



## GENERAL CONDITIONS for the SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS

Brussels, March 2012

### PREAMBLE

1. These General Conditions shall apply when the parties agree In Writing or otherwise 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”**: an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such an act or omission;

- **“In Writing”**: communication by document signed by both parties or by letter, fax, electronic mail 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.

### PRODUCT INFORMATION

3. All information and data contained in general product documentation and price lists shall be binding only to the extent that they are by reference In Writing expressly included in the Contract.

### DRAWINGS AND TECHNICAL INFORMATION

4. All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the Contract, shall remain the property of the submitting party.

Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

5. 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 in the number of copies agreed upon or at least one copy of each. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

### ACCEPTANCE TESTS

6. 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.

7. 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.

8. 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.

9. 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

10. 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 named by the Supplier.

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 pass not later than when the Product is handed over to the first carrier.

Partial delivery shall not be permitted, unless otherwise agreed.

### TIME FOR DELIVERY. DELAY

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

12. 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.

**13.** If delay in delivery is caused by any of the circumstances mentioned in Clause 41, by an act or omission on the part of the Purchaser, including suspension under Clauses 21 and 44, 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.

**14.** 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 purchase price for each commenced week of delay. The liquidated damages shall not exceed 7.5 per cent of the purchase price.

If only part of the Product is delayed, the liquidated damages shall be calculated on that part of the purchase 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 15.

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.

**15.** If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 14 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 14, shall not exceed 15 per cent of that part of the purchase 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 14, 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 15.

**16.** Liquidated damages under Clause 14 and termination of the Contract with limited compensation under Clause 15 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.

**17.** 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, he shall nevertheless pay any part of the purchase 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.

**18.** Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 41, the Supplier may by notice In Writing require the Purchaser to accept delivery within a final reasonable period.

If, for any reason which is not attributable to the Supplier, 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 purchase price which is attributable to that part of the Product in respect of which the Contract is terminated.

## **PAYMENT**

**19.** Payment shall be made within 30 days after the date of invoice.

Unless otherwise agreed, the purchase price shall be paid with one third at the formation of the Contract and one third when the Supplier notifies the Purchaser that the Product, or the essential part of it, is ready for delivery. The remaining part of the purchase price shall be paid when the entire Product is delivered.

**20.** 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.

**21.** 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 rate of the main refinancing facility of the European Central Bank. 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 and 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 loss he incurs. Such compensation shall not exceed the agreed purchase price.

## RETENTION OF TITLE

22. 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 10.

## LIABILITY FOR DEFECTS

23. Pursuant to the provisions of Clauses 24-39, the Supplier shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials or workmanship.

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

25. 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.

26. 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 maintenance, incorrect installation or faulty repair by the Purchaser or to alterations carried out without the Supplier's consent In Writing. The Supplier shall neither be liable for normal wear and tear nor for deterioration.

27. 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.

28. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part 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 27 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.

29. The Purchaser shall without undue delay notify the Supplier In Writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 27 or the extended period(s) under Clause 28, where applicable.

The notice shall contain a description of the defect.

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.

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

30. On receipt of the notice under Clause 29 the Supplier shall at his own cost remedy the defect without undue delay, as

stipulated in Clauses 23-39. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.

Repair 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.

31. 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.

32. 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.

33. 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 destination stated at the formation of the Contract for the Supplier's delivery to the Purchaser or – if no destination has been stated – the place of delivery.

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

35. If the Purchaser has given such notice as mentioned in Clause 29 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.

36. If the Supplier does not fulfil his obligations under Clause 30, 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 repair work at the risk and expense of the Supplier.

Where successful repair 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.

37. Where the Product has not been successfully repaired, as stipulated under Clause 36,

a) the Purchaser shall be entitled to a reduction of the purchase price in proportion to the reduced value of the Product, provided that under no circumstances shall such reduction exceed 15 per cent of the purchase 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 his loss, costs and damages up to a maximum of 15 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

**38.** Notwithstanding the provisions of Clauses 23-37 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 27 or from the end of any other liability period agreed upon by the parties.

**39.** Save as stipulated in Clauses 23-38, 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. This limitation of the Supplier's liability shall not apply if he has been guilty of Gross Negligence.

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

**40.** 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 46.

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**

**41.** 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 other 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 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.

