



General Terms and Conditions / SERVICES
ENGIE Refrigeration GmbH
April 2022

SCOPE OF APPLICABILITY

1. The subject General Terms and Conditions apply for contracts to be concluded between the Customer and ENGIE Refrigeration GmbH („Contractor“) for the execution of Services on products manufactured by ENGIE Refrigeration GmbH and on products manufactured by third parties.

Contracts exclusively covering the Contractor’s supply of spare parts, or of other equipment and materials excluding the execution of Services, are governed by the General Terms and Conditions for Supplies and Services (April 2022) applicable for the manufacturing and supply of products by ENGIE Refrigeration GmbH.

The present proposal is based on the ORGALIME General Conditions for Maintenance of the Mechanical, Electrical and Electronic Equipment – M 17 (October 2017). ORGALIME comprises the European federation of the mechanical, electrical and metal technology industries. The ORGALIME M 17 terms and conditions represent a neutrally edited and balanced contractual basis for Customer and Contractor. In the case that you are not already familiar with ORGALIME M 17, we will provide you a copy on request.

Any forthcoming contract will be exclusively governed by these General Terms and Conditions of the Contractor. Deviating terms and conditions of the Customer will not become part of the contract, even if the Contractor did not explicitly dispute their applicability.

The below stated terms and conditions apply as complementary provisions to ORGALIME M 17 and in any event take precedence in case of contradictions:

DELAYED PAYMENT (supplements Art. 29 ORGALIME M 17)

2. In the case that the Customer is in delay with payments due for a period in excess of three months, the Contractor, after written notification of the Customer, is entitled to withdraw from the contract and may, in addition to the interest in accordance with this Article, charge the Customer for the compensation of loss and damage.

RIGHT TO SET-OFF PAYMENT

3. The Customer’s right to set-off own claims from payments due to the Contractor is restricted to such claims, which are not disputed by the Contractor or which have been rightfully determined by a court of law. Moreover, any rights of the Customer to set-off own claims from payments due to the Contractor are limited to those cases, where the Customer’s claim is based on the identical contractual relationship.

LIABILITY FOR DEFECTS (replaces Art. 30 ORGALIME M 17)

4. Upon receipt of a defect-notification, respectively upon its own detection of a defect, the Contractor is obliged to repair at its own expense any defects in the Services, or in supplied parts and components.
5. Timewise the defect-rectification shall be arranged in such a way that the operations of the Customer are not unnecessarily disturbed.
6. Unless the Contractor deems the transport to the place of manufacturing, or to another Contractor-defined location, to be more appropriate, the Customer's premises at which the object of the Services is installed, is the principle place where defects are rectified.
7. Replaced defective components are to be handed over to the Contractor and are transferred into his ownership.
8. To the extent this is necessary for the rectification of defective Services, the Customer is obliged to provide at his own cost access for the Contractor to the installations / equipment concerned and to perform potentially necessary interventions with respect to facilities that do not form part of the scope of Services.
9. In the event that the Customer has notified a defect without that a Contractor-attributable defect can be determined, the Customer must compensate the costs incurred by the Contractor as a result of his attending to such defect-notification.

DEFECT-LIABILITY PERIOD (supplements Art. 31 ORGALIME M 17)

10. The defect-liability period for wear and tear parts amounts to six months. The Contractor does not assume any defect-liability for consumables and operational media (e.g. refrigerant).

EXTENT OF LIABILITIES (replaces Arts. 36 and 43 ORGALIME M 17)

11. The liability of the Contractor as per these General Terms and Conditions is excluded for defects or damages that are resulting from circumstances not attributable to the Contractor, including, but not limited to, operation of the chiller unit outside the contractually specified operating instructions, lack of or deficient daily maintenance by the Customer, deficient remedial measures by the Customer. The Contractor does not assume any liability for normal wear and tear.
12. In the case of Contractor-attributable breaches of material contractual obligations, the Contractor's liability, unless wilful misconduct or gross negligence apply, for damages that are not typical for the subject contract and for damages, which were not foreseeable at the point in time of the entering into force of the contract, is excluded.
13. Equally, in these cases the Contractor's liability for any loss of profit, loss of production, financial or economic loss, loss of contract or business, loss of revenues, loss of product, loss of use, loss due to business interruption, increased costs, and in each case irrespective of whether or not any of the foregoing may be held to be direct or indirect cost, loss or damage, or for any special, indirect, incidental or consequential loss or damage, is excluded.
14. Except for the Contractor's liability for contractor-attributable damages to the property of the Customer, the remaining liability of the Contractor per damage is limited to 100% of the contract-price.

