEFORE TRANSFER OF RISK

64. The manufacturer shall be liable for all damage to the works which occurs prior to the transfer of risk to the purchaser. This shall apply irrespective of the cause of the damage unless the damage was caused by the purchaser himself or by a third party for whom the purchaser is responsible in connection with the fulfilment of this contract. Even in cases where the manufacturer is not liable for damage to the works under this Clause, the manufacturer shall, at the request of the purchaser, remedy the damage at the expense of the purchaser.

65. The manufacturer's liability for damage to the purchaser's property until acceptance of the works shall be limited to cases where the manufacturer or any third party for whom the manufacturer is responsible in the fulfilment of the contract has caused the damage by negligence. In no event shall the manufacturer be liable for loss of production, loss of profit or other consequential or indirect damage.

LIABILITY FOR DEFECTS

66. Pursuant to Clauses 67 up to and including 78, the manufacturer shall, subject to sentence 2, remedy any defect in the works resulting from a defect in design, material or workmanship. If the purchaser

remedy of the defect conditional upon payment of a reasonable part of the purchase price. In deviation from Clause 111, liability for infringement of industrial property rights and intellectual property shall be governed by Art. 42 CISG.

67. The manufacturer's liability shall be limited to defects in the works occurring within one year after acceptance or, if acceptance has not been agreed, after delivery of the delivery item. A preliminary acceptance is also an acceptance in this sense. The delivery item is designed for one-shift production during a regular five-day week. If the operating time exceeds this limit, the period shall be shortened accordingly. If acceptance is delayed for reasons for which the purchaser is responsible, the manufacturer's liability for defects shall end no later than 18 months after delivery of the delivery item. Liability for defects is excluded in the event of delivery of a used delivery item.

68. If a defect in any part of the works is remedied, the manufacturer shall be liable for defects in the replaced or repaired parts under the same conditions as for the original works for a period of one year. For all other parts of the works, the period referred to in Clause 67 shall be extended only by the duration of the interruption of operation of the works caused by the defect.

69. The purchaser must notify the manufacturer of any defects without delay. The complaint must describe the defect. The complaint must be made on normal working days of the manufacturer between 7 a.m. and 5 p.m. CET ("service times"). The manufacturer will react within 24 hours after notification of defects on normal working days of the manufacturer, on other days the reaction time will be postponed according to the working day service times.

If the purchaser fails to notify the manufacturer of the defect within the periods specified in this Clause, he shall forfeit his right to the defect being remedied.

If the defect could cause damage, the purchaser shall notify the manufacturer immediately in text form. The purchaser shall bear the risk of damage to the works resulting from failure to notify the manufacturer. The purchaser shall take all reasonable measures to limit the damage and in this respect follow the manufacturer's instructions.

70. Upon receipt of the notice of defect in accordance with Clause 69, the manufacturer shall remedy the defect immediately and at his own expense in accordance with Clauses 67 up to and including 78. The remedy of the defect shall be timed so as not to unnecessarily interfere with the purchaser's operations. The purchaser shall give the manufacturer the necessary time and opportunity to remedy the defect.

71. Subject to the following paragraph, the defect shall in principle be remedied at the installation site; however, the manufacturer shall have the discretion to have the defective part or the delivery item returned to him for repair or replacement.

If the work to remedy the defect is carried out at the installation site, Clauses 27 et seq. and 50 shall apply mutatis mutandis.

If the defect can be remedied by replacing or repairing a defective part and if the dismantling and installation of the part does not require special expertise, the manufacturer may demand that the defective part be sent to him or to another location specified by him. In this case, the manufacturer's obligation in respect of the defect shall cease upon delivery of the properly repaired or replaced part to the purchaser.

72. Irrespective of the existence of a support agreement, the manufacturer is entitled to attempt to solve the problem by telephone, online, with the involvement of the purchaser's operating staff or by connection to the machine via software for remote maintenance (e.g. TeamViewer) ("remote maintenance") for all delivered products that meet the technical requirements. The purchaser must collaborate in the remote maintenance.

73. If the purchaser has notified the defect in accordance with Clause 69 and if no defect is found for which the manufacturer is liable, the purchaser shall reimburse the manufacturer for the costs incurred by the manufacturer as a result of such notification.

74. The purchaser shall, at his own expense, ensure access to the works and for any intervention relating to equipment not belonging to the works to the extent necessary to remedy the defect.

