INTRODUCTORY NOTE

ORGALIME GENERAL CONDITIONS FOR MAINTENANCE - M 2000

Scope of use

The General Conditions for Maintenance are intended to be used where one company, the Customer, employs another company, the Contractor, to carry out technical maintenance of the Customer’s equipment, under a contract which runs for a certain period. The conditions replace the Orgalime publication titled Model Form of Maintenance Contract.

The General Conditions divide the services into preventive maintenance, i.e. measures taken in order to ensure the continued functioning of the equipment, and corrective maintenance, i.e. measures taken to remedy a defect which has occurred. The Contractor’s obligations will usually comprise both preventive and corrective maintenance, but the conditions can also be used if only preventive or corrective maintenance is included.

According to Clause 19 the corrective maintenance shall, unless otherwise agreed, be paid on a time basis. If the parties wish to include the corrective maintenance in a fixed fee, they may want to limit the extent the corrective maintenance that is covered by the fee. This can be done in several ways, for example by specifying the maximum number of hours of work or the maximum number of occasions.

The General Conditions are not, however, intended for situations where the Contractor undertakes only to remedy a specific defect, which has already occurred. In such situations the Orgalime General Conditions for Repair are recommended.

Contents of the individual contract

The parties must of course specify the extent of their respective obligations. They should do so in a separate written contract. Among the points to be covered are:

- A reference which makes clear that the General Conditions apply to the contract
- A description of the Equipment, which is subject to maintenance
- The extent to which the Contractor shall carry out preventive and corrective maintenance
- A detailed description of what is comprised in the preventive maintenance (for example the extent of the functional checks), and a time schedule for its performance
- A list of wearing parts, which are included in the preventive maintenance (see Clause 2)
- The number of hours/days within which the Contractor shall commence corrective maintenance
- The extent to which the Customer shall keep a log of the operation and care of the Equipment (Clause 8)
- Technical documentation to be provided by the Customer (Clause 12)
- The fee for preventive maintenance and the terms of payment (Clauses 18 and 21)
- The duration of the contract and the required length of notice of termination (Clause 30)

For some of the above listed points the General Conditions specify a rule, which will apply where no other agreement is reached. But an individual agreement is normally to be preferred.

There are also other points where the parties may prefer to have a different rule from the one specified in the General Conditions. They may, for example, specify a different amount for the Contractor’s liability for damage under Clause 27, or they may agree on a fixed fee to cover both preventive and corrective maintenance, or that there is no obligation to use original parts (Clause 7).

Amendment of the basic liability rules should not, however, be undertaken without expert legal advice.

No guarantee as to results

The Contractor’s obligations consist primarily of using proper care and skill in performing the work described in the contract and that the parts, which he installs, are free of defects. There is no guarantee that the work will have a certain result.

If the parties agree that the Contractor shall guarantee a certain result, for example the availability of the equipment, they may still use the general conditions as a basis for the contract, but they will have to clearly specify the terms of the guarantee. Important points to cover are the conditions under which the guarantee will apply, how the fulfilment shall be measured and the remedies available to the Customer if the guarantee is not fulfilled. Such a guarantee is, however, rather complicated and the text must be considered carefully.
PREAMBLE

1. These General Conditions shall apply when the parties agree in writing or otherwise thereto. When the General Conditions apply to a specific contract, modifications of or deviations from them must be agreed in writing.

DEFINITIONS

2. In these General Conditions the following terms shall have the meaning hereinafter assigned to them:

"Contract" shall mean the written agreement between the parties concerning maintenance to be performed by the Contractor, and all appendices, including agreed amendments and additions to the said documents.

"Equipment" shall mean the specific equipment, which is subject to maintenance under the Contract.

"Gross Negligence" shall mean 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 act or omission.

"In Writing" shall mean by document signed by the parties or by letter, fax, electronic mail and by such other means as are agreed by the parties.

"Wearing Parts" shall mean those parts of the Equipment, which shall be replaced under the preventive maintenance. The Contract shall identify the Wearing Parts and the intervals at which they shall be replaced.

SCOPE OF THE MAINTENANCE

3. Contractor undertakes to perform preventive and corrective maintenance of the Equipment to the extent specified in the Contract.

PREVENTIVE MAINTENANCE

4. Preventive maintenance shall be carried out at the times or with the intervals specified in the Contract. Unless otherwise agreed the preventive maintenance shall include:
- checking the condition of the Equipment
- functional check
- adjustments
- provision and replacement of Wearing Parts
- cleaning and necessary lubrication

CORRECTIVE MAINTENANCE

5. Corrective maintenance shall be undertaken in order to remedy any functional defects which have arisen in the Equipment. It shall be commenced with all speed or within the time specified in the Contract. Unless otherwise agreed the corrective maintenance shall include:
- fault tracing
- remediying of the defect
- provision and replacement of spare parts
- functional check

CONTRACTOR'S MAINTENANCE REPORT

6. The Contractor shall make a report In Writing containing his observations and the measures taken. The Contractor shall provide a copy of the report to the Customer each time he has performed maintenance work. The report shall, unless otherwise agreed, be in the same language as the Contract.

ORIGINAL PARTS

7. Unless otherwise agreed, the Contractor and the Customer shall only use parts of the original brand or parts of equivalent quality when carrying out maintenance and daily care of the Equipment.

CUSTOMER'S DAILY CARE. LOG

8. The Customer shall be responsible for the necessary daily care of the Equipment. He shall, if so specified in the Contract, further keep a log of the operation and care of the Equipment.

CONTRACTOR'S EXCLUSIVE RIGHT

9. The Customer shall not, except as specified in Clauses 17 and 27, without the Contractor's consent, himself carry out or have others carry out the maintenance which under the Contract shall be carried out by the Contractor. If the Customer does so, the Contractor’s responsibility for previously performed maintenance shall cease, unless the result of the maintenance is not affected by the Customer’s measures.

ALTERATIONS TO THE EQUIPMENT

10. The Customer shall without undue delay inform the Contractor by notice In Writing of any alterations concerning the Equipment or its operation or other