15. The above mentioned limitations of liability under this Article do not apply for damages to life, limb or health and not for liabilities in the frame of the product-liability-law.
16. In the case of Contractor-attributable breaches of contractual obligations, which are not of a material nature, the Contractor's liability, unless wilful misconduct or gross negligence apply, for damages that are not typical for the subject contract and for damages, which were not foreseeable at the point in time of the entering into force of the contract, is excluded. The above mentioned limitations of liability under this Article do not apply for damages to life, limb or health and not for liabilities in the frame of the product-liability-law.
17. Material contractual obligations are those obligations, whose fulfilment is indispensable for the achievement of the contractual purpose, for example, the Contractor's obligation to perform the Services.

DISPUTE REGULATION AND GOVERNING LAW (Replaces Art. 44 ORGALIME M 17)

18. All disputes that arise in relation to the contract, or in relation to its validity, will be decided by a regular court of law. The place of jurisdiction is Lindau (Lake Constance), Federal Republic of Germany.
19. The contract is governed by the laws of the Federal Republic of Germany. The Vienna UN-Convention on the International Sale of Goods (CISG) is explicitly excluded.

SEVERABILITY CLAUSE AND WRITTEN FORM

20. The partial or complete invalidity of any one or more provisions of the contract shall not affect the validity or continuing force and effect of any other provision. The invalid provision is to be replaced by a valid provision that as far as possible achieves the intended economic purpose of the invalid provision.
21. Revisions and amendments to this contract, including the present provision, may be performed in writing and in electronic format. The written form requirement is maintained by letters and statements signed in handwriting that are forwarded as original, by fax or scanned-in by e-mail. The electronic format is maintained by forwarding an electronic document that is signed by a software-generated electronic signature (e.g. DocuSign or similar).

EXPORTCONTROL

22. The Contractor is relieved from his obligation under the contract to deliver the scope of supplies and services, in the case that compliance with the contract contravenes the applicable laws and regulations related to import- or export-control, or if necessary import- or export-related statutory permits, approvals or authorisations required by the Contractor, his subcontractor or a subcontractor of contracted third parties for the import- or export of the scope of supplies and services are not granted or withdrawn.

In the same way the Contractor, or his subcontractors or a third party contracted by the Contractor are relieved from the obligation to deliver the scope of supplies and services in the frame of the execution of the contract, in the case that the supplies or the services would contravene US-sanctions.

Claims for the compensation of damages by the Customer and/or or potentially agreed contractual penalties are excluded, to the extent that the above mentioned obstructions to deliver the scope of supplies and services are caused by the beforementioned statutory measures or denied permits, approvals and authorisations and such obstructions therefore are not solely attributable to the Contractor.

COMPLIANCE

23. In the context of the conclusion of the current contract, or in the context of the creation or preservation of a related business relationship, the Customer will refrain from directly, or indirectly, paying, offering or promising money or valuables (such as gifts, grants, travel or entertainment) to individual persons or to a company (including its entire workforce) for the purpose of illegitimately influencing their acts or decisions.

The same applies in relation to all governmental officers and to holders of public functions (including employees of any state-owned or controlled enterprise, political party or a candidate for political office), to the extent their decisions might be of relevance for the execution of the contract.

The Customer will execute suitable measures in order to safeguard that all of his authorised representatives, or representatives acting under the Customer's direction (vicarious agents) will likewise comply with the beforementioned rulings.

In addition to the above, the Customer is obligated to refrain from any acts, by which the Contractor or his affiliates might run the risk, of being exposed to penalties or sanctions in accordance with the laws and other regulations of those countries, in which they pursue business.