

# ENMO GENERAL CONDITIONS OF SALE

## © ENMO Sound & Vibration Technology

These general terms and conditions are applicable for the companies ENMO Nederland BV, ENMO BV and ENMO Services BV, herein after referred to as 'ENMO'.

No part of these general terms and conditions may be amended, reproduced, stored in a computerized database, or disclosed in any form or manner, whether electronically, by photocopying, recording, or any other means, without the prior written consent of ENMO.

### PART A: General part

#### 1. DEFINITIONS

- 1.1. **Offer:** Any offer made by the Contractor to the Client.
- 1.2. **Advising:** Giving advice in the general sense of the word, including in any case advising in the field of automation and/or organization, performing applicability research, performing system analysis, advising in respect of equipment and/or software to be applied by Principal, providing support in the development of software, giving and/or organizing instruction, courses or workshops and supervising employees.
- 1.3. **General Terms and Conditions ENMO:**  
These general terms and conditions further referred to as **The Conditions (or the delivery Conditions)**, consisting of:
- **Part A:** general conditions;
  - **Part B:** with additional conditions concerning the delivery of services, including R&D, consultancy, service and training and further including contracting with the exception of the development of Software.
- 1.4. **Documentation:** Brochures provided by the Contractor, product information, factory drawings, instructions, test certificates, catalogues, price lists, leaflets and all information provided by the Contractor in or with an Offer or during the performance of the Agreement, such as, for example, but not limited to: designs, drawings/pictures, plans, descriptions, explanations, ideas, models, samples, tables, diagrams, databases, software, calculations and any other information which by its nature is confidential.
- 1.5. **Shortcoming:** There is a shortcoming if the Delivered by the Contractor to the Client under the Agreement is not complete and/or does not meet the specifications and/or does not possess the characteristic(s) explicitly confirmed by the Contractor In Writing to the Client before or when the Agreement was concluded.
- 1.6. **Delivered:** The deliveries made by the Contractor under the Agreement, including the (part of the) Work and/or the Work that the Contractor has delivered to the Client or has performed for the Client under the Agreement.
- 1.7. **Immediate:** As soon as reasonably possible but no later than the next full two working days.
- 1.8. **Assignment:** The agreed Work as well as the agreed Work and other work to be delivered by the Contractor under the Agreement.
- 1.9. **Order confirmation:** The Written communication from the Contractor to the Client summarizing the content of the Agreement. The Order Confirmation will usually describe the scope of the agreed delivery and the agreed prices and conditions.
- 1.10. **Client:** The party to whom the Offer made by the Contractor is addressed, to whom delivery has been made by the Contractor and/or with whom the Contractor has made an agreement.
- 1.11 **Contractor:** The person who, and his representative(s), agent(s), legal successor(s) and any other (legal) person , undertakes towards a client to perform work in execution of an assignment contract.

1.12. **Agreement:** The Agreement between the Client and the Contractor including any amendment(s) agreed after its conclusion, and the agreed additional work and less work.

1.13. **Parties:** Client and Contractor.

1.14. **Party:** One of the Parties.

1.15. **Written:** Correspondence by fax, registered letter, bailiff's writ or regular mail. This also includes correspondence by electronic medium (such as e-mail or web form) in so far as neither Party has demonstrably objected to the use of the electronic medium in question.

1.16. **SubSupplier:** The party from which the Contractor procures the goods it offers.

1.17. **Work:** The item of material nature or parts thereof to be created by the Contractor for the Principal in fulfilment of the Agreement, such as, for example, an appliance, machine, semi-finished product, structure, installation or other item.

1.18. **Activities:** The activities performed by the Contractor for the Client in execution of the Agreement concerning the provision of services in so far as it does not relate to the creation of a Work for the Client. This could, for instance, include conducting research and development (R&D), carrying out feasibility studies, Consulting, developing, designing, building and supplying and/or adapting software, systems or operating systems, designing mechanical and electrical engineering installations, the performance of service and maintenance, assembly, disassembly, installation, de-installation, connection and disconnection, installation, construction, dismantling, demolition, adjustment, calibration, validation, configuration, adjustment and setting activities, commissioning, testing, calibration, inspection, inventory, training, workshops, supervision, etc. In general, services provided are often charged by the hour on the basis of subsequent calculation when it concerns a pure effort obligation.

#### 2. APPLICABILITY OF CONDITIONS, TITLES AND LANGUAGE

2.1. **Applicability:** These terms and conditions apply to every Offer, every delivery by the Contractor, every Agreement between the Contractor and the Principal and all other legal relationships between the Principal and the Contractor. Deviations from these terms and conditions are only effective insofar as they have been explicitly confirmed In Writing by the Contractor to the Principal.

2.2. **Authorized persons:** Only employees of the Contractor who are authorized to do so according to the trade register of the Chamber of Commerce (the Netherlands) or publication in Het Staatsblad (Belgium) are authorized to perform legal acts on behalf of the Contractor. Legal acts performed by persons other than those authorized to do so according to the Trade Register cannot be invoked against the party on whose behalf the legal acts were performed unless the Contractor has ratified these legal acts In Writing. Legal acts include making an Offer, guaranteeing certain properties of a product, making promises about delivery dates, changing previously made arrangements, entering into an agreement, etc.

2.3. **References:** Where these terms and conditions refer to article numbers, those article numbers refer to the relevant articles of these terms and conditions unless it is clear from the text that the reference is to articles from another document or source.

2.4. **Proof of receipt:** If the recipient disputes that certain Written correspondence has reached him, the burden of proof that the recipient has received such correspondence lies with the sender. In the case of correspondence by electronic medium, data concerning dispatch and receipt as recorded on the Contractor's server(s) will serve as sole evidence, unless conclusive proof to the contrary is provided.

2.5. **Mutual priority clauses of The Conditions:**

To the extent that a clause in Part B of The Terms applies to the relevant agreement or part thereof and a clause in Part B conflicts with a clause in Part A, the clause in Part B shall prevail over the relevant clause in Part A with which it conflicts.

2.6. **Couance:** If, for whatever reason, the Contractor does not invoke any provision of these terms and conditions at any time, he does not thereby waive the right to invoke it at a later stage.

**3. THE OFFER AND THE CONCLUSION OF THE AGREEMENT**

3.1. **Non-binding:** Every Offer is without obligation unless a period for acceptance is specified in the Offer. An Offer without obligation may be withdrawn by the Contractor without delay after acceptance. In that case, no Agreement will be concluded.

3.2. **Offer and acceptance:** The Agreement is established by a Written Offer and its acceptance subject to Articles 3.4 to 3.7.

3.3. **Sales via webshop:** contrary to the other provisions of this article, in case an order is given via a web shop, the Agreement will only be established at the moment it is confirmed In Writing by the Contractor to the Client by means of an Order Confirmation.

3.4. **Modified acceptance:** To the extent that the Principal's acceptance of an Offer made by the Contractor differs in any respect from the Offer, the Agreement will only be established at the time the Contractor confirms the establishment and content of the Agreement In Writing by means of an Assignment Confirmation, unless the Principal objects to it In Writing without delay.

3.5. **Non-written acceptance:** If the Offer or the acceptance or both the Offer and the acceptance were not made In Writing, the Agreement will only be established at the moment the Contractor confirms the establishment and the contents of the Agreement by means of an Assignment Confirmation unless the Principal objects to it In Writing without delay.

3.6. **No agreement after objection:** In cases where, pursuant to article 3.4 or 3.5, the Agreement is concluded at the time the Order Confirmation is received by the Client and the Client objects to it In Writing without delay, no Agreement is concluded.

3.7. **Agreement by commencement of delivery:** If, for whatever reason, there is a deviation from the manner of action described in article 3.2, 3.4, or 3.5, for instance because the communication was only verbal, the Agreement will still be established, however, subject to the following. The Agreement is then established at the time that the Contractor actually starts to perform the Agreement or instructs third parties to do so. In such a situation, subject to evidence to the contrary to be provided by the Principal, the invoice is deemed to fully and correctly reflect the contents of the Agreement.

