

PURCHASING

## **Orgalime SE 01**

Addendum

### **Orientation**

**This standard does not apply to Volvo Cars. To Volvo Cars, VCS 8000,449 applies.**

This version differs from version 4 in that certain sections have been updated.

This standard is Volvo's addendum to Orgalime SE 01 General conditions for the supply and erection of mechanical, electrical and associated electronic products.

### **Scope and field of application**

This Addendum contains amendments and additions to Orgalime SE 01. This Addendum is part of the Contract, including a Purchase Agreement, entered into between the Contractor and the Purchaser.

In all cases of inconsistency between this Addendum and Orgalime SE 01, this Addendum shall prevail.

The headings and numbering of clauses used below correspond wherever applicable to the headings and numbering of clauses of Orgalime SE 01. The terms defined in the Purchase Agreement and Orgalime SE 01 shall equally apply to this Addendum.

### **Amendments and additions**

#### **Definitions**

**The following definitions are deleted in Clause 2 of Orgalime SE 01:**

*Contract*

*Contract Price*

**The following is added at the end of Clause 2 of Orgalime SE 01:**

The terms defined in the Purchase Agreement shall apply equally to these General Conditions.

#### **Drawings and Descriptions**

**The following Clauses are added:**

4(a) Notwithstanding the foregoing, the Purchaser and any other Volvo Group Company shall, without compensation of any kind other than the Contract Price, have a perpetual worldwide right to freely use and authorize third party subcontractors to use all Technical Documents, developed by the Contractor for the Purchaser in connection with the Contract, for the purpose of procuring spare parts and / or perform repair and maintenance of the Works. Upon request by the Purchaser, the Contractor shall deliver free of charge such Technical Documents to the Purchaser.

4(b) All Technical Documents which are the results of joint efforts of the parties in connection with the Contract shall be the joint property of the Contractor and the Purchaser. Both parties shall have a right to use and authorize others to use such Technical Documents in his own business (including sub-contracting). Any applications for patents or other registerable rights shall be made by the parties jointly.

4(c) Clauses 4(a)-4(b) shall not imply any limitations of a party's exclusive ownership to any part of a Technical Document which is developed apart from the Contract by that party.

**The last sentence of Clause 5 of Orgalime SE 01 is deleted.**

## Tests before shipment

**Clause 6, 1<sup>st</sup> paragraph, of Orgalime SE 01 is deleted and replaced by the following:**

If tests before shipment are provided for in the Contract they shall each cover all parts of the Plant and shall, unless otherwise agreed, be carried out during normal working hours at the place of manufacture, being the Contractor's place of business indicated in the Purchaser's order.

**The following Clauses are added:**

6(a) The Purchaser shall furthermore be entitled to have all parts of the Plant, both during manufacture and when completed, inspected and checked. Unless otherwise agreed, such inspections and checking shall be carried out during normal working hours.

6 (b) If as a result of such tests, inspections and checking, the Purchaser is of the opinion that any material or parts are defective or not in accordance with the Contract, he shall state in writing his opinion and the reasons therefore.

**Clause 9 of Orgalime SE 01 is deleted and replaced by the following:**

The Contractor shall bear all costs for tests carried out at the place of manufacture. The Purchaser shall however bear all travelling and accommodation expenses for his representatives as well as costs for test materials in connection with such tests, except when such new tests as referred to in Clause 9 are carried out in which case the Contractor shall bear such costs.

**The following Clause is added:**

9 (a) Any tests, inspections or checking of the Plant, whether before or after shipment, shall not constitute an approval of work such that the Purchaser loses his right to claim liability for defects under the Contract, including but not limited to Clauses 51 – 65 of Orgalime SE 01.

## Preparatory Work and Working Conditions

**The last sentence of sub-clause d) of Clause 14 of Orgalime SE 01 is deleted and replaced by the following:**

Unless the Contractor's requirements concerning such equipment, tools, machinery, materials, supplies, instruments etc. are expressly set out in the Contract, the Contractor may not make any claim whatsoever against the Purchaser for any failure by the Purchaser to provide such items.

**The following sentence is added at the end of subclause e) of Clause 14 of Orgalime SE 01:**

Unless the Contractor's requirements concerning such facilities are expressly set out in the Contract, the Contractor may not make any claim whatsoever against the Purchaser for any failure by the Purchaser to provide such facilities.

