

<p><b>Article 1 Definitions</b></p> <p>1.01 In these general terms and conditions (hereinafter: the "IGTC") the following words will be used with the following meaning, unless stated explicitly differently; Environmental Monitoring Systems (EMS) B.V. hereinafter "EMS": the author and user of these IGTC; Principal: the counterparty of EMS, acting in the execution of a profession or trade; Agreement: the Agreement between EMS and Principal.</p> <p><b>Article 2 General</b></p> <p>2.01 The stipulations of these IGTC apply to each offer and each Agreement between EMS and a Principal on which EMS has declared these IGTC to be applicable, to the extent that Parties have not deviated from these IGTC explicitly and in writing.</p> <p>2.02 The present IGTC are also applicable to all agreements with EMS, for the execution of which third parties need to be involved.</p> <p>2.03 The applicability of possible general terms and conditions applied by the Principal is explicitly rejected.</p> <p>2.04 If one or more stipulations in these IGTC are invalid or invalidated, then the remaining stipulations of these IGTC will remain in full force. EMS and Principal shall by then consult in order to agree upon new stipulations for the replacement of the invalid or invalidated stipulations, whereby if and to the extent possible the purpose and the tenor of the original stipulation shall be observed.</p> <p><b>Article 3 Special offers and offers</b></p> <p>3.01 All special offers are non-binding unless thereby the contrary has been determined explicitly and in writing. They are based on the drawings and design pages provided with the application etc. or on the measurements and observations executed by EMS.</p> <p>3.02 The offers issued by EMS are non-binding; they are vasection during thirty days, unless stated differently. EMS is only bound to the offers if the acceptance thereof is being confirmed in writing by the Principal within thirty days.</p> <p>3.03 Delivery times in offers of EMS are indicative and do not give the Principal upon exceeding thereof a right to dissolution or compensation for damages, unless agreed explicitly differently.</p> <p>3.04 The prices in the mentioned special offers and offers are exclusive of VAT and other levies by the government as well as shipping and possible transport and packaging costs, unless explicitly stated differently.</p> <p>3.05 If the acceptance, other than on minor points, deviates from the offering stated in the offer, then EMS is not bound by it. The Agreement is then not concluded according to this deviating acceptance, unless EMS states differently.</p> <p>3.06 A compounded price statement does not oblige EMS to a delivery of a part of the goods included in the special offer or offer against a proportional part of the agreed price.</p> <p>3.07 Special offers or offers do not automatically apply to after orders.</p> <p>3.08 If not explicitly stated differently, assembly costs are not included in our prices.</p> <p>3.09 If not stated explicitly differently, our prices are exclusive of currency risk.</p> <p>3.10 The weights, dimensions, capacities, prices, returns and other data, stated in catalogs, prospect documents, leaflets, advertisements, images and price lists have the character of an estimate. These data only bind, insofar the Agreement explicitly refers to it.</p> <p>3.11 Drawings and technical descriptions handed before or after the conclusion of the Agreement by EMS to Principal with the purpose to use these for the manufacturing or assembly of the work of a part of the work, remain exclusively property of EMS. Without our permission it shall not be used, copied, duplicated, handed over to or brought to the knowledge of third parties by the Principal. They may possibly become the property of the Principal; if this has been agreed explicitly or if they relate to a prior development agreement, to be distinguished from the execution agreement, in which EMS has not reserved the property right.</p> <p>3.12 Drawings and technical descriptions handed before or after the conclusion of the Agreement by Principal to EMS with the purpose to use these for the manufacturing or assembly of the work of a part of the work, remain exclusively property of EMS. Without the permission of the Principal it shall not be used, copied, duplicated, handed over to or brought to the knowledge of third parties by EMS, to the extent not required by the work.</p> <p>3.13 The offer is, unless explicitly stated differently, based on execution under normal circumstances and working hours.</p> <p>3.14 The calculation of our prices is based on the expectation that the concerned prices for materials and wage costs remain the same as at the time of the offer, or - if the prices have been determined without a prior offer - as at the time of the conclusion of the Agreement. If after the offer or after the conclusion of the Agreement changes occur in these prices for materials and wages costs, then EMS is authorized to increase the prices with the increase which the prices of materials and wages costs have undergone, even when this increase was already foreseeable at the time of the offer. Under prices of materials and wages costs will be understood in this article all prices, costs and factors that</p>	<p>are of influence in the broadest sense on our price calculation. After the increase of the prices has been established, EMS will be authorized to claim the increased prices in the terms in which the original amount of the order was payable on demand.</p> <p>3.15 EMS is authorized to charge the costs that have been made to make or issue and order to the Principal if no Agreement is being concluded.</p> <p>3.16 Taxes etc., that at the time of the conclusion of the Agreement did not exist, are eligible to be charged onwards.</p> <p><b>Article 4 Agreement</b></p> <p>4.01 EMS shall execute the Agreement to the best of its insights and abilities and according to the requirements of proper expertise. The one and the other on the basis of the status of known science and available technique at that time.</p> <p>4.02 If and insofar a good execution of the Agreement requires so, EMS has the right to let certain activities be executed by third parties .</p> <p>4.03 The Principal will ensure that all data, of which EMS states that these are necessary or of which the Principal reasonably should understand that these are required for the execution of the Agreement, will be provided to EMS timely. If the data required for the execution of the Agreement have not been provided timely to EMS, then EMS has the right to suspend the execution of the Agreement and/or to charge the extra costs deriving from the delay to the Principal according to the usual rates.</p> <p>4.04 EMS is not liable for damage, of whichever nature, because EMS has relied on incorrect and/or incomplete data provided by the Principal.</p> <p>4.05 If it is agreed that the Agreement will be executed in phases, then EMS can suspend the execution of those parts that belong to a following phase, until the Principal has approved the results of the prior phase in writing. If in the framework of the order activities are being executed by EMS, or by third parties employed by EMS on the location of Principal or a location designated by Principal, then Principal will arrange free of charge for the facilities reasonably desired by those cooperatives.</p> <p>4.06 Principal will safeguard EMS from possible claims of third parties, that incur damage in relation to the execution of the Agreement and which is imputable to Principal.</p> <p>4.07 A possible change and /or partial cancellation of full cancellation of an order or commission, by or upon the request of the Principal, can only take place with the prior permission in writing of EMS and on the condition that the activities already executed by EMS will be fully paid by the Principal; in case of change and/or partial cancellation upon request of the Principal EMS is authorized to charge onwards the related (extra) costs to the Principal and to set the delivery time again.</p> <p>4.08 Oral agreements, also if these relate to a change or cancellation of an Agreement, do not bind EMS until after and to the extents that these have been confirmed by EMS in writing.</p> <p>4.09 EMS is only bound to an order, after this has been confirmed in writing by EMS. The same applies to possible additions or changes of the order. The confirmation by EMS of the order is decisive for the scope thereof.</p> <p>4.10 For activities of orders for which in view of their nature and scope no offer or order confirmation is being sent, it applies that the Agreement is concluded at the moment that by or on behalf of EMS an actual start has been made with the execution of the Agreement, while in such a case the invoice will be regarded as an order confirmation, which is also deemed to represent the Agreement correctly and fully.</p> <p>4.11 EMS is authorized to request at the conclusion of the Agreement or thereafter, before a start is made from the side of EMS with the execution of the Agreement or that execution is continued that sufficient surety is provided by the Principal regarding the timely satisfaction of his payment obligations and other obligations.