

# GENERAL TERMS AND CONDITIONS OF EMCO GMBH (HEADQUARTERS OF EMCO)

As per: 01. Juni 2020

## 1. SCOPE

- 1.1. The following General Terms and conditions (GTC - hereinafter short referred to as "General Terms") shall be valid for all business relations respectively contracts as performed between EMCO GmbH, Salzburger Straße 80, 5400 Hallein (hereinafter short referred to as "EMCO") and its customers, particularly for all sales and deliveries as well as for all secondary business associated herewith and for all other services rendered. The General Terms shall also apply to all future business relations, even though reference is not explicitly made to such terms in particular cases or especially in case of future supplementary or follow-up orders.
- 1.2. Upon conclusion of an agreement the relevant version of our General Terms as applicable from time to time shall govern and may be retrieved from our website ([www.emco-world.com](http://www.emco-world.com)).
- 1.3. We conclude an agreement solely on the basis of our General Terms.
- 1.4. Divergent or amendatory General Terms EMCO's customers shall not constitute an integral part of the contract even in case such circumstance has come to EMCO's attention, unless we explicitly consented to such validity in writing. All amendments and complements of our General Terms require our explicit written confirmation – especially for our business customers.
- 1.5. General Terms of EMCO's customers shall also not be considered accepted, should EMCO not expressly contradict upon receipt of such General Terms.

## 2. CONTRACT NEGOTIATIONS AND CONCLUSION OF CONTRACT

- 2.1. In the absence of any other provisions our offers are subject to change and non-binding and are in force subject to prior sale.
- 2.2. With the order and/or bid the customer bindingly states his offer to enter into a contract. With electronically ordered merchandise EMCO shall immediately acknowledge receipt of the bid. The receipt does not automatically constitute a binding acceptance of the order/bid. The receipt shall only constitute such acceptance if expressly acknowledged by EMCO.  
EMCO is entitled to accept the offer to enter into a contract included in the bid within two weeks. Orders and bids shall become binding for EMCO not until its written affirmation and only to the terms contained therein. Also, telegraphic, telephonic or oral amendments, changes and side-agreements of orders and bids shall produced by EMCO in writing to be legally binding.
- 2.3. All technical and business details as well as all information contained in catalogs, brochures, circular letters, advertisements, illustrations, samples and price lists etc. shall only take effect if expressly made subject matter of the contract in the acceptance of order.
- 2.4. All information, all kinds of bidding documents and documents for decisions making, especially

photocopies, samples and product information in audio and visual mode allocated to the customer in the course of contract negotiations or management of the contract are strictly confidential and remain a property of EMCO. Every exploitation, reproduction, circulation and handing-over to a third party shall only be performed upon EMCO's express consent.

- 2.5. The customer shall be in charge to provide import licenses and import permits, civil and public law approvals or confirmations, necessary for the accomplishment and transaction of the contract timely and at his costs. Documentary evidence of origin will be provided upon request subject to the issuing by the competent authority.
- 2.6. Estimates are non-binding and against payment. Consumers are advised of the liability to pay costs for the estimate prior to its compilation. In case of effected assignment comprising all services as included in the estimate, the payment for the estimate will be credited in the corresponding invoice.

## 3. TRANSFER OF PERILS

- 3.1. If not provided otherwise in the acceptance of order, the place of fulfillment shall be EMCO's delivering plant. From the date of the announced submission of the merchandise at disposal, the transfer of risk and title, especially the risk of loss of merchandise and incidental deterioration of the merchandise are vested in the customer.
- 3.2. EMCO shall notify the customer in due time of the submission date of the merchandise, so that the customer is able to perform all necessary arrangements for such merchandise receiving.
- 3.3. If the term "free" for place of destination, dispatch and lading etc. is agreed, the transfer of perils to the customer shall take place with the handing over of the merchandise to the forwarding agent, hauler or to any other person or institution authorized to perform shipment.
- 3.4. EMCO shall only be bound to effect insurance, if and to the extent to which this has been agreed upon in writing, and the costs for it shall be borne by the customer.
- 3.5. For interpretation and amendments of other supply and transfer of perils agreements the version of the INCOTERMS as amended at the time the contract is entered into shall prevail.

