

The new S 2012 General Conditions: an overview of the major changes

1. Revision of the S 2000 General Conditions

As the international sale of products represents the core business of companies in the mechanical and electrical engineering industries in Europe, Orgalim has soon recognised that these companies would benefit from a set of general conditions for the supply of products, which could be used all over the world. The first version of the Orgalime Supply-conditions has been already published in 1992 (S 92 conditions) and these conditions have ever since been among Orgalim's most widely-used legal publications. They are used in a very large-scale with well over a million hard copies sold since their publication and they are the biggest pull to our licensing website, where hundreds of companies from all over the world have purchased a licence for the use of Orgalim's standardised conditions in electronic format.

The Orgalim Legal Affairs working group (consisting of lawyers representing the national member associations of Orgalim) updates these conditions to take into account legal developments and their experience in dealing with legal contracts in the engineering world. After a first review that resulted in the S 2000 conditions, the working group has now adopted a new updated text, which results in the S 2012 conditions.

The S 2000 conditions have been reviewed in detail. The Orgalim Legal Affairs working group unanimously concluded that the Orgalime Supply-conditions have been widely accepted and endorsed in international business and meet the parties' needs. Thus, the review work is considered an update of the S 2000 conditions.

Some material changes have been applied, new texts have been inserted and existing texts have been amended. Apart from these material changes, texts have been amended to clarify the meaning. These changes have however not changed the well-balanced nature of the conditions.

Finally, definitions of the most important terms have been added in a separate Clause 2. These definitions aim to increase legal certainty for the user of the S 2012 and to avoid misunderstandings between the parties.

2. Amendments

Below the material changes in the conditions are listed:

Clause 10 (former Clause 9)

The Incoterms rule EXW (Ex Works) has been replaced by the rule FCA (Free Carrier). Accordingly, the Supplier is responsible to clear the Contract Products for export. The Supplier is normally in a better practical position to perform this task, being based in the country of export. He has to bear the costs of customs formalities, duties, taxes and other fees resulting from the export procedures. In contrast to the S 2000-conditions partial delivery is basically not permitted.

Clause 11 (former Clause 10)

It is now stated in general terms that a period of time within which the Supplier has to deliver the Contract Products only starts to run as soon as the Purchaser has fulfilled any preconditions upon which the parties have agreed. These preconditions have to be specified in the Contract. The former clause was restricted to a limitative enumeration of preconditions.

Clause 13 (former Clause 12)

In the revised version any circumstance which is attributable to the Purchaser entitles the Supplier to extend the time for delivery. In the former text this extension could only occur if the delay resulted from Force Majeure or from an act or omission of the Purchaser. The new text broadens the scope for such extension.

Clause 14 (former Clause 13)

In the S 2012-conditions liquidated damages are calculated on each commenced (S 2000: completed) week.

Clause 21 (former Clause 20)

If the purchaser fails to pay, the S 2012-conditions explicitly provide for a right of the Supplier to claim recovery costs. Recovery costs shall be 1% of the amount due. The S 2000-conditions did not mention recovery costs, which could be a reason for disputes.

Clause 36 (former Clause 32)

If the Supplier does not remedy a defect, the final period to be set by the Purchaser shall not be less than one week. This precise minimal time period was not mentioned in the S 2000 conditions.

Clause 37 (former Clause 33)

If the Product has not been successfully repaired by the Supplier, the Purchaser's right to terminate the contract and to be compensated up to a maximum of 15 per cent has been limited to that part of the contract which can as a consequence of the defect not be used as intended. This amendment takes account of situations where the defect does not affect the use of other substantial parts of the delivery.

Clause 38 (former Clause 36)

The liability period for replaced or repaired parts ends in any case one year from the end of the normal liability period (in S2000: two years from the beginning of the normal liability period).

Clause 41 (former Clause 39)

Currency and export restrictions, epidemics, natural disasters, extreme natural events and terrorist acts have been added as examples of Force Majeure-events.