</p> <p><b>Article 5 Technical requirements</b></p> <p>5.01 EMS is responsible that delivered goods comply with the technical requirements, as set by the laws and regulations of the Netherlands.</p> <p>5.02 If the goods to be delivered shall be used outside the Netherlands, then the Principal is required to notify so, while stating the special technical requirements, before the conclusion of the Agreement. The Principal will safeguard EMS from claims of third parties in relation to not making the aforementioned statement or the incorrectness of the statement.</p> <p><b>Article 6 Scope of a commission accepted by EMS</b></p> <p>6.01 If a commission for the assembly of the installations or parts to be delivered has been accepted, then the price is calculated for a ready to operate assembled status on the place stated in the offer. In the price is then included the instruction in the operation and maintenance of the installation, to be given by EMS to the Principal or the personnel, that will be charged with the operation. EMS shall determine the scope and duration of that instruction, but shall accept no liability whatsoever in relation thereto.</p> <p>6.02 Unless explicitly differently stated in the offer, neither will be part of the assembly nor shall be part of our responsibility:</p>	<p>1. ground, sinking, hacking, breaking, foundation, masonry, concrete, carpentry, leveling, painting and upholstering works or other additional works of whichever nature;</p> <p>2. the extra help for the moving of those parts that cannot be moved by the personnel made available by EMS, as well as the cranes and lever tools and pulleys required therefore;</p> <p>3. the provision of scaffolding or racks;</p> <p>4. the realization of connections of the installations to the electrical grid, gas of water supply networks, as well as the connection of the disposal ducts;</p> <p>5. the supply and assembly of the switch and security devices and electrical conducts for the electronic equipment and other electrical devices to be delivered for and by EMS;</p> <p>6. the delivery of subscriptions and materials for all kinds of services such as for instance for telecommunication, maintenance, gas, water, electricity, compressed air gases, required for the testing and putting into operation;</p> <p>7. activities, required to bring parts of the installation(s), that have become dirty or damaged at the work not because of EMS, in good shape again;</p> <p>8. the provision of revision drawings.</p> <p>6.03 The Principal obliges to timely ensure that:</p> <p>1. the activities, which do not belong to the order issued to EMS, have been executed so timely according to the requirements of the work, that the assembly of the commission accepted by EMS experiences no delay because of that;</p> <p>2. Before or upon arrival of the goods for the benefit of the technicians one or more properly illuminated, dry and for them properly closable spaces of sufficient size with a reasonable distance of the location, where the installation in principle has to be applied, as a working place, for storage of materials and as a canteen will be made available free of charge. When during the work the designated spaces must be changed upon the request of the Principal, then the related costs will be for the account of the Principal;</p> <p>3. for the delivery of the goods a proper access road is present;</p> <p>4. the goods, which are delivered before the arrival of the technicians will be stored in a dry and safe area in a closed space;</p> <p>5. without charge will be made available: a connection for electrical power in or on the work site, for the operation of electrical drill and other tools and for walking lights;</p> <p>6. such illumination is present at the activities, that the assembly work can continue under artificial light;</p> <p>7. to EMS the use of construction elevators and scaffolding, to the extent present, without a license is granted, otherwise a license to EMS is granted and in advance is announced that the license needs to be applied for, as well as the use of telephone against call costs;</p> <p>8. the required put through openings and possible required drain channels for the pipework to be installed by EMS in the required dimensions will be present. All costs deriving from not -timely or not -proper compliance by the Principal with his obligations mentioned under the previous section 1 t/m 8 can be charged by EMS. As soon as the Agreement regarding installation of an installation has been completed, then EMS is authorized to place an advertising board, which contains our tradename, at the place and keep it in place during execution, without that a fee may be charged for it to EMS. These authorizations become void in case of an existing and in use building.</p>
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Article 7	Delivery, delivery time	8.03	EMS is authorized without prior consent of the Principal to execute or have executed extra work and charge for that, if the costs of the extra work do not amount to more than fifteen percent (15%) of the originally agreed amount.	Article 12	Warranty
7.01	Delivery takes place ex works/warehouse of EMS.			12.01	EMS warrants that the designs and prototypes comply with the agreed specification(s), as well as the usual requirements and norms that can be set for it.
7.02	If delivery takes place on the basis of "Incoterms", then the "Incoterms" in force on the moment of the conclusion of the Agreement shall be applicable.	8.04	Changes in a order deriving from the Principal or caused or become necessary by change of circumstances because of which the original Agreement cannot be maintained (in full), shall be executed as being extra work and charged on, this within the limits of reasonableness and fairness.	12.02	EMS warrants that series products to be delivered comply with to the agreed specification(s), as well as the usual requirements and norms that can be set for it.
7.03	Principal is obliged the goods to take off the goods on the moment on which these are made available to him according to the Agreement.	8.05	For extra work or lesser work that deviates more than fifteen percent (15%) from what was originally agreed, parties need to enter into consultation with each other over the measures to be taken. In case of cancellation by the Principal EMS will be authorized to invoice the costs incurred till then and delivered goods to the Principal.	12.03	EMS gives a 12 months guarantee on possible material and manufacturing errors of series products commencing on the date of delivery. On prototypes that are built at the request of the Principal by EMS no guarantee is given. For a claim on guarantee of delivered components and materials EMS will claim under the guarantee conditions of the concerned supplier of the concerned components and materials to EMS.
7.04	If the Principal refuses to take off or is negligent with the provision of information or instructions that are necessary for the delivery, then EMS is authorized to store the goods for the risk and the account of Principal.			12.04	No guarantee applies to goods delivered by the Principal.
7.05	If the goods need to be delivered, then EMS is authorized to charge delivery costs. These shall then be stated separately on the invoice.			12.05	The guarantee also applies if the goods to be delivered are destined for the use abroad and Principal has mentioned this use at the time of the conclusion of the Agreement explicitly in writing to EMS.
7.06	If EMS requires data from the Principal in the framework of execution of the Agreement, the delivery time starts after Principal has made this available to EMS.			12.06	If a delivered good does not comply with the set requirements, then EMS will at the discretion of EMS, within a reasonable time period after receipt of the good, repair or replace it or credit Principal for it.
7.07	If EMS has stated a time period for delivery, then this is indicative; a stated delivery time is therefore never a fatale time period.			12.07	The guarantee here mentioned does not apply when the defect has arisen as a consequence of inexpert or improper use (including breaking the seals applied by EMS) or when, without permission in writing of EMS, Principal or third parties have applied or try to apply changes to the good are have used this for purposes for which the good is note destined. Furthermore is excluded from this guarantee: normal wear and tear parts and damage caused by abnormal circumstances such as electrolytical working, chemical affection in the broadest sense of the word or excessive charge. Also excluded are all damages caused by wrongful location, inexpert treatment or not proper maintenance by or on behalf of the Principal.
7.08	Exceeding of the agreed delivery time, by whichever cause, does give Principal no right to compensation for damages, neither to request dissolution of the Agreement.			12.08	Shipping, transport, travel, board costs in the provision of guarantee etc. are always for the account of the Principal.
