

GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT OF EMS Energy Management Systems b.v.

1. Applicability

These general terms and conditions apply to all agreements between EMS and its customers and to all offers and to orders placed by the customer, to the exclusion of any general terms and conditions of the customer, of any nature whatsoever. Any departures from the applicability of these general terms and conditions and from these general terms and conditions themselves shall only be binding on us after they have been confirmed in writing to the customer. At the time an agreement comes into being, the customer is deemed to agree with the exclusive applicability of these general terms and conditions: the same applies to any further orders from the customer, issued orally, by telephone, by facsimile or in any other way, which therefore need not be confirmed in writing by us.

2. Offers

- Each and every offer remains valid in an unchanged manner during a period specified in the offer, failing which the offer is subject to contract.
- All pricelists, brochures and other information provided with an offer are as accurate as possible. However, no rights can be derived from this information, except if said information has been confirmed by Energy Management Systems b.v. in writing. We are not held to provide detailed information, unless stipulated otherwise in writing.
- Any and all information included in brochures, pricelists and any and all technical information in the form of drawings, designs, models, samples, and the like provided with the offers as well as any and all other written documents shall expressly remain intellectual property of Energy Management Systems b.v.. Without prior written consent the customer is expressly not allowed to let third parties use this kind of information or to sell, copy or otherwise reproduce the same. The use of this information must be limited to personal use within the framework of the offer and the possibly awarded contract. On demand and in any case if the customer does not conclude an agreement within the offer period or cancels the same any and all information must be returned immediately.
- In case of a breach of the prohibitions outlined in paragraph 3 the customer forfeits, without demand or notice of default and judicial intervention being required, an immediately claimable penalty of € 500.00 (in words: five hundred Euros) for each breach, without prejudice to the right of Energy Management Systems b.v. to claim compensation for other damages.
- Energy Management Systems b.v. is entitled to pass on the costs that were incurred to present a complex offer to the other party if an agreement is not concluded.
- The offered prices are only valid for the offered quantities.

3. The agreement

- An agreement only comes into existence when we have explicitly accepted and/or confirmed the order in writing. In the event of a binding offer term, the agreement shall take effect when the customer has accepted the offer. The order confirmation or binding offer is deemed to represent the agreement correctly and in full.
- Any additions and/or changes made at a later time and (oral) promises from us or our staff, representatives, agents or any other intermediaries shall only be binding when these have been confirmed in writing on our behalf by a person authorized to do so.
- In the event that no offer or order confirmation is sent due to the nature and scope of deliveries or works, the invoice shall also be considered as the order confirmation, which shall also be deemed to represent the agreement correctly and in full.
- Each agreement is entered into subject to the contingent condition that the customer is sufficiently creditworthy to fulfill its financial obligations under the agreement.
- Upon or following the conclusion of the agreement and before any (further) performance, we shall be entitled to demand surety from the customer that both financial and other obligations will be met.
- We shall be entitled to call in other parties for a proper performance of the agreement. If possible, we shall consult with the customer in this respect.

4. Circumstances beyond our control

- In this respect this shall include all circumstances beyond the control of the parties and all unforeseen circumstances as a result whereof the fulfillment of the agreement by us can no longer be reasonably required by the customer. Circumstances beyond our control shall in any case include: strikes, excessive staff absence through illness or absenteeism, transport problems, insufficient supply of raw materials and/or parts, fire, government measures, including import and export bans, quota restrictions, interruptions of operations at suppliers and subcontractors and on performance by suppliers and subcontractors as a result whereof we cannot (or can no longer) fulfill our obligations towards the customer.
- In the event that in our opinion the circumstance beyond our control is temporary, we shall be entitled to suspend the performance of the agreement until such time as the circumstance beyond our control no longer occurs.
- In the event that in our opinion the circumstance beyond our control is permanent, the parties may effect an arrangement on the dissolution of the agreement and the ensuing consequences. We shall not be liable for any compensation, of any nature whatsoever.
- We shall be entitled to demand payment for the work carried out in the performance of the agreement concerned before the situation causing the circumstance beyond our control became apparent.