3.8. **Attached information:** Documentation provided by or on behalf of the Contractor shall bind the Contractor only insofar as data from such Documentation is explicitly referred to in the Offer. In case of no explicit reference in the Offer, the technical specifications for the listed articles apply as stated for these articles on the Website or Supplier's Product Information.

3.9. **Documentation in singular:** The Contractor shall provide Documentation to the extent agreed or, in the opinion of the Contractor, relevant, in single copies free of charge. Client shall owe a reasonable fee to Contractor for additional copies of such Documentation.

3.10. **Providing security:** At the Contractor's first request, the Principal shall provide adequate securities to the Contractor at its own expense for the timely payment of its obligations under the Agreement.

3.11. **Enabling third parties:** The Contractor is authorised to engage third parties for the purpose of performing the Agreement concluded between the Parties and to charge the costs thereof to the Principal in accordance with that Agreement

**4. CONFIDENTIALITY**

4.1. **Prohibition:** Without the written permission of the Contractor, the Client is prohibited from copying or reproducing Documentation or parts thereof in any way whatsoever, disclosing it or causing it to be disclosed to third parties, allowing it to be used by third parties, selling it to third parties or making it available to third parties.

4.2. **Right to use Documentation:** The Principal is permitted to use Documentation only insofar as this is necessary for the establishment or the performance of the Agreement. At the Contractor's first request, as well as if the Agreement is not concluded, ends prematurely or is cancelled, the Principal must immediately return to the Contractor, at its own expense, all Documentation provided to it.

4.3. **Limited readership:** The Customer shall only share the Documentation within its own organization with its own employees and insofar as this is necessary for the realization or performance of the Agreement. By taking receipt of the Documentation, the Customer guarantees that it has taken and will take adequate measures in good time to prevent any leakage of the Documentation or parts thereof to persons other than those persons/third parties who are entitled to take cognisance of the Documentation pursuant to this article.

**5. MODIFICATION OF THE AGREEMENT**

5.1. **Written only:** An amendment to the Agreement can only be agreed in Writing. If the Parties have agreed on a particular amendment to the Agreement, the Contractor will confirm the amendment to the Client In Writing. This confirmation will in any case show the substantive, financial and time-related consequences of the amendment.

5.2. **Content amended Agreement:** Unless the Customer provides proof to the contrary In Writing, the amended Agreement will be deemed to have been concluded in accordance with the contents of the Written confirmation referred to in the previous sentence unless the Customer objects to it In Writing without delay. In the event that the Client makes a timely objection In Writing as referred to in the previous sentence, the amendment of the Agreement will not come into effect.

5.3. **Or modified version:** If the Parties agree in substance on the desired amendment of the Agreement but the Written Requirements as stipulated in Article 5.1 have not been met, and the Contractor, with the knowledge of the Client, fulfills the Agreement in amended form, the invoice or invoices received by the Client from the Contractor will be deemed to reflect the correct content and scope of the amended Agreement, subject to evidence to the contrary to be provided by the Client.

5.4. **Cost already Delivered:** If an amendment to the Agreement has been agreed upon, the Principal is in any case obliged to reimburse the Contractor for the agreed price for what has already been delivered by the Contractor up to the time of amendment.

5.5. **Cost of modifying:** If an amendment to the Agreement has been agreed, the Principal must reimburse the Contractor for the associated costs, to be reasonably determined by the Contractor, resulting from the amendment. This may include the cost price of materials or manpower already purchased, price changes of supplies, or cancellation costs resulting from the cancellation of supplies that were initially required for the fulfillment of the unchanged Agreement.

5.6. **Delivery times change along:** If an amendment to the Agreement is agreed upon, the Contractor has the right to deviate from previously agreed delivery times and lead times to the extent that, in his opinion, this is necessary to be able to fulfill the Agreement in the amended form.

**6. INTERMEDIATE TERMINATION**

6.1 **Mutual consent:** The parties may jointly agree that the Agreement will terminate prematurely and under what conditions such termination will occur.

**6.2. Conditions of intermediate termination:** Termination will not occur until after:

- the agreement to terminate has been confirmed In Writing by the Contractor to the Client stating all the terms and conditions agreed in connection with the termination;
- the Client has not objected In Writing to the confirmation referred to in the previous paragraph;
- all conditions agreed by the Parties in connection with the interim termination and included by the Contractor in the Written confirmation have been fulfilled in full.

**6.3. Reimbursement:** If, as part of the intermediate termination, the Parties have agreed on a fee to be paid by the Client to the Contractor, then, in addition to the provisions of Article 6.2, the Agreement will not terminate until the remuneration referred to above has been received by the Contractor.

## **7. PRICES**

**7.1. Euros:** Unless otherwise stated in the Offer, all prices are in euros and excluding VAT, excluding import duties and othertaxes, axes or excise duties, excluding cost of packaging, excluding cost of insurance and excluding disposal fee(s).

**7.2. Cost and transport insurance in the Netherlands, Belgium and Luxembourg:** Unless otherwise agreed, for delivery within the Netherlands, Belgium or Luxembourg, the costs of transport and insurance are for the account of the Client, FCA.

**7.3. Cost of transportation and insurance:** Unless otherwise agreed, in the event of delivery, the costs of transport and insurance shall be borne by the Client. For delivery outside Belgium, Luxembourg or the Netherlands, unless otherwise agreed, delivery shall be ex-works manufacturer in accordance with the most current version of the Incoterms at the time the offer is made.

**7.4. Other costs:** The costs of assembly, installation, mounting or removal, connection or disconnection, construction, connection, adjustment, adjusting, calibration, validation, , instruction, testing, inspection and commissioning are only included in the price or at least part of the delivery, insofar as the Parties have agreed this in Writing.

**7.5. Rate changes > +/- 2%:** In the case of a non-binding Offer and also if this reservation is included in a non-binding Offer, the Contractor is entitled to adjust prices if the official currency parity at the time of delivery differs by more than 2% from the currency parity on the date the Offer was made, the latter parity being set at 100.

## **8. RISK**

**8.1. Risk transport:** For shipments within the Netherlands, Belgium or Luxembourg, the risk of theft, damage, destruction or deterioration shall pass to Client at the time of delivery of the goods in question with due observance of the other provisions of this article.

**8.2. Risk transport outside the Netherlands, Belgium or Luxembourg:** In the event of delivery outside Belgium, Luxembourg or the Netherlands, the risk in connection with transport shall be arranged in accordance with the Incoterms provisions agreed by the Parties.

**8.3. Transportation risk within the gates:** The risk during transport on Client's premises shall at all times be borne by Client unless Client can prove that the damage was caused by intent or gross negligence on the part of Contractor's management.

**8.4. Risk after transport outside the Netherlands, Belgium or Luxembourg:** In the event of delivery outside Belgium, Luxembourg or the Netherlands, the risk of theft, damage or deterioration shall in any case pass to the Client at the time the Contractor has fulfilled all his obligations in accordance with the agreed provisions of the Incoterms.

**8.5. Risk operations:** Except in cases of intent or gross negligence by the Contractor's management and when not otherwise agreed, the following risk shall be borne by the Client, without prejudice to the provisions of Article16:

The risk of loss, theft, damage, destruction or deterioration of the

Delivered by the Contractor, the property of the Client and that of third parties, related to the performance by the Contractor of work for the purpose of, among other things, but not limited to, assembly, installation, mounting or dismounting, coupling or uncoupling, construction, connection, adjustment, , calibration, validation, , instruction, tests, control and commissioning.

**8.6. Risk matters under Contractor:** If Contractor has segregated items for Client's benefit from its other stock items but has not yet delivered them for any reason, or if Contractor holds items for Client's benefit in Client's custody, e.g., for repair, inspection, calibration, validation, training, testing, or for whatever purpose, the risk of loss, theft, damage, destruction, or deterioration shall be borne by Client unless the intentional risk has materialized as a result of willful misconduct or gross negligence on the part of Contractor's management.

