

Standard Terms and Conditions of

§ 1 Scope of Application

- (1) These Standard Terms and Conditions (hereinafter referred to as GTC) shall apply to all contracts on supplies and services of EMIS Electrics GmbH, Neckarzulmer Straße 3-5, with headquarters in 03222 Lützenau/Spreewald (hereinafter always referred to as EMIS).
- (2) The terms and conditions of contractual partners of EMIS (hereinafter always referred to as customers) which differ from these GTC shall not be deemed to be part of a contract, even not through order acceptance or unconditional service. Differing standard terms and conditions of the customer become part of the contract only subject to the explicit written agreement of EMIS.
- (3) These Standard Terms and Conditions also apply to all future business transactions with the customer, provided that they are legal transactions of a related type.
- (4) Quotations submitted by EMIS are valid provided that the required permissions are granted.

§ 2 Copyright

EMIS reserves unrestricted intellectual property rights and copyright, including exploitation rights, to all documentation, specimens, quotations, offers/calculations, drawings and figures, prospectuses and other comparable documents as well as information in electronic form handed over to customers. The above-mentioned documents, or extracts of them, shall not be made accessible for third parties or otherwise be used by customers without the explicit written approval by EMIS. If an order is not placed, all the above documents are to be returned to EMIS should EMIS so request.

§ 3 Dates of Delivery of Goods / Provision of Services

- (1) Dates of delivery of goods and provision of services shall be binding only if they have been confirmed in writing by EMIS or expressly stipulated by contract.
- (2) If a contractual period has been validly agreed, it will be extended accordingly in case of force majeure and other events that are beyond the control of EMIS e.g. transport and traffic obstacles, problems of delivering required material and/or components, strike - also regarding sub-suppliers of EMIS - war, terrorist attacks or similar events.
- (3) The commencement of, and adherence to, effective delivery periods and dates require, in particular, the punctual receipt of all documents to be furnished by customers (schemes, drawings etc.), of any necessary permissions and releases as well as the clarification of technical issues between the parties. Firmly agreed periods and dates of delivery additionally require the punctual and proper fulfilment of all customer's obligations (including possible payment obligations), insofar as EMIS is not responsible for the delays. We reserve the right to plea of non-performance.
- (4) EMIS is entitled to claim compensation for damage, including any additional expenditure, should the customer placing the order **default in accepting** or fail to fulfil other duties to cooperate. EMIS reserves the right to make further claims. Provided that the above requirements exist, the risk of accidental loss or deterioration of an item delivered, or service supplied, passes to the customer at the point of time at which the customer gets into default of acceptance or delay of payment.
- (5) Should EMIS fail to meet a contractually agreed period of delivery, and the customer suffers damage due to this delay, the customer is entitled to demand compensation from EMIS for each completed week of delay up to a maximum of 0.5%, however up to a total of 5% of the price of the delayed part of service.

- (6) Further claims of compensation of the customer exceeding the claims and rights according to section 3 (5) of these Standard Terms and Conditions due to delayed performance, shall be excluded in all cases of delay, also after a period of performance possibly set by EMIS. The same applies to damage compensation claims instead of subsequent performance. This shall not apply to mandatory liability in cases of culpable intent, gross negligence or injury to life, body or health. The customer can withdraw from the contract according to statutory provisions only if EMIS is responsible for the delayed performance.
- (7) At the request of EMIS, the customer is obligated to notify within a reasonable period, with regard to the delayed performance, whether the customer insists on the fulfilment and/or which of the customer's claims and rights the customer asserts.

§ 4 Services of EMIS

- (1) EMIS provides the services in keeping with the rules of technology acknowledged at the time of order placement and with the diligence customary in this line of business. The customer bears the risk of applicability of the services provided, in particular regarding applications that are different from the applications stipulated by contract.
- (2) If EMIS uses services of third parties by order of, or in agreement with, the customer as a basis or part of EMIS' services, EMIS is entitled to make use of these services for the further provision of services without revision, unless the customer expressly orders EMIS in writing to revise these accepted services.
- (3) Provision of partial services by EMIS is permitted provided that the customer considers them reasonable.
- (4) In case of culpable failure to meet service obligations, EMIS is first entitled to subsequent fulfilment, free of charge, unless the customer considers the subsequent fulfilment unreasonable.
- (5) EMIS is entitled to place subcontracts with third parties.

