

### **Services to be provided by the customer for deburring systems**

The modules require the following utility connections:

Heavy current electrical supply

Pneumatics

Cooling medium

Industrial water

Gas (for TEM-machines)

It is assumed that the deburring system will be installed on a level surface.

### **Climbing and lifting devices**

The customer shall provide the safety-checked climbing and lifting devices necessary for installation and operation to the Extrude Hone operation personal, free of charge for the intended use.

### **Technical availability**

The technical availability for deburring systems is 95 %.

### **Documentation for deburring systems on data carrier**

Included in the scope of supply is the standard documentation in the appropriate language for the country of use (operator's manual), together with the EU Certificate of Conformity and the manufacturer's declaration. This also applies to the visualization on the system control and the labelling of the system and tooling (use of Latin alphabet characters is assumed). (where applicable)

Spare and wear parts lists, as well as drawings for the system and tooling in the English language, are included.

The documentation for the deburring system comprises an operator manual, certificate of conformity, manufacturer's declaration, customer's data sheets, list of system spare and wear parts, tooling documentation, electrical circuit diagram, pneumatics drawings and pipe-work and general installation schematic.

In addition, there is one (1) file documenting the buy-in parts. An USB stick is also included. (for deburring systems)

The documentation for the tooling includes a description of how it is assembled, an assembly drawing in a pdf copy or equivalent and a maintenance schedule.

For countries outside Europe, which do not use Latin alphabet characters, the documentation, visualization and labelling is in the German or English language. Other languages are possible. If requested, we would be pleased to quote a price for these after checking the technical feasibility.

### **Test and prove-out of tooling**

If not agreed differently during negotiation and defined by quotation at latest halfway through the confirmed delivery period the customer will provide free delivery of approximately 50 work pieces to drawing specification, in order to prove-out the tools prior to shipping the equipment.

In the event that, through no fault of Extrude Hone GmbH, there are delays in making the work pieces available, we reserve the right to deliver the tooling, 4 weeks after notification of readiness, to ship untested and to invoice for it. In this case we would be pleased to provide our personnel at extra cost for subsequent commissioning and setup of the tooling.

### **Preparation of 3D models:**

For the purpose of calculating the fixture price (where necessary in the case of TEM), and in order to design the fixture we make the assumption that we will receive the tooling drawing as a 3D model in STEP or IGES format. This 3D model must show the work-piece in the work process before it is consigned to the surface finishing process.

In the event that we receive the drawing only in 2D, in hard copy or in DXF format, the supplementary costs for the formatting in 3D will be added to the fixture price.

Drawing specifications must be current and must be in the German or English language. Furthermore, an index must be appended.

Any additional comments, symbols, etc. on the drawing will not be considered if they are not mentioned separately in the quotation.

The drawing (for the work process prior to the corresponding EH process) must contain all dimensions and measurements.

We require this binding work-piece drawing (with the order) at the latest 5 working days after placement of order (if not otherwise agreed) in the format specified above in order to be able to start the design of the complete fixture. In the event that the drawings are provided to us at a later time, EH reserves the right to reschedule the delivery date accordingly, with imposition of the agreed sanctions as applicable.

EH requires the complete work-piece drawings for the respective work process (as 3D model) in the format specified above and a corresponding drawing either as 2D data file in DXF, DWG, pdf, tif or in hard copy.

Process-typical discolorations

Process-typical discolorations (ECM, CP and TEM) can arise in consequence of the material and liquids that are used in the machining and pre- and post-treatment and must be accepted unless otherwise agreed within the framework of the quotation or purchase order.

Pre- and post-treatment of any kind (prior to the deburring process) can affect the quality of the deburring process and must be checked separately for each individual case.

Unloading / Set-up

Unloading and set-up will be carried out by the customer.

### **Directives and regulations**

Our machines are in compliance with the applicable EU Machinery Directives. They carry the CE symbol and are in accordance with accident prevention regulations, VDE, VDI and EMC requirements.