**8.7. Risk of return of items Client:** In the event that Contractor has in its custody items belonging to Client for such purposes as repair, inspection, etc., and such items must be shipped or transported for any reason, the risk of loss, theft, damage, destruction or deterioration during such transportation shall be borne by Client.

## **9. DELIVERY**

**9.1. Administration fee:** For orders <= 100,00 € ex. VAT 10,00€ as a contribution to the administrative and logistic costs.

**9.2. Time of delivery:** The moment of delivery is, in the case of delivery within Belgium, Luxembourg or the Netherlands, the moment when the goods to be delivered are unloaded or unloaded at the place agreed for that purpose. The moment of delivery is, in case of delivery outside Belgium, Luxembourg or the Netherlands, the moment when the Contractor has fulfilled all obligations in accordance with the Incoterms provisions agreed by the Parties (see Article 7.3). For the moment at which risk passes see Article 8, for the moment at which ownership passes see Article 14.

**9.3. Notification of transport damage etc.:** The Client must report any shortages, defects and damage in Writing directly to the Contractor within 24 hours of delivery, failing which the goods shall be deemed to have reached the Client in good order, complete and without damage or loss.

**9.4. Partial delivery:** The Contractor shall be entitled to deliver the goods to be delivered in parts and to invoice these parts separately.

**9.5. Acceptance:** Insofar as a test, trial or inspection (hereinafter: "Acceptance Test") has been agreed with respect to a delivery and a Defect is thereby established, the reporting of that Defect must take place immediately with due observance of the provisions of article 15.4. If Immediately after the Acceptance Test no Defect is reported with due observance of the provisions of article 15.4, the delivery shall be deemed to be in accordance with the justified expectations of Principal.

**9.6. Return:** Return to Contractor of goods delivered by Contractor, or any part thereof, for any reason whatsoever, may be made only with prior Written approval and only in accordance with any shipping instructions given by Contractor to Client.

**9.7. No acceptance goods:** In the event that Principal does not accept or has indicated that it will not accept a delivery offered by Contractor, Contractor shall nonetheless be entitled to charge Principal for the goods in question and Contractor shall further be entitled to store these goods (or have them stored) at its own discretion and for the Principal's account and risk for as long as it deems sensible, without prejudice to all other rights granted to it by law in connection with Principal's non-performance.

**9.8. Permits:** The Client must take care itself and at its own expense to obtain any permits, concessions, licenses, consents, etc. that are necessary for the Contractor to properly fulfill all of its obligations under the Agreement.

## **10. SPARE PARTS**

**10.1. After warranty period:** The Contractor cannot be obliged to supply spare parts for delivered goods after the expiration of the agreed warranty period.

**10.2. Spare parts warranty:** If spare parts are supplied or installed by the Contractor to repair a Defect, the warranty period shall not start anew for these spare parts. The warranty period of the original delivery remains unchanged.

**10.3. Discontinued parts:** To the extent that the Contractor is under an obligation by law or Agreement to supply spare parts for goods or parts thereof previously delivered to the Client, such obligation shall lapse at such time as the Contractor no longer has such spare parts in stock, nor are they available on the market through regular channels on reasonable terms.

**10.4. Similar goods/parts:** In the event that Contractor is required to replace goods or parts thereof delivered to Principal, Contractor shall be free to deliver a comparable good or part to the extent that, in its judgment, it is suitable for the same normal use for which the good or part to be replaced was suitable.

**10.5. Consumables:** Insofar as the Parties have not made any Written agreements regarding the deliverability of consumables, the Contractor is no longer obliged to be able to deliver consumables after the expiry of the agreed warranty period.

## **11. DELIVERIES**

**11.1. Foreign Supplies:** It may occur that the goods offered by the Contractor such as parts, semi-finished products or raw materials required for the production thereof, hereinafter referred to as 'Foreign Supplies', are supplied directly or indirectly from various continents and countries and/or are obtained from various Suppliers. The Contractor cannot rule out that in exceptional cases these Foreign Supplies may be difficult to obtain or even impossible to obtain for some time as a result of, for example, scarcity of raw materials on the world market, environmental disasters and significant fluctuations on the supply side. As a result, it is not always possible for the Contractor to predict exactly when deliveries can be made as early as when the order is placed. In order to inform the Client as accurately as possible, the Contractor uses the method described in the following paragraphs of this article.

**11.2. No fatal deadlines:** The Contractor will state estimated delivery times in his Offer. After the Agreement is concluded, the Contractor may verify these estimated delivery times and confirm them to the Client. The verified delivery times may differ from the estimated delivery times in the Offer. Neither the estimated delivery times nor the verified delivery times are deadlines.

**11.3. Extend delivery times:** Because unexpected situations may arise during the procurement, production, assembly and transport of the ordered goods and of the materials, raw materials and semi-finished products incorporated therein, over which the Contractor, in all reasonableness in his judgment, has no control, the Contractor shall be entitled to extend the verified delivery times by a maximum of four weeks at all times. To this end, the Contractor shall send a confirmation prior to the expiry of the verified delivery time stating the new verified delivery time(s).

**11.4. Fatal deadlines:** If, at the request of the Client, the Parties have agreed that deliveries are to be made on a specific day and if it has been stated in writing, before or at the time the Agreement is concluded, that later delivery is not acceptable, the Contractor will not be in default with respect to exceeding those agreed delivery dates until after he has been served with a notice of default In Writing and given a reasonable period in which to still deliver. In determining the reasonable period, at least but not exclusively, the currently applicable delivery and production lead times, the duration of any transport(s) and the availability of raw and building materials shall be taken into account. Under no circumstances shall the client be entitled to compensation or the possibility of canceling the agreement in whole or in part.

## **12. FORCE MAJEURE (NON-ATTRIBUTABLE FAILURE)**

**12.1. In case of force majeure, no obligation:** Neither Party shall be bound to fulfill any obligation, including any warranty obligation agreed between the Parties, if prevented from doing so as a result of force majeure.

**12.2. Scope:** Force majeure includes: (I) force majeure of Suppliers of Contractor, (II) failure of Suppliers to properly fulfill obligations of Contractor prescribed by Client to Contractor, (III) defectiveness of items, equipment, software or materials of third parties, the use of which has been prescribed by Client to Contractor, (IV) governmental measures, (V) electricity failure, (VI) failure of internet, service providers computer network or telecommunications facilities, (VII) war, (VIII) labor occupation, (IX) strike, (X) general transportation problems and (XI) unavailability of one or more personnel whose personal effort is necessary in connection with the performance, (XII) terrorist attacks or occupations, (XIII), epidemics and pandemics, (XIV) financial crises, (XV) non-functioning of the payment network of the relevant banks.

**12.3. Dissolve:** If a force majeure situation lasts longer than ninety days, either Party has the right to dissolve the Agreement in writing. What has already been performed under the Agreement shall in that case be settled proportionately, without the Parties owing each other anything else. The Parties shall immediately make payments to be made in connection with this settlement.

**12.4. Notice of force majeure:** If the Contractor wishes to invoke force majeure, it shall notify the Client as soon as practically possible. The effects of force majeure shall take effect from the moment the circumstance, cause or event leading to it has occurred.

**12.5. Suspend:** If the Contractor is prevented by force majeure from fulfilling any due obligation to the Client and the force majeure situation will, in the opinion of the Contractor, be of a temporary or transitory nature, the Contractor is entitled to suspend the performance of the Agreement until the circumstance causing the force majeure situation(s) no longer occurs.

**12.6. Priority:** If, as a result of force majeure, the Contractor is prevented from fulfilling its commitments to one or some of its customers or Clients, but not the commitments to all customers and Clients, the Contractor is entitled to decide at its own discretion which of the commitments and to which customers and Clients it will fulfill, as well as the order in which it will do so.