§ 5 Prices

- (1) The prices of EMIS are indicated in euros. They are exclusive of value-added tax. Different prices will be valid only if expressly agreed in writing with the customer. As to business transactions at home, EMIS additionally charges the value-added tax according to the statutory tax rate valid at the date of invoicing.
- (2) Unless explicitly agreed otherwise by contract, the prices of EMIS shall apply, plus the costs of packaging, transportation ex works, erection/installation and all further additional costs (e.g. travel costs, costs of transporting tools or personal luggage, daily allowance etc.)
- (3) Provided that no other prices have explicitly been agreed regarding EMIS' services, EMIS scheduled prices shall apply to all supplies and services valid on the day of delivery of goods or provision of services, plus the taxes and expenses stipulated in section 5 (1) and (2) of these Terms and Conditions.
- (4) EMIS is entitled to demand a reasonable increase in the remuneration for additional expenditure resulting from changed tasks due to customers' requests or other reasons that EMIS is not responsible for.

§ 6 Terms of Payment

- (1) Payments shall exclusively be effected to one of the accounts indicated in EMIS' invoices. Customers are permitted to deduct discounts only if they are especially agreed with EMIS in writing.
- (2) Unless agreed otherwise, the invoiced amount falls due within 14 calendar days after the delivery of goods and/or provision of services. Default interests will be charged to consumers amounting to 5 percent above

the respective basic interest rate according to article 247 BGB (German Civil Code), and to traders amounting to 8 percentage points above the respective basic interest rate according to article 247 BGB (German Civil Code). EMIS reserves the right to claim higher compensation for damage due to default in performance.

- (3) EMIS is not obligated to accept bills or cheques. If EMIS accepts a bill or cheque, this is only for settlement purposes. Collection and discount expenses as well as note tax shall be borne by the customer. The customer pays them together with the invoiced amount. EMIS does not guarantee the punctual presentation, raising of protest, notification and return of a bill in case a bill is not honoured.
- (4) For any kind of payment, the transaction is deemed to be settled only on the day when EMIS has this amount available.
- (5) Statements of the customer that payments are to be effected in a certain manner are not binding upon EMIS.
- (6) The customer is entitled to rights of setting off only if the customer's claims have been found to be undisputed or legally valid and if EMIS has been notified in writing of the setting off 14 day prior to the due date. The customer has the right of retention only as far as the customer's counterclaim is based on the same contractual relationship.

§ 7 Delivery, Erection and Installation

The following provisions shall apply to each type of service that EMIS provides for a customer, unless agreed otherwise in writing:

1. The customer shall accept and provide the following on time and bear the pertinent costs:
 - The temporary staff, e.g. assisting staff and skilled workers together with the required number of tools for the proper acceptance and performance of services by EMIS,
 - All building prerequisites EMIS' provision of services, in particular, ground work, foundation, building, caulking, scaffolding, plastering and painting work and other types of supplementary work outside this line of branch, including the required specialists and assisting staff, building materials, auxiliary and other materials.
 - The items and materials required just in time for installation and commissioning purposes,
 - Power, water, compressed air and other media at the site of their application, including the required connections, heating and lighting fittings,
 - At the installation site, sufficiently large, suitable, dry and lockable rooms for storing machine components, devices, materials, tools etc. and appropriate work rooms and recreation rooms for the installation staff, including corresponding sanitary facilities; for protecting the property of EMIS and the installation personnel at the site, in general, the customer shall take the same necessary precautionary measures as the customer would take for the protection of the customer's own property;
 - Protective clothing and protection devices required due to special conditions on the installation site and that are unusual in this line of trade for the contractor.
2. Prior to the commencement of installation works, the customer shall provide, without being requested, the required information about the arrangement of concealed power cables, gas and water piping or similar facilities as well as the necessary statistical data.
3. Prior to the provision of services i.e. erection or installation, the customer shall ensure that the required auxiliary facilities and supporting items needed for this purpose are available at the erection and installation site and that all preliminary types of work such as bricklaying and carpentering as well as other preparations EMIS requires for the erection have reached such a state that EMIS can commence erection and installation work as agreed and the work can be carried out without interruption. The access ways and the

erection and installation area must be levelled and cleared.

