

The new ORGALIME SI 14-conditions: an overview of the major changes

1. Revision of the ORGALIME SE 01-conditions

As the international sale of plants and their installation represent the core business of many companies in the mechanical and electrical engineering industries in Europe, ORGALIME has recognised that these companies would benefit from a set of general conditions for the supply and installation of plants which could be used all over the world. The first version of the ORGALIME Supply and Installation Conditions has already been published in 1994 (SE 94-conditions) and these conditions have ever since been among ORGALIME's most widely-used legal publications. They are certainly used at a very large-scale. Millions of hard copies have been sold through the years, whereas the electronic use (under an ORGALIME licence) has increased to a very substantial level.

The ORGALIME Legal Affairs working group (consisting of lawyers representing the national member associations of ORGALIME) updates these conditions from time to time to take into account legal developments and their experience in dealing with contracts in the engineering industry. After a first review that resulted in the SE 01-conditions in 2001, the working group has now adopted a new updated text, which results in the SI 14-conditions.

The ORGALIME Supply and Installation Conditions are to a great extent based on the ORGALIME Supply Conditions, which were most recently revised in 2012 when the S 2012-conditions for supply were adopted and published. Therefore, the major changes in the ORGALIME Supply Conditions are also reflected in the ORGALIME Supply and Installation Conditions.

The SE 01-conditions have been reviewed in detail. The ORGALIME Legal Affairs working group concluded that the ORGALIME Supply and Installation Conditions have been widely accepted and endorsed in international business and meet the parties' needs. Thus, the review work could be restricted to an update of the SE 01-conditions.

Nevertheless, some material changes have been made. 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. Some changes may improve the position of the Contractor, whereas other changes may improve the position of the Purchaser. Finally, definitions in the existing Clause 2 have been up-dated and further specified.

The major changes in the conditions are listed below.

2. General amendments

A fundamental amendment is the deletion of the term "Completion", which was an important notion in the SE 01-conditions. In the SE 01-conditions completion of the Works was considered to take place when they were taken over. Completion was in fact a synonym for taking-over. The use of 2 different terms for the same concept ("completion" and "taking-over") could however lead to confusion, so it was decided to stick to "taking-over". No material change was meant however, so the balance of responsibilities and obligations of the parties has not been amended in this respect.

The word "erection" has been replaced by the word "installation" which is a modern term to grasp the same idea.

3. Specific amendments

Clause 14 item e) and Clauses 15 - 17

These new clauses have been inserted. They imply an obligation of the Purchaser to support the Contractor and/or to facilitate the work of the Contractor in certain fields. Some of the obligations may be quite self-evident, but practice has shown that clear and precise obligations may be useful to prevent any discussions in this respect.

Clause 18

According to the new Clause 18, the parties have to appoint a representative who can act on behalf of the respective party during the work on the site. This clause aims to prevent that the work needs to be interrupted and delayed until a competent person is found to take decisions.

Clause 21 (former Clause 17)

If taking-over is prevented by the Purchaser's default and the Purchaser fails to remedy his default, the Contractor has the right to terminate the Contract. It has now been made clear that this termination may also concern only part of the contract. Compensation shall then be limited to the price of that part of the Works for which the Contract is terminated.

Clause 24 (former Clause 20)

This provision deals with the costs and other consequences of changes in laws, etc.. The consequences may be quite substantial and affect the contractual balance between the parties. In the SE 01-conditions, any discussions between the parties were referred to ICC-arbitration. As this is quite a costly and time-consuming procedure, discussions on the financial consequences have been cut off by the provision that the Contractor shall be compensated for the variation work on a time basis.

Clause 30 (former Clause 26)

The Incoterm EXW (Ex Works) has been replaced by the Incoterm FCA (Free Carrier). Accordingly, it is now the Contractor who is responsible to clear the Plant for export. The Contractor 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.

Clause 40 (former Clause 37)

It is now clearly stated that a period of time within which taking-over of the Works shall take place only starts to run as soon as the Purchaser has fulfilled any preconditions upon which the parties have agreed. These preconditions of the Purchaser have to be specified in the Contract. The former clause was less clear as it could also refer to preconditions to be fulfilled by the Contractor.

Clause 42 lit. e. (former Clause 39. lit. e.)

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

Clause 43 (former Clause 40)

In the SI 14-conditions liquidated damages are payable for each commenced week. Under the SE 01-conditions these damages were only payable for completed weeks.

Clause 47 (former Clause 44)

Items g), h) and i) have been inserted to clarify that such costs may be separately charged to the Purchaser.

Clause 48 (former Clause 45)

As a consequence of the new items g), h) and i) in Clause 47, it had to be specified in Clause 48 whether these items were included in the lump sum price or not. As the costs concerned are normally not anticipated by the Contractor, Clause 48 provides that these items are excluded from the lump sum price.

Clause 51 (former Clause 47)

If the purchaser fails to pay, the SI 14-conditions explicitly provide for a right of the Contractor to claim recovery costs. Recovery costs shall be 1% of the amount due. The SE 01-conditions did not mention recovery costs, which could be a reason for disputes.

Clause 61 (former Clause 54)

In order to minimise costs and damages it has been provided that the Purchaser must take reasonable measures if a defect occurs and that the Purchaser must comply with instructions of the Contractor in that respect.

Clause 68 (former Clause 60)

If the Contractor does not remedy a defect, the final period to be set by the Purchaser shall not be less than one week. This precise minimal period was not mentioned in the SE 01-conditions.

Clause 69 lit. b. (former Clause 61. lit. b.)

If the Works have not been successfully repaired by the Contractor, 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 Works 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 Works.

Clause 70 (former Clause 64)

The liability period may, due to Clause 60, have been extended by repair/replacement of defects/defective parts. Clause 70 defines a final stop to the liability period of the Contractor: his liability for replaced or repaired parts ends in any case one year from the end of the normal liability period (in SE 01: two years from taking over of the Plant).

Clause 73 (former Clause 67)

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