### **Disclaimer**

Statements in relation to technical design data and prices remain non-binding until all queries have been fully and finally clarified.

We reserve the right to change the scope of supply in regard to the quoted design or manufacture should the changes bring technical improvement.

It may be necessary to include any additional costs which are incurred in meeting the customer's technical specifications.

### **Warranty period for ECM tooling**

Extrude Hone GmbH warrants the principal components of the supplied ECM tooling for 12 months after delivery for multi-shift operation. However, the warranty ends at latest 15 months after delivery in the event that commissioning of the tooling is delayed for reasons not attributable to the supplier.

Consumables and wear parts are excluded from the warranty.

### **Warranty period for deburring systems**

Extrude Hone GmbH warrants the delivered components for a period of 24 months for single shift operation or 12 months for multi-shift operation. However, the warranty ends at latest 15 months or 27 months after delivery, in the event that commissioning of the deburring system is delayed for reasons not attributable to the supplier.

Consumables and wear parts are excluded from the warranty. The warranty period starts when the system has been installed and is ready for operation.

### **Acceptance**

The purchaser must provide the supplier, free of charge and in due time, with all of the preparatory measures required for carrying out the acceptance tests, provided that these are required for the acceptance tests and are not already covered within the scope of supply. In the event that the purchaser does not fulfil his obligations or impedes in some other way the execution of the acceptance tests, the tests are considered to be successfully completed on the date for the acceptance tests given in the manufacturer's notification.

The work is accepted,

a) when the acceptance tests have been successfully carried out, or

b) when the buyer has received the notification in writing that the work has been completed, provided that it corresponds to the contractual provisions in regard to the acceptance. However, this applies only in those cases in which the parties have not agreed to the carrying out of acceptance tests.

Small defects that have no impact on the performance of the work carried out by Extrude Hone are no reasons for rejecting the acceptance.

The purchaser is not entitled to use the work or any part of it prior to acceptance. Otherwise, the work is considered accepted by him, with the proviso that no written consent from the manufacturer existed. The manufacturer is then no longer obligated to carry out the acceptance tests. The warranty period begins with acceptance of the work. When requested in writing, the purchaser shall issue a certificate confirming the date of acceptance of the work. However, should the purchaser not issue such a certificate, this does not compromise the acceptance.

### **Payment terms for deburring systems**

Deposit for:

40 % of total contract price, payable within 14 days of issuing the order acknowledgement and deposit invoice, strictly net.

If the down payment will not be received 14 days after sending the down payment bill, the delivery date will respectively postponed.

Progress invoice for:

30 % of total contract price, payable after written design approval by customer

20 % of total contract price, payable within 14 days of completed pre-acceptance in our factory, strictly net, or at latest 4 weeks after notification of readiness for the pre-acceptance, in the event of any delay to the pre-acceptance for reasons not attributable to the supplier.

10 % of the total contract price, payable within 14 days of the successful commissioning/final acceptance in the customer's factory, strictly net, or at latest 4 weeks after delivery to the customer's premises, in the event of any delay to the final acceptance for reasons not attributable to the supplier.

The delivered items remain the property of the manufacturer until payment in full has been received.

All payments are net.

### **Payment terms for tooling**

40 % of total contract price, payable within 14 days of issuing the order acknowledgement and deposit invoice, strictly net.

If the down payment will not be received 14 days after sending the down payment bill, the delivery date will respectively postponed.

30 % of total contract price, payable after written design approval by customer

30 % of total contract price, payable within 14 days with delivery, strictly net, or at latest 4 weeks after notification of readiness to ship, in the event of any delay to the delivery for reasons not attributable to the supplier.

The delivered items remain the property of the manufacturer until payment in full has been received.

### **Delivery time**

An exact delivery date we will tell you upon receipt of the official order and clarification of all technical details in our order confirmation.

### **Delay**

Extrude Hone does not accept any penalties on delayed delivery unless defined otherwise in a special contractual agreement.

### **Terms for delivery**

Unless otherwise specifically stated in the quotation, the delivery is FCA to the nominated shipping address (Incoterms 2020), inclusive of packaging but excluding transportation insurance.