5. Prices

- Any price quoted is without obligation, unless a binding offer term applies.
- Unless stated otherwise, the prices shall be:
 - based on the levels of the purchase prices, wages, wage costs, social security contributions and government charges, freight costs, insurance premiums and other costs prevailing on the date of the offer and/or order;
 - based on carriage paid delivery to the premises of the customer or a different destination in the Netherlands indicated by the customer, unless otherwise agreed in writing and without prejudice to the provisions of article 6.3;
 - excluding VAT and any other duties;
 - based on delivery ex works/warehouse for order outside the Netherlands;
 - excluding the costs of installation and start-up, unless stated otherwise, in which case these costs shall be specified separately;
 - excluding the costs of non-standard packaging;
 - stated in Euro, subject to the right of adjustment following any changes in exchange rates.
- In the event of an increase of the cost price factors, we shall be entitled to adjust the order price accordingly, all this subject to any existing legal provisions in this respect.

6. Costs and risks pertaining to transport

- In the event that the customer has not issued any further instructions, we shall determine the method of transport, shipment, packaging, etc. in accordance with good

business practice. Any specific wishes the customer may have concerning packaging and/or transport, which is also deemed to include the movement of goods within the confines of the site, will only be carried out if the customer pays the cost involved.

- In principle goods will be transported at our risk, with the exception of shipments outside the Netherlands. Our liability shall be entitled to charge an insurance surcharge.
- For orders with an invoice value below EUR 50,00 VAT excluded, we shall be entitled to charge EUR 34,50 for freight and handling. In exceptional cases, for example when there is no correspondence between the freight costs and the value of the goods (for example in the event of very bulky or highly fragile goods requiring special packaging) we shall be entitled to charge the actual freight and handling costs.

7. Delivery and delivery term

- Unless otherwise agreed, delivery shall take place carriage paid to the premises of the customer or a different destination in the Netherlands indicated by the customer. Deliveries outside the Netherlands shall be ex works/warehouse, unless otherwise agreed.
- The delivery time and/or installation terms agreed shall commence on the day on which we have all the required information and documents at our disposal. Without prejudice to the provisions of article 16, the time of delivery shall be the moment at which the goods are unloaded (the actual transfer). The risk for the goods shall then pass to the customer. This also applies in the event that the goods are to be installed and/or started up by us. The selected incoterms (latest edition) shall apply to deliveries outside the Netherlands.
- The customer shall be obliged to inspect the delivered goods and/or the packaging within 24 hours of delivery for any shortages or damage or to carry out this inspection within 10 days of our notification that the goods are at the disposal of the customer. The customer must report any shortages and/or damage found upon delivery to us within 24 hours after delivery. Failure to do so shall entitle us not to handle any complaints in this respect.
- We shall be entitled to make partial deliveries which may be invoiced separately. In that case the customer shall be obliged to pay in accordance with the provisions of article 14 of these terms and conditions, unless otherwise agreed in writing.
- In the event that the goods are to be inspected on the instructions of the customer, the goods shall be deemed to be delivered other than stated in clause 2 of article 7 when the goods or the major parts thereof are ready for testing/inspection at the manufacturer concerned (third parties or EMS) and after the customer has been notified of this in writing. From that time the goods shall be for the risk of the customer, even if the goods are still to be transported by us.
- In the event that the goods are not accepted within 10 days of delivery or, in the event of call contracts, the customer fails to observe the call term agreed upon, we shall be entitled to invoice the goods concerned and to store these goods from that time completely at the customer's expense and risk.
- Agreed delivery times are always approximate. In the event of late delivery, the customer shall be entitled to set a fair term of at least 14 days for delivery of the goods. In the event that the goods are still not delivered within this term, the customer shall be entitled to dissolve the agreement, without any obligation on our part to pay any damages of any nature whatsoever. The term of 14 days does not apply to specifically ordered products with a long delivery time and specific applications or required inspections. In these cases an extra term is applicable which is proportionate to the complexity and the delivery terms of these products.

