

The revised Orgalim S 2022 conditions: an overview of the major changes

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Revision of the Orgalim S 2012 Conditions

The Orgalim Legal Affairs Working Group (consisting of lawyers representing the national member associations of Orgalim) has updated the conditions of 2012 to take account of legal developments and experiences in dealing with supply contracts in the engineering industries. It is the third revision since the introduction of the Orgalim Supply Conditions in 1992.

The S 2012 Conditions have been reviewed in detail. The Orgalim Legal Affairs Working Group unanimously concluded that this edition has been widely accepted and endorsed in international business and meets the parties' needs and expectations. Therefore, the outcome of the review work must be considered to be only an update of the S 2012 conditions.

Some material changes have been applied, new texts have been inserted and existing texts have been amended to clarify the meaning. However, these changes have not changed the well-balanced nature of the conditions.

Amendments

The most important material changes of S 2022 compared with S 2012 are listed below:

➤ **Clause 2 (Definitions)**

The definition of "Gross Negligence" has been changed to make it very clear that the behaviour must be deliberate or reckless, which corresponds with the internationally recognised understanding of gross negligence by legal experts.

The term "purchase price" has been replaced by "Contract Price". For the sake of clarity, a definition of "Contract Price" has been inserted, also suggesting to the parties that they may consider to agree on a price revision clause.

➤ **Clause 4 (Product Information/Instructions)**

It is now explicitly stated that the purchaser has a right to one paper copy, but also to electronic transmission of information necessary for the use of the product.

➤ **Clause 5 and Clause 6 (Intellectual Property and Confidentiality)**

A specific clause on intellectual property has been included in the conditions. In general, the clause assigns the intellectual property rights to the supplier. The purchaser is licensed the rights necessary for the use of the product.

It also clarifies that there is no obligation to disclose the source code. The clause also applies if a product or software has been developed specifically for the purchaser. This should answer a frequently disputed question in practice.

The scope of the confidentiality clause has been broadened to include all information, regardless of whether it is technical, commercial or financial in nature and regardless of whether it is contained in drawings, technical documents etc. or communicated orally.

➤ **Clause 20 (Payment; former Clause 19)**

The payment terms have been simplified by providing for invoicing one third of the contract price at the time of conclusion of the contract and the remaining part at the time of delivery. This eliminates the question of when exactly a product is ready for delivery (decisive under S 2012).

➤ **Clause 34 (additional costs for remedying defect (former Clause 33))**

This change is best explained by giving an example. A German supplier sells a product to a French purchaser. Delivery will be FCA Frankfurt or DDP Paris. The French purchaser informs the German supplier that the product will not be used at its premises in France, but will be exported to Brazil and only be put into service there.

In case of a defect within the liability period of one year, according to the text of Clause 33 of S 2012, the supplier would only have to bear costs for remedying the defect in France, so the additional costs for remedying the defect in Brazil would be for the purchaser's account. According to the new wording in Clause 34 of S 2022, the supplier would have to bear the costs for remedying the defect in Brazil, provided it has been specified in the contract that the product would only be put into service in Brazil. The supplier will in such circumstances be well-aware of the fact that the product will only be used in Brazil and not in France. The supplier can take the risk of additional costs for remedial work in Brazil into account when calculating the contract price. If no place for putting the product into service has been specified in the contract, the supplier will according to the text of Clause 34 only have to bear the costs for remedying the defect at the place of delivery.

➤ **Clauses 40 – 44 (Liability for infringement of intellectual property rights)**

The conditions now also regulate the liability for infringement of intellectual property rights by the supplier. This is a clarification and not an extension of the supplier's liability. Already under S 2012, a claim against the supplier for infringement of intellectual property rights was possible, based on faulty design. In S 2022, this situation is explicitly covered by the conditions and not left to the background law.

An important aspect is the liability of the supplier to indemnify the purchaser in case of third party claims and the fact that liability for infringement of intellectual property rights is limited to the purchaser's country. In addition, specific remedies are mentioned. If the supplier cannot remedy the infringement, the purchaser has the same rights as if the product is defective for other reasons (decrease of contract price or termination of contract).