### **General terms and conditions**

Unless otherwise agreed, the enclosed "ORGALIM S 2022 general conditions for the supply of mechanical, electrical and electronic products" (October 2022), including the appendix sheet shall apply. The contract is subject to the laws of Germany. Recourse to the Viennese UN Convention on Contracts for the International Sale of Goods is expressly excluded.

The General Terms takes precedence over the Orgalim.

### **Prices**

The prices are strictly net but do not include any applicable VAT.

Our prices are valid for 1 (one) month. After this time our quotation is subject to review.

### **Export control**

It is agreed that the legally binding conclusion of this contract is subject to the suspensive condition that BAFA grants the necessary approvals for the sale, delivery, transfer or export of the specified goods/technologies.

If the necessary export or transfer licenses or other releases are not issued by the responsible authorities or are not issued in a timely manner, or if there are other obstacles due to the customs regulations that we as exporter or shipper or our suppliers have to comply with; If foreign trade and embargo regulations contravene the fulfillment of the contract or delivery, we are entitled to withdraw from the contract or from the individual delivery or service obligation.

The customer undertakes to recognize and comply with the European and relevant national export control regulations and embargo regulations and not to sell, export, re-export the delivered goods directly or indirectly to persons, companies, institutions, organizations or to countries, to deliver, pass on or otherwise make accessible if this violates European or national export regulations or embargo regulations.

# GENERAL CONDITIONS FOR THE SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS

Brussels, October 2022

## PREAMBLE

1. These General Conditions shall apply when the parties agree 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** » : a deliberate or reckless failure to take such care as is obviously required in the circumstances to avoid serious consequences for the other party;
  - « **In Writing** » : communication by document signed by both parties or by letter, electronic mail, fax 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;
  - « **Contract Price** » : the agreed price, which shall be either a fixed price or, in case the parties have specifically agreed on a price revision clause, the revised price.

## PRODUCT INFORMATION/INSTRUCTIONS

3. All information and data contained in general product documentation and price lists, regardless of form, shall be binding only to the extent that they are by reference In Writing expressly included in the Contract.
4. 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 as one paper copy of each and also electronically. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

## INTELLECTUAL PROPERTY AND CONFIDENTIALITY

5. All intellectual property rights in the Product, including in any embedded software, and in any technical information relating to the Product, shall rest with the Supplier or, in the appropriate case, with a third party which has licensed the Supplier to sublicense these rights. Subject to any limitations that may have been agreed between the third party and the Supplier, the Purchaser shall acquire a non-exclusive, perpetual and transferable right to use these intellectual property rights, but limited to the extent required by the purpose of the Contract. The Supplier shall not be obliged to provide the Purchaser with the source code or with updates for any embedded software.

This clause shall also apply when the Product and/or software has been specifically developed for the Purchaser, unless otherwise agreed In Writing.

6. Technical, commercial and financial information and information, which has been declared as confidential or which must by its very nature be deemed to be confidential, disclosed In Writing or orally by one party to the other, shall be treated confidentially. The information shall therefore not without the consent of the disclosing party In Writing be used for any other purpose than that for which it was provided. It may not, without the consent of the disclosing party In Writing, be transmitted, communicated or otherwise disclosed to a third party.

## ACCEPTANCE TESTS

7. 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.

8. 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.
9. 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.

10. 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**

11. 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 of manufacture of the Product.

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 nevertheless pass to the Purchaser as soon as the Product is handed over to the first carrier.

Partial delivery shall not be permitted, unless otherwise agreed In Writing.

### **TIME FOR DELIVERY. DELAY**

12. 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 met by the Purchaser have been fulfilled, such as official formalities, payments due at the formation of the Contract and securities.

13. 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.

14. If delay in delivery is caused by any of the circumstances mentioned in Clause 46, by an act or omission on the part of the Purchaser, including suspension under Clauses 22 and 49, 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.

15. 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 Contract Price for each commenced week of delay. The liquidated damages shall not exceed 7.5 per cent of the Contract Price.