**Sub-clause f) of Clause 14 of Orgalime SE 01 is deleted and replaced by the following:**

The access routes to the Site, (or drawings of the access routes, if only drawings of such routes are available), shall be inspected by the Contractor before entering into the Contract. Unless the Contractor's requirements concerning changes of the access routes are expressly set out in the Contract, the Contractor shall be deemed to have accepted the access routes and may not make any claim whatsoever against the Purchaser with respect to such routes.

**Purchaser's Default**

**Clause 16 (b) of Orgalime SE 01 is deleted and replaced by the following:**

The Contractor may suspend in whole or in part his performance of the Contract until the Purchaser has remedied his default. He shall forthwith notify the Purchaser in Writing of the suspension.

**Local laws and regulations**

**The last sentence of Clause 18 of Orgalime SE 01 is deleted and replaced by the following:**

The Purchaser shall, at the request of the Contractor, assist the Contractor to obtain the necessary information concerning such laws, regulations and rules.

**Variations**

**The text of Clause 24 of Orgalime SE 01 is deleted and replaced by “[Intentionally Left Blank]”.**

**The following Clause is added:**

25(a) Should the parties disagree on the terms and conditions for a variation, the Purchaser shall, notwithstanding any intellectual property rights of the Contractor, have the right either to carry out the change himself or to use another contractor for carrying out the change, regardless of whether the change is suggested by the Purchaser or the Contractor. The Contractor shall, however, remain bound by the terms and conditions of the Contract except as regards those variations as are carried out by another contractor or by the Purchaser.

**Passing of Risk**

**The second paragraph of Clause 26 of Orgalime SE 01 is deleted and replaced by the following:**

If no trade term is specifically agreed In Writing, delivery of the Plant shall be Delivery Duty Paid (DDP), name of the Site, INCOTERMS 2000 or successor.

**Taking-over Tests**

**The following Clauses are added:**

27(a) The Contractor is responsible for demonstrating that the Works comply with the Contract.

27(b) During the taking-over test, it shall be verified if and to what extent the Works comply with the Contract.

27(c) The Purchaser shall have the right to postpone the date for the taking-over test, provided, however, that such postponement(s) does not exceed two months (in total if several postponements).

**Taking-over**

The following Clause is added:

34 (a) Notwithstanding the above, the Purchaser is entitled to use the Works or any part thereof before taking-over if the taking-over is delayed and such delay is not caused by the Purchaser. This shall not relieve the Contractor of his duty to carry out taking-over tests. If the Purchaser shall do so, Clause 63 below shall apply, mutatis mutandis.

**Completion. Contractor's Delay****The following paragraph is added to Clause 36 of Orgalime SE 01:**

The Works shall not be considered as completed until the Contractor has cleared away and removed from the Site all his equipment, surplus material, wreckage and rubbish and left the Site and the Works in a clean and safe condition to the satisfaction of the Purchaser's Representative(s).

**Subparagraph (e) of Clause 39 of Orgalime SE 01 shall be replaced by the following:**

(e) as a proximate result of any negligent act or omission on the part of Purchaser, or an act or omission on the part of Purchaser in breach of the Contract.

**The second sentence of Clause 40, 1<sup>st</sup> paragraph, of Orgalime SE 01 is replaced by the following:**

The Contractor's delay, other than delays described in Clause 39, entitles the Purchaser to liquidated damages from the date on which the Works should have been completed.

**The following paragraph is added at the end of Clause 41, para. 2, of Orgalime SE 01:**

It shall be presumed that no part of the Works can be used as intended by the parties in case of delay.

**The following paragraph is added at the end of Clause 41, para. 3, of Orgalime SE 01:**

For the avoidance of doubt, the 15 per cent limitation shall in no way affect the Purchaser's right to claim back payments already made for the terminated part(s) of the Works.

**Payment****Clause 43 of Orgalime SE 01 is deleted and replaced by the following:**

Unless otherwise agreed, to all payments by the Purchaser, the following payment term shall apply: free month of delivery based upon receipt of correct invoice + 3 calendar months of credit, paid next coming Thursday which is not a bank holiday.