7.09	EMS is authorized to deliver the goods in parts, unless a deviation thereof by Agreement is in place or when no independent value is attached to de partial delivery. EMS is authorized to invoice the so delivered separately.			12.09	Except for the stipulation set forth in the following sections of this article EMS warrants that the goods delivered goods by it in that sense that EMS meets with the specifications in the Agreement and to reasonable requirements of usability and properness. After the final delivery EMS will be held under the guarantee exclusively to the application of the necessary improvements or repairs to alleviate defects with regard to which in accordance with the previous article a timely reclamation has been made.
7.10	If it is agreed that the Agreement will be executed in phases, the EMS can postpone the execution of those parts that belong to a following phase until the Principal has approved the results of the preceding phase in writing.			12.10	EMS however does not accept any responsibility:
7.11	Unless agreed differently, the delivery time starts form the last of the following dates:	9.01	If the work during the testing proves to have defects or not be compliant with the Agreement, then EMS will repair these defects as soon as possible for its own account or ensure that the work complies with the requirements of the Agreement. After that the testing, if so required by the Principal, will be repeated. The stipulations in this section shall not apply in case of defects that are the consequence of and/or relate to the working conditions on the construction place. For these working conditions the Principal is responsible.	1.	for the design of the installation, if this does not come from EMS, but from the Principal or third parties;
7.12	the date of conclusion of the Agreement;			2.	for the usability of properness of certain materials and parts, if the application there has been prescribed by Principal or his advisers;
7.13	the date, on which all technical and other data required for the execution of the agreed work are in the possession of EMS or have been processed by EMS;			3.	for the provision or non provision of advices on any area that according to article 6.02, does not belong to work of EMS;
7.14	the date, on which EMS, if a term payment before the start of the assembly has been stipulated, has received this.			4.	for defects, caused by errors or omissions of Principal and those persons for whom Principal is responsible or third parties, or by external causes. If the installation is placed in existing buildings and EMS has executed the measuring in those buildings itself or has it be done by personnel of EMS, then EMS is responsible for the correctness of those measurements. EMS accepts however no responsibility for the correctness of data and drawings, which were provided to EMS by or on behalf of the Principal regarding provided buildings and purposes of use, for which the commissioned installation should serve.
7.15	The delivery time is set in the expectation, that the circumstances, under which activities by EMS can be executed, remain the same as at the time of the conclusion of the Agreement and the required goods are being delivered to EMS timely. If a delay arises, because the said circumstances are being changed or the required goods, although ordered timely, have not been delivered timely to EMS, then the delivery time will tacitly be extended with the duration of this delay.	Article 10	<b>Samples, models and drawings</b>	5.	for wrong conclusions on the basis of measurement data of equipment of EMS delivered to Principal.
7.16	The delivery time is also extended with the time, during which the Principal has left any amount payable to EMS unpaid, after it has become payable on demand.	10.01	If a model or sample is shown or provided by EMS, then this is deemed only to be shown or provided by way of indication; the features of the goods to be delivered may deviate from the sample or model, unless explicitly is stated that the goods delivered should conform to the shown or provided sample or model.		
7.17	A delayed delivery shall not give the Principal any right to refuse the take-off of the goods.	10.02	All drawings and data provided with the offer such as dimensions etc. remain property of EMS and may without its explicit consent not be copied or given to third parties for viewing or made available, the one and the other upon the forfeit of a contractual fine immediately payable on demand of € 25,000.00 by the Principal. EMS in addition remains authorized to claim full compensation for the actually incurred damage by it.		
7.18	Exceeding of the stated delivery time, by whichever cause, will neither give the Principal any right to compensation for damages, non-compliance with any obligation deriving from the Agreement or to request the dissolution thereof.	10.03	The Principal will safeguard EMS against claims of third parties – in particular for violation of rights of third parties - from the models, drawings etc made available by the Principal to EMS.		
7.19	EMS reserves the right to deliver orders in parts, whereby the payment conditions described below are also applicable to any partial delivery.	10.04	The storage of models, drawings etc made available by the Principal in the archives of EMS takes place for the risk of the Principal.		
7.20	As the time of delivery is regarded the moment on which the goods leave the warehouse or if an inspection is agreed, or the sending because of causes outside the fault of EMS is not possible, the moment on which the goods are ready for inspection or shipping.	Article 11	<b>Inspection, reclamation</b>	12.11	Material and construction are guaranteed by EMS for a time period of 1 year, to be counted from the time of definitive final delivery; repairs executed by EMS to installations maintained by EMS for a time period of 3 months, to be counted from the time of the repair. The guarantee referred to here is in compliance with exceptions and it being understood, that EMS with regard to all parts, that as a consequence of materials and construction errors proven to be insufficient during the guarantee period, may – at its discretion of EMS may be – free of charge – repair or replace with new parts; the related assembly costs are not for our account; replaced parts become pure property. The compliance by EMS with the guarantee obligation is regarded as the only and overall compensation for damages, so that except for what has been set forth in lawful stipulations of public order, any other claim for compensation for damages is explicitly excluded. EMS is therefore not bound to compensation or further costs and damage, arisen for persons and/or to goods or interests, the one and the other except for the stipulation set forth in article 20 of these IGTC.
7.21	Insofar delivery on call has been agreed, EMS can, in case of none or non timely call, invoice the goods at its own discretion to the Principal in compliance with article 28 and store or have stored the goods. For that, if during three months no call has followed, a storage percentage shall be charged.	11.01	Principal is required to inspect the delivered on the moment of delivery, but in any case within such short time period as possible to inspect or have inspected. Thereby Principal should examine whether the quality and quantity of the delivered comply with what has been agreed, or meets the requirements that are set for it in normal (trade) traffic in society.		
		11.02	Possible visible defects of shortfalls should be reported within five working days after delivery in writing to EMS. Not visible defects or shortfalls should be reported within three weeks after discovery but not later than within 12 months after delivery (the warranty period).		
Article 8	<b>Extra costs, extra and lesser work</b>	11.03	If in accordance with the previous section a timely reclamation is being made, Principal remains obliged to take-off and payment of the purchased.	12.12	The Principal is obliged to enable EMS to execute the activities under the guarantee. When the Principal would refuse such, then EMS is relieved of any guarantee obligation. Activities without our consent executed by the Principal or by third parties to the goods delivered by EMS delivered goods, will relieve EMS of its guarantee obligations.
8.01	If the assembly activities or delivery of the goods by causes, which are within the sphere of influence of the Principal, cannot take place normally and not without interruption - to the extent that EMS before the conclusion of the Agreement has not been informed about the possibility of that interruption in writing – then EMS is authorized to charge the extra costs deriving therefrom to the Principal.				
8.02	Extra and lesser work needs to be settled, or possibly be paid for additionally, within one month after submission of the related account for more and lesser work.				