## 4. TERMS OF DELIVERY

- 4.1. Unless otherwise agreed upon the delivery date shall not commence until fulfillment of the terms and conditions as listed below:
  - a) Returning of the undersigned acceptance of order
  - b) Compliance with all technical, commercial and financial conditions incumbent on the customer pursuant to the contract
  - c) Making of down payment by customer or organization and forwarding of the agreed indemnification.
- 4.2. The delivery date shall be considered complied with if EMCO informs the customer about the

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readiness for delivery or of the fact that the merchandise has left the plant prior to the expiration of the delivery date.

4.3. EMCO reserves the right to perform partial or advanced delivery upon prior notification of the customer.

4.4. In the absence of explicitly converse written agreement delivery dates are non-binding for EMCO. They are limited by the possibilities of our contractors to deliver.

4.5. A stipulated delivery date shall be prolonged according to the duration of the respective events and obstructions, and delays so caused shall not be placed in EMCO's sphere, if they occur during an already existing delay. Among such are actions in connection with industrial conflicts, especially strikes and lockout and all circumstances independent of the will of the parties such as e.g. fire, mobilization, confiscation, embargo, prohibition of foreign exchange transfer, revolt, lack of means of transport, general shortage of supply goods, restriction of energy consumption, delays in the delivery of components specified by the customer.

4.6. If, in spite of the aforementioned provisions, a default in delivery occurs, the customer shall be entitled to either still request fulfillment or to withdraw from the contract upon setting of an adequate period of days of grace. Regarding all merchandise already delivered by EMCO or which is not yet being defaulted by EMCO, the customer shall only be able to withdraw from the contract if the aforementioned merchandise cannot be utilized in an adequate manner without the outstanding merchandise. Already delivered but not utilized merchandise shall be returned at the costs of the customer. In case of returned merchandise already utilized by the customer EMCO reserves the right to charge an appropriate compensation fee.

4.7. Other claims of the customer than listed in 4.6. only exist if EMCO has defaulted grossly negligent. Should the customer insist on fulfillment he shall be entitled to compensation of the default damage. Compensation will be lump-sum compensation to the effect that compensation of 0.5% of the value of the defaulted delivery per defaulted week shall be paid, whereas the total compensation shall not exceed 7.5% of the value of the performance owed. Such limitation according to amount shall also apply in cases where the customer withdraws from the contract. All duty of replacement for interruptions in the business of the customer or for loss of profit shall expressly be excluded.

4.8. In case the customer defaults to accept the contractually provided merchandise on the contractually fixed point in time, his entitlement for delivery/handing over of the merchandise shall be considered lapsed. In such case EMCO shall be entitled to only release the merchandise step by step against payment of the total price including all incidental claims (compensation for damages, costs for warehousing, bank charges, etc.). Incidentally, EMCO is entitled to either request fulfillment or to declare

rescission of the contract upon setting of an adequate deadline. In case of customized merchandise and merchandise made to specification, the customer is bound to accept the merchandise also in case of default in delivery. Should he nevertheless reject acceptance liquidated damages not subject to judicial discretion to the amount of the purchase price shall be considered agreed upon, without EMCO having to render proof of the actual damage.

4.9. Furthermore, EMCO is entitled to effect warehousing of the merchandise at customer's risk and cost in case of default of acceptance of the customer after selection of the merchandise. In general, EMCO shall be reimbursed for all costs arising in connection with default and the resulting consequences by the customer. All claims for damages in excess remain unaffected. After occurrence of the default of acceptance EMCO is free to dispose of the merchandise otherwise.

4.10. EMCO shall not be bound to take back packaging material.

## 5. ACCEPTANCE TESTING

Should the customer require an acceptance testing, such testing must expressly be arranged with EMCO in writing upon conclusion of the contract. Unless otherwise agreed upon, the acceptance testing has to be performed at the place of manufacture resp. at a place to be determined by EMCO during regular working hours. In doing so, the general practice of the corresponding sector of industry is instrumental for the acceptance testing. EMCO will inform the customer in due time of the acceptance testing so that the customer is able to be present at the testing resp. is able to be represented by an authorized agent. Should the merchandise prove to be defective during the acceptance testing, the defects are to be corrected by EMCO. The customer may require a repetition of the testing only in cases of considerable defects. Following the acceptance testing an acceptance report has to be compiled. If the acceptance testing results in contract-compliant completion and unobjectable serviceability of the article of sale, this has to be confirmed in writing by both contractual parties. Should the customer or his authorized agent not be present at the acceptance testing in spite of timely notification, the testing will be performed by EMCO alone. If the testing so performed results in contract-compliant completion and unobjectable serviceability of the merchandise, this has to be included in the acceptance report and the acceptance testing shall be considered completed. A copy of the acceptance report is to be forwarded to the customer, who shall be bound to the contents of the accepting protocol. Unless otherwise agreed upon, EMCO shall bear the costs for the acceptance testing. The customer shall cover all of his costs and the costs arising for the authorization of his agent in connection with the acceptance testing, such as e.g. travel expenses, costs of living and allowances.