8. Acceptance, inspection and claims

- In the event that the customer fails to submit a complaint to us in writing for defects that do not come under clause 3 of article 7 within 7 days of delivery and/or installation of the goods, the customer shall be deemed to have accepted the goods. In the event of a complaint, the customer must leave the goods as they are until we have investigated the complaints.
- If it has been agreed that the customer will inspect the goods or will have the goods inspected at our premises, and the customer has not exercised this right within 10 days of being notified of the opportunity so to do, the goods shall be deemed to have been definitively accepted by the customer. Unless otherwise agreed in writing, the cost of the inspection, certificate and certification shall be borne by the customer.
- Any claims in respect of visible defects shall be made at once during the testing or inspection at the plant of the supplier concerned or at our premises or, in the event that no testing or inspection takes place, within the term referred to in article 7.3.
- Goods returned shall only be accepted by us if:
 - we have given our prior approval in writing;
 - the goods are returned carriage paid, unless agreed otherwise;
 - the goods are stock or standard materials;
 - the goods have not been delivered more than 6 weeks ago, unless agreed otherwise.

9. Product and quantity tolerances

- We cannot accept any liability for colour differences that are not more than colour nuances. The customer cannot derive the right to refuse the delivery from this.
- For certain products from our product range we reserve the right to supply up to 10% more or less than the ordered quantity.
- In respect of products for which the wall thickness, plate thickness or weights in grams have been indicated, we shall be allowed a tolerance of up to 10% more or less.
- In respect of the tolerances for differences in dimensions and/or hardness we refer to the international standards laid down for the products concerned, all such to the extent that the offer does not explicitly depart from these standards in writing and no special specification has been agreed in writing.
- Any parts to be made available to us by or on behalf of the customer and to be fitted on, in or to the product to be manufactured by us, must be delivered to us in the required quantity with a surplus of 10% (in the event that no other percentage has been agreed), on time, free and carriage paid. We accept no liability whatsoever for the parts or other goods made available to us in this way nor for the quality and satisfactory usability thereof and we may assume without any investigation that these parts can be used as is, in or on applied to the product to be manufactured by order.

10. Intellectual property rights

- In the event of the production of articles in accordance with drawings, samples, models or other instructions in the broadest sense, to be received by us from our customer or through our customer from third parties, our customer fully guarantees that the production and/or delivery of these articles shall not constitute an infringement of any patent, brands, rights of use, trade models or any other right of third parties and our customer indemnifies us against all possible claims.

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2. In the event that a third party objects to production and/or delivery on account of any alleged right, we shall be entitled solely on the basis hereof to stop production and/or delivery at once and to demand compensation of the costs incurred, without prejudice to our rights to any possible further compensation from our customer, without being held liable for any compensation to our customer. We shall be obliged to notify the customer at once of any objections received by us from third parties against the production and/or delivery of the article concerned.

11. Guarantee and service

1. Defects in delivered goods destined for long-term use can be repaired or replaced by a new delivery for twelve months following the delivery, solely at our judgment, in the event that in our opinion or in the manufacturer's opinion the defects can be blamed on design errors, the material used or the manufacture, as a result whereof the goods are unusable to the customer for the intended purpose. This guarantee does not cover consumables, such as elements, seals and hoses.

2. The customer must report the defects within 14 days of finding these defects or reasonably should have found these defects.

3. Goods that qualify for repairs and/or investigation must be sent carriage paid to our address. In the event that we have to carry out repairs or investigations outside our premises, we shall be entitled to charge the customer the travelling expenses, any transport costs and the costs of the test equipment to be used. Investigation and repairs shall in principle be done at our premises during normal working hours. Solely in the event of a separate service agreement, this work can take place outside normal working hours. In the event that the goods submitted for investigation or repairs do not show any defects, all cost incurred shall be borne by the customer.

4. All claims for repair or replacement shall be cancelled in the event that the customer itself changes or repairs the delivered goods or has these goods changed or repaired or does not use the delivered goods exactly in accordance with any instructions included or in any other way handles or uses the goods improperly or for a purpose other than the original purpose.

5. Failure of the customer to fulfill one of its obligations shall exempt the supplier from its obligations under this article.

6. Apart from the obligation in the first clause of this article we shall not be liable for any compensation. Nor shall we be liable for any damage or injury inflicted on objects or persons during work at the customer's premises on the grounds of the obligations under this article.

