

# General Conditions for Sale and Delivery

These General Conditions for Sale and Delivery shall apply in full unless otherwise agreed in Writing. Any other conditions of the Purchaser shall not be applicable, even if they were not explicitly rejected in any individual case. These General Conditions for Sale and Delivery incorporate Orgalime S 2012 General Conditions for the SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS ("Orgalime S 2012") as well as they contain certain amendments of and additions to the aforementioned Orgalime S 2012. In all cases of inconsistency between these General Conditions for Sale and Delivery and Orgalime S 2012, these General Conditions for Sale and Delivery shall prevail. The headings and numbering of clauses used below correspond wherever applicable to the headings and numbering of clauses of Orgalime S 2012.

## Amendments of and additions to Orgalime S 2012

*The following title and clause shall be added:*

### **CONCLUSION OF THE AGREEMENT – Clause 2a**

Following the Purchaser's quotation the Supplier's order confirmation sent to the Purchaser shall be binding for the obligations of both contracting parties if the Purchaser has not explicitly objected it in Writing within three working days as from receipt of the order confirmation. If the Purchaser asks for a delivery time for which a shipment in less than three working days is needed, the Supplier's order confirmation shall be binding for the obligations of both contracting parties unless the Purchaser immediately objects it in Writing.

*The following title and clause shall be added:*

### **Product Price – Clause 2b**

SKF shall be entitled to be paid for the Works performed according to SKF's current rates as stated in the pro forma invoice or in the order confirmation and in the Appendix. The minimum price for an order shall be 200 €. In case an order is accepted despite a lower price, the Supplier shall be entitled to be paid 200 €.

*The title "Acceptance Tests" shall be deleted and replaced as follows:*

### **ACCEPTANCE TESTS. PASSING OF RISK**

#### **ACCEPTANCE TESTS. PASSING OF RISK – Clause 6**

*At the end of clause 6 the following paragraphs shall be added:*

If the acceptance test is carried out at another place but the place of manufacture, the Purchaser shall provide the surroundings as well as any means and materials necessary for the execution of the acceptance test, which are not explicitly part of our contractual duties. The Purchaser shall – if applicable – take care of the coordination of the Supplier's Products and the acceptance test with deliveries/services of other providers, in particular with regard to interfaces – if applicable.

Furthermore the Purchaser shall obtain all official permits necessary for Supplier to render the acceptance tests, such as but not limited to official entry, exit or work permits required in the country where the acceptance tests are to be carried out. Any obligation of the Supplier shall be waived until the Purchaser complies with the above mentioned obligations. Delivery times shall be extended correspondingly.

*The following clause shall be added:*

#### **ACCEPTANCE TESTS. PASSING OF RISK – Clause 6a**

In case an acceptance is compulsory by contract or by law, such acceptance shall effect the transfer of risks. The Purchaser shall declare acceptance at the agreed date of acceptance-tests or if such date is not agreed without undue delay after the Supplier's notice of readiness for acceptance-tests. In case the Purchaser does not declare refusal of acceptance in Writing with a statement of reasons without undue delay after completion of the acceptance test or within a reasonable period of time set by the Supplier, the acceptance shall be deemed effected. The acceptance shall be deemed effected as well by use of the Product by the Purchaser. Minor impairments of the Product of delivery shall not entitle the Purchaser to refuse acceptance. By means of acceptance, the Supplier is released from liability for visible defects as long as the Purchaser did not reserve his right to file notice of certain defects with his acceptance.

#### **ACCEPTANCE TESTS. PASSING OF RISK – Clause 9**

*Clause 9 shall be deleted and replaced by the following:*

The Purchaser shall bear all personal and material costs for acceptance tests carried out as well as any of his own costs.

If the acceptance test is carried out at another place but the place of manufacture, the Purchaser shall bear all additional costs of the Supplier in accordance with the pay rates stated in the pro forma invoice or the order confirmation and the Appendix. The Purchaser shall ensure, that the Supplier's personnel is able to start work in accordance with the agreed time schedule and to work during normal working hours as referred to in the Appendix.

*The following title and clause shall be added:*

#### **TEST RUN/ PUTTING INTO OPERATION. PASSING OF RISK – Clause 9a**

A putting into operation/ test-run is only compulsory if explicitly agreed on in Writing. In any case it shall not have an impact on the passing of risk, which takes place with delivery of the Product or the acceptance according to clauses 6-9.

#### **DELIVERY. PASSING OF RISK – Clause 10**

*The fourth paragraph of clause 10 shall be deleted and replaced by the following:*

Partial delivery shall be permitted, unless otherwise agreed.

*The following clause shall be added:*

#### **TIME FOR DELIVERY, DELAY – Clause 11a**

As long as nothing else has been agreed upon, the delivery periods and dates shall be deemed met if – at the date of expiry – either the essential parts of the product to be delivered have left our works or if the Supplier has notified their readiness to be shipped or the risks of loss or damages have been transferred to the Purchaser otherwise.

#### **TIME FOR DELIVERY, DELAY – Clause 14**

*The first paragraph of clause 14 shall be deleted and replaced by the following:*

If the Product is not delivered at the time for delivery proven by the Purchaser to be negligently caused by the Supplier, the Purchaser shall be entitled to liquidated damages from the date on which delivery should have taken place.

#### **TIME FOR DELIVERY, DELAY – Clause 15**

*The following sentence shall be added at the end of the second paragraph of clause 15:*

In case of late delivery the ongoing interest of the Purchaser on the execution of the contract shall be presumed.