## 6. PRICES

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- 6.1. In the absence of other agreements prices are quoted ex works and without costs for packaging, shipment, insurance and transport. Should the place of execution differ from the place of delivery, the prices are quoted exclusive unloading and loading of the merchandise delivered. In the absence of deviating agreements packaging is performed in standard manner, to avoid damage of the merchandise to its destination under normal conditions of transport, at customer's costs. Any additional packaging will only be performed by specific request and at the expenses of the customer.
- 6.2. For price changes accruing after completion of contract, caused by changes of taxes, customs duties, foreign exchange rates, freight charges etc. or for services instructed by the customer, not covered in the original contract, an appropriate charge shall be collected and such costs will be additionally invoiced.
- 6.3. In case the contract is concluded without express valorization, the list prices in Euro in force on the date of acceptance of order shall be understood as agreed.

## 7. PAYMENT AND DEFAULT

- 7.1. Unless otherwise expressly agreed in writing, one third of the purchase price and other monies shall be payable upon conclusion of the contract, another third upon commencement of manufacture and the rest not later than at the date of submission or upon delivery. Irrespective thereof, value added tax contained in the respective bill shall in either case be payable within 30 days after receipt of invoice. The eligibility to cash discount deduction is subject to an express written agreement.
- 7.2. The customer is not entitled to retain due payment because of possible counterclaims (e.g. guarantee, warranty or indemnity claims). Moreover, the customer shall only be entitled to offset counterclaims against pecuniary claims by EMCO if ascertained by court or expressly acknowledged in writing by EMCO.
- 7.3. Should the customer fall behind with his payments, with advance performance or secondary obligation, he is obligated to effect all or part, EMCO shall have the right to cancel a contract by granting reasonable days of grace or to insist on fulfillment of the contract and to immediately make mature the total purchase price. In such case, EMCO shall also be entitled to refuse supply of EMCO's services or partial services, until performance of complete settlement of the purchase price including all interest and fees and to retain all merchandise in EMCO's custody.
- 7.4. Upon occurrence of the default EMCO shall be entitled to debit the customer with default interest in the amount of 8 % above base rate.
- 7.5. In case of default of payment the customer undertakes to replace all of EMCO's costs, fees and cash expenditures resulting from whatsoever writ and the ones resulting from a prosecution of EMCO's legitimate claims, especially also charges for interventions of a licensed debt collecting agency.
- 7.6. In case where part-delivery has been agreed upon and the customer defaults in respect to payment of a part-delivery, EMCO shall have the right to cancel a

contract regarding both, the respective part-delivery and also regarding all outstanding services.