4. If erection, installation or commissioning are delayed due to causes EMIS is not responsible for, the customer shall bear a reasonable amount of the costs incurred due to consequential additional expenses of EMIS, in particular costs resulting from waiting time and required additional business trips of EMIS or the installation staff.
5. To the best of the customer's knowledge, the customer shall prepare a weekly written confirmation for the installation staff indicating all types of work completed, and immediately hand over to EMIS' installation staff the written confirmation specifying the completed erection, installation and commissioning work.
6. EMIS is not liable for additional work of EMIS' employees or other installation staff involved if the work is not directly related to the contractually stipulated supply, erection and installation (at least as far as there is no culpably caused failure) or to the extent that this work has been performed based on direct orders of the customer.
7. If EMIS has accepted the erection or installation based on individual calculation, the following provisions shall additionally apply:
 - The customer pays EMIS, in addition to the work time payment agreed upon order placement, also premiums for overtime, nightshift, work on Sundays and holidays, and for work carried out under severe conditions, as well as for planning and supervision.
 - Furthermore, EMIS' travel expenses, costs of transporting tools and personal luggage and allowance for the work time and holidays and days of rest are separately remunerated.
8. Items delivered by EMIS shall be accepted by the customer, even if they show insignificant damages.

§ 8 Transfer of Risk / Acceptance

- (1) In case of supplies of EMIS without erection or installation, the risk passes to the customer also in terms of CPT (Carriage Paid To) delivery, after the delivery item has been handed over to the person performing the transport, at the latest when the delivery item has left the production site / warehouse; this also applies to partial deliveries.
- (2) If the dispatch, delivery and commencement or performance of the erection/installation work are postponed at the customer's request or delayed due to reasons EMIS is not responsible for, the risk passes to the customer for the time of the delay. However, EMIS is obliged to take out any insurance if requested by the customer and at the customer's costs.
- (3) The customer shall immediately accept services provided and items produced at works. The acceptance basically covers only items of due performance.
- (4) Within 14 work days after acceptance of the services provided and items produced at works, the customer shall notify EMIS in writing whether they are acknowledges to meet the contractual requirements, or else notify EMIS immediately, however at the latest within the above period of time, of concrete defects including their precise description. If this is not done, the acceptance is deemed to be final. The acceptance is also deemed to be final if the service or product has been used, possibly following a test stage as agreed in writing.
- (5) In the event of insignificant defects, the customer is not permitted to refuse acceptance or receipt of services provided and products delivered.
- (6) If it is explicitly agreed in writing that formal acceptance shall be carried out, the customer is obliged to accept the service or product and issue a written acceptance certificate to EMIS. The customer is obliged to immediately perform the formal acceptance procedure. The provisions of section 8 (3) to (5) of these Terms and Conditions shall apply accordingly.
- (7) EMIS may require an interim acceptance of interim and partial services if this is necessary for further supplies and services. The provisions of section 8 (3) to (6) of

these Standard Terms and Conditions apply accordingly to interim or partial acceptance.

§ 9 Retention of Title

- (1) EMIS retains title to the items supplied until all contractual payments have fully been made, also for all future supplies, even if EMIS does not always emphasize it. EMIS is entitled to take supplied items back if the customer's behaviour is in breach of contract.
- (2) As long as the property right has not yet passed to the customer, the customer is obligated to handle the supplies/services of EMIS with care. In particular, the customer is obligated to insure the supplies and services, at the reinstatement value and at the customer's own expense, against theft, fire and water damage. If maintenance and inspection works have to be done, the customer shall undertake perform them on time at the customer's own costs.
- (3) As long as the title to property has not yet been transferred, the customer is not entitled to pledge the item of delivery nor to transfer ownership for security purposes. The customer shall immediately notify EMIS in writing if an item delivered etc. is pledged or subject to other interventions by third parties. If the third party is not able to compensate EMIS for court fees and extrajudicial expenses resulting from a lawsuit according to article 771 ZPO (German Civil Code of Law), the customer shall be liable to EMIS for damage caused.
- (4) If the customer's behaviour is contrary to the contract terms, especially in case of default in payment, EMIS is entitled to take back the supplies and services after a reminder, and the customer is obliged to return them. Following the return of supplies and services, EMIS has the right to their realisation. EMIS will perform the realisation in a proper way and set off the realisation proceeds against the customer's obligations, deducting corresponding realisation costs incurred.
- (5) The customer is entitled to resell the retained goods in the course of ordinary business transactions. Already now the customer assigns the claims of the buyer of the resold conditional goods to EMIS based on the invoice price agreed with EMIS (including VAT). This assignment shall be valid regardless of whether the purchase item was resold without or after undergoing modification. The customer is further entitled to collect the claimed amount also after the assignment. The permission of EMIS to itself collect the claimed amount however, is not affected by that. However, EMIS will not collect the claimed amount provided that the customer meets the payment obligations as agreed based on the proceeds received, is not in default of any other payment obligation, if there is no petition of bankruptcy and/or the customer does not notify of a suspension of payment.
- (6) The purpose-related modification and processing or changing of services or items of EMIS shall always be carried out by the customer on behalf and by order of EMIS. In this case, the rights of EMIS to the modified item continue to exist. Provided that the item is modified with other items not belonging to EMIS, EMIS acquires the co-ownership of the new item in proportion to the objective value of EMIS' services with regard to the other modified items at the time of modification. The same applies to mixing of items. If the mixing is performed in a way that the customer's item constitutes the main item, it is deemed to be agreed that the customer proportionately assigns co-ownership to EMIS and keeps the sole property or joint property for EMIS. For securing the claims of EMIS concerning the customer, the customer shall also assign such claims to EMIS that are created for the customer vis-à-vis a third party as a result of connecting the conditional commodity with an estate; EMIS accepts this assignment already now.
- (6) As far as the total amount of all collateral values EMIS is entitled to exceeds all secured claims by more than 10 percent, EMIS releases a corresponding part of the security interest at the customer's request. The right to select securities to be released rests with EMIS.