**42.** 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 expenses incurred in securing and protecting the Product.

**43.** 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 41 for more than six months.

#### **ANTICIPATED NON-PERFORMANCE**

**44.** Notwithstanding other provisions in these General Conditions regarding suspension, 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**

**45.** Save as otherwise stated in these General Conditions 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 or for any other consequential or indirect loss whatsoever.

#### **DISPUTES AND APPLICABLE LAW**

**46.** 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.

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



## GENERAL TERMS & CONDITIONS OF METEOR SYSTEMS B.V. AND/OR ITS AFFILIATED COMPANIES FOR ON-SITE PRODUCTION

*Supplementary to Orgalime S2012 terms and conditions.*

*Filed at the Breda Chamber of Commerce under number: 20105750*

### INTRODUCTORY PROVISIONS

1. Unless agreed otherwise In Writing, these general terms & conditions for On-site Production by Meteor Systems B.V. and/or its affiliated companies shall apply in addition to the Orgalime S2012 general conditions for the supply of mechanical, electrical and electronic products of March 2012 (hereinafter referred to as Orgalime S2012). Any change or deviation therefrom must be agreed In Writing.
2. If the Purchaser resells the Products and the Supplier has to execute the On-site Production at the location of the end customer, the Purchaser shall guarantee that the end customer will fulfil all of the Purchaser's obligations and responsibilities for the execution of work for On-site Production in accordance with these 'General Terms & Conditions of Meteor Systems BV and/or its affiliated companies for On-site Production'. The Purchaser shall impose the relevant provisions from these conditions on the end customer and shall be fully responsible for the end customer's compliance with these provisions.

### DEFINITIONS

3. In these General Terms and Conditions, the following terms have the following meaning:
  - 'Contract': the Written agreement between the parties with regard to On-site Production and all appendices, including amendments and additions to the aforementioned documents agreed In Writing;
  - 'Site': the location where the Products have to be produced, including the space required for unloading, storage and local transport of the production resources;
  - 'On Site Production terms and conditions': these General Terms and Conditions of Meteor Systems B.V. and/or its affiliated companies for On-site Production;
  - 'the Product' or 'the Products': the gutters to be produced by the Supplier on-site in accordance with the Contract;
  - 'Purchase Price': the payment due for On-site Production;
  - 'On-site Production': production at the location of the Products and all other work to be performed by the Supplier in accordance with the Contract.

If the Products are purchased in several parts in accordance with the Contract, and these parts are intended to be used independently of each other, these terms and conditions shall apply to each individual part.

4. These On-site Production terms and conditions shall apply in addition to the Orgalime S2012 conditions.  
Unless stated otherwise, references to articles relate to the relevant articles in these On-site Production terms and conditions.  
In case of differences between the Orgalime S2012 conditions and the On-site Production terms and conditions, the latter terms and conditions shall prevail.

### PRODUCT INFORMATION

5. The following provision is supplementary to art. 3 of the Orgalime S2012 conditions:
  - The maximum load of a cultivation or lifting system or any other construction specified in product information, as well as all associated suspension and fixing systems and supports, should be considered as a weight load that can only be carried under normal conditions of use.Depending on the length of the gutters, bending may occur; the Supplier applies a margin of 0.2% on the bending per 100 linear metres.

### DRAWINGS AND TECHNICAL INFORMATION

6. Supplementary to art. 4, first paragraph, of the Orgalime S2012 conditions, models, tools and production resources, including the mobile rolling machine, which will be made available by the Supplier or used for On-site Production shall remain the property of the Supplier.

### ARRANGEMENTS/PROVISIONS/CONDITIONS FOR ON-SITE PRODUCTION

7. The Purchaser shall perform timely preparatory work for its own account and risk to ensure that all conditions are met to facilitate on-site production and the proper functioning of Products.
8. If the Parties have agreed that the Supplier will produce the Products on site using a mobile rolling machine, the following shall apply:
  - a. the Supplier shall make its mobile rolling machine for gutters available at the Site;
  - b. the Supplier shall make its rolling machine operator(s) available at the Site.

The Purchaser shall, without prejudice to the provisions of art. 7, fulfil the following obligations at its own account and risk:

- c. the Purchaser shall provide sufficient personnel to unload the materials at the time of delivery at the Site;
- d. the Purchaser's personnel shall, at the Supplier's request, assist the rolling machine operators with executing the On-site Production, including connecting the steel roller to the next new steel roller. The Purchaser's personnel shall assemble the Products and install them in the suspension/support system.