#### **TIME FOR DELIVERY, DELAY – Clause 15**

*The first sentence of the third paragraph of clause 15 shall be deleted and replaced by the following:*

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, excluding any consequential or indirect loss.

## General Conditions for Sale and Delivery

### **PAYMENT – Clause 19**

*The second paragraph of clause 19 shall be deleted.*

### **PAYMENT – Clause 21**

*The following paragraphs shall be added to the end of clause 21:*

In addition, the supplier shall have the particular right to withhold - to a reasonable amount and extent - deliveries of other orders of the Purchaser and - as from the beginning of the default in payment - to carry out such deliveries only against cash in advance or against cash on delivery as well as to declare any outstanding invoice to be due for immediate payment, even in case longer periods of payment had been agreed upon.

In case the Supplier obtains knowledge of circumstances which are - within his due discretion - eligible to reduce the creditworthiness of the Purchaser, the Supplier shall be entitled to omit any agreed terms of payment and to make any further deliveries subject to cash in advance or to request prior security of his choice. Following a reasonable grace period, the Supplier shall be entitled to rescind from the contract and to claim damages instead of performance. Based upon the power of attorney granted to us by our affiliated companies, the Supplier is entitled to set-off against any claim the Purchaser may have against the Supplier or any of his affiliated companies with any claim Supplier or one of his affiliated companies may have against the Purchaser. This shall also apply in case of cash payment for one party and payment by means of bill of exchange for the other party have been agreed upon. Upon request, the Supplier will provide the Purchaser with a list of affiliated companies.

In the course of the commercial relationship, the Purchaser shall be entitled to set-off only in case his counter claims have been determined *res iudicata*, are undisputed or have been acknowledged by the Supplier. The Purchaser shall be entitled to rights of retention only in case his counter claims have been determined *res iudicata*, are undisputed or have been acknowledged by the Supplier.

### **LIABILITY FOR DEFECTS – Clause 25**

*At the end of clause 25 the following sentence shall be added:*

However, the Supplier shall not be liable for the product fitting the use of the Product intended by the Purchaser, unless otherwise agreed explicitly.

### **LIABILITY FOR DEFECTS – Clause 27**

*Clause 27 shall be deleted and replaced by the following:*

The Supplier shall, at his own expense, remedy, on his choice by repair or replacement, any defects in the Product appearing within 12 months after the Product was delivered. The Supplier's warranty shall apply only to defects that appear under normal operating conditions, under proper use and only to the extent the defects can be assignable to the Supplier's performance of the Product.

### **LIABILITY FOR DEFECTS – Clause 28**

*Clause 28 shall be deleted and replaced by the following:*

When a defect in a part of the Product has been remedied, the period mentioned in Clause 28 shall be extended by a period equal to the period during which and to the extent that Product could not be used as a result of the defect.

### **LIABILITY FOR DEFECTS – Clause 34**

*Clause 34 shall be deleted and replaced by the following:*

Defective parts which have been replaced shall be made available to the Supplier and shall be his property, unless requested otherwise by the Supplier.

### **LIABILITY FOR DEFECTS – Clause 39**

*The second sentence of Clause 39 shall be deleted and replaced by the following:*

This applies to any loss the defect may cause including loss of production, loss of profit, and any other indirect loss, such as port charges, towing and docking costs.

*The following clause shall be added:*

### **LIABILITY FOR DEFECTS – Clause 39 a**

If not stated otherwise in this Agreement the liability of the Supplier irrespective of the legal ground shall be limited in total to an amount equal to the price of the products and services paid to the Supplier pursuant to this agreement, except in the event of intent or other cases of mandatory liability according to law.

### **FORCE MAJEURE – Clause 41**

*The second paragraph of clause 41 shall be deleted and replaced by the following:*

A circumstance referred to in this Clause whether occurring prior to or after the formation of the Contract shall give a right to suspension whether or not its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.

### **DISPUTES AND APPLICABLE LAW – Clause 46**

*Clause 46 shall be deleted and replaced by the following:*

The place of jurisdiction shall be Hamburg.

### **DISPUTES AND APPLICABLE LAW – Clause 47**

*Clause 47 shall be deleted and replaced by the following:*

The contract shall be governed by Swiss law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

*The following title and clause shall be added:*

### **Severability Clause – Clause 48**

Shall any provision of this agreement be or become invalid, this shall not affect the validity of the remaining provisions of the agreement. In this event, the parties shall be obliged to replace the invalid provision by a valid provision, which most approximates the economic purpose of the invalid provision. The same applies in case of a gap.

## General Conditions for Sale and Delivery

### Appendix to the General Conditions for Sale and Delivery

The current normal working time is 35 hours per week/Monday to Friday.

Extras: The above mentioned pay rates are applicable as follow:

- |   |       |
|---|-------|
| ● for each hour of overtime in excess of normal hours         | 25 %  |
| ● for each hour of overtime after 20:00 h                     | 50 %  |
| ● for working hours on Sunday                                 | 50 %  |
| ● for working hours on National Holidays                      | 100 % |
| ● for working hours on National Holidays on a normal week day | 150 % |

In case that several extra rates concur, only the higher extra rate shall be payable.

The National Holidays will be those as shall be valid in Hamburg.

An allowance shall be payable for each day of absence from Hamburg including the travelling time. Travelling expenses as well as overnight stay expenses shall be invoiced to the amount actually incurrent. In case that a car is used a lump sum mileage allowance of € 0,43 for each km shall be paid.

For transportation of material and equipment in private cars to the erection site an allowance of max € 55,00 (corresponding to 100 kg over 400 km) shall be invoiced.

Telephone calls required shall be for account of the purchase (owner).



## 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.