

The new ORGALIME REPAIR CONDITIONS (R 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 repair of mechanical, electrical and electronic equipment. These conditions are referred to as the R 17-conditions and replace the R 02-conditions.

The new R 17-conditions have not been adopted in order to remedy any specific defects in the R 02-conditions. The R 02-conditions are perfectly okay 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 repair contract. Another objective has been to harmonize the conditions with the ORGALIME-general conditions for maintenance (M 17), which to a certain extent cover similar issues. And last but not least, the new R 17-conditions clarify the liability regime, in order to prevent any misunderstandings.

The major changes of the R 17-conditions compared with the old R 02-conditions are the following:

1. It has been put beyond doubt that the Contractor, taking care of repair 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 3, 15 and 24 of the R 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 repair. 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 “repair” the product, i.e. taking care that the product is restored to its original state.
2. Clause 6 has been extended to provide for additional responsibilities of the Customer to enable the Contractor’s repair work, particularly by doing preparatory work and taking care of adequate working conditions at his premises.
3. It has been made clear in Clause 13 that the Contractor shall be entitled to reimbursement of additional costs due to delay of the repair work if the Customer cannot let the Contractor carry out the repair work at the agreed time.
4. Clause 15 makes it clear that the Contractor is not only obliged to complete repair 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 repair activities of the Contractor which may interrupt his normal production process.

5. The old regime for payment of 30% of any agreed lump sum at the time of formation of the Contract (Clause 20 of R 02) has been deleted to adapt to practice, where advance payments are not quite common in case of repair work.
6. The liability period as regards any defects in the repair work has been extended from 6 months to 12 months, in order to adapt to demands from practice. Please see Clause 22.
7. The liability of the Contractor for the repair work has been elaborated into much detail in Clause 24. In case repair 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 repair contract and claim compensation of reasonable costs of the repair 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.
8. The maximum amount of the Contractor's liability for damage to the Customer's property, including the Equipment which is the subject of repair, has been augmented to EUR 75.000. Please see Clause 26.
9. Clause 32 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 R 17-conditions. This provision has been considered useful in order to have a clear-cut restriction of liability in this respect.