With respect to provisions c and d, the Supplier shall not be liable for the personnel made available by the Purchaser or for any acts or omissions of the persons involved;

- e. The Purchaser shall, at its own expense, make a 5-pole wall socket available within 100 metres of the planned location for the rolling machine. This 5-pole wall socket must be protected with a 32 Amp circuit breaker and must be installed in accordance with applicable national and local electronics standards. If the Purchaser cannot provide for this, it shall, at its own expense, supply a generator with sufficient power;
- f. the Purchaser shall ensure that upon commencement of and during the On-site Production, any products sent are present at the right place, and that a finished, installed suspension/support system is already available;
- g. the Purchaser shall ensure that a forklift truck with a minimum lifting capacity of 3000 kg is available to lift the rollers into the rolling machine;

- h. the Purchaser shall provide a clear path with minimum obstacles of at least three metres for the placement of the rolling machine, preferably a hardened concrete path;
  - i. the Purchaser is responsible for chopping/breaking/digging and demolition work, punching holes or making connections, if such work is required for On-site Production;
  - j. the Purchaser shall ensure a stable surface;
  - k. the Purchaser shall guarantee the soundness of the structures and working methods it prescribes.
  - l. the Purchaser is responsible for damages to pipe and cable systems that have not been reported to the Supplier in advance;
  - m. the Purchaser is responsible for a properly designed and maintained slope for drainage gutters for the efficient drainage of drain water;
9. Furthermore, the Purchaser shall, at its own expense and risk:
- a. ensure that the Supplier's personnel can start the work according to the agreed time schedule and work during normal working hours. Insofar as the Supplier deems it necessary, work may also be performed outside normal working hours, provided the Purchaser has been notified of this In Writing within a reasonable period of time;
  - b. inform the Supplier In Writing and in good time before the start of On-site Production about all relevant safety regulations applicable at the Site. On-site Production shall not be carried out in an unhealthy or unsafe environment. Before the start of production, all necessary safety and precautionary measures shall be taken and these shall be maintained during the On-site Production;
  - c. ensure that suitable accommodation and all facilities required in accordance with government regulations, the Contract and the use are available for the Supplier's employees;
  - d. make all necessary and usual auxiliary equipment, tools, machines and operating materials (including fuels, oils, greases and other items, cleaning and other small material, gas, water, electricity, steam, compressed air, heating, lighting, etc.), as well as the measuring and testing equipment that is normally used by the Purchaser available to the Supplier at the correct place at the Site free of charge and on time;
  - e. provide the Supplier with sufficient lockable storage space with a minimum temperature of plus 10 degrees Celsius for protection against drought, frost, fire, theft and damage to the Products, the tools and equipment intended for production, and the production resources, including the mobile rolling machine, and the personal property belonging to the Supplier's personnel;
10. If requested by the Supplier, the Purchaser shall provide all necessary assistance for the import and re-export of the Supplier's equipment, production resources (including the mobile rolling machine) and tools, including assistance with customs formalities. The assistance itself shall be provided free of charge.
11. The Purchaser shall provide all necessary assistance to ensure that the Supplier's personnel obtain timely visas and other official entry, exit and work permits and (if necessary) mandatory tax documentation applicable in the Purchaser's country, as well as access to the Site. The assistance itself shall be provided free of charge.
12. Each party shall appoint a representative to act on its behalf during the On-site Production.  
The representatives shall be present on or near the Site during working hours. Unless specified otherwise in the Contract, each representative shall be authorised to act on behalf of the relevant party in all matters relating to On-site Production. If the general terms and conditions applicable between the parties require that a Written notification be made, the representative is at all times authorised to receive such notification on behalf of the party concerned.