## **13. WARRANTY**

**13.1. Product warranty:** Subject to the other provisions of these General Terms and Conditions, the Contractor only guarantees that the Delivered, with the exception of consumables, complies with the product specifications at the time of delivery and that it possesses the properties that were confirmed In Writing by the Contractor to the Client before or at the time the Agreement was concluded.

**13.2. Extended warranty/operating warranty:** The parties may agree that the Contractor provides a warranty that goes beyond the product warranty as referred to in Article 13.1 with due observance of the provisions of this paragraph. The Contractor only provides a guarantee that the Deliverable will function and/or perform in a certain manner in combination with items delivered by third parties and/or in combination with items belonging to the Client (for example, in a process, in a machine or in an installation of the Client), hereinafter: "Performance Guarantee", if and insofar as this has been explicitly confirmed In Writing by the Contractor to the Client before or at the conclusion of the Agreement with due observance of article 2.2. Furthermore, the conditions for the occurrence of an obligation to achieve a result regarding a Work, as included in Article 25.4, also apply to the occurrence of a Performance Guarantee. A Performance Guarantee will lapse at such time as it becomes apparent after delivery that there are circumstances which, in the opinion of the Contractor, adversely affect the performance of the Deliverable and which had not already been reported by the Client to the Contractor before or when the agreement was concluded and confirmed In Writing by the Contractor to the Client. Unless otherwise agreed, a Performance Guarantee will lapse after 12 months after delivery.

**13.3. Term:** Unless other warranty periods are stated in the Offer, the warranty mentioned in 13.1 is the warranty granted by the factory from the time of delivery. Unless otherwise stated in the Offer, no warranty is given on used items delivered by the Contractor. Warranty on repairs on used materials for the repair and working hours also concerns the warranty granted by the factory.

**13.4. Report Defect during warranty:** If the Client has become aware of a Defect and wishes to make a claim under warranty regarding the defective

delivery, the Client must report this Defect in accordance with the provisions of Article 15.4 on pain of forfeiture of the right to do so.

**13.5. Repair or replacement:** If, in the opinion of the Contractor, there is indeed a Defect attributable to him and if the Principal is entitled to the warranty referred to in Article 13.1 with respect to this Defect, the Contractor shall, at his discretion, either see to the repair of this Defect or to the replacement of the defective item, unless such repair or such replacement cannot reasonably be required of him.

**13.6. Mode of recovery:** The Contractor is free to perform the repair of a Defect itself or to subcontract or engage third parties for this purpose.

**13.7. Transmission to Contractor:** Goods eligible for warranty must be delivered to Contractor by Principal at his own expense. All costs incurred as a result, such as, but not limited to, costs related to assembly and disassembly, installation, calibration, verification, start-up, loss of production, waiting time, production downtime, packaging, insurance and transport shall be borne by the Client.

**13.8. Reimbursement costs:** If the goods sent to Contractor under warranty are, in Contractor's judgment after inspection, found to have no Defects, or if Principal is not entitled to warranty, Principal shall be obligated to reimburse Contractor for all costs of inspection, safekeeping and shipping.

**13.9. What is out of warranty:** Without prejudice to the other provisions of this article, Client shall in no case be entitled to any warranty:

- if the Delivered is not used for the purpose and under the circumstances for which it was delivered;
- if the Deliverable is used contrary to the instructions and regulations, etc.
- in respect of items made available by the Customer for processing;
- if the alleged Defect is the result of wear and tear resulting from normal use;
- to Work performed which is in the nature of a best-efforts obligation;
- to goods prescribed by Principal or obtained by Contractor from third parties designated by Principal.

**13.10. Warranty Expiration:** All warranty claims shall immediately expire at the time that without the Contractor's Written consent:

- modifications, adjustments and/or repairs have been made to the Deliverable;
- the Delivered Product is not being or has not been used or treated in accordance with the supplied and/or applicable (manufacturing) regulations or instructions for use;
- the Deliverable is or has been otherwise used or treated improperly;
- a software modification or upgrade has taken place in or with respect to the Deliverable that was not made by the Contractor itself or by a third party designated by the Contractor;
- the Deliverable is or has been used or applied for purposes other than those for which it is intended;
- the Deliverable is or has been used in a manner that could not reasonably have been foreseen by the Contractor on the basis of the information provided by the Customer to the Contractor before or at the time of the conclusion of the Agreement.

**13.11. Waiver of warranty obligations:** As long as the Principal fails to fulfill one or more of its obligations to the Contractor under any Contract or fails to fulfill them in full, the Contractor shall be relieved of its warranty obligations from the time the Principal fails to fulfill its obligations properly until the time the Principal has again properly fulfilled all its obligations to the Contractor. During the period that Contractor is relieved of its warranty obligations, the warranty period shall continue to run.

**13.12. Damage during warranty period:** To the extent that the Contractor is required during the warranty period to compensate any damage or expenses incurred by the Client as a result of a Defect, the fulfillment of the warranty obligation by the Contractor shall constitute sole and full compensation.

#### **14. RETENTION OF TITLE**

**14.1. Extended reservation:** Without prejudice to the provisions of Article 8 regarding the risk and transfer thereof, all goods delivered by or on

behalf of Contractor shall remain Contractor's property until Client has fulfilled all his due and payable obligations to Contractor.

**14.2. Proper care:** Client is obliged - as long as pursuant to the provisions of Article 14.1 the ownership of goods delivered by or on behalf of Contractor still belongs to Contractor - to keep these goods separated from other goods in such a way that they can be easily and clearly identified as Contractor's goods.

**14.3. Reclaim:** In the event of non-payment of any amount due and payable by Principal to Contractor, and furthermore in the event that the Agreement ends other than by completion, Contractor will be entitled to reclaim the goods in respect of which the retention of title applies as property and to take the measures relating thereto (or have them taken), subject to settlement of any amounts already paid in respect of those goods, without prejudice to Contractor's right to demand compensation for any loss or damage. In the event of such non-payment or termination of the Agreement, any claim which the Contractor may have against the Principal will become immediately due and payable.

**14.4. Retrieval of goods:** Client shall, at Contractor's first request, provide a power of attorney for the immediate repossession of goods not yet fully paid for, wherever they may be located. Client agrees to cooperate at Contractor's first request in order to give Contractor the opportunity to exercise its retention of title including any disassembly, removal, sealing, disconnection, etc.

**14.5. Consequences of sales:** The Principal will be entitled to sell or use goods which are subject to retention of title in favor of the Contractor in the normal course of business; however, no security right may be established on these goods, while the Principal may not perform or cause to be performed any actions with respect to these goods that would make them part or component of one or more other goods. In the event that goods are resold that are still subject to retention of title in favor of Contractor, Principal shall be obliged to retain ownership thereof himself and, at Contractor's first request, to assign to Contractor all claims against Principal's debtor up to the amount due.

#### **15. PREVENTION OF DAMAGE, REPORTING DEFECT**

**15.1. Care Contractor:** In fulfilling the Agreement, the Contractor will exercise the care that may reasonably be expected of him. Nevertheless, it cannot be ruled out that the Delivered by the Contractor may not arrive at the Client without Defects as a result of events during transport or unforeseen circumstances or may show Defects as a result of the Client's method of use.

**15.2. Preventing damage:** The Deliverable delivered by Contractor may possibly be used in processes or installations of Customer. The manner in which the Deliverable is installed or used, under what circumstances the Deliverable is used and what specific requirements are imposed on the Deliverable are usually not fully known to the Contractor. If the Delivered will unexpectedly exhibit a Defect, this may cause damage to the Customer. The amount of that damage depends to a large extent on the way in which the Client's processes and installations are set up and what those processes and installations are for. Of importance are, for example, the manner and speed of monitoring, redundant or non-redundant executions, frequency and depth of inspections, types and manner of alarming in case of failures, permanent or non-permanent supervision, failure handling routines and related business processes, quality of maintenance, etc. Since all the aforementioned parameters are within the domain of the Client, the Client is responsible for taking adequate measures to prevent unnecessary or unnecessarily high damage in case an asset provided by the Contractor becomes defective.