If only part of the Product is delayed, the liquidated damages shall be calculated on that part of the Contract 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 16.

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.

16. If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 15 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 15, shall not exceed 15 per cent of that part of the Contract 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 15, 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.

17. Liquidated damages under Clause 15 and termination of the Contract with limited compensation under Clause 16 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.

18. 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 for a reason which is not attributable to the Supplier, he shall nevertheless pay any part of the Contract 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.

19. Unless the Purchaser's failure to accept delivery is due to any of the circumstances mentioned in Clause 46, the Supplier may by notice In Writing require the Purchaser to accept delivery within a final reasonable period.

If, for a reason which is not attributable to the Supplier and not the result of any of the circumstances mentioned in Clause 46, 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 Contract Price which is attributable to that part of the Product in respect of which the Contract is terminated.

## **PAYMENT**

20. Payment shall be made within thirty days after the date of invoice.

Unless otherwise agreed, the Contract Price shall be invoiced with one third at the formation of the Contract and the remaining part when the Product is delivered.

21. 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.

22. 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 interest rate of the European Central Bank for the main refinancing operations (MRO). 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 or 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 costs and loss he incurs, including indirect and consequential loss.

## **RETENTION OF TITLE**

23. 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 11.

## **LIABILITY FOR DEFECTS**

24. The Product shall be in conformity with the Contract. Pursuant to the provisions of this clause and Clauses 25-44, the Supplier shall remedy any defect in or nonconformity of the Product (hereinafter termed defect) resulting from faulty design, materials or workmanship.

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

26. 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.

27. 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 or incorrect installation, maintenance or repair, or to any alteration, carried out by the Purchaser or by a third party on behalf of the Purchaser. The Supplier shall neither be liable for normal wear and tear nor for deterioration.

28. 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.

29. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired part or in the part in replacement 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 28 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.

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 28 or from the end of any other liability period agreed upon by the parties.

30. The Purchaser shall without undue delay notify the Supplier In Writing of any defect which appears. The notice shall contain a description of the defect. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 28 or the extended period(s) under Clause 29, where applicable.

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 and any other rights in respect of the defect.

Where the defect is such that it may cause damage, the Purchaser shall immediately notify 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.

31. On receipt of the notice under Clause 30, the Supplier shall at his own cost remedy the defect without undue delay, as stipulated in Clauses 24-44. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.

Remedial work 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.

32. 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.

33. 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.

34. 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 place specified in the Contract for putting the Product into service, or if not specified, the place of delivery.

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

36. If the Purchaser has given such notice as mentioned in Clause 30 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.

37. If the Supplier does not fulfil his obligations under Clause 31 or 43, 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 remedial work at the risk and expense of the Supplier, provided the Purchaser or third party does so in a professional manner.

Where successful remedial 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.

38. Where the defect has not been successfully remedied, as stipulated under Clause 37,

a) the Purchaser shall be entitled to a reduction of the Contract Price in proportion to the reduced value of the Product, provided that under no circumstances shall such reduction exceed 15 per cent of the Contract 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 any loss, including any consequential and indirect loss, up to a maximum of 15 per cent of that part of the Contract Price which is attributable to the part of the Product in respect of which the Contract is terminated.
39. Save as stipulated in Clauses 24-38, the Supplier shall not be liable for defects. In consequence, the Supplier shall not be liable for any other 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.

#### **LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**

40. Unless otherwise agreed, the Supplier shall, in accordance with this clause and Clauses 41 - 44 be liable towards the Purchaser for the Product infringing patents, copyrights or any other intellectual property rights of a third party in the Purchaser's country. The Supplier shall in such case indemnify the Purchaser and hold the Purchaser harmless against claims of third parties, provided that such claims are confirmed as valid by a final award or a settlement approved by the Supplier. The Supplier shall however not be liable for the Purchaser's loss of production, loss of profit, loss of use and loss of contracts, unless the Supplier has been guilty of Gross Negligence.
41. The Supplier shall have no liability for infringement of intellectual property rights arising out of:
- the Product being used elsewhere than in the Purchaser's country;
  - the Product being used otherwise than agreed or in a way the Supplier could not have foreseen;
  - the Product being used together with equipment or software not supplied by the Supplier, or
  - a design or construction stipulated or specified by the Purchaser.
42. The Supplier shall only be liable if the Purchaser notifies the Supplier In Writing without delay of any claim as referred to in Clause 40 which he receives and allows the Supplier to decide how the claim shall be dealt with.