**The text of Clauses 44(b) and (d) of Orgalime SE 01 are deleted and replaced with "[Intentionally Left Blank]".**

**The taxes in Clause 44(f) of Orgalime SE 01 shall exclude any taxes assessed on Contractor's income.**

**The following Clause is added:**

45(a) The Contractor shall reimburse the Purchaser and other contractors employed by the Purchaser for costs corresponding to those described in Clause 45 incurred by the Purchaser or such other contractors due to interruptions or disturbances caused by the Contractor or his subcontractors.

45(b) Compensation under Clauses 45 and 45(a) shall be limited to 15 per cent of the Contract Price.

**The following sentence is added to Clause 46 of Orgalime SE 01:**

Notwithstanding the foregoing, if the Purchaser is required under the laws or regulations of the Contractor's country to deduct or withhold any part of the payment to the Contractor under the Contract, the Contractor shall be deemed to have received the full amount of the payment, provided that the deduction or withholding does not exceed the minimum amount legally required and that the Purchaser furnishes to the Contractor an official receipt by the relevant authority or other entity involved for all amounts deducted or withheld as aforesaid.

**Clause 47 of Orgalime SE 01 is amended accordingly:**

The reference to "8 percentage points" shall be replaced by "3 percentage points".

**The following Clauses are added:**

47(a) Payment under the payment schedule is conditional upon the Works proceeding in accordance with the agreed time schedule. If there is any delay in relation to the time schedule, the Purchaser shall have the right to postpone affected partial payments by a time period equal to the delay, provided, however, that such delay was not caused by the Purchaser which, under the express terms of this Contract, relieves the Contractor of responsibility for the delay. Part payments are not due until the agreed requirements for the actual part payment as well as for any prior part payment have been fulfilled.

47(b) Payment does not imply any approval of the Works or any part thereof.

**Liability for Defects****The fourth paragraph of Clause 55 of Orgalime SE 01 is deleted and replaced by the following:**

The Contractor is obliged to dismantle the Works to the extent necessary and to reassemble the Works.

**The following paragraph is added at the end of Clause 61 (b) of Orgalime SE 01:**

For the avoidance of doubt, the compensation of up to 15 per cent is in addition to the Purchaser's right to claim back payments already made.

**Clause 62 of Orgalime SE 01 is deleted and replaced by the following:**

The Contractor is not liable for defects arising out of materials provided by or designs actually originating from the Purchaser, his employees, agents, contractors or vendors (other than the Contractor and his subcontractors).

**The following Clause 65(a) is added:**

65(a) No limitations of the Contractor's liability hereunder shall apply, notwithstanding any provision of this Contract, to liabilities, damages, costs or expenses arising out of defects in the Works to the extent said liabilities, damages, costs, or expenses are the proximate result of claims for personal injury or death, or loss of, destruction or damage to property, alleged to have been or actually caused by the Works.

**Liability for Damage caused by the Works****Clause 66 of Orgalime SE 01 is deleted and replaced by the following:**

The Contractor shall defend, indemnify and hold the Purchaser harmless from and against any and all loss, liability, cost and expense (including reasonable attorney's fees) arising out of a claim that a defect in the design or manufacture of the Works, including defects in material and/or manufacturing processes or techniques, caused personal injury or loss of, destruction or damage to property. This agreement of indemnification includes the Contractor's responsibility for all judgements or settlement amounts which may otherwise be or become the responsibility of the Purchaser but for the agreement of indemnification set forth in this Clause. This agreement of indemnification shall inure to the benefit of the Purchaser, his officers, directors, affiliates, successors and assigns. The Contractor shall, at the Purchaser's request, assist the Purchaser in disputes in which the Purchaser could become involved by reason of such alleged defects and if required by the Purchaser take on the conduct of any dispute.

Neither the Purchaser nor the Contractor will file cross-claims or third party complaints against the other in product liability litigation without notifying the other company in advance. Where practicable, notice should be given sufficiently in advance to allow thorough discussion of alternatives to such filing.

The Contractor shall enter into and maintain an adequate product liability insurance policy during the period of the Contract and shall at the Purchaser's request also supply the Purchaser with a copy of the insurance certificate.