Unless otherwise agreed, the necessary transport of the delivery item and/or parts thereof to and from the manufacturer in connection with the remedying of defects for which the manufacturer is liable shall be at the risk and expense of the manufacturer. The purchaser shall follow the

delivery item was delivered at the time the contract was entered into, the purchaser shall bear all additional costs incurred by the manufacturer in remedying any defect by reaching the actual location of the delivery item. Replaced defective parts shall be made available to the manufacturer upon request free of charge and shall become his property.

75. If the manufacturer fails to comply with his obligations under Clause 70 within a reasonable period of time, the purchaser may give the manufacturer in writing a final reasonable period of at least one week within which the manufacturer must comply with his obligations. Country-specific entry conditions shall be taken into account when setting the deadline.

If the manufacturer does not fulfil his obligations within this final period, or in urgent cases of danger to operational safety and/or to prevent substantial damage, the purchaser may carry out the necessary repairs himself or have them carried out by a third party at the expense and risk of the manufacturer. If the repair was successfully carried out by the purchaser or a third party, all claims of the purchaser against the manufacturer in respect of this defect shall be settled by reimbursement of the reasonable costs incurred by the purchaser.

76. If a remedy pursuant to Clause 70 fails,
- a) the purchaser may claim a reduction in the contractual price equal to the reduced value of the works, provided that such reduction shall in no case exceed 15 per cent of the contractual price; or, if the defect is so fundamental that the purchaser loses interest in the contract in respect of the works or a substantial part thereof,
 - b) the purchaser may withdraw from the contract with respect to that part of the works which cannot be used as intended due to the defect by giving written notice to the manufacturer. The purchaser shall then be entitled to compensation for his loss, costs and damage up to a maximum of 15 per cent of the part of the contractual price corresponding to that part of the works in respect of which the contract has been terminated.

The manufacturer shall not be liable for defects based on materials provided by the purchaser or on a design prescribed or specified by the purchaser.

77. The manufacturer shall be liable only for defects occurring under the contractually agreed operating conditions and in the proper use of the works. The operating instructions of the delivery item must be observed and use is only permitted by qualified operating staff.

The manufacturer shall not be liable for defects resulting from poor maintenance or from faulty repair and/or operation by the purchaser or from modifications without the written consent of the manufacturer. Finally, the manufacturer's liability does not extend to normal wear and tear or deterioration. The manufacturer shall also not be liable if a defect arises after relocation of the delivery item, the transport and recommissioning of which was not carried out by the manufacturer.

78. Subject to the provisions of Clauses 67 - 78, the manufacturer shall not be liable for defects. This shall apply to any damage caused by the defect, such as production stoppage, loss of profit and other indirect damage. The manufacturer's limitation of liability shall not apply in the event of intent or gross negligence pursuant to Clause 4 or in the event of culpable injury to life, limb or health.

Furthermore, the limitation of liability shall not apply in the event of culpable breach of essential contractual obligations. In the event of slight negligence, the manufacturer shall only be liable for reasonably foreseeable damage typical of the contract.

Furthermore, the limitation of liability shall not apply in cases in which liability is assumed under the *German Product Liability Act* [Produkthaftungsgesetz] for personal injury or property damage to privately used objects in the event of defects in the works. It shall also not apply to defects which the manufacturer has maliciously concealed or whose absence he has guaranteed.

FORCE MAJEURE

79. Each party shall be entitled to suspend its contractual obligations to the extent that such performance is made impossible or unreasonably difficult by force majeure, which shall include: industrial disputes and all circumstances beyond the control of the parties such as fire, war, general mobilisation, insurrection, requisition, confiscation, embargo, restrictions on energy consumption, currency and export restrictions, epidemics, natural disasters, extreme natural phenomena, acts of terrorism and defective or delayed deliveries by subcontractors due to the circumstances listed in this Clause.

If a circumstance listed in this Clause occurs before or after conclusion of the contract, it shall give a right to suspension of the contractual obligations only to the extent that its effects on the fulfilment of the contract were not foreseeable at the time of conclusion of the contract.

80. The party invoking force majeure shall inform the other party immediately and in writing of the occurrence and end of such circumstances. If one party fails to give such notice, the other party shall be entitled to claim compensation for any additional costs it incurs as a result of not having received such notice.