Defence against claims referred to in Clause 40 shall be for the Supplier's account. The Supplier shall compensate the Purchaser for any amounts the latter is obliged to pay under a final award or a settlement approved by the Supplier.

43. Infringement of intellectual property rights shall, at the Supplier's discretion, be remedied by:
- providing the right for the Purchaser to use the Product,
  - adjusting the Product so that the infringement ceases, or
  - by replacing the Product with another product, which can be used without infringing applicable intellectual property rights.
44. If the Supplier fails to remedy the infringement in accordance with Clause 43 without undue delay, Clauses 37, 38 and 39 shall apply.

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

45. 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 51.

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

46. 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 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 import or 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.

47. 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 costs which the Supplier incurs in storing, securing and protecting the Product and avoiding unreasonable interference with his other activities.

48. 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 46 for more than six months.

## ANTICIPATED NON-PERFORMANCE

49. 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

50. Save as otherwise stated in these General Conditions or in case of Gross Negligence 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 and for any other consequential or indirect loss whatsoever, whether the loss was foreseeable or not.

## DISPUTES AND APPLICABLE LAW

51. 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.

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

*Orgalim represents Europe's technology industries, comprised of 770,000 innovative companies spanning the mechanical engineering, electrical engineering, electronics, ICT and metal technology branches. Together they represent the EU's largest manufacturing sector, generating annual turnover of over €2,480 billion, manufacturing one-third of all European exports and providing 10.97 million direct jobs. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.*

*Editeur responsable: Orgalim aisbl. All rights reserved © Orgalim - Europe's Technology Industries.*

Orgalim aisbl  
BluePoint Brussels  
Boulevard A Reyers 80  
B1030 | Brussels | Belgium

+32 2 206 68 66  
legal.publications@orgalim.eu  
www.orgalim.eu  
VAT BE 0414 341 438

SHAPING A FUTURE THAT'S GOOD



## Appendix attached to the Orgalim General Conditions S 2022 regarding the application of German law

October 2022

Where the Contract is governed by German Law (cf. Clause 52 of the Orgalim Conditions S 2022), the present amendment shall apply jointly with the Orgalim Conditions to pay due regard to the provisions of the German Civil Code BGB concerning standard business conditions.

Furthermore, it should be noted that the Orgalim Conditions S 2022 (cf. Clause 52) may lead to the application of the UN Convention on Contracts for the International Sale of Goods (CSIG). If this is not the intention of the Parties, a stipulation to the contrary will have to be expressly mentioned and agreed upon.

### regarding Clause 8 second sentence (to be replaced by the following):

*"If the Purchaser is not represented through his own fault, the test report shall be sent to the Purchaser and shall be accepted as accurate."*

### regarding Clause 15, para 5:

is deleted

### regarding Clause 17 second sentence (to be replaced by the following):

*"All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of a negligent breach of a fundamental condition of the contract ("wesentliche Vertragspflicht"), intent or Gross Negligence."*

### regarding Clause 28 (amendment):

*"Claims for reimbursement of expenses of the Purchaser pursuant to Sec. 445a BGB (recourse of the seller) also become statute barred one year after the beginning of the statutory limitation period, provided that the last contract in the supply chain is not for sale of consumer goods. Suspension of the statute of limitations under Sec. 445b (2) BGB remains unaffected; it shall end, at the latest, five years after the point in time when the Supplier delivered the item to the Purchaser."*