<p>12.13 Guarantee work will in principle be executed within the enterprise of EMS (for instance on its service department), and during the normal working hours. Guarantee activities can only then take place outside normal working hours if a separate service-contract has been concluded and only if and insofar such derive from that service-contract.</p> <p>12.14 EMS is authorized to have guarantee activities be executed outside its own enterprise, if this, at the sole discretion of EMS, is in the interest of those activities or if the execution of such activities in the enterprise EMS is not reasonably possible or not desirable.</p> <p>12.15 Goods that are eligible for guarantee work need to be sent for free delivery to EMS. If EMS needs to execute or have executed the guarantee outside its enterprise, then EMS is authorized to charade the related travel and board expenses to the Principal, as well as the possible (special) costs of transport, packaging and insurance and the costs of the test equipment and materials to be used.</p> <p>12.16 If it proves that the goods presented to EMS for repair display no defects, the all made costs are for the account of the Principal, also during the guarantee period.</p> <p>12.17 Non-compliance by the Principal of one or more of his obligations shall relieve EMS of its guarantee obligations.</p>	<p>15.12 If a payment due by the Principal to EMS does not take place timely takes then the Principal shall as of the day on which the payment period has expired be liable to pay to EMS automatically a delay interest of one and a half percent (1½ %) per month, notwithstanding the other rights of EMS by then; for the calculation of this delay interest, an already started but not completed month shall count as a full month. The here mentioned delay interest of 1½ % per month is a minimum interest, and in case this interest calculated on an annual basis should at any time be less than 5% higher than the officially applicable lawful interest in the Netherlands, than this delay interest shall automatically be increased so that, calculated on an annual basis is 5% higher is than the interest by law.</p> <p>15.13 If the execution of the order is delayed at the request of the Principal, or because he does not timely comply with his obligations, or does not enable EMS timely to prepare the installation or does not timely execute the required activities thereto, then EMS will be authorized to request payment of the not yet paid time periods of the commission amount on the times on which these time periods would become payable in case of a normal execution of the order.</p> <p>15.14 When EMS thinks to have to assume that the Principal will not, not timely or not entirely comply with his obligations, then EMS is authorized to demand prepayment of a surety for payment before proceeding to (further) delivery.</p>	<p><b>Article 18 Change of the Agreement</b></p> <p>18.01 If during the execution of the Agreement it becomes apparent that, for a proper execution, it is necessary to change the activities to be executed and/or to add to them, then parties shall timely and in mutual consultation modify the Agreement accordingly.</p> <p>18.02 If parties agree that the Agreement will be changed and/or supplemented, then the time of the completion of the execution can be influenced. EMS will notify the Principal as soon as possible thereof.</p> <p>18.03 If the change and/or addition to the Agreement has financial and/or qualitative consequence, then EMS will inform the Principal about this in advance.</p> <p>18.04 If a fixed rate has been agreed, then EMS will indicate thereby to which extent the change or addition of the Agreement leads to an exceeding of this fixed rate.</p> <p>18.05 EMS is authorized to deliver in deviation of what has been agreed if it concerns changes in the goods to be delivered, the packaging or related documentation, which are required to comply with the applicable lawful regulations or if it concerns minor changes.</p> <p>18.06 EMS is authorized to suspend the compliance with the obligations or to dissolve the Agreement, if:        - Principal does not or not fully comply with the obligations under the Agreement.        - After the conclusion of the Agreement circumstance that have come to the knowledge of EMS give good grounds to fear that the Principal will not comply with the obligations (In case there is a good ground to fear that the Principal will only partially or not properly comply, then a suspension is only permitted to the extent that the shortcoming justifies so.)        - Principal has been requested at the conclusion of the Agreement to provide a surety for the compliance with his obligations under the Agreement and this surety remains absent or is insufficient. (As soon as surety has been provided, then the authority to suspension becomes void, unless this compliance has been delayed unreasonably because of it.</p> <p>18.07 Furthermore EMS is authorized to (have) dissolve(d) the Agreement if circumstances arise which are of such nature that compliance with the Agreement is impossible according to standards of reasonableness and fairness or cannot any longer be required according to standards of reasonableness and fairness or if otherwise circumstances arise which are of such nature that an unchanged maintenance of the Agreement cannot reasonably be expected.</p> <p>18.08 If circumstances arise with regard to persons and/or material of which EMS makes use in the execution of the Agreement, which are of such nature that the execution of the Agreement becomes impossible or so burdening and/or disproportionately expensive, that compliance with the Agreement cannot reasonably be expected anymore, then EMS is authorized to dissolve the Agreement.</p> <p>18.09 If the Agreement is dissolved, the claims of EMS on the Principal will be immediately payable on demand. If EMS suspends the compliance of the obligations, it retains its claims under the law and Agreement.</p> <p>18.10 EMS always reserves the right to claim compensation for damages.</p>
<p><b>Article 13 Right of retention.</b></p> <p>13.01 On all goods which are from or on behalf of the Principal under EMS, no matter what the cause or reason may be, EMS shall have a right of retention for as long as the Principal has not complied with all of his obligations towards EMS.</p> <p>13.02 EMS is obliged to (have) manage(d) the goods referred to in Article 13.01 according to good tradesman ship, but Principal shall have not any right to compensation for damages in case of the entire or partial demise or loss of those goods and/or damage to that goods outside the fault of EMS, and the risk for those goods therefore remains with the Principal.</p>	<p><b>Article 16 Collection costs</b></p> <p>16.01 If the Principal is in default on the (timely) compliance with his obligations, then all reasonable costs to obtain out of court payment will be for the account of Principal. In any case is Principal in the case of a monetary claim liable to pay collection costs. The collection costs are charged in accordance with the collection rate as advised by the Nederlandse Orde van Advocaten for collection cases.</p> <p>16.02 If EMS has incurred higher costs, which were reasonably necessary, the also these are liable for compensation.</p> <p>16.03 The possibly made reasonable in-court and execution costs are also for the account of Principal.</p> <p>16.04 All the in-court and out-of-court costs inclusive of the costs to be made by EMS for legal support and legal advice, are for the account of the Principal. The out-of-court collection costs amount to 15% of the amount due by the Principal including the due interest over that amount, notwithstanding the right of EMS to claim compensation by the Principal of the actually made collection costs if these should amount to more than the mentioned 15%.</p> <p>16.05 To the charge of Principal also the costs of a filing for bankruptcy by EMS, as well as the storage costs in case of suspension of delivery on the basis of article 9 has taken place.</p>	<p><b>Article 17 Retention of property</b></p> <p>17.01 All goods delivered by EMS such as gas measurement systems, analyzers, measurement and control equipment, switch cabinets, test equipment, including possible schedules, designs, sketches, drawings, films, software, (electronic) files, intellectual property etc., remain property of EMS until the Principal has complied with all following obligations under all agreements concluded with EMS thereby included.</p> <p>17.02 In the case the Agreement concerns a financial lease agreement, the delivered goods remain without change property of EMS until the last payment obligation has been satisfied.</p> <p>17.03 In the case the Agreement concerns a rental agreement, the delivered goods are and remain property of EMS. The properties may then for an agreed period be used for the regular execution of the enterprise.