- 7.7. The failure to meet contractual obligations, which when considered from an economical point of view would not have been concluded without the conclusion of another, shall entitle EMCO to withdraw from both contracts.
- 7.8. EMCO's cancellation entails complete restitution of the work performed and entitles EMCO to assert full compensation. In particular, EMCO shall be entitled to demand provision of merchandise already delivered at customer's risk and expense, whereas depreciation of the merchandise meanwhile occurred shall be at customer's expense. Finished and semi-finished but not yet consigned merchandise may be made available to the customer at his risk and expense by levying the pro-rata sales price and in case of default of acceptance of the customer, storage capacity shall be made available in EMCO's or in facilities rented for such purpose. At the same time EMCO shall be exempt from all further contractual obligations.
- 7.9. Should the customer unjustified withdraw from the contract, EMCO shall be reimbursed for all costs incurred until the point in time of the withdrawal, however not less than 15 % of the contract value.
- 7.10. The basic currency shall be EURO. The use of other currencies has to be agreed upon in writing. Expenses so caused shall always be at customer's expense and payment shall be considered effectuated by means of bank transfer with the day the amount is credited to EMCO's bank account.
- 7.11. With any exceeding of the payment period all granted remuneration (discount, deduction and others) shall expire and shall be attributed to the invoice.
- 7.12. If the customer was granted the right to cover his debt in installments, not timely or not complete payment of just one installment entails entering of date loss. In such case EMCO shall be entitled to request immediate payment of the total debt, plus default interest as agreed upon, from the point in time of the original maturity. The same is valid should insolvency proceedings be opened against the assets of the customer or the assets disclaimed in the absence of sufficiency to cover costs (in the absence of marginal assets) or an execution procedure be instituted against the customer.
- 7.13. Incoming payments shall firstly be attributed to costs (expenses), then to interest and finally to the capital. Deviating allocation statements may be submitted within four weeks after receipt of payment. EMCO shall be entitled to first of all charge payments dedicated by the customer to unsecured resp. the respectively oldest invoice related to date.
- 7.14. In case of default, EMCO is entitled to charge up to a maximum amount of € 25.00 as replacement for the collection fee per reminder. Furthermore, the customer shall be obligated to incur any arising operating costs and upon EMCO's request to provide appropriate indemnification.
- 7.15. Should the credit worthiness of the customer deteriorate during the period between submitting of

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offer and complete payment of purchase price, EMCO shall be entitled to demand additional indemnification and prior to the deposit under no condition shall any default in delivery commence.

- 7.16. The amount of all securing means granted by EMCO (liability escrow, retention, advance payment bond etc.) is based on the respective basis of assessment excluding VAT.

## 8. RETENTION OF TITLE

- 8.1. All merchandise delivered shall remain property of EMCO until complete payment is performed (retention of title). This shall also be valid for articles EMCO mounts or assigns in the context of work performance. Retention of title shall also be considered agreed upon should EMCO's claim be cleared with a current account (current account with business partners).

- 8.2. The customer agrees to carefully handle EMCO's merchandise during the duration of the retention of title. As far as maintenance and service work has to be performed, the customer is required to perform these at his own costs at regular intervals. In case of resale of merchandise subject to retention of title by the customer – which may only be performed upon our express written consent – the customer on his part agrees to deliver such merchandise to his clients until full payment is performed only by means of effectively stipulated retention of title (extended retention of title). In doing so, the customer shall supply EMCO unrequestedly with all relevant details on his customer (name, address, agreement reached). The customer in advance assigns all his claims against his customers or a third party from resale of EMCO's goods subject to retention of title, as well as possible claims owing in the future according to the gross invoice value plus already accumulated interest and costs of EMCO's consignments or EMCO's co-ownership share to EMCO. EMCO shall herewith accept such retention and such retention shall be articulated in the customer's journals or on his invoices. After performance of such retention the customer shall be authorized to enforce the claim. EMCO reserves the right to enforce the claim itself, should the customer not duly meet his obligation to pay and hence default payment.

- 8.3. Any processing and compilation of the merchandise by the customer is always performed by order and on behalf of EMCO. If merchandise is processed, EMCO shall acquire common ownership in the ratio of the value of the merchandise delivered by EMCO. The same shall apply if the merchandise is processed, connected or blended with other items not belonging to EMCO.

- 8.4. In case of behavior of the customer contrary to contract, especially in case of default of payment, EMCO shall be entitled to withdraw resp. to retract merchandise delivered with retention of title not yet paid in full. EMCO shall have the right to enter the location of the merchandise delivered with retention of title – as far as reasonable for the customer - (only upon prior notification). Insofar the customer has no

right of ownership. After returning of the merchandise EMCO shall be entitled to exploit the merchandise. All costs necessary and adequate for prosecution shall be borne by the customer. Unless provided differently, the contract shall remain in force in case of assertion of retention of title. With regard to this case, EMCO shall continue to be qualified to demand payment of the total purchase price from the customer.

- 8.5. Any forfeiting or transfer by way of security of EMCO's merchandise delivered with retention of title shall not be permitted to the customer. A transfer by way of security for an entire warehouse for merchandise delivered by EMCO shall explicitly be excluded. In case of execution or distress the customer shall make reference to the existing reservation of title and to immediately notify EMCO in writing, to enable EMCO to perform the necessary counter measures. The customer shall be liable for all judicial and extrajudicial costs arising EMCO from such measures.