§ 10 Liability for Material Defects and Notice of Defect

- (1) At EMIS' discretion, all goods and services shall be subsequently mended, newly supplied or furnished free of charge which turn out to be defective within the period of limitation - leaving service life out of account - provided that the reason of the defect had existed already at the time of risk transfer.
- (2) Claims regarding defects become statute-barred after 12 months. This does not apply where longer periods are prescribed by the law in accordance with articles 438 par. 1 No. 1 (Construction and Structural Materials) and 634 a) par. 1 No. 2 (Construction Defects) BGB (German Civil Code) as well in cases of injury to life and body or damage to health, of intentional or gross negligence on part of EMIS and of maliciously concealed defects. The legal provisions regarding suspension of expiration, suspension and recommencement of limitation periods remain unaffected by this.
- (3) The customer shall basically inspect each commodity/service received from EMIS instantly and in a proper way upon its receipt, and if an obvious defect is found, EMIS shall immediately be notified in writing, but within three days after receipt of the commodities/services at the latest. If such a defect becomes obvious only at a later time, the customer shall notify EMIS in writing immediately after detecting the defect. If the customer fails to timely notify in writing, the delivery shall be deemed to have been approved, provided that this does not contradict mandatory legal provisions.
- (4) Provided that the customer has properly notified a material defect according to section 10 (3) of these Standard Terms and Conditions, EMIS shall be permitted to remedy the defect at EMIS' own discretion or to provide replacement goods or services within a reasonable period of time. Basically, EMIS' effort to remedy a defect or provide replacement shall be deemed to have failed only after the second unsuccessful attempt. The fact that the elimination of a defect or provision of replacement was unsuccessful has to be again reported in writing to EMIS by the customer without delay. Section 10 (3) of these Standard Terms and Conditions shall apply correspondingly.
- (5) Should the subsequent fulfilment by EMIS finally fail, the customer may, regardless of possible claims of damage compensation, withdraw from the contract or reduce the amount of payment, if such claims are not effectively excluded by contract.
- (6) Claims of the customer due to expenses incurred by subsequent performance, in particular, transportation, work and material costs are excluded if these expenses increase due to the fact that the object of the service has later been relocated to a place other than the customer's site, unless the relocation is in keeping with its intended purpose.
- (7) In the event of notification of defect, the Company is allowed to retain payments only at a reasonable proportion to the detected material defects. The customer is allowed to retain payments only if the notification of the defect is doubtlessly justified. Provided that the notification of the defect was unjustified, EMIS has the right to demand reimbursement of the pertinent expenses of EMIS from the customer.
- (8) Claims due to defects are not permitted if there are just minor deviations from the agreed characteristics, only insignificant impediment to applicability, natural wear and tear or damage occurring only after the transfer of risk due to faulty or negligent handling, excessive stress, inadequate operating materials, faulty construction work, improper substratum, especially due to external influences which are not required by contract, as well as due to non-reproducible software errors. In case the customer or third parties carry out improper modification or repair work, no claims for compensation shall be permitted regarding these works nor resulting consequences.
- (9) Further claims of the customer or claims different from those stipulated in section 10 of these Standard Terms and Conditions are excluded, irrespective of the legal ground with regard to EMIS and EMIS' vicarious agents caused by material defect, to the extent that

there is no liability for intent or gross negligence or injury to life and body or damage to health, or for accepting warranted characteristics. The above provision is not related to any change of the burden of proof to the detriment of the customer.