</p> <p>17.04 In the case the Agreement concerns a rental agreement, the delivered goods remain without change property of EMS until the last payment obligation has been satisfied.</p> <p>17.05 If third parties seize the goods delivered under retention of property delivered goods or want to vest or make valid rights thereon, then Principal is obliged to notify EMS thereof as soon as reasonably may be expected.</p> <p>17.06 The Principal obliges to insure and keep insured the goods delivered under retention of property delivered goods for at least the transaction value between EMS and the Principal against fire damage (scorching or smoldering included), as well as against explosion, smoke, water, theft, damaging and demolition damage. The policy of this insurance should be made available upon first request to EMS, or third parties designated by it for viewing.</p> <p>17.07 Goods delivered by EMS, that fall on the basis of article 17.01 fall under the retention of property, may only be sold onwards in the framework of a normal execution of enterprise and never be used as a payment instrument.</p> <p>17.08 Analyzers / measurements / devices for direction or control purposes on the basis of lease of financial lease may never be sold onwards, modified or rented to third parties.</p> <p>17.09 In case that EMS wants to exercise its property rights stated in this article, then the Principal gives already now for then an unconditional and irrevocable consent to EMS, or to third parties to be designated by it, to enter all locations where the properties of EMS are located and to repossess these goods.</p> <p>17.10 As long as the Principal has not fully complied with his payment obligation regarding the delivered or to be delivered goods, those goods as well as already shipped parts and materials remain EMS property notwithstanding otherwise the obligation of the Principal to timely payment.</p>
<p><b>Article 14 Fees, prices, interest and costs</b></p> <p>14.01 If EMS has agreed with the Principal a fixed sales price, then nevertheless EMS is authorized to the increase of the price in the cases mentioned below.</p> <p>14.02 EMS may charge onwards prices increases, if EMS can demonstrate that between the moment of offer and execution of the Agreement significant price changes have occurred with regard to for example exchange rates, wages, raw materials, semi-products or packaging material.</p> <p>14.03 The prices used by EMS are in Euro (€), exclusive of VAT and possible other levies, as well as possible costs to be made in the framework of the Agreement including transport, shipping, insurance, assembly, service and administration costs, unless stated differently.</p>	<p><b>Article 15 Payment</b></p> <p>15.01 All goods and services will be deemed to be invoiced immediately after delivery, notwithstanding the time that is necessary to create the invoice, to send and to receive it.</p> <p>15.02 Payment needs to take place within 30 calendar days after delivery, nett, in a manner stated by EMS and in the currency in which the invoice was made. Payment takes place in accordance with the payment conditions stated on the invoice. It is not permitted for the Principal to set-off the invoices or to reduce them by means of compensation of debts, or to suspend the payment thereof.</p> <p>15.03 Objections against the height of the invoices do not suspend the payment obligation.</p> <p>15.04 In case of liquidation, bankruptcy or suspension of payment of the Principal, the claims of EMS on the Principal are immediately payable on demand.</p> <p>15.05 EMS has the right to let the payments made by the Principal serve firstly for the reduction of the costs, subsequently for the reduction of the appeared interest and finally for the reduction of the principal and the current interest. EMS can, without thereby getting in default, refuse an offer for payment, if the Principal designates a different order for the allocation. EMS can refuse full redemption of the principal, if not also the appeared and current interest as well as the costs being paid.</p> <p>15.06 In case of projects, the agreed order amount, unless differently stipulated, shall be paid by Principal in the following time periods:</p> <p>15.07 thirty percent at the order;</p> <p>15.08 thirty percent at the moment of the start of the assembly activities;</p> <p>15.09 thirty percent upon finalization of the assembly activities and putting into operation.</p> <p>15.10 ten percent upon the final delivery and the testing.</p> <p>15.11 The Principal shall be in default by the mere expiration of the time period within which a payment or the satisfaction of another obligation should have taken place, without that thereto a further summation or notice of default shall be required.</p>	<p><b>Article 19 Returning provided goods</b></p> <p>19.01 If EMS has made available to Principal good during the execution of the Agreement, then Principal is required to return such goods within 14 days after the end of the Agreement or upon the first request by EMS, in its original state, free of defects and completely. If the Principal does not comply with this obligation, then all costs deriving there from are for his account.</p> <p>19.02 If Principal, for whichever reason, after a summation thereto, after all remains in default regarding the obligation under section 1 of this article, the EMS has the right to take recourse on Principal for the resulting damage and costs, including the costs of replacement.</p> <p><b>Article 20 Liability</b></p> <p>20.01 If goods delivered by EMS are defect, then the liability of EMS towards Principal will be limited to what has been stipulated in these IGTC under "Warranty".</p> <p>20.02 If EMS is liable is for direct damage, then that liability limited to the maximum of the amount of the invoice for the delivered goods, albeit to that part of the Agreement to which the liability relates, or to a maximum of € 5,000 (said: five thousand Euro). The liability is at all times limited to the maximum of the amount to be paid out by the insurer of EMS in the concerned case. Under direct damage will exclusively be understood:        - the reasonable costs for the establishment of the cause and the scope of the damage, to the extent that the establishment relates to damage in the sense of these IGTC;        - the possible reasonable costs made to let the defect performance of EMS comply with the Agreement, unless this defect is not imputable to EMS;        - reasonable costs, made for the prevention or limitation of damage, insofar Principal demonstrates that these costs have led to a limitation of direct damage as referred to in these IGTC.</p> <p>20.03 EMS is never liable for indirect damage, including consequential damage, missed profits, missed savings and damage by enterprise stagnation.</p> <p>20.04 The limitations in these IGTC of the liability for direct damage do not apply if the damage is due to wilful intent or gross negligence of EMS or its employees.</p>

20.05	From the time, on which the goods or parts to be installed have been delivered (see article 7.20), the risk for all direct and indirect damage that may occur to these goods, is for the Principal. EMS is not liable to compensation for costs and damage, occurred to or by goods, that the Principal has sent to EMS for assembly or otherwise.	22.03	EMS also has the right to claim Force Majeure, if the circumstance that impedes (further) compliance, occurs after EMS should have complied with its obligation.	25.04	All documents such as designs, sketches, drawings, films, intellectual property, software, (electronic) files possibly provided by EMS are exclusively destined to be used by the Principal and may not without prior consent of EMS by him be duplicated, disclosed or brought to the knowledge of third parties, unless such derives differently from the nature of the provided documents.	
20.06	Principal is responsible for the application of lawfully prescribed safeties for the consequences of the possible absence of safety, as well as for the compliance with all current law regulations or such prescribed by EMS with regard to goods delivered by EMS. EMS cannot be held liable for damage that occurs to and/or that is the consequence of goods delivered by EMS, if the safeties described above and/or regulations have not been observed in the manner set forth in the law and/or has been prescribed by EMS.	22.04	During Force Majeure the delivery and other obligations of EMS are suspended. If the period, in which by Force Majeure compliance with the obligations is not possible, lasts longer than 3 months, both parties are authorized to dissolve the Agreement, without that in that case an obligation to compensation for damages exists.	25.05	EMS reserves the right to use the possibly increased knowledge during the execution of the activities for other purposes, to the extent that hereby no confidential information is disclosed to third parties.	