**The following Clause is added:**

66(a) The Contractor shall indemnify and hold harmless the Purchaser from and against any and all claims, suits and actions by third parties alleging that the Works or the design, manufacture, operation or maintenance thereof, constitutes an infringement of any intellectual property rights of third parties, and against all losses, damages, costs and expenses, including attorney's fees, which the Purchaser may suffer in connection therewith. The Purchaser shall without undue delay notify the Contractor of any such claim, suit or action and shall not settle any such claim, suit or action without prior consultation with the Contractor.

**Anticipated Non-Performance****The following Clauses are added:**

70(a) The Purchaser shall have the right to cancel the Contract, in his entirety or in part at his choice, in case

a) the Contractor should neglect his obligation to commence work or otherwise fail to take any action necessary for completion of the Works, and this results in a delay in the completion of the Works or it is likely that the completion of the Works will be delayed as a result thereof, provided that such delay can be considered as of significant inconvenience to the Purchaser; or

b) the Contractor should become, or can reasonably be expected to become, insolvent, declared bankrupt or suspend his payments.

70(b) Should the Purchaser terminate the Contract, in his entirety or in part, the Purchaser shall have the right in his sole discretion within a reasonable time, to either claim damages amounting to the difference between the Contract Price and the reasonable costs to have the Works completed by another contractor, or to claim the maximum price reduction under Clause 41. Furthermore, the Purchaser shall have the right, upon notice In Writing to the Contractor stating a reasonable price, to take over as much of the work as is performed including components, raw materials etc. manufactured or procured by the Contractor, as the Purchaser deems necessary for completion of the Works. Intellectual property rights, if any, which otherwise may prevent the Purchaser from completing the Works himself or by a third party, shall hereby be waived by the Contractor.

70(c) The provisions of Clauses 70(a) and 70(b) shall not in any way limit or exclude any other right the Purchaser may have in case of breach of contract by the Contractor according to the Contract or applicable law.

**Disputes and Applicable Law****Clauses 72 and 73 of Orgalime SE 01 are deleted and replaced by the following:**

**72** The Contract shall be governed by and construed in accordance with Swedish substantive law unless the Purchaser has his place of business in France or in the United States of America.

**73** If the Purchaser has his place of business in France, the Contract shall be governed and construed in accordance with French substantive law.

**74** If the Purchaser has his place of business in the United States of America, the Contract shall be governed and construed in accordance with the substantive laws of the state of North Carolina.

**75** Any dispute arising between the Purchaser and the Contractor out of or relating to the Contract shall promptly and in good faith be negotiated with a view to its amicable solution.

**76** If, in accordance with Clause 72 above the Contract shall be governed by Swedish law and no amicable resolution or settlement is reached, such dispute shall be referred to and finally settled by arbitration in accordance with the rules of the Arbitration Institute of the Stockholm Chamber of Commerce applicable at the time the arbitration is called for. The arbitration proceeding shall be held in Gothenburg, Sweden, and be conducted in Swedish. If at least one of the Parties is domiciled outside of Sweden, the arbitration proceedings shall be conducted in English.

**77** If, in accordance with Clause 73 above the Contract shall be governed by French law and no amicable resolution or settlement is reached, such dispute shall be referred to and settled by the Commercial Court of Lyon, France.

**78** If, in accordance with Clause 74 above the Contract shall be governed by the laws of the state of North Carolina and no amicable resolution or settlement is reached, such dispute shall be referred to and finally settled by arbitration in accordance with the rules of arbitration promulgated by the American Arbitration Association under its Commercial Dispute Resolution Procedures (the "Rules"). Such arbitration shall take place in Washington D.C. and be conducted in English before a panel of three neutral arbitrators selected pursuant to such Rules. A judgement on the award rendered by the arbitrators may be entered in and enforced by any court having jurisdiction thereof, with each Party hereby consenting to the jurisdiction of such court over it and waiving, to the fullest extent permitted by law, any defence or objection relating to in personam jurisdiction, venue or convenience of the forum. All matters arising in any action to enforce an arbitral award shall be determined in accordance with the law and practice of the forum court, provided that, notwithstanding the foregoing, this arbitration clause shall not apply to claims for indemnification from third-party claims where said third party has initiated litigation against the Purchaser or the Contractor, or both.