§ 11 Deficiency in Title

In case of deficiency in title, the provisions of section 10 of these Standard Terms and Conditions shall apply accordingly.

§ 12 Liability

- (1) EMIS is fully liable for damage to life, body and health caused by EMIS, and pays, in case of material damage, for the recovery of material items up to an amount of EUR 500,000.- in each damage event. If data media material is damaged, the duty of indemnification does not cover the expenditure for the retrieval of lost data and information.
- (2) Further compensation claims regarding damage and expenditure of the customer, regardless of the legal basis, especially due to breach of debt obligations as well as unauthorized actions, are excluded. This does not apply if there are contradicting mandatory liability provisions e.g. according to the Product Liability Act, in case of culpable intent, gross negligence, because of assumption of warranty for characteristics of an item, malicious concealing of a defect or due to breach of essential contractual duties. However, compensation claims concerning damage and expenses caused by violating essential contractual duties shall be limited to the typical contractual, predictable damage, provided that it has not been caused intentionally or by gross negligence.
- (3) Insofar as the customer is entitled to compensation claims for damage suffered and redemption of expenses based on section 12 of these Standard Terms and Conditions, they will expire upon the termination of the period of limitation regarding claims of material defects according to section 10 (2) of these Standard Terms and Conditions. This does not apply to cases of intent, gross negligence, injury to life and body or damage to health as well malicious concealment of a defect or with regard to claims based on the Product Liability Act.

§ 13 Assignment

- (1) An assignment of the customer requires written approval of EMIS. An assignment of the customer to EMIS becomes effective only upon written notification to EMIS.
- (2) For the assignment to be effective, the new obligee shall submit the following written statement in conjunction with the notification according to section 13 (1) of these Standard Terms and Conditions:
„I acknowledge

- that the settlement of the obligations can be demanded only based on the terms of contract;
- that according to article 404 of BGB (German Civil Code), the objections can be raised against me that existed against the previous obligees at the time of the assignment ,
- that setting off against counterclaims is permitted within the scope of article 406 of the BGB (German Civil Act) and
- that further assignment made by me to the customer is not effective.”

- (3) Assignments based on several orders shall be notified separately for each order by the customer to EMIS.

§ 14 Applicable Law / Legal Venue

- (1) The laws of the Federal Republic of Germany shall apply to the contract, excluding possible expulsion standards. The application of UN law of international sale of commodities (CISG) is excluded.
- (2) The place of performance is Lübbenau. In case of disputes arising from the contract between EMIS and the customer, the legal venue shall be Lübbenau provided that the customer is a trader in accordance with the Commercial Law of the FRG. Moreover, EMIS is entitled to sue the customer at any competent court at the place of business of EMIS.

§ 15 Relationship between the GTC of EMIS and „Standard Conditions of Supply and Delivery for Products and Services of the Electrical and Electronic Industry“

- (1) If the Standard Terms and Conditions of EMIS and the General Conditions of Supply and Delivery for Products and Services of the Electrical and Electronic Industry include contradicting provisions, the Standard Terms and Conditions of EMIS shall apply.
- (2) The General Conditions of Supply and Delivery for Products and Services of the Electrical and Electronic Industry shall supplement these Standard Terms and Conditions of EMIS.

§ 16 Severability / Written Form Clause / Ancillary Agreements

- (1) Should individual provisions of these terms and conditions be or become invalid or inapplicable, this shall not affect the validity of the remaining provisions. Invalid or inapplicable provisions shall be replaced with mutually agreed new valid or applicable provisions which reflect as fully as possible the commercial purpose of the invalid or inapplicable provisions.
- (2) Amendments and supplements to these Standard Terms and Conditions shall be in writing to be valid. The same applies to the written form clause. Verbal agreements do not exist.

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EMIS Electrics GmbH