20.07	Except if and insofar it otherwise derives from stipulations mandatory by law regarding (product) liability, EMS is not liable to any compensation for damage, of whichever nature, to any movable or immovable object or to any person, including enterprise damage, at the Principal or any third party, which damage is caused direct or indirect by or relates to any good or matter delivered by or on behalf of EMS or is caused direct or indirect is caused by or relates to any use or any application or treatment of such a good or matter or storage or keeping thereof, or assembly, installation or putting into operation of such a good or matter and the Principal will safeguard EMS explicitly against claims and claims which are based on any such damage or relate thereto. In compliance with other stipulations in these IGTC, EMS is in any case not liable for damage or loss caused direct or indirect by: inexpert use of the delivered of use thereof for another purpose than for which it is reasonably deemed suitable or for another purpose than it is objectively suitable or for another purpose of which EMS could reasonably rely on that it would be used for; - uncareful behavior of the Principal, or the personnel of the Principal or other persons employed by him or any other person at the side of the Principal; violation of any patent, use model, brand, indication of origin, model right, copyright of adjoining right, right on a semi-conductor product or the topography thereof, right on a database or other data collection or any other right of industrial of intellectual property or any other exclusive right, or violation of or infringement of a license under Any such right, which is the direct or indirect consequence of use and/or application and/or publication or multiplication of data provided by or on behalf of the Principal such as for instance descriptions, drawings, models, designs, and so forth.	22.05	Insofar EMS at the time of the emergence of Force Majeure has already partially complied with its obligations under the Agreement or can comply with these and an independent value can be attributed to the fulfilled or to be complied with part, then EMS is authorized to invoice the already delivered or to be complied with part separately. Principal obliged to pay this invoice as if it were a separate Agreement.	25.06	If unexpectedly it should be proven that a good sold by EMS to the Principal violates in the Netherlands a right of industrial or intellectual property of a third party, and the Principal is confronted therewith, then the Principal is obliged to notify EMS thereof immediately in writing, and the Principal shall then to his own choice either have the right to either obtain the right to use that good or to change it so that this no longer constitutes a violation or to supply a replacement good that does not cause a violation. Regarding a violation of right of industrial of intellectual property outside the Netherlands, the Principal cannot make or have a claim against EMS.	
<b>Article 23 Safeguards and limitation liability</b>						
20.08	If EMS provides help at the assembly and/or the making ready for use and/or the installation of goods, without that this explicitly has been stated in the order, then this always takes place entirely for the risk of the Principal.	23.01	The Principal will safeguard EMS for claims of third parties with regard to rights of intellectual property on materials of data provided by the Principal that are used at the execution of the Agreement.	25.07	EMS can not be held liable in any way regarding a violation of any right of industrial or intellectual property or any other exclusive right which is the consequence of any change in or to a good delivered or sold by or on behalf of EMS or of any use of such good or any application of such good that is different than which EMS has prescribed or of which EMS relied on, or which is the consequence of integration with or in use of application in combination with goods not sold and delivered by or on behalf of EMS, or which is the result of a software adaptation that was not made by EMS.	
20.09	Compliance with the valid guarantee obligations and/or pay-out by the insurer of the Principal or payment by EMS (in compliance with the maximum set forth in Article 20.02) of the established damage shall be regarded as the only and full compensation for damages. Otherwise the Principal will safeguard EMS explicitly and fully.	23.02	If Principal provides to EMS information carriers, electronic files or software etc., then he warrants these that the information carriers, electronic files or software are free of viruses and defects.	<b>Article 26 Confidentiality</b>	26.01	Both parties are obliged to confidentiality of all confidential information that they have obtained in the framework of their Agreement from each other or from a different source. Information is deemed to be confidential if this has been stated by a party or if it derives from the nature of the information.
20.10	Notwithstanding what otherwise has been stated in this Article, any claim for compensation for damages will expire after the course of one year after the damage has occurred or has been discovered or acknowledged or reasonably could have been discovered or acknowledged, in any case after the expiry of 1 year after the delivery.	23.03	In case of the use or dosage of gases EMS excludes any liability for possible incurred (product) damage by this dosage. Dosage of CO <sub>2</sub> , NO <sub>x</sub> , CO, ethylene or any gas whatsoever from whichever source is at the own risk and responsibility of the Principal.	26.02	If, on the basis of a lawful stipulation or a court order, EMS is bound to provide confidential information to third parties designated by the law or by a competent court and EMS cannot make a claim an exception granted under the law of by a competent court, then EMS is not liable for compensation for damages or other compensation and the Principal is not authorized to dissolution of the Agreement on the ground of any damage derived here from.	
20.11	With regard to goods which EMS has sourced from a third party, the applicable (contract and/or guarantee) for the concerned transaction shall also apply towards the Principal, if and to the extent that EMS makes a claim under it	23.04	In case of application of an EMS measuring instrument linked to an automatic control, the Principal will be responsible for the crop, man and machines. EMS excludes any liability for consequential damage deriving from an automatic control.	<b>Article 27 Not-taking over personnel</b>	27.01	The Principal shall during the tenor of the Agreement as well as three years after termination thereof, in no way, except for after proper business consultation, with EMS has taken place, employ employees of EMS or of enterprises which EMS has employed for the execution of this Agreement, and that have been involved in the execution of the Agreement, or otherwise, directly or indirectly let them work for him.
20.12	EMS is not liable for damage arisen from goods which EMS has delivered to a Principal that consist of equipment and/or goods that need to be periodically tested, calibrated or where to otherwise service needs to be provided in order to warrant the proper operations of the device, and of which the equipment described in this article has not been periodically tested, calibrated by EMS or where otherwise service has been rendered to by EMS.	23.05	In case of application of an EMS measurement instrument linked to an automatic control, the Principal himself is responsible for this automatic control. Thereby the Principal should observe all safeties that are customary such as: (a) Standard settings in the climate computer properly set and applied for minimum valve positions and/or minimum window settings and/or minimum/maximum permitted set points. (b) In addition a Principal should always apply the maintenance recommended by the order taker on the measurement instruments of EMS including the recommended annual or semi annual calibration(s). (c) Daily visual inspection of the measured concentrations, and the commensurate valve and window settings and/or minimum/maximum permitted setpoints. (d) Daily visual inspection of the quantities of dosed CO <sub>2</sub> , NO <sub>x</sub> , CO or ethylene or any gas whatsoever from any source whatsoever. This in relation to logical proportions that usually are expected to be present.	<b>Article 28 Termination Agreement</b>	28.01	In case of a default by the Principal EMS will be authorized to cancel the Agreement without intervention of the court or to dissolve it notwithstanding the right of EMS to claim compensation for damages, to making use of the rights deriving from retention of property, and to taking other (legal) measures and notwithstanding the right of EMS to, instead of cancelling the Agreement demand compliance (whether or not with compensation for damages).
<b>Article 21 Risk transfer</b>						
21.01	The risk of loss or damaging of the goods that are subject of the Agreement, is transferred to Principal on the moment on which these are delivered to Principal legally and/or actually and thereby are brought under the control of Principal or of third parties designated by Principal.	<b>Article 24 Licenses etc.</b>	24.01	28.02	In case of a default by the Principal EMS will be authorized to cancel the Agreement without intervention of the court or to dissolve it notwithstanding the right of EMS to claim compensation for damages, to make use of the rights deriving from retention of property, and to taking other (legal) measures when: a. the Principal is declared to be in a state of bankruptcy, proceeds to release of assets, files a request for a suspension of payment, or the Principal is granted a (provisional or final) suspension of payment or a seizure of all the assets of the Principal or a part thereof is granted; b. the Principal, if this is a natural person, dies or is put under receivership or the goods of the Principal are put under administration; c. if the Principal is a legal person, the liquidation of the Principal is started, or a request to the dissolution of the Principal is filed or a resolution to dissolution regarding the Principal is or will be taken.	