### regarding Clause 31, para 3 second sentence:

is deleted

### regarding Clause 38 b (amendment):

*"The limitation of the Supplier's liability shall not apply if he has been guilty of intent, Gross Negligence or if the Supplier negligently causes damage to life, body or health.*

*Furthermore, the limitation of liability shall not apply in cases of negligent breach of a fundamental condition of contract ("wesentliche Vertragspflicht"). In the case of a slightly negligent breach, the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract.*

*The said limitation of liability shall also be inapplicable in cases of strict liability under the Product Liability Act ("Produkthaftungsgesetz"), for defects of the Product causing death or personal injury, or damage to items of property used privately. Furthermore, the said limitation of liability shall not apply in cases of defects the Supplier has fraudulently concealed or whose absence he has guaranteed."*

**regarding Clause 39 (to be replaced by the following):**

*"Save as stipulated in Clauses 24-38, 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. The limitation of the Supplier's liability shall not apply if he has been guilty of intent, Gross Negligence or if the Supplier negligently causes damage to life, body or health.*

*Furthermore, the limitation of liability shall not apply in cases of negligent breach of a fundamental condition of contract ("wesentliche Vertragspflicht"). In the case of a slightly negligent breach, the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract.*

*The said limitation of liability shall also be inapplicable in cases of strict liability under the Product Liability Act ("Produkthaftungsgesetz"), for defects of the Product causing death or personal injury, or damage to items of property used privately. Furthermore, the said limitation of liability shall not apply in cases of defects the Supplier has fraudulently concealed or whose absence he has guaranteed."*

**regarding Clause 40, last sentence (to be replaced by the following):**

*"The Supplier shall however not be liable for the Purchaser's loss of production, loss of profit, loss of use and loss of contract.*

*The exclusion of the Supplier's liability shall not apply if he has been guilty of intent, Gross Negligence or if the Supplier negligently causes damage to life, body or health. Furthermore, it shall not apply in cases of negligent breach of a fundamental condition of contract ("wesentliche Vertragspflicht"). In the case of a slightly negligent breach of a fundamental condition of contract, the Supplier shall, however, be liable only for reasonably foreseeable damage which is intrinsic to the contract.*

*The exclusion of liability shall also be inapplicable in cases of strict liability under the Product Liability Act ("Produkthaftungsgesetz") for defects of the Product causing death or personal injury, or damage to items of property used privately. Furthermore, it shall not apply in cases of damage attributable to fraudulent concealment or under a specific guarantee granted."*

**regarding Clause 45:**

is deleted

**regarding Clause 50 (amendment):**

*"The exclusion of the Supplier's liability shall not apply if he has been guilty of intent, Gross Negligence or if the Supplier negligently causes damage to life, body or health. Furthermore, it shall not apply in cases of negligent breach of a fundamental condition of contract ("wesentliche Vertragspflicht"). In the case of a slightly negligent breach of a fundamental condition of contract, the Supplier shall, however, be liable only for reasonably foreseeable damage which is intrinsic to the contract.*

*The exclusion of liability shall also be inapplicable in cases of strict liability under the Product Liability Act ("Produkthaftungsgesetz") for defects of the Product causing death or personal injury, or damage to items of property used privately. Furthermore, it shall not apply in cases of damage attributable to fraudulent concealment or under a specific guarantee granted."*

*Orgalim represents Europe's technology industries, comprised of 770,000 innovative companies spanning the mechanical engineering, electrical engineering, electronics, ICT and metal technology branches. Together they represent the EU's largest manufacturing sector, generating annual turnover of over €2,480 billion, manufacturing one-third of all European exports and providing 10.97 million direct jobs. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.*

*Editeur responsable: Orgalim aisbl. All rights reserved © Orgalim - Europe's Technology Industries.*

**Orgalim aisbl**  
BluePoint Brussels  
Boulevard A Reyers 80  
B1030 | Brussels | Belgium

+32 2 206 68 66  
legal.publications@orgalim.eu  
www.orgalim.eu  
VAT BE 0414 341 438

SHAPING A FUTURE THAT'S GOOD