12. Liability

1. Without prejudice to imperative law, we shall not be liable for any damage of any kind, directly or indirectly, among which loss of profits, damage to movable or immovable properties or to persons, both of the other party and third parties. The other party shall be obliged to indemnify and compensate us for all costs, damage and interest on our part which might result directly from claims of third parties against us in respect of events, acts or negligence for which we are not liable to the other party under these terms and conditions. Subject to the provisions of this article, we shall in any case not be liable for damage caused by the improper use of the delivered goods or the use thereof for a purpose different from the purpose for which the goods are suitable by objective standards. Nor shall we be liable for damage caused by a defect in our product in the event that:

- we did not put the product on the market;
- in view of the circumstances, it may be assumed that the defect causing the damage did not exist at the time the product was put on the market by us or that this defect occurred at a later time;
- our product was not manufactured for sales purposes or for any other form of distribution with an economic purpose, nor manufactured or distributed as part of the operation of our business;
- the defect is a result of the fact that the product is in accordance with strictly binding government regulations;
- it was impossible to detect the existence of the defect on the basis of current scientific and technical knowledge at the time the product was put on the market by us;
- as far as the manufacturer of a part is concerned, the defect can be blamed on the design of the product of which the part is an element or on the instructions given by the manufacturer of the product.

2. We accept no liability whatsoever for the damage resulting from infringements on patents, licenses and/or other intellectual property rights of third parties resulting from the use of information issued by or on behalf of the customer, such as drawings, models, etc. in the broadest sense. In the event that in the written agreement made with the customer or in our order confirmation we refer to technical, safety, quality and/or other regulations relating to products, customer shall be deemed to know them, unless he immediately informs us of the contrary. We shall then supply him with further details of these regulations. The customer shall undertake to notify his buyers at all times of the above regulations in writing.

3. In the event that we assist with installation and/or start-up while this is not stated in the order, this is done at the request of the customer and at the customer's expense and risk.

13. Payment

1. Unless otherwise agreed, payment must be made net without any discount or offsetting, by means of payment or transfer into a bank and/or giro account designated by us within 30 days of the invoice date. We shall be entitled to allocate a credit restriction charge. The transaction date shown on our bank and/or giro statements shall be the date of payment. We may demand payment of the agreed price in three instalments, i.e.:

- 40% upon acceptance of the order
- 40% upon shipment of the goods to the indicated address
- 20% within 30 days of the second installment or after the notification that the installation is completed or any other progress payment as demanded by us.

2. If the buyer does not pay in a timely fashion then the buyer shall, without any further notice of default being required, be liable to pay interest equal to one per cent per month or part thereof, unless the statutory interest is higher in which instance the statutory interest shall be payable. The interest on the claimable amount shall be calculated as from the day that the other party is in default up to the moment of satisfaction of the full amount.

In addition an amount of € 40.00 per invoice shall be passed on for administrative costs as well as all judicial and extrajudicial costs related to the collection of the contractual price.

3. Each payment by the customer serves first to pay the interest owed and the collection and/or administrative costs incurred by us and shall then be deducted from the oldest outstanding claim.

4. In the event that the customer:

- is declared bankrupt, proceeds with the assignment of its estate, applies for a moratorium or in the event that all or part of his property is attached;

- dies or is placed under legal restraint;
- fails to fulfill any legal obligation or any obligation under these terms and conditions;
- fails to pay an invoice amount or part thereof within the stipulated term;
- terminates or transfers all or a significant part of its business, including the transfer of its business into a company, whether to be set up or existing, or changes the purpose of its company;

we shall be entitled, solely by the fact of the occurrence of one of the above events, to dissolve the agreement without any judicial intervention and to demand payment in full of any amount owed by the customer on account of work and/or deliveries carried out by us without any warning or notification of default being required, all such without prejudice to the right to compensation of costs, loss or damage and interest.

14. Notification obligation

1. The event that the customer is obliged by law to immediately notify government bodies or industrial insurance boards after it has been shown that the customer cannot pay, the customer shall be obliged to notify us at the same time and in writing.