If force majeure prevents the purchaser from fulfilling its obligations under the contract, it shall indemnify the manufacturer for any costs incurred in securing and protecting the works.

81. Notwithstanding any effect set forth in these General Terms and Conditions, either party shall have the right to rescind the contract by notice in writing to the other party if fulfilment of the contract is suspended under Clause 79 for more than six months.

FORESEEABLE FAILURE TO PERFORM

82. Notwithstanding any provision to the contrary in these General Terms and Conditions regarding suspension of fulfilment, either party shall be entitled to suspend fulfilment of its obligations under the contract if it is clear from the circumstances beyond any doubt that the other party will not fulfil its obligations. A party suspending fulfilment of its contractual obligations shall immediately notify the other party thereof in writing.

CONSEQUENTIAL DAMAGE

83. Subject to deviating provisions in these General Terms and Conditions, the liability of either party to the other for loss of production, loss of profit, loss of use, contractual losses or any other consequential damage shall be excluded.

This limitation of liability shall not apply in the event of intent or gross negligence pursuant to Clause 4 or in the event of culpable injury to life, limb or health. Furthermore, it shall not apply in the event of culpable breach of essential contractual obligations. In the event of slightly negligent breach of essential contractual obligations, the manufacturer shall only be liable for reasonably foreseeable damage typical of the contract.

Furthermore, the exclusion of liability shall not apply in cases in which liability is assumed under the *German Product Liability Act* [Produkthaftungsgesetz] for personal injury or property damage to privately used objects in the event of defects in the works. It shall also not apply in the event of damage due to fraudulent misrepresentation or within the framework of special guarantee promises.

SPECIAL PROVISIONS FOR CONTRACTS WITH INTERMEDIARIES

84. In the absence of a separate agreement, the following provisions shall apply to contracts with intermediaries:
85. The intermediary is only entitled to sell the delivery item to an end user whose production location for the delivery item is outside Germany with the prior written consent of the manufacturer. If the intermediary violates this provision ("unauthorised resale"), the manufacturer shall be entitled to rescind the contract. Furthermore, the Intermediary shall indemnify the manufacturer against all claims of third parties arising therefrom. In the event of an unauthorised resale, the manufacturer shall be entitled to claim a contractual penalty from the intermediary amounting to 10 per cent of the purchase price. In the case of a purchase contract with an obligation to install the delivery item, the calculation shall be based on the sales price within the meaning of Clause 4 in case of doubt.
86. The resale discount on the purchase price granted by the manufacturer shall be refunded by the intermediary if, after the conclusion of the purchase contract, it turns out that the conditions required by the manufacturer for recognition of the intermediary status are not met.
87. The intermediary is not entitled to make independent quality agreements or to promise the properties of the delivery item to the end user.
88. If and to the extent that the intermediary is used by the end user, the manufacturer is only obliged to

89. The intermediary is not entitled to make declarations of intent in legal transactions with effect for and against the manufacturer.

SPECIAL PROVISIONS ON THE TRANSFER OF RIGHTS OF USE OF DATA

90. The purchaser transfers to the manufacturer a non-exclusive right to use the data generated by the delivery item, provided and to the extent that these do not contain any personal references.
91. This data is automatically transferred from the delivery item to the manufacturer.
92. The manufacturer is entitled to use the data collected in this way for his own purposes in the sense of product development.