## DEFAULT ON THE PART OF THE PURCHASER

13. If the Purchaser expects that it will not be able to meet its obligations with respect to the On-site Production on time, as stated in the article 'Arrangements/facilities/conditions for On-site Production', the Purchaser shall inform the Supplier immediately In Writing, stating the reasons and, if possible, the date on which it shall be able to perform its obligations.
14. Without prejudice to the Supplier's rights under art. 15, if the Purchaser fails to fulfil its obligations correctly and on time for executing On-site Production, as stated in the article 'Arrangements/facilities/conditions for On-site Production', the following shall apply:
- a. The Supplier may, if desired, choose to perform the Purchaser's obligations itself or have them performed by a third party, or take other measures that are appropriate under the circumstances to prevent or limit the consequences of the Purchaser's default.
  - b. The Supplier may suspend the performance of the Contract in whole or in part. It shall inform the Purchaser immediately of this suspension In Writing.
  - c. If the mobile rolling machine and tools, machinery, materials etc. required for On-site Production have not yet been delivered to the Site, the Supplier shall arrange for the storage thereof, such as at the Purchaser's risk. If the Purchaser so wishes, the Supplier shall also arrange insurance to this end.
  - d. The Purchaser shall pay each part of the Purchase Price that would have been payable if it had not been in default.
  - e. The Purchaser shall reimburse the Supplier for all costs reasonably incurred by the Supplier as a result of the measures referred to under a), b) or c) of this article.
15. If delivery is prevented by the Purchaser's default, as referred to in art. 14, and this is not a consequence of Force Majeure, the Supplier may give the Purchaser Written notice requiring it to cure its default within a final reasonable period.  
If the Purchaser does not cure its default within this period and the reason for not doing so is not attributable to the Supplier, the Supplier may terminate the Contract in whole or in part by Written Notice. The Supplier shall then be entitled to compensation for the loss it suffers as a result of the Purchaser's default, including any consequential and indirect loss. The compensation shall not be higher than that part of the Purchase Price that relates to the part of the On-site Production for which the Contract is terminated.

## LOCAL LAWS AND REGULATIONS

16. The Supplier shall ensure that On-site Production is executed and is in accordance with the laws, regulations and rules that apply to On-site Production. If required, the Purchaser shall provide the Supplier with the necessary information regarding these laws, regulations and rules In Writing.
17. The Supplier shall perform all variation work that is necessary to comply with changes in the laws, regulations and rules, as referred to in art. 16, or in the generally accepted explanation thereof, that occur between the offer date and the delivery. The additional costs and other consequences of these variations shall be for the account of the Purchaser, including the variation work.
18. If the parties cannot come to an agreement on the additional costs and other consequences of changes in the laws, regulations and rules, as referred to in art. 16, the variation work shall be reimbursed to the Supplier based on actual costs.

## VARIATIONS

19. Any variation requests from the Purchaser shall be submitted to the Supplier In Writing and contain an accurate description of the variation.
20. As soon as possible after receipt of a variation request or after an own variation proposal, the Supplier shall inform the Purchaser In Writing whether and how the variation can be implemented, stating the consequences for the Purchase Price, the delivery time and other contract conditions.  
The Supplier shall also give such notice to the Purchaser when variations are required as a result of changes in laws, regulations and rules, as referred to in art. 16.
21. If delivery of the on-site Products is delayed by a dispute between the parties about the consequences of variations, the Purchaser shall pay that part of the Purchase Price that would have been due if delivery had not been delayed.
22. Subject to the application of art. 17, the Supplier is not obliged to execute variations requested by the Purchaser as long as the parties have not come to an agreement on the consequences of the variations for the Purchase Price, the delivery period and other contract conditions.

## PASSING OF THE RISK

23. The risk of loss or damage to the Products shall pass to the Purchaser under application of the agreed trading term, which is explained in accordance with the Incoterms® applicable on the day of the conclusion of the Contract. If no specific trading term has been agreed, delivery of the Products shall be effected 'Free Carrier' (FCA) at the location specified by the Supplier.
24. Insofar as the risk is not covered by art. 23, all materials, as soon as they have been delivered to or near the Site at the agreed place of unloading, shall be at the Purchaser's risk. The Purchaser shall therefore be liable for all damage caused after the supply of the materials such as drought, frost, fire, theft and damage. The Purchaser must take out adequate insurance against the aforementioned risk, stating the Purchaser as a 'loss payee' until the Purchase Price has been paid in full.  
During the execution of On-site Production, the risk for the produced Products shall be at the Purchaser's risk. Unless agreed otherwise in writing, the Purchaser shall take out the usual insurance policies for this immediately upon commencement of On-site Production and, at the Purchaser's first request, allow the Purchaser to inspect the policy conditions.

## DELIVERY

25. The Products shall be delivered as soon as the last gutter has been produced and the delivery note has been signed by the Purchaser. If the delivery note is not signed by the Purchaser, delivery of the Products shall be deemed to have taken place as soon as the Supplier provides the Purchaser with a Written notification that the Products have been delivered after On-site Production, provided that the Products are in keeping with the delivery requirements applicable under the Contract.  
Minor shortcomings that do not affect the proper functioning of the Products (including the circumstance that not all materials have been delivered yet) shall not impede delivery.  
The Supplier's obligation to produce on-site has been complied with if the Products are delivered under the terms of art. 25, without prejudice to its obligation to remedy any minor shortcomings.
26. The Purchaser is not authorised to use the Products before delivery. If the Purchaser does so, without Written permission from the Supplier, the Products shall be deemed to have been delivered.