15. Reservation of title

1. All goods delivered by us, including the good installed by us at the premises of the customer or its principal in accordance with the agreement, shall remain our property until the time of payment in full of everything owed by the customer under this agreement or under any related agreement, including interest and costs.

2. In the event that the goods delivered are treated, processed or mixed at the customer's premises or by the customer, we shall obtain joint ownership of the resulting new goods and/or the goods composed with the delivered goods in the value of the original goods delivered.

3. The customer shall be obliged to keep the delivered goods, as long as these are not used, clearly separated from other goods as long as the ownership has not been transferred. In the event of non-payment of an amount due, suspension of payment, application for a moratorium, bankruptcy, placement under legal restraint, death or liquidation of the customer, we shall be entitled, without any notification of default being required and without judicial intervention, to recover the goods delivered but not paid for or not paid for in full as our property, offsetting the amount already paid, if any, but without prejudice to all rights to claim compensation for any loss or damage.

4. The customer must enable us at all times to immediately recover unpaid and/or leased goods, wherever these may be.

5. The goods may be resold or used by the customer in the conduct of normal operations, but the goods may not be encumbered in any way whatsoever. In the event of resale of goods that have not been paid for, the customer shall be obliged to retain title and, at our first request, to transfer all claims up to the amount owed to us in a non-possessory lien.

16. Right of retention

1. We shall have the right of retention on all goods held by us for or on behalf of the customer, irrespective of the cause, as long as the customer has not fulfilled all its obligations to us.

2. We shall be obliged to manage these goods in accordance with good business practice without the customer having any right to compensation in the event of destruction, partial loss and/or damage through no fault of ours. The risk for the goods remains with the customer.

17. Disputes and applicable law

1. All our offers, agreements and the performance thereof shall be governed by Dutch law, with exclusion of the act of 15 December 1971 governing the enforcement of the treaty concluded on 1 July 1964 in The Hague relating to the uniform act in respect of the international purchase of tangible movable property, TRB 1964 no. 117 and 1968 nr. 13 (Public Journal 1971, S780 and S781) and the Vienna commercial treaty of 11 April 1980.

2. All disputes, including those only considered as disputes by one party resulting from or in connection with the agreement to which these general terms and conditions apply or the terms and conditions themselves and the interpretation or implementation thereof in actual and legal terms shall be submitted to the district court in Alkmaar, the Netherlands, in as far as allowed by law.

3. In the event of a dispute, the information in our records shall be conclusive, subject to proof to the contrary.

SPECIAL TERMS AND CONDITIONS IN RESPECT OF INSTALLATION

18. General

1. The special Terms and Conditions apply alongside and in addition to the provisions of articles 1 to 19, unless the following explicitly departs from these provisions.

2. The term 'we' shall also include the third party contractor called in for the installation who carries out the work on our instructions.

19. Completion/delivery

1. Our written order confirmation shall be binding as far as the installation and the related completion term is concerned. Agreed delivery times are always approximate. The delivery times commence as of:

- the date the agreement is concluded;
- the date on which the customer has provided us with all necessary information;
- the date on which the customer has paid a stipulated advance installment;
- the date on which the customer has sent us the drawings, designs, etc. approved by an authorized person, after the last of one of the dates referred to.

2. Contrary to clause 7 of article 7, the customer shall not be entitled to refuse acceptance of the installation or to cancel the agreement in the event that the delivery time is exceeded. In the event of prolonged exceeding to the delivery term, we shall consult with the customer on what should be done in reasonableness and fairness. In the event that the agreement is dissolved, the customer shall pay for the work done. Dissolution of the agreement shall not result in any obligation on our part to compensate for any loss or damage of any nature whatsoever. As long as the customer does not promptly meet its obligations, we may suspend completion and/or delivery.

3. The work shall be deemed to be completed and/or delivered:

- in the event that the customer has approved the work after inspection;
- after we have informed the customer that the work has been installed, mounted and/or is ready for operation. The customer must provide the required test facilities. A missing part that should have been delivered by a third supplier or contractor shall not constitute a reason for considering the work as uncompleted;
- 8 days after we have given written notification that the work is completed and the customer has failed to inspect and/or test the work or have this tested within this term;

- after the customer has actually taken the work into operation. A part shall be considered as completed upon the taking into operation of that part.
4. Small, non-essential defects shall be repaired by us as soon as possible and do not constitute a reason for the customer to withhold approval.
5. Recommendations and/or information relating to installation and/or use of the system shall be provided to our best knowledge and without guaranteeing any particular result, unless otherwise agreed.