- 8.6. In case the merchandise delivered with retention of title is transported to a location outside the Republic of Austria or brought to such location off-site by the customer, the customer shall be responsible to ensure that EMCO's retention of title shall effectively be protected in the country to which the merchandise is or shall be introduced to. As far as certain actions are necessary for this purpose (e.g. specific marking or an entry in a local register), the customer shall perform such action at his costs in EMCO's favor. EMCO shall immediately be informed by the customer should EMCO's assistance be necessary.

- 8.7. EMCO shall be entitled to transfer the merchandise with retained ownership to third party, especially to credit companies, at any time.

## 9. WARRANTY AND COMPLAINT

- 9.1. The customer has ordered the merchandise himself and is aware of its extent and manner. Thus, EMCO shall neither be liable for a certain feature nor for applicability for a specific usage of the merchandise. Customary variations concerning dimensions, configuration and material do not qualify the customer to lodge a complaint. The customer agrees to immediately and fully inspect the merchandise after notification of readiness for delivery at the location of acceptance agreed or after receipt of delivery. In case the customer expressly or implicitly renounces such inspection the merchandise shall be considered orderly delivered upon leaving the supplier.

- 9.2. Warranty for merchandise exclusively utilized in a one-shift enterprise is limited to 12 months, merchandise utilized in a multi-shift enterprise is limited to 6 months, however, limited to a total of 2000 hours of operation, whereas the period of warranty shall commence with delivery of the merchandise by EMCO or by an dealer authorized by EMCO. Should EMCO or the authorized dealer also perform installation work, the period shall commence upon completion of installation of the merchandise. In case of delay in delivery or installation without EMCO's fault or the fault of the distribution partner, the warranty period shall

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expire 12 months from the point of transfer of perils at the latest. In all cases, the warranty period for spare parts is 6 months from the point of delivery resp. installation, whereas in case of repeated utilization of the warranty the scope of services provided at the first assertion shall be at the most be owed.

9.3. All warranty claims shall be asserted by registered mail or by telefax with written affirmation as shown below by giving as detailed as possible a description of the defect occurred and by enclosing a copy of the invoice, the certification of takeover, description of the defect as well as the service card without any delay, not later than three days. Decisive for the timeliness of the notice of defect shall be the date of posting. The statutory presumption of § 924 clause 2 and 3 ABGB shall be excluded. In case the customer is behind with the services to be rendered, especially with payments, in whole or in part, EMCO may reject fulfillment of the warranty claims asserted.

9.4. In case a customer has duly and correctly reprimanded a defect subject to warranty, EMCO will produce or have one of its contractual partners produce the contractually agreed condition of the merchandise within an appropriate period in the manner best suited to EMCO's opinion:

- a) Delivery of spare parts or of compensatory merchandise
- b) Repair of the defective merchandise on the premises or upon return of the merchandise to the EMCO delivering plant
- c) Reduction of price if the defect does not impede the proper use of the merchandise. Entitlement of the customer to reduction of price or redhibitory action shall only exist if attempts of improvement performed by EMCO within an adequate period of at least 6 weeks did not prove successful. The customer shall be liable to support EMCO in the execution of improvement attempts to the best of his ability and to follow EMCO's instructions.

9.5. Should a return of the defective merchandise be necessary due to compensation delivery or due to repair work at the EMCO location, the costs and risk of the return shall be born by the customer unless otherwise agreed. Replaced merchandise or parts of merchandise are to be released to EMCO. EMCO shall only have to cover the costs of attempts of the customer to remedy defects if agreed to in writing. Repair work performed by the salesman without EMCO's written consent shall entail loss of all further warranty claims. The same shall be valid if changes have been caused to the merchandise by a third party or by integration of external parts.

9.6. The warranty deed shall only apply for defects occurred under compliance of the intended operating condition and of normal utilization. Hence, it does not apply for defects caused by:

- a) Improper installation and implementation by the customer or his agent, contradictory to instructions provided.
- b) Improper repair work or maintenance performed by the customer or his agent as well as unauthorized

interventions not explicitly ordered by EMCO or an authorized dealer or other alterations of the merchandise.

- c) No-observance of the acceptance direction, the directions for use, the provisions of the supplier on the handling of the merchandise, the safety regulations, the maintenance agreement as well as other directions regarding installation, implementation and proper use.
- d) Natural operational wear and tear or deterioration as well as force majeure.
- e) Chemical, electro-chemical or electrical influences as well as insufficient energy supply.