27. The periods specified in art. 35 commence as soon as the Products have been delivered in accordance with art. 25 or 26.

## DELAY ON THE PART OF THE SUPPLIER

28. In the case of On-site Production, articles 11 to 18 of the Orgalime S2012 conditions are amended as follows:
  - a. Where reference is made to 'delivery', this should be construed as 'completion'. Therefore:  
'delivery period' is construed as 'completion period';  
'delivery date' is construed as 'completion date',  
'delivery' is construed as 'completion' and 'delivers' is construed as 'completes'
  - b. Art. 13 of the Orgalime S2012 conditions is amended to include that the Supplier is authorised to extend the period for (completion) delivery if a delay occurs:
    - due to variation work in accordance with art. 17, or
    - due to variation work in accordance with art. 19 to 22, or
    - suspension in accordance with art. 14, or
    - due to abnormal and/or unfavourable weather conditions (such as rain, hail, whirlwind, frost, snow, black ice, fog or storm) or unworkable soil conditions at the Site, or
    - because necessary (imported or to be imported) tools, production resources (such as the mobile rolling machine), auxiliary equipment, auxiliary and operating materials are not delivered to the Site in time for the execution of On-site Production.

This extension shall, taking into account all relevant circumstances, be for as long as is necessary. This provision applies both if the cause of the delay occurs before and if it only occurs after the agreed date of completion.

- c. Art. 14 up to and including art. 16 of the S2012 conditions shall apply if On-site Production is not completed at the time agreed for completion.
29. Article 19, second paragraph of the S2012 Conditions Orgalime Conditions is replaced by the following provisions for On-site Production:  
Unless agreed otherwise, the Purchase Price shall not include the costs of special types of packaging and dispatch (including dispatch to multiple addresses), the costs of import and excise duties, travel and accommodation costs, as well as all levies or taxes imposed or levied with respect to any performance.

Unless agreed otherwise, the Purchase Price shall be paid as follows:

- 30% upon entering into the Contract;
- 60% before shipment of the materials;
- 10% after completion of On-site Production.

If the shipment of the materials is delayed due to the Purchaser's failure to pay on time, the Purchaser shall also pay storage costs amounting to 1% of the total agreed price per month, without prejudice to the provisions of 21 of the Orgalime S2012 conditions. These costs shall be paid monthly.

In the event that the Contract for On-site Production is concluded by the Purchaser subject to a suspensory or resolutely condition that the required financing and/or the required permits can be obtained, if the Purchaser demonstrates that it does not have the required financing and/or permits within 18 months after the conclusion of the Contract, the parties shall do everything that can reasonably be expected of them to perform the Contract, modified to the available finances and/or to the limitations of the permit to be granted.

30. All costs that could not reasonably have been foreseen by the Supplier and are caused by circumstances not attributable to the Supplier (including costs related to customs formalities) shall be charged to the Purchaser,
31. In the event of a delay in On-site Production due to a cause attributable to the Purchaser, the Purchaser shall indemnify the Supplier for any additional costs arising from this, such as but not limited to:
- waiting time and time for extra trips;
  - costs and additional work as a result of the delay, including removal, safeguarding and setting up production resources;
  - additional costs, including costs arising because the Supplier's machinery and equipment has to be on the Site longer than expected;
  - additional travel and accommodation costs for the Supplier's personnel;
  - additional costs for financing and insurance;
  - other substantiated costs incurred by the Supplier as a result of changes in the production schedule.

If these costs are time-related, they shall be charged at the usual rates charged by the Supplier.

### RETENTION OF TITLE

Art. 22 of the Orgalime S2012 conditions is replaced by the following provision:

32. The Products shall remain the property of the Supplier until payment has been made in full, including payment for production, insofar as this retention of title is valid in accordance with the relevant law. Only materials of normal marketable quality shall be used for On-site Production. All materials or residues thereof left over from the On-site Production are the property of the Supplier and may be removed from the Site by the Supplier.
33. At the request of the Supplier, the Purchaser shall cooperate in taking measures to protect the Supplier's right of ownership with regard to the Products and the materials and remnants left over from the On-site Production.  
The retention of title does not affect the passing of risk under art. 23 and 24.