20. Scope of the work

1. The installation work to be carried out shall comprise the work as described in the order confirmation and, in the event that and in as far as agreed, the work shall also include the supervision and/or training of the customer's staff appointed for the use and operation of the system to be supplied, without guaranteeing any particular result in respect of this supervision and/or training.
2. Unless explicitly otherwise agreed, the following work, deliveries and facilities are not included in our obligations. The customer shall be obliged to ensure that these are carried out in time to prevent any delays in the work to be carried out by us.
- Earthworks, paving, piling, breaking, foundation work, concreting, carpentry and upholstery or other additional work, of any nature whatsoever. The customer shall in any case have to ensure good site accessibility.
 - Additional help to move items that cannot reasonably be handled by two people and the hoisting equipment to be used.
 - Providing and putting up scaffolding and ladders and removing these after the work is completed.
 - Supplying fuels and auxiliary materials such as compressed air, gas, water, electricity and the required piping necessary to carry out the work, any tests and starting-up, the supply of control and security equipment and lines for the electric motors and/or other electrical equipment to be supplied with the exception of starting resistances and rheostats that are part of the electrical equipment.
 - Providing a dry, heated, lighted and separately lockable area of adequate dimensions in the immediate vicinity of the site to serve as accommodation for the workers concerned and to store the materials to be processed, tools and personal belongings of the workers for the duration of the works.
 - The work to restore parts of systems that have been dirtied or damaged during work, unless the dirt or damage was caused by our subordinates.
 - Lighting of the site in such a way that the installation work can continue.
3. The customer shall also be responsible for submitting the applications and/or paying the amounts due in respect of feed lines, connections, taxes on encroachments over public land, nuisance act (permits), building and/or renovations permits, etc.
4. Unless explicitly agreed otherwise in writing, any materials replaced or removed shall become our property.

21. Variations in work

We shall be entitled to carry out additional work and to charge this without the prior permission of the customer in the event that this additional work amounts to no more than 10% of the originally agreed amount.

1. Changes in the order from the customer or caused by changed circumstances as a result whereof the original agreement cannot be (completely) maintained, will be carried out and charged as variations in work. All this within reasonable and fair limits.
2. In the event that the amount of the variations differs more than 10% of the original amount, the parties shall consult in respect of the measures to be taken. In the event of cancellation by the customer, we shall be entitled to invoice the costs incurred until that time and/or the goods supplied.

22. Guarantee/liability

1. The supplier guarantees that the goods supplied and/or installed meet the specifications agreed and the reasonable requirements in respect of usefulness and fitness for their purpose for 12 months. The guarantee obligation is restricted to repairs and/or replacement in respect of any shortcomings, provided that claims are submitted in time.
2. We shall not be liable for:
- the design of the system and/or parts thereof and all other information if this has not been provided by us;
 - influences on the system as a result of the use of material and/or operating instructions that have not been provided by us;
 - the instructions in respect of operation and/or power supply are not carried out accurately;
 - normal wear and tear and damage and/or wear and tear caused by overloading or by the influence of abnormal circumstances;
 - the implementation of legally prescribed safety requirements.
- Without prejudice to the provisions of article 12, the guarantee obligation of the supplier shall lapse in these cases.

23. Claims

The customer shall be obliged to submit claims relating to the capacity of a component and/or the system directly to us in writing within one month after completion of the work.

24. Payment

1. In the event of installation, we shall be entitled to demand payment in installments as follows:
- 40% upon conclusion of the agreement;
 - 40% upon testing/inspection and/or ready for Shipment of the goods or the major parts there of;
 - 20% within 30 days after the second instalment.

25. Filing

These Special Terms and Conditions have been filed at the Office of the Court in Alkmaar and can also be downloaded from the website of EMS Energy Management Systems b.v. (www.EMSvalvesinstruments.com)

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