**15.3. Warning:** The use of items that do not function properly may have serious consequences for the functioning of processes or installations of which the Delivered is a part or for the persons involved therein. This is therefore strongly discouraged by the Contractor.

**15.4. Notification Defect:** The Client must report a Defect in writing to the Contractor Immediately after it becomes aware of it or reasonably could or should have become aware of it if it had taken adequate measures as referred to in Article 15.2. The notification of the Defect must be so specific that it is clear to the Contractor without further inquiry what the nature of the Defect is and what actions can reasonably be expected of him. The notification of the Defect must describe all relevant

circumstances that are or could be important for an assessment of the facts of the Defect.

## **16. LIABILITY**

**16.1. Conditions of compensation for damages:** Except in cases of intent or gross negligence on the part of the Contractor's management and subject to the other provisions of these General Terms and Conditions and, in particular, the other paragraphs of this article, the Contractor shall only be obliged to compensate the Client for the damage suffered by the latter as a result of a Defect. The obligation to compensate damage does not arise until the moment when each of the following conditions has been met:

- the Defect must have been reported by Principal to Contractor in the manner described in Article 15.4;
- there must be a default as described in Article 16.2 and Article 16.3;
- the damage must be attributable to Contractor
- Principal has made it sufficiently plausible that he has taken adequate precautions to prevent or limit the damage as mentioned in article 15.2 and 15.3.

**16.2. Absence duration:** The Contractor shall be in default during the time that performance remains outstanding after it has become due and the requirements of Article 16.3 have been met, except to the extent that the delay cannot be attributed to him or, in the judgment of the Contractor, performance is already permanently impossible.

**16.3. Notice of default:** The default referred to in article 16.2 shall not take effect until the Contractor is given notice of default by the Principal by means of a Written demand for payment in which it is given a reasonable time for performance, and performance fails to occur within this time. In determining the reasonable period, account must be taken at least, but not exclusively, of the delivery and production lead times applicable at the time of the notice of default, the duration of any transport(s) and the availability of raw materials and building materials.

**16.4. Liability Insurance:** The Contractor may but need not insure himself against damage that may arise as a result of a failure to fulfill his obligations to the Client that is attributable to him. If the Contractor has taken out liability insurance, this may affect the maximum amount for which he can be sued in the event of such a failure. By entering into an Agreement, the Principal accepts that it is incumbent upon him to check in advance whether, in his opinion, the cover provided by the liability insurance taken out by the Contractor is sufficient for the Assignment in question. At the Client's first request, the Contractor will send the Client a copy of the relevant insurance policy sheet.

**16.5. Limitation of liability:** If the Contractor is liable to the Principal on the basis of an attributable failure in the performance of the Agreement or on the basis of any legal basis whatsoever, and is obliged to compensate the Principal's loss or damage, the obligation to compensate loss or damage will be limited to compensation for direct loss or damage and to a maximum of the amount involved in the Agreement (excluding VAT). If it mainly concerns a continuing performance contract with a term of more than one year, the amount involved in the Contract shall be set at the total of the fees (excluding VAT) stipulated for one year. In any event, the obligation to pay damages is limited to a maximum of € 500,000 (five hundred thousand euros). In the event that the insurer pays out an amount in connection with the Contractor's liability as referred to above, the obligation to compensate damage is furthermore limited to the amount paid out by the insurer for the case in question or to what is covered by the insurance.

**16.6. Exclusion of liability for indirect damages:** Contractor's liability is excluded for indirect or consequential damages, which in any case includes:

- damages other than damages to Contractor to remedy the direct consequences of non-performance;
- damage due to loss of profit, production stop, destruction or deterioration of goods as a result of production stop, missed savings, business interruption or due to reduced goodwill;
- damage resulting from claims by third parties, including customers of the Client;
- damage relating to the use of goods prescribed by Principal to Contractor such as, but not limited to: installations, tools, machines, materials or data, information or software of third parties;

- damage relating to the use of suppliers, programmers, consultants or controllers prescribed by the Principal to the Contractor;
- damage resulting from mutilation, destruction, or loss of data, settings of digital equipment, software, information, data or documents.

The exclusions and limitations mentioned in this article shall cease to apply if and to the extent that the damage is the result of intentional or gross negligence on the part of Contractor's management.

**16.7. Other exclusions:** Contractor's liability is further excluded for:

- the direct and indirect consequences of Customer's failure to strictly comply with the instructions for use or operation;
- normal wear and tear, and damage and/or wear and tear caused by improper use and as a result of overloading or any other form of non-normal use.
- abnormal or unforeseen circumstances, or at least circumstances which the Contractor could not reasonably have taken into account on the basis of the information submitted to him when the Contract was concluded;
- damage against which the Principal could have insured itself.

**16.8. Cumulation:** The exclusions and limitations of the Contractor's liability as described in Article 16 shall not affect the other limitations and exclusions as included in these General Terms and Conditions.

**16.9. Statute of limitations:** Any claim that Client has against Contractor shall expire by the mere lapse of twelve months after such claim arises and in any case after the lapse of three years after delivery by Contractor, regardless of the legal basis of the claim.

**16.10. Indemnification:** Client shall indemnify and hold harmless Contractor regarding all claims by third parties for compensation for losses suffered by such third parties, including claims due to product liability and infringement of intellectual property rights, as a result of a good supplied by Client to such third parties that consisted in part of goods supplied by Contractor

**16.11. Recourse to these general conditions by others:** The provisions of this article as well as all other limitations and exclusions of liability mentioned in these General Terms and Conditions also apply in favor of employees employed by the Contractor and of all (legal) persons whom the Contractor makes use of in the execution of the Agreement and in favor of the concern of which it is part.

**16.12. Third party terms and conditions:** With respect to goods and services procured by the Contractor from a third party, the provisions applicable to the relevant Agreement regarding warranty, spare parts and liability will also apply to the Agreement between the Contractor and the Principal, if and to the extent that the Contractor invokes these provisions. By entering into an Agreement, Principal authorizes Contractor to accept a limitation of liability of such third party.

## **17. INTELLECTUAL PROPERTY RIGHTS**

**17.1. Property:** All Intellectual Property Rights, hereinafter referred to as 'IE', to anything delivered, developed or made available by Contractor to Client - including Documentation, inventions, ideas, software, ICs, data files, diagrams, equipment, samples, circuits, methods, setups, installations, solutions, analyses, designs, reports, quotations - are vested exclusively in Contractor or in his licensor(s) or his Supplier(s).

**17.2. Right of use deliveries:** Unless otherwise agreed in writing, the Customer shall acquire in connection with the agreed deliveries, as far as applicable, only the perpetual, non-exclusive and non-transferable rights of use for the specific application for which the delivery was intended and exclusively for use in the country where the delivery was to take place according to Agreement.

**17.3. Moment of transition of right of use:** The rights of use mentioned in Article 17.1 shall not pass to the Client until the relevant deliveries are complete and have been duly made and the Client has fulfilled all its obligations under the Agreement towards the Contractor.

**17.4. IP rights registration:** To the extent that, with respect to the rights referred to in 17.1, a registration is required before the relevant right arises, the Client is prohibited from carrying out the relevant registration acts (or having them carried out) without the Contractor's written permission.

**17.5. Infringement:** In the unlikely event that a good sold by Contractor to Principal infringes an intellectual property right of a third party in the Netherlands, Belgium or Luxembourg, and Principal is sued in this respect, Principal is obliged to immediately inform Contractor thereof in writing. In that case, Contractor shall be entitled, at its own discretion, to remedy such infringement by:

- provide the Client with the right to use that good, or
- modify the item in such a way that it no longer infringes, or
- supply a replacement good that does not infringe, or refund the purchase price to the Customer after the good has been received back from the Customer less reasonable compensation for the period during which the Customer had the good at its disposal.