9.7. A specific warranty agreement between EMCO and the customer shall prevail over the arrangements made here. The "Terms of Use and the Warranty Terms for EMCO Software Products" shall apply for software products.

9.8. For the parts of merchandise EMCO has obtained from sub-suppliers specified by the customer, EMCO shall only be liable according to the type of warranty claim EMCO itself is entitled to the sub-contractor. If merchandise is manufactured due to design details, drawings or models of the customer, EMCO shall not be liable for the correctness of the construction itself but for the accomplishment pursuant to the information of the customer. In such case, the customer shall indemnify and hold harmless EMCO guiltless in case of possible breach of property rights. Upon acceptance of repair orders or with alterations or reconstruction of old pieces of merchandise or of external merchandise as well as in case of delivery or used merchandise EMCO shall not assume liability. All plans, static calculations, parts lists, lists of materials etc. compiled by EMCO shall thoroughly be controlled immediately after arrival at the customer. If no objection is made by the customer to such documents within ten days after receipt the documents shall be considered approved. In case such documents are not compiled by EMCO but by a third party, EMCO shall not be liable for their default but only for gross culpa in eligendo.

9.9. Any type of liability for EMCO's assembly instructions shall be excluded.

9.10. If EMCO's merchandise resp. machine proves not to be defective or that the defect is not within EMCO's sphere, the customer shall have to reimburse EMCO for all costs incurred.

9.11. A prolongation, constraint or discontinuation of the period of warranty due to a remedy of defects shall not occur. In addition, the customer shall not have a right of detention of the purchase price.

### 10. LIMITATION OF LIABILITY

10.1. Claims for damages against EMCO shall be excluded, provided they do not result from gross negligence or willful intent. In particular, EMCO shall not be liable for damages resulting from a regulation or official directive at home or abroad or from disturbances in the operation of the company. Equally, any liability for consequential damage and financial loss, not effectuated savings, loss of interest and

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damages caused by third party claims against the customer shall be excluded. The aforementioned limitations of liability shall not apply in case of physical injuries, damages to anyone's health or the loss of a life of a customer attributable to EMCO.

- 10.2. Possible warranty claims, should the defect not be acknowledged in writing by EMCO, shall be brought before the competent court within the warranty period stipulated, as the claims otherwise will expire.
- 10.3. The object of purchase only provides the guarantee which may be expected based on the specifications for admission, manual, EMCO's regulations on the handling of the object of purchase – especially relating to possibly required inspections – and other indications provided.
- 10.4. EMCO would like to point out, that any merchandise delivered features the expected safety and functional efficiency only if all industry standards, specification for admission, safety instructions, manuals as well as all other of EMCO's instructions, directions and manuals concerning installation, implementation and maintenance of the merchandise are strictly adhered to and fully followed.
- 10.5. The limitation of liability shall be passed in full to possible customers, with the obligation of further circulation.
- 10.6. Claims for damages resulting from a breach of precontractual due diligence shall be excluded.
- 10.7. Warranty claims and/or claims for damage resulting from employment assigned to employees by the customer on the occasion of the performance of contractual work, which does not constitute a part of the services stipulated, shall entirely be excluded, as in such case the employees are to be qualified as temporary workers.
- 10.8. The disclaimer of warranty shall also comprise claims against EMCO's employees, salesmen and persons employed by the obliged party in performing obligations due to damages, caused to the respective customer without regard to a contract on their part with the customer.
- 10.9. If and to the extent to which a customer is able to call upon insurance benefits for damages for which EMCO is liable for, due to indemnity insurance either concluded by the customer or in his favor – no matter which type –, the customer shall be committed to utilize such insurance benefits and EMCO's liability shall be limited to the disadvantages arising in this respect for the customer by utilizing such insurance (e.g. increased insurance premium or participation).
- 10.10. Possible recourse receivables, brought against EMCO by co-contractors or any third party, resulting from the enforcement title „Product Liability“ within the meaning of the Product Liability Act, shall be excluded, unless the recourse beneficiary is able to prove that the defect was generate within EMCO's sphere and that it at least was caused by an act of gross negligence.