21.02	The goods travel at the risk of the Principal.	24.02	The absence of any license, concession, permit, consent etc. as referred to in Article 24.1 shall be regarded as an imputable shortcoming (default) on the side of the Principal, and shall not relieve the Principal from any of his obligations towards EMS, nor can it be a cause to suspend the compliance of any obligation of the Principal towards EMS.	28.03	If an Agreement is cancelled or dissolved according to the stipulations of this Article then the amounts that the Principal is liable to pay at the moment of cancellation or dissolution to EMS remain due in full and shall the Principal regarding these amounts be liable to pay the interest and costs according to the stipulations of these IGTC, notwithstanding the right of EMS to claim compensation for damages and the other rights belonging to EMS.	
21.03	With regard to machines, tools or materials, which have been transferred to the premises, factory or terrain of the Principal or to a place designated by him, the Principal will bear the same risk as described in article 12.07.	24.03	The Principal is liable for all damage which directly or indirectly may be caused by the absence of any license, concession, permit, consent etc. as referred to in Article 24.1, and the Principal will safeguard EMS against claims and claims that relate to such damage.	<b>Article 29 Disputes</b>		
21.04	In case the installation or a part thereof is put into use by or on the request of the Principal before the definitive final delivery, then this takes place entirely for the risk of the Principal.	<b>Article 25 Intellectual property and copyrights</b>				
<b>Article 22 Force Majeure</b>						
22.01	Parties are not required to comply with any obligation, if they are impeded thereto as a consequence of a circumstance that is not imputable to them, and neither on the basis of the law, a legal act or the opinions in society are for their account.	25.01	Notwithstanding the other stipulations in these IGTC, EMS reserved the rights and powers that derive for EMS on the basis of the Dutch law Auteurswet.	29.01	In deviation of the rules by law for the competence of the civil court, shall any dispute between EMS and the Principal, in case the district court is competent, be settled by the Court of Middelburg (sector Tholen) The same applies for injunctions (" kort geding").	
22.02	Under Force Majeure will be understood in these IGTC in addition to what is understood in the law and jurisprudence, all external cause, foreseen or unforeseen, on which EMS can exercise no influence, but because of which EMS is not able to comply with its obligations. Work strikes in the enterprise of EMS are included.	25.02	It is not permitted for the Principal to make changes in the goods, unless it follows differently from the nature of the delivered or has been agreed differently in writing.	29.02	EMS however remains authorized to sue the Principal for the court competent by law or the court competent according to the applicable international treaty.	
22.03	25.03	29.03	The designs, sketches, drawings, films, software, intellectual property and other materials or (electronic) files possibly produced by EMS in the framework of the Agreement remain property of EMS, irrespective whether these have been made available to the Principal or to third parties, unless agreed.	Parties shall only turn to the courts after having made an utmost effort to settle a dispute in mutual consultation.		

<b>Article 30</b>	<b>Applicable law</b>	ready for use, final delivery the Programs are deemed to be accepted by the Principal. If a test has been agreed as stated hereafter in Article 33.6 stated, the Programs are deemed to be accepted after acceptance by the Principal or after fourteen days after the ready for use final delivery if the Principal by then has notified EMS in writing about possible defects as stated hereafter in Article 33.8.	33.07	Upon the conclusion of an Agreement that also relates to a Standard package developed by EMS, the Principal will declare to be familiar with the fact that the Standard package contains confidential information and company secrets of EMS. The Principal required to keep the Standard package secret and not to (have) reveal(ed) it to third parties.
30.01	On each Agreement between EMS and the Principal the laws of the Netherlands shall be applicable exclusively. The Vienna Purchase Treaty is explicitly excluded.			
<b>Article 31</b>	<b>Change, location of the IGTC</b>	If and to the extent that this has been agreed between parties in writing, the Principal is authorized to test or have tested the Programs during fourteen days after the ready for use final delivery. Unless agreed differently in writing, the test will consist of the execution of a collection of test cases compounded by the Principal, which shall be made available by the Principal for the benefit of the test sufficiently timely before ready for use final delivery and shall be made available in a for EMS understandable and useable form to EMS.	32.06	33.08
31.01	These IGTC have been filed at the Chamber of Commerce in Zeeland (Middelburg).			In deviation of the time period referred to in Article 12.03 of these IGTC, the guarantee period regarding a Standard package is three months from the delivery; during this period EMS will, to the best of its abilities, repair possible defects when the Programs of the Standard package do not comply with the user manual of the Standard package. Only when a maintenance agreement has been concluded or when a use fee has been agreed in which the maintenance is included, such a repair will be executed free of charge, unless the defects are caused by or relate to use errors on the side of the Principal or other causes not imputable to EMS. In other cases the costs of repair can always be charged to the Principal. Repair of lost data does not fall under the guarantee. The guarantee becomes void as soon as the Standard package is adapted or changed by others than EMS. EMS does not warrant that the Standard package will function without interruption or without defects or that all defects shall be repaired or improved.
31.02	Applicable is always the last filed version or the version in force at the time of the conclusion of the Agreement.			
<b>SPECIAL CONDITIONS REGARDING SOFTWARE, ADVISORY AND COMPUTER SERVICE.</b>		If during the execution of the test as referred to in Article 33.6 it shows that the progress of the test is being impeded by defects in the Programs, then the Principal will inform EMS hereof in as much detail as possible in writing; in such a case the test period of fourteen days will be interrupted until the defects have been repaired.	32.07	
General (software, advisory and computer service). The following stipulations of these IGTC apply next to and in addition to what has been set forth in the articles 1 up to and including 31, unless hereafter there is an explicit deviation.				
Under "Program" is understood computer program(s) recorded on carriers legible for a computer with material and the commensurate documentation, irrespective of which form this documentation may have. Under "Standard package" is understood a general available program and not a Program especially designed for a Counterparty, whether or not adapted, changed or extended for the benefit of the Counterparty. Under "Advisory" is understood, the giving of advice in the area of automation and/or organization, execution of feasibility research, the execution of consultancy, the execution of system analysis. The selection of equipment, the provision of support in the development of programs, the fixing of education and/or the organizing of courses or training.				