In respect of infringement of a right of IP outside the Netherlands, Belgium or Luxembourg, Client shall have no claim against Contractor and no claim against Contractor.

**17.6. Exclusion of liability IE:** Contractor is not liable for the infringement of any intellectual property right or any other exclusive right resulting from:

- any alteration in or to any good sold or supplied by or on behalf of the Contractor;
- any use or application of such good other than that prescribed by the Contractor or which the Contractor was entitled to assume under the Agreement;
- integration, use or application with goods not sold and supplied by or on behalf of the Contractor, including (parts of) systems and networks;
- a software modification not made by or on behalf of the Contractor.

## **18. PAYMENT**

**18.1. Payment Terms:** Client shall pay invoices in accordance with the payment terms stated on the invoice. If no specific conditions are stated on the invoice, Client shall pay within thirty (30) days from the invoice date stated on the invoice. Client is not entitled to set off or suspend any payment. The value date indicated on the Contractor's bank statements on which a payment is received shall count as the day on which the payment was made.

**18.2. Order of payment:** Every payment made by the Client shall serve - if applicable - first to pay the interest owed by it and the collection and administrative costs owed to the Contractor, and then to pay the outstanding claims in order of age.

**18.3. Late payment:** If the Client fails to pay amounts owed by it to the Contractor on time, the Client will owe statutory interest for commercial transactions on the outstanding amount, calculated cumulatively per month, without the need for a reminder or notice of default. If, following a payment reminder, demand or notice of default, Client also fails to fulfill its payment obligations within a reasonable period of time, it shall be in default by operation of law. From that moment on, in addition to the costs established in court, Principal is also obliged to reimburse Contractor for the judicial costs actually incurred by Contractor and the extrajudicial costs actually incurred, including the costs charged by the parties and/or judicial experts.

**18.4. Claims invoice:** Complaints regarding an invoice must be submitted to Contractor in writing within 8 (eight) days of the date of that invoice.

**18.5. Payment obligation remains:** The reporting of a Defect as described in Article 13.4 and/or Article 15.4 does not relieve Principal of its payment obligations to Contractor.

## **19. TERMINATION AGREEMENT**

**19.1. Dissolution or fulfillment:** In the event that either Party is in default, this gives the other Party the power to terminate the Agreement in whole or in part without prejudice to the power to demand performance.

**19.2. Compensation for damages:** The Contractor shall not be liable to pay damages to the Client in the event of dissolution by the Client.

**19.3. Immediate termination:** The Contractor may terminate the Agreement with immediate effect without notice of default in the event that the other Party is declared bankrupt, proceeds to divest itself of its

assets, is granted (provisional or definitive) suspension of payments, in the event that all or part of the assets of the other Party are seized or in the event that the other Party's business is liquidated or terminated.

**19.4. Consequences of dissolution:** If a Party dissolves an Agreement pursuant to the provisions of this article, the amounts owed by the Client to the Contractor at the time of dissolution shall remain payable in full, and the Client shall be liable to pay interest and costs in respect of such amounts in accordance with the provisions of these general terms and conditions, without prejudice to the Contractor's right to claim damages, to exercise its rights arising from retention of title, to take other (legal) measures and other rights vested in the Contractor.

## **20. CANCELLATION AT CLIENT'S REQUEST**

**20.1. Mutual consent:** The Client may request the Contractor to agree to cancel an Agreement that has already been placed but not yet executed. Cancellation of an Agreement cannot take place until after the Parties have agreed in Writing on the cancellation conditions, including the amount of the cancellation fee, and after all agreed cancellation conditions have been paid in full in the opinion of the Contractor.

**20.2. Moment of cancellation:** As long as the Parties have not agreed on the cancellation terms or as long as the cancellation terms have not, in the opinion of the Contractor, been fully satisfied, the Agreement shall continue and the Parties shall remain obligated to perform their mutual obligations under that Agreement in full.

**20.3. Cancellation fee amount:** The amount of cancellation charges will be determined by Contractor on a case-by-case basis. Factors relevant to determining the amount of the cancellation fee include the following:

- the amount involved in the Agreement;
- the extent to which performance of the Agreement has already progressed;
- the type of Agreement (delivery of goods, development order, delivery of a work, service agreement, training/education, etc.);
- the costs already incurred by the Contractor up to the time of cancellation; the obligations already incurred by the Contractor in connection with the performance of the Agreement;
- the actions to be taken by the Contractor in connection with the cancellation; the profit lost by the Contractor as a result of the cancellation.

**20.4 Damages due to cancellation:** In the event of cancellation of an Agreement, the Contractor shall in no event be required to compensate any damage that the Client suffers or might suffer as a result of such cancellation.

## **21. APPLICABLE LAW AND DISPUTES**

**21.1. Applicability of Belgian law:** Any Offer made by the Contractor (ENMO BVBA, ENMO Services BVBA), any Agreement entered into by or on behalf of the Contractor and any other legal relationship between the Parties shall be governed by Belgian law.

**21.2. Applicability of Netherlands law:** Any Offer made by the Contractor (ENMO Nederland BV), any Agreement entered into by or on behalf of the Contractor and any other legal relationship between the Parties will be governed by Dutch law.

**21.3** The applicability of the Vienna Sales Convention 1980 is excluded.

**21.3 Forum Choice:** Disputes arising from an Agreement concluded between the Contractor and the Principal shall be submitted to the competent court in the district in which the Contractor is located as the court of first instance, on the understanding that if a particular court is mandatorily designated as the competent court, the dispute shall be settled by the court so designated as the court of first instance, all this without prejudice to the right of the Contractor to seize and take or cause to be taken other provisional measures at such place(s) before such courts as the Contractor deems desirable.

**21.4. Other:** The provisions of Article 21.3 shall not affect the Contractor's right to submit a dispute to the court with jurisdiction under the normal rules of competence, or to have it settled by arbitration or a binding opinion.

## **22. VALIDITY**

If any provision of these General Terms and Conditions should be wholly or partly invalid and/or unenforceable as a result of any statutory regulation, court order, or any directive, decision, recommendation or measure issued by any local, regional, national or supranational authority or body, or otherwise, this shall not affect the validity of any of the other provisions of these General Terms and Conditions. If any provision of these general terms and conditions should not be valid for any reason referred to in the preceding sentence, but would be valid if it had a more limited scope or purport, such provision shall automatically apply with the most far-reaching or extensive more limited scope or purport with which or in which it is valid.

### **23. DATA PROVISION**

Upon receipt of the order/agreement, the client agrees to share the essential contact details necessary for the completion and/or execution of the order/agreement.

## **PART B: Concerning Agreements to Perform Work and Accept Work.**

### **24. APPLICABILITY**

**24.1. Work and Employment:** The provisions of these General Terms and Conditions of Delivery - concerning work to be performed - will apply to all legal relationships between the Client and the Contractor concerning the performance of Work and the contracting of Work without prejudice to the applicability of the provisions of ENMO's General Terms and Conditions of Delivery which, insofar as applicable, will also apply to the delivery of Work and the contracting of Work.

**24.2. Part B > Part A:** The provisions of these General Supply Conditions - concerning work to be performed - therefore supplement the provisions of ENMO's General Supply Conditions. If a provision of this document is also applicable and conflicts in whole or in part with a provision of ENMO's General Terms of Delivery, the provision of Part B, General Terms of Delivery - regarding work to be performed shall prevail insofar as the conflict extends.

### **25. DEFINITIONS**

**25.1. Accepting Work:** The realization (making, building, delivery) of an object of material nature by order of the Client. This could include, for example, the creation of an installation, test setup, system, machine, apparatus, printed circuit board, switchboard, etc. For the realization of the Work, the Parties will generally agree on a guide price, lay down specifications and make arrangements about additional and less work and the manner of acceptance and testing.