## 11. EXPORT CONTROL CLAUSE

Delivery of supplies and services may be subject to export control restrictions of national, European and/or

other international export regulations like the US re-export control regulations. Any re-export might require the approval by the competent authorities. EMCO's obligation to fulfill this contract is subject to the reservation that there are no hindrances out of national and/or international foreign trade and customs requirements or any other trade restriction.

The customer confirms that the scope of material supplied is used for civil purposes and/or the purpose mentioned in the project only. The customer shall be liable for the compliance of the export control regulations in case of exporting and/or-re-exporting the goods and he explicitly agrees to hold EMCO fully harmless.

## 12. FORCE MAJEURE

- 12.1. The parties shall be exempt from on schedule execution of the contract all or part, should they be prevented by doing so due to events of force majeure. As such events of force majeure shall only be considered events that are unpredictable and inevitable for the parties and that are not in their sphere of responsibility. Strike and industrial action shall be considered an act of force majeure. Any customer hampered by an event of force majeure may refer to the existence of such event if he immediately, however not later than 5 calendar days, presents a written statement confirmed by the corresponding government body resp. chamber of commerce of the supplying country, sent by registered mail explaining the cause, the beginning and possible ending of the event and the expected impact.
- 12.2. In case of events of force majeure the parties shall undertake all efforts possible to remove or abate the problem and the foreseeable damage and to keep the opposing party informed. Otherwise they shall be liable for damages to the opposing party. Deadlines and terms which cannot be adhered to due to force majeure shall be prolonged by the duration of the effect of the force majeure or, as the case may be, for a period of time determined by mutual agreement.
- 12.3. Should an incident of force majeure last for more than four weeks, the customer and EMCO shall find a way of solving the procedural effects through negotiation. Should no mutual decision be reached, EMCO is entitled to withdraw from the contract all or part.

## 13. RIGHT TO SET-OFF AND RIGHT OF RETENTION

The customer shall only set-off claims against legally ascertained claims or against claims acknowledged in writing by EMCO. The customer shall not be entitled to withhold payment due to guarantee or warranty claims or claims for damages.

## 14. DATA PROTECTION

The customer provides until further notice data for processing for the purpose of advertising and sending information and advertising material about products and invitations to thematic events. The customer expressly agrees that personal data may be automated

or conventionally processed and stored. The processing of the data is exclusively for the purpose stated above. In accordance with the relevant data protection provisions and data protection guidelines, appropriate technical and organizational measures will be taken to ensure adequate security in the processing of personal data. The parties commit to absolute secrecy of the knowledge they have gained from business relations with third parties. The declaration of consent regarding the processing of personal data of the customer can be revoked at any time by e-mail to [info@EMCO.at]. By means of an informal application, the customer can receive information about the stored and / or processed personal data by e-mail to [info@EMCO.at] and at any time. Affected rights (request for correction of data, deletion of data or restriction of data processing) can be submitted by informal request via e-mail to [info@EMCO.at]. Applications will be processed within one month and the applicant will be informed in writing about the measures taken after the processing has been completed. If the application is not or not properly processed, the customer has the opportunity to appeal to the Austrian Data Protection Authority.

#### **15.FINAL PROVISIONS**

- 15.1. With regard to all disputes under this contract, the exclusive jurisdiction of the court of the Provincial Capital of Salzburg having subject-matter competence is deemed agreed. EMCO GmbH moreover shall have the option of submitting any dispute before the Vienna International Arbitral Centre (VIAC) for a decision made in German and under the Vienna Rules.
- 15.2. The parties agree that Austrian law shall govern, but hereby exclude application of the UN Convention for the International Sale of Goods from the 11<sup>th</sup> April 1980 (CISG) and the renvoi and choice-of-law rules of the Austrian International Private Law Act. For sales to consumers in terms of consumer protection laws the aforementioned provisions shall apply only insofar as the consumer protection law does not stringently stipulate other provisions.
- 15.3. If individual terms of this contract are or become ineffective and/or void, either as a whole or in part, this fact shall have no effect on the validity of the remainder of the contract. In fact, according to the principle of equity and good faith, the ineffective/void term shall be replaced by one which serves the purpose of the contract as closely as possible.
- 15.4. The place of payment and performance for all services is EMCO's location at 5400 Hallein, Salzburger Straße 80 (Austria), even if transfer of merchandise is performed at a different location according to the contract.
- 15.5. In the event of discrepancy concerning the use of a language or misconceptions the German language shall govern.