INDEPENDENT REPAIR AND INSTALLATION SERVICES

93. Independent repair and installation services are services of the manufacturer.
94. If the item to be repaired or assembled is not supplied by the manufacturer, the purchaser must draw attention to existing industrial property rights with regard to the item; insofar as the manufacturer is not at fault, the purchaser shall indemnify the manufacturer against any claims by third parties arising from industrial property rights.
95. The purchaser shall be invoiced for the services rendered for the submission of a cost estimate as well as for any further expenses incurred and to be substantiated (troubleshooting time equal to working time) if the repair cannot be carried out for reasons for which the manufacturer is not responsible, in particular if
- the error complained of did not occur during the investigation,
 - spare parts cannot be procured,
 - the purchaser has culpably failed to meet the agreed deadline,
 - the contract has been terminated during performance.
 - the cause of the error cannot be determined even though the manufacturer has used all his expertise and, where possible, has sought technical advice from third parties.
96. In the case of repairs which cannot be carried out, the manufacturer shall not be liable for damage to the item to be repaired, the breach of secondary contractual obligations and for damage which has not occurred to the item to be repaired itself, irrespective of the legal grounds invoked by the purchaser.
97. However, the manufacturer shall be liable in the event of intent, gross negligence on the part of the owner/the bodies or executive employees as well as in the event of culpable breach of essential contractual obligations and in the event of injury to life, limb and health.
98. In the event of culpable breach of essential contractual obligations, the manufacturer shall be liable - except in cases of intent and gross negligence on the part of the owner/the bodies or executive employees - only for reasonably foreseeable damage typical of the contract.
99. As far as possible, the purchaser shall be informed of the expected repair price when the contract is concluded, otherwise the purchaser may set cost limits. If the repair cannot be carried out at the cost of the anticipated repair price or the cost limit or if the manufacturer considers it necessary to carry out additional work during the repair, the consent of the purchaser shall be obtained if the stated costs are exceeded by more than 15 %.
100. If a cost estimate with binding price quotations before the repair is desired, this must be expressly requested by the purchaser. Unless otherwise agreed, such a cost estimate shall only be binding if submitted in writing. It shall be remunerated. The services provided for the submission of the cost estimate shall not be charged to the purchaser insofar as they can be utilised in the execution of the repair.
101. Unless a lump-sum price has been expressly agreed, the installation shall be invoiced based on a calculation of the time required according to the manufacturer's valid service and installation guidelines.

102. For purposes of clarification, reference is made to the validity of in particular Clause 57 et seq. The purchaser's obligations pursuant to Clauses 26 to 35 and the provisions on default pursuant to Clauses 50-55 and the scope of liability pursuant to Clauses 67 and 78.
103. Unless otherwise agreed in writing, in the case of repairs carried out at the manufacturer's plant, transport of the item to be repaired to and from the manufacturer's plant - including any packaging and loading - at the request of the purchaser shall be carried out at the expense of the purchaser, otherwise the purchaser shall deliver the item to be repaired to the manufacturer at his expense and the purchaser shall collect the item to be repaired from the manufacturer after the repair has been carried out. The purchaser shall bear the transport risk.
104. At the purchaser's request, the transport to and possibly from the manufacturer shall be insured against insurable transport risks, e.g. theft, breakage, fire, at the purchaser's expense.
105. No insurance cover is provided during the repair period at the manufacturer's plant. The purchaser shall ensure that the existing insurance cover for the item to be repaired is maintained, e.g. with regard to fire, tap water, storm and machine breakage insurance. Insurance cover for these risks can only be procured at the express request and expense of the purchaser.
106. In the event of delay on the part of the purchaser in taking over the items, the manufacturer may charge storage fees for storage at his plant. The item to be repaired may also be stored elsewhere at the discretion of the manufacturer. The costs and risk of storage shall be borne by the purchaser.
107. In the case of agreed installation services, the purchaser shall make the item to be installed available to the manufacturer at the place of installation. Transport to the place of installation and any necessary transport to the place of installation at the purchaser's premises shall be at the purchaser's expense and risk - this shall also apply if the manufacturer has assumed responsibility for shipment to the purchaser in individual cases. In addition, the transport of the item to be installed shall be determined in accordance with the clauses of these Terms and Conditions.

TRAINING / PRODUCTION SUPPORT

108. Insofar as the purchaser can claim training and/or production support, the following shall apply:
 - a) Unless otherwise agreed, these "General Terms and Conditions for the delivery of machines, plants, devices, spare parts and tools abroad and, in individual cases, contractually agreed commissioning, training and production support abroad as well as for independent installation and repair orders" shall apply accordingly.
 - b) Training may be provided in German or English. If the manufacturer provides production support without at the same time supplying an object of purchase, the provisions for training shall apply accordingly.
 - c) If the training is carried out at the manufacturer's premises, the purchaser shall also bear the costs for his staff, their accommodation, travel expenses and meals.
 - d) The training shall take place before delivery of the object of purchase. If, in addition to the delivery of the object of purchase, commissioning is owed, the training may, at the discretion of the manufacturer, also take place after delivery at the installation site of the object of purchase.

CONTRACTUAL LANGUAGE AND DISPUTES AND GOVERNING LAW

109. Unless otherwise agreed between the parties, the language of the contract shall be German or, subordinately, English.
110. All disputes arising out of or in connection with the contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with such rules.
111. The contract shall be governed by the substantive law of the country of the manufacturer, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

