

The new ORGALIME MAINTENANCE CONDITIONS (M 17): an overview of the major changes

ORGALIME has made it its responsibility to ensure that companies in the sector can use adequate legal tools to make life easier by making model contracts and general conditions available. These contracts and conditions are prepared in the working group “Legal Affairs” of ORGALIME, consisting of lawyers of the ORGALIME-member associations in the European countries. This working group has recently adopted revised general conditions for maintenance of mechanical, electrical and electronic equipment. These conditions are referred to as the M 17-conditions and replace the M 2000-conditions.

The new M 17-conditions have not been adopted in order to remedy any specific defects in the M 2000-conditions. The M 2000-conditions are perfectly accurate from a legal point of view. The objective of the ORGALIME-working group “Legal Affairs” has mainly been to clarify certain issues, where a certain clause could be misinterpreted, and to add certain responsibilities for each of the parties to a maintenance contract. Another objective has been to harmonize the conditions with the ORGALIME-general conditions for repair, which to a certain extent cover similar issues. And last but not least, the new M 17-conditions clarify the liability regime, in order to prevent any misunderstandings.

The major changes of the M 17-conditions compared with the old M 2000-conditions are the following:

1. It has been put beyond doubt that the Contractor, taking care of maintenance on behalf of the Customer, is obliged to apply proper skill and care, but is not obliged to guarantee a good result of his activities. Please see Clauses 5, 23 and 33 of the M 17-conditions. The Contractor should indeed not become the victim of defects in the design or construction of a product which cannot be remedied just by doing maintenance. Such defects can only be remedied by changing the design or construction of the product itself, which goes far beyond the scope of responsibilities of a contractor whose duty is to “maintain” the product, i.e. taking care that the product is kept in its original state.
2. The compensation for the Contractor in case of termination of the Contract due to alterations in the Equipment initiated by the Customer is limited to EUR 75 000 or five times the yearly remuneration of the Contractor if this is a higher amount. Please see Clause 10, second paragraph. This limitation has been inserted to provide for an adequate compromise between the interests of the parties.
3. Clauses 11.3 and 11.4 have been added to provide for applicable rules in case of non-completion of the maintenance work where the parties have agreed on maintenance work on a lump sum basis.

4. Clause 12 has been introduced to provide for specific responsibilities of the Customer to enable the Contractor's maintenance work, particularly by doing preparatory work and taking care of adequate working conditions at his premises.
5. Clauses 15-17 have been introduced to provide for rules where maintenance is to be carried out outside the Customer's premises.
6. Clause 23 makes it clear that the Contractor is not only obliged to complete corrective maintenance work at any agreed time, but also to start work at any such agreed time. This may indeed be important for the Customer, as he must enable maintenance activities of the Contractor which may interrupt his normal production process.
7. Clause 26 has been added to provide for a remuneration regime in case of corrective maintenance on a lump sum basis.
8. The liability period as regards any defects in the maintenance work has been extended from 6 months to 12 months, in order to adapt to demands from practice. Please see Clause 31.
9. The liability of the Contractor for the maintenance work has been elaborated into much detail in Clause 33. In case remedial work is not successful due to a lack of proper skill and care of the Contractor and the Customer does not succeed in remedying the defects himself or having these remedied by a third party, the Customer may terminate the maintenance contract and claim compensation of reasonable costs of the remedial work unsuccessfully undertaken by himself or by the third party and reimbursement of any remuneration which was already paid by the Customer to the Contractor. Any other compensation is explicitly excluded.
10. The maximum amount of the Contractor's liability for damage to the Customer's property, including the Equipment which is the subject of maintenance, has been augmented to EUR 75.000. Please see Clause 35.
11. Clause 43 has been added to make it clear that there shall not be any claim of either party for compensation of any consequential and indirect loss whatsoever, unless otherwise stated in the M 17-conditions. This provision has been considered useful in order to have a clear-cut restriction of liability in this respect.