### LIABILITY FOR DEFECTS

34. Art. 26 of the Orgalime S2012 is amended to include: "The Supplier's liability shall also not include defects that occur in or are wholly or partly the result of:
- galvanized materials;
  - chemicals that are harmful to coated materials, such as sulfur;
  - mechanical damage;
  - parts obtained by the Supplier from third parties, insofar as the third party has/does not provide(d) a guarantee to the Supplier or the guarantee provided by the third party has expired".
35. Art. 27 of the Orgalime S2012 conditions is amended as follows: "The liability of the Supplier is limited to defects in the Products occurring within one year after delivery."

Contrary to the period stated in the previous provision, the following periods shall apply to the following components:

- for steel gutters with polyester coating, an expiring period of four (4) years after delivery applies on the understanding that this period will in any case end if four (4) years and 6 months have passed since the date of delivery of the materials;
- for steel gutters with a polyurethane coating an expiring period of (8) years after delivery applies on the understanding that this period will in any case end if eight (8) years and 6 months have passed since the date of delivery of the materials.

Art. 28 of the Orgalime S2012 conditions regarding the extension of periods does not apply to these parts.

Expiring periods means that the costs for repair or replacement for the Supplier expire linearly to nil at the end of said periods.

The aforementioned periods for the steel gutters with a polyester coating and the steel gutters with a polyurethane coating only apply if there is detachment, flaking, blister formation, crack formation and/or corrosion of the coating and this affects the functioning of the cultivation system.

The above-mentioned periods on the steel gutters with a polyester coating and the steel gutters with a polyurethane coating expire if the coating is exposed to chemicals with a PH value lower than three (3) or higher than ten (10) and/or other chemicals that are harmful to the coating.

With respect to other components of the cultivation system, such as the suspension, fixing and support materials, no longer warranty period applies on the coating.

36. Art. 30 of the Orgalime S2012 conditions is amended to include: "For repairs at the Site, art. 7 to 11, 23 and 24 of the On-site Production conditions apply mutatis mutandis".
37. Art. 33 of the Orgalime S2012 conditions is amended as follows: "Unless agreed otherwise, the Purchaser shall bear the additional costs incurred by the Supplier in remedying the defect because the Products are located at a different place than the Site."
38. Art. 39 of the Orgalime S2012 is amended to include: "Consequential damage also includes the inability to grow on the cultivation system or cultivation areas (on time), damage to crops, immaterial damage, environmental damage or damage caused by the release of harmful vapours or gases from raw materials, additives, coating or varnish with which the Products are treated or manufactured."

### LIABILITY FOR DAMAGE CAUSED BY THE WORK

39. Art. 40, first sentence of the Orgalime S2012 conditions is amended as follows:  
"The Supplier shall not be liable for any damage to property caused by any Product after On-site Production that arises while the Product is in the Purchaser's possession."

### FORCE MAJEURE

40. Art. 41 of the Orgalime S2012 specified circumstances that result in Force Majeure is amended in favour of the Supplier to include: "danger of war, transport difficulties and import restrictions (including customs formalities), government measures (including negative travel advice), religious holidays and abnormal weather conditions".

### TUNNEL GREENHOUSES

41. If On-site Production also includes the construction of tunnel greenhouses, the following additional provisions shall apply:
- Prices
    - The prices shall not include the costs of customs brokers, import and export costs of production resources and auxiliary and operating materials, such as poured concrete, PVC rainwater drainage pipes, electrical installation costs, earthworks, removal of construction waste, driven piles or friction piles, supplies or work that are not specifically mentioned in the offer.
    - The Supplier shall offer the possibility of supervision during the build-up on the basis of actual costs at a rate and conditions to be agreed later.

- Any re-tightening of the film shall be at the Purchaser's expense.
- b. Site
  - The Purchaser shall ensure that the Site is a freely accessible site, flat crosswise and lengthwise under the same slope as required for the greenhouse. The construction of the tunnel greenhouses shall be effected in accordance with AAK's guidelines
  - a forklift truck is present to transport the materials;
  - all bends, brackets and shores are secured by means of the supplied self-drilling screws, if the Purchaser performs these activities.
- c. Liability for defects
  - The liability for defects in the film shall be subject to the terms and conditions of the supplier of the film with due observance of the provisions of art. 34 of these On-site Production terms and conditions.