**25.2. Design data:** All data and circumstances, including information, dates, specifications, requirements, manner of use and environmental conditions, on the basis of which the Contractor must perform Work or deliver a Work or which he must otherwise take into account in the execution of the Agreement, to the extent that they have been provided by the Client before or during the formation of the Agreement and have been confirmed by the Contractor to the Client. To the extent that additional relevant data and/or circumstances become known to the Contractor during the performance of the Agreement, they will only become part of the Design Data when explicitly confirmed in Writing by the Contractor to the Client.

**25.3. Assignment:** The order to perform Work and/or provide a work as specified in the Agreement and the General Terms of Delivery of ENMO and Design Data.

### **26. THE ASSIGNMENT**

**26.1. Coming to fruition:** The Agreement concerning the provision of Work and/or a Work can only be concluded In Writing with due observance of article 3 of ENMO's General Terms and Conditions of Delivery. The effect of Article 3.7 of ENMO's General Terms and Conditions of Delivery is excluded for the provision of Work and of a Work.

**26.2. Scope:** The scope of the Assignment and the specifications to be met by the Deliverable shall be determined solely by what the Parties have agreed in Writing with respect thereto.

**26.3. Effort obligation:** The Work to be performed by the Contractor is in the nature of a best efforts obligation, unless it has been explicitly agreed that it is in the nature of a result obligation and the intended result has been described with sufficient definiteness with due observance of the provisions of the following paragraph.

**26.4. Result commitments:** The parties may agree in Writing that the Contractor must achieve a specific result by performing the Assignment. In that case, there is only an obligation to achieve a result if the following conditions have also been satisfied:

- all Design Data required by the Contractor that are important for achieving the agreed result must have been reported by the Client to the Contractor before or during the establishment of the Agreement and confirmed by the Contractor to the Client;
- after the Agreement has been concluded, the information, data and circumstances mentioned in the previous point have not, in the opinion of the Contractor, been adversely affected;
- the criteria on the basis of which and the circumstances in which it is assessed whether the agreed result has been achieved must be crystal clear and objectively measurable in the agreed manner;
- the manner in which the Parties determine whether the agreed result has been achieved must be confirmed in writing to the Client by the Contractor before or when the Agreement is concluded.

**26.5. Partial performance commitments:** Insofar as the Parties have agreed on an obligation to achieve a result but the conditions for doing so have not been met in full, the Agreement is in the nature of an obligation to perform to the best of one's ability insofar as, in the Contractor's judgment, the guaranteed result could not be achieved as a result of the failure to meet the conditions referred to above.

### **27. SCOPE**

**27.1. Basis for the Activities and Work:** The Contractor will perform the agreed Work and create the agreed Work on the basis of the Design Data.

**27.2. Format Design Data:** The Client will provide the Design Data digitally as much as possible in the agreed format. If nothing has been agreed in this respect, the Design Data will be delivered digitally in the format specified by the Contractor. Necessary adjustments, arrangement, conversions and sorting of the Design Data will be carried out by the Client at the first request of the Contractor.

**27.3. Access systems:** To the extent that, in the Contractor's opinion, the performance of the Work requires access to the Client's installations, networks or systems, the Client will cooperate without delay. The Contractor is not liable for any damage or costs resulting from the use of the Client's networks, systems or installations unless the Client proves that the damage or costs are the result of intent or gross negligence on the part of the Contractor's management.

**27.4. Correctness Design Data:** The Client guarantees the accuracy and completeness of the Design Data. If, in the opinion of the Contractor, there are imperfections in the Design Data, he is entitled to suspend his Work until the imperfections have been removed by the Principal. In such a case, without prejudice to the Contractor's right to compensation for damage, the Principal will in any case owe the Contractor the applicable fee for what has already been done in the execution of the Agreement, while the Contractor will then also be entitled to charge additional costs in accordance with its usual rates. The Principal cannot derive any right to compensation from the Contractor's suspension, regardless of the legal basis.

**27.5. Duty to Inform Principal:** The Client has the obligation to disclose to the Contractor in a timely manner all relevant data and circumstances that are within its domain and could be important for the performance of the Agreement.

### **28. DELIVERY**

**28.1. Start of delivery period:** If a specified delivery period has been agreed upon by the Parties, such period shall commence on the day following the day on which, to the extent applicable, each of the following conditions has been met:



- the Agreement relating to the Assignment has been concluded;
- all Design Data required in connection with the execution of the Assignment in the opinion of the Contractor have been made available by the Client in the correct format;
- if an advance payment has been agreed, it has been received by the Contractor;
- the day on which, in the opinion of the Contractor, all formalities necessary in connection with the execution of the Order have been fulfilled, including obtaining permits;
- to the extent that, in connection with the execution of the Order, work needs to be performed on a site to be designated by the Client or on an installation, network or system to be designated by the Client, which, in the opinion of the Contractor, has/have been made ready for this purpose and to which the Contractor has unimpeded access or has/have been made available.

**28.2. Delivery date instead of delivery term:** If no delivery period but a delivery date is agreed upon, the delivery period shall be equal to the number of days between the moment the Agreement is concluded and the agreed delivery date. This period shall not commence earlier than the moment when all conditions mentioned in article 27.1 have been met. The moment of delivery shall in that case be the moment when the aforementioned delivery period has elapsed in compliance with the other provisions of Article 27.

**28.3. Delay:** If delays occur during the execution of the Order that are not entirely attributable to the Contractor, the delivery period shall be extended by the duration of such delay.

**28.4. Extend delivery time:** If, during the execution of the Order, the conditions for commencement of the delivery period as described in Article 27.1 are no longer met and the progress of the agreed Work and/or the Work is, in the opinion of the Contractor, hindered as a result, the delivery period will be extended by the number of days that those conditions are no longer met.

**28.5. No fatal delivery period:** The agreed delivery period is an estimated delivery period, based on - at the time the Offer was made - delivery times of Suppliers, information and circumstances known to the Contractor. If, during the delivery period, circumstances arise through no fault of the Contractor which make the agreed delivery period no longer feasible, the delivery period will be extended to the extent necessary in the opinion of the Contractor.

## **29. FACILITATION BY CLIENT**

**29.1. Client Obligations:** Except if and to the extent expressly agreed otherwise, the Client itself shall - in the opinion of the Contractor sufficient and timely - take care of:

- earthwork, paving, piling, demolition, foundation, concrete, carpentry and upholstery work or other ancillary works of any kind;
- proper and constant accessibility of the site(s) and guidance to/at the site(s) to which the Contractor must have access in connection with the performance of the Order;
- drawings, Documentation, floor plans, diagrams and explanations required by the Contractor concerning the premises and items thereon of the Client;
- the assistance required for placing or moving items that cannot reasonably be handled by two people, as well as the hoisting and/or lifting equipment and similar tools to be operated;
- the provision, setting up and, after completion of the Contractor's Work, removal of scaffolding and ladders;
- the provision of fuels, energy and auxiliary materials such as compressed air, gas, water, electricity, gas oil and gasoline, supply and discharge lines, and the required connection points, necessary for the performance of the Order and any testing and commissioning;
- the provision of switching and protection equipment and piping for the electric motors and/or other electrical equipment to be supplied or used, with the exception of starting and control resistors that are part of the electrical equipment;
- the provision, for the duration of the execution of the Order, in the immediate vicinity of the place(s) where the Order is to be executed, of a dry, heated, lighted and separately lockable space of sufficient size, as accommodation for the workmen concerned and for the

- storage of the materials and tools to be processed or used and of the workmen's personal property as well as the provision of a toilet;
- work required to restore parts that have become dirty, damaged or dislocated, or which no longer function, to a good and usable condition, unless the contamination or damage has been caused by the Contractor's subordinates;
- starting up and/or keeping in operation and/or stopping installations under the management of the Client to the extent desirable or necessary for the performance of the Order;
- adequate lighting and, if applicable, bringing and keeping the place(s) where the Assignment is to be executed at the required or desired temperature and humidity, in such a way that the Work or the Work can proceed without difficulty;
- applications for and the timely payment of amounts due in respect of power supplies, connections, dues, nuisance permits, permits under the Environmental Protection Act and other legislation relating to the environment, building and renovation permits and other legal requirements.

**29.2. Excess materials:** Replaced, derived or removed materials shall become the property of Contractor unless he does not exercise that right.

## **30. EXTRA/LESS WORK**

**30.1. Changes/Extensions/Containment:** The Parties may agree on a change or increase or decrease in the agreed Work or the Work. If a fixed price has been agreed in the Agreement, the Contractor will inform the Principal of the financial, time-related and other consequences of the desired change.

**30.2. More/less work is modification Agreement:** If the Parties agree on an amendment or more or less work, this shall be considered an amendment to the Agreement as referred to in Article 5 of ENMO's General Terms of Delivery.

**30.3. Delivery times slide along:** In case the Parties agree on an amendment to the Agreement, the agreed delivery period or delivery date shall be extended or postponed, respectively, by the number of days necessary for the realization of the amendment to the Agreement.

**30.4. Necessary change:** If, in connection with the performance of the Work or the Work, the Contractor is of the opinion that a change and/or extension thereof is necessary or reasonably desirable, he will inform the Client accordingly. In that case, if the Client has not agreed to the proposed change(s) and/or extension(s) and the related price change in writing within 14 (fourteen) days, the Contractor will be entitled to suspend the fulfilment of its obligations towards the Client. In that case, the Principal will be obliged to pay the Contractor compensation for the Work already performed and the Delivered Work already delivered on the basis of the Contractor's applicable rates, without prejudice to the Contractor's right to compensation for damage suffered by him.

**30.5. Payment of additional work:** Unless otherwise agreed upon, additional work may be invoiced separately by Contractor after such additional work is completed in Contractor's opinion.

## **31. DELIVERY AND PURCHASE**

**31.1. Milestones:** If it has been agreed that the Assignment will be performed in phases, the Contractor is entitled to postpone or suspend the Work and deliveries relating to a subsequent step or phase or any part of such Work or deliveries until the Client has approved the results of the preceding step(s) or phase(s) in Writing in accordance with the agreed test criteria.

**31.2. Test Period:** If not otherwise agreed, Customer shall test the Deliverable against the agreed test criteria within the test period of 8 (eight) working days counting from the moment that Contractor has made it known that the Deliverable is ready for acceptance.

**31.3 Extension of test period:** If, during the performance of the test(s), it becomes apparent that the progress of the test(s) is impeded by a Defect in the Deliverable, the Customer will inform the Contractor of this in writing in as much detail as possible; in such a case, the test period will be interrupted until the Deliverable is again presented for testing.

**31.4. Reporting Defects to Delivered during testing:** The Client shall notify the Contractor without delay, in Writing and properly substantiated and documented, of any Defect that comes to light during testing or during the

warranty period. The Contractor shall not be required to remedy a Defect until after it has received from the Client all available and necessary information to remedy the Defect.

**31.5. Cost recovery Defects:** The repair of a Defect identified during testing will be free of charge if a fixed price has been agreed upon. If no fixed price was agreed upon, Contractor shall be entitled to reasonable compensation according to the agreed prices and rates for the efforts involved in connection with the repair of the Defect.

**31.6. Test criteria:** The test criteria should preferably be agreed in Writing by the Parties before or at the conclusion of the Agreement. Subjective criteria do not form part of the test criteria. Criteria agreed later are only applicable insofar as they have been confirmed In Writing to the Client by the Contractor. The Client cannot claim that the Deliverable does not meet certain requirements if these requirements are not part of the agreed test criteria. Failure to meet the test criteria will constitute a Defect as referred to in article 1.5. of ENMO's General Terms and Conditions of Delivery.

**31.7. Time of completion Delivered:** The Delivered was properly delivered and taken delivery of at the first of the following times:

- the moment at which the Customer, after testing in accordance with the agreed test criteria, has inspected the Deliverable and has not established any essential Defect as referred to in Article 30.9;
- the moment at which the test period has expired, counting from the day following the day on which the Contractor has notified the Customer In Writing that the Deliverable is ready for acceptance and the Customer has failed to test the Deliverable within the test period;
- the moment at which the test period has expired, counting from the day following the day on which the Contractor has informed the Customer In Writing that the Deliverable is ready for acceptance and the Customer has not informed the Contractor In Writing of an essential Defect (as defined in article 30.9) in the Deliverable; the moment at which the Customer has actually put into use the Deliverable or the installation of which it forms a part or has become a part after installation the moment at which the Customer has paid the invoices relating to the Deliverable.

**31.8. Work after delivery:** To the extent that the delivery of a Work has been agreed and the Contractor is still required to perform Work in connection with that Work (for example, calibration or giving instructions), the Work will nevertheless be deemed to have been delivered and taken delivery of when the Work itself is deemed to have been delivered and taken delivery of pursuant to Article 30.7.

**31.9. Essential Defect:** An essential Defect is defined as a deficiency that, in Contractor's judgment, significantly interferes with the normal operation or use of the Deliverable.

**31.10. Recovery from non-essential Deficiency:** If only one or more non-essential Defects are found during tests in connection with acceptance, the Delivered shall be deemed to have been delivered. The Contractor shall be obliged to remedy this/these non-essential Defect(s) as soon as possible. A non-essential Defect shall not entitle the Client not to take delivery of the Deliverable, to dissolve the Agreement in whole or in part or to suspend payments.

**31.11. Recommendations:** Advice, information provided, data and/or suggestions from the Contractor regarding the use, placement, commissioning, installation, expansion, etc. of the Delivered Product shall only have the character of a guarantee of, for example, efficiency, accuracy, compatibility with other items, operation in a particular environment or installation, etc., if this has been explicitly agreed upon with due observance of the provisions of Article 13.2.

## **32. WARRANTY**

**32.1. Switch provision:** The warranty provisions of Article 13 of ENMO's General Terms and Conditions shall also apply to the delivery of a Work and of Work, insofar as they may apply to it in view of the specific nature of the Deliverable.

**32.2. As per agreed specifications:** The Contractor guarantees to perform the Work and the Work in compliance with the Design Dates and to perform them in such a way that they meet the agreed specifications and the requirements to be reasonably imposed on them with due observance

of Article 25.2. of these General Delivery Terms and Conditions - regarding work to be performed.

**32.3. Warranty period under normal use:** Unless otherwise agreed, the warranty period applies to use during working days of eight (8) hours per day. If the Delivered is used during working days of more than eight (8) hours per day, the actual warranty period shall be correspondingly shorter.

**32.4. Exclusion:** Contractor provides no warranty for items which, although assembled, installed, set up, calibrated, validated, tested, inspected, adjusted and/or commissioned etc. by or on behalf of Contractor, were not supplied by or on behalf of Contractor itself.

## **33. LIABILITY**

Without prejudice to the provisions of Article 16 of ENMO's General Terms of Delivery, the following provisions shall apply.

**33.1. Exclusions related to Work.:** Contractor shall not be liable for any damages or costs incurred as a result of:

- performing Work on or in connection with goods supplied by third parties;
- incorrect, late or incomplete Design Data submitted by the Client;
- the performance of Work for the use, testing, commissioning or decommissioning of a Work of which goods supplied by third parties form part or in which such goods are assembled or installed;
- the performance of Work on a Work that has become part of an item belonging to the Client (for example, by building it in) in the period prior to the time at which the Deliverable has been properly completed and accepted;
- items used at the request, advice or instruction of the Client in the performance of Work;
- Work performed by persons recommended or designated by the Client.

**33.2. Exclusions related to Work.:** Contractor is further not liable for damages or costs resulting from:

- the design or parts of the design of the Work to the extent that this design/these parts of the design was/are not made entirely by the Contractor itself;
- the malfunctioning of the machines, installations or processes of the Client of which the Delivered has become part in the period prior to the time when the Delivered has been properly delivered and taken delivery of;
- the use of certain parts in the Work insofar as those parts were applied at the request, advice or instruction of the Client or were obtained from a Supplier designated or recommended by the Client.