31.03	Under "Supplier" is also understood the third party provider or programmers that is employed to execute the activities on behalf of EMS for the development of Programs or with the development, adaptation, modification and/or extension of a Standard package or with the execution of Advisory.	32.08	32.09	33.09
31.04	The Principal is responsible for that all is required, relevant or useful data and information for the execution of a Agreement is always timely and in a for EMS fully understandable and useable form shall be made available to EMS; the costs of the obtaining and keeping up to standard of such data and information are for the account of the Principal.	The Principal is required to if during the execution of the test referred to in Article 33.6 it proves that the Programs have defects and do not comply with the specifications recorded in writing in advance, he will notify EMS hereof immediately after the expiry of the test period as much as possible in writing, after which EMS will repair the mentioned defects within a reasonable time period; such repair shall only take place free of charge when for the development of the Programs a fixed price has been agreed; in other cases the costs of repair will be charged to the Principal.	In case of development of Programs the guarantee period, in deviation of the period mentioned in Article 12.03 of these IGTC, three months after acceptance; during this period EMS to the best of its abilities will repair possible defects when the Programs do not comply with the specifications recorded in writing in advance. Only if for the development of the Programs a fixed price has been agreed, such repair will take place free of charge, unless the defects have been caused by or relate to use errors on the side of the Principal or other causes not imputable to EMS, or when the defects could have been established during the execution of the test referred to in Article 33.6. If no fixed price has been agreed then the costs of repair shall always be charged to the Principal. Restoration of lost data does not fall under the guarantee. Furthermore the guarantee will become void if the Programs have been adapted or modified by others than EMS. EMS does not warrant that the Programs will function without interruption or without defects or that all defects shall be repaired or improved.	When for the Standard package with EMS a maintenance agreement has been concluded or when a use fee has been agreed in which the maintenance has been included, then the Principal is required to notify EMS immediately in writing and in a sufficiently clear manner of effects established in the Programs of the Standard package. EMS will then after receipt of this notification to the best of its abilities repair the defects if the Programs of the Standard package do not comply with the user manual of the Standard package. Restoration of lost data does not fall under the maintenance. If defects caused by relate to use errors at the side of the Principal or other causes not imputable to EMS, then EMS is authorized to charge the Principal for the costs of repair. If defects are caused by or relate to any change of adaptation of the Programs of the Standard package by others than EMS, the Supplier will be authorized to refuse repair or, when he proceeds to repair, to charge to the Principal the costs of repair.
31.05	The Principal is responsible for the use and the correct application of Programs and of hardware and of the services (to be) provided by and/or on behalf of EMS. The Principal is furthermore responsible for the use and the correct application of the administration and calculation methods to be applied, and the Principal is responsible for the protection of data.	32.10	33.10	33.11
31.06	If according to the Agreement material, equipment and/or data and information (including data and information on information carriers) has or have to be made available by the Principal, then the Principal is responsible or that these meet with the specifications applicable for the execution of the Agreement.	When, for the Programs with EMS, a maintenance agreement has been concluded, then the Principal is required to notify EMS immediately in writing and in a sufficiently clear manner of the defects established in the Programs. EMS will then after receipt of this notification to the best of its abilities repair the defects if the Programs do not comply with the specifications referred to in Article 33.1. Restoration of lost data does not fall under the maintenance. If defects are caused by or relate to use errors at the side of the Principal or other causes not imputable to EMS, then EMS is authorized to charge the cost of repair to the Principal. If defects are caused by or relate to any change or modification of the Programs by others than EMS, then the Supplier will be authorized to refuse repair or, if he proceeds to repair, to charge the costs of repair to the Principal.	When with regard to a Standard package developed by EMS maintenance agreement has been concluded, then EMS, when an improved version of the Standard package becomes available to the market, make such a version available to the Principal. Notwithstanding the stipulation of Article 34.8, EMS will in any case after expiry of three months of the making available of a new version no longer be required to any repair of defects in an older version. EMS is authorized to, if a new version of the Standard package compared with older version contains new options and/or functions, require a fee for the making available of that new version.	When EMS makes available a not self developed Standard package, but only grants the right of use of a Standard package according to the stipulations of a use or license agreement from or with a third party, or if the maintenance regarding a Standard package is executed in accordance with the stipulations in an Agreement of EMS with a third party, then the stipulations of the Articles 34.1 up to and including 34.10 of these IGTC shall apply, but only the stipulations of the concerned Agreement(s) of EMS with that third party(ies). EMS will inform the Principal upon his request about the applicable.
31.07	EMS is authorized to, in case data and information required for the execution of the Agreement have not, not completely, not timely, or not in the correct form been made available to EMS, or if the Principal otherwise does not comply with his obligations, to suspend or terminate the execution of the Agreement; in such a case the Principal, notwithstanding the right of EMS on compensation for damage, in any case be liable to pay to EMS the applicable fees for what has already been done for the execution of the Agreement, while EMS by then is furthermore authorized to charge extra costs according to its usual rates.	32.11	33.11	<b>Article 34</b>
<b>Article 32</b>		Except if and to the extent that it has been agreed differently, and on the condition that the Principal has complied with his obligations towards EMS, the Principal may make use without limitations of the Programs specially developed by EMS for the Principal.	32.12	<b>Advisory.</b>
<b>Development of specific Programs.</b>		EMS is at all times authorized to use Programs developed by him, on his behalf or in commission by him, to apply these and to further develop and have them be used, applied and/or further developed by others.	33.01	34.01
32.01	Development by EMS of specific Programs (tailor made Programs) for the Principal will take place on the basis of prior specification in writing of the Programs to be developed (whereby also has to be recorded in which manner the development shall take place), and furthermore on basis of data and information made available by the Principal for the development to EMS; the Principal warrants the correctness, completeness, relevance and reliability of these data and information.	<b>Article 33</b>	<b>Standard package.</b>	34.02
32.02	If it has been agreed that the development of Programs shall take place in steps or phases, then EMS is authorized to postpone the activities with regard to a following step or phase or any part of those activities until the Principal has approved the results of the prior step(s) or phase(s) in writing.	33.01	33.02	34.03
32.03	Parties can agree changes and/or additions to the agreed activities. If a fixed price has been agreed, then EMS will inform the Principal which price increase the desired or agreed change(s) and/or addition(s) will involve. In case of a change or addition the delivery time, or the time on which the activities shall be completed, be extended or moved accordingly.	33.02	33.03	If it becomes apparent to EMS during the execution of the agreed activities that a change and/or extension thereof is necessary or desirable, then he will notify the Principal thereof, whereby in case for the development of the Programs a fixed price has been agreed, EMS will inform the Principal which price increase the change or extension shall bring along; if the Principal has not agreed by then or within fourteen days in writing with the proposed change(s) and/or extension(s) and the related price increase, then EMS will be authorized to suspend or stop the execution of the activities, in which case the Principal shall be liable to pay a fee to EMS for the already executed activities on the basis of the applicable rates of the Supplier, such notwithstanding the right of EMS to claim compensation for damages. If EMS informs the Principal about a necessary or desired change or extension, then the delivery time or the time of completion of the activities, will be extended or postponed for at least three weeks, while furthermore, if a change or extension of the activities takes place the delivery time or the time of completion will be further extended or postponed accordingly.
32.04	If it becomes apparent to EMS during the execution of the agreed activities that a change and/or extension thereof is necessary or desirable, he will inform the Principal thereof whereby, in case for the development of the Programs a fixed price has been agreed, EMS will inform the Principal which price increase the change or extension shall bring along; if the Principal has not agreed by then or within fourteen days in writing with the proposed change(s) and/or extension(s) and the related price increase, then EMS will be authorized to suspend or stop the execution of the activities, in which case the Principal shall be liable to pay a fee to EMS for the already executed activities on the basis of the applicable rates of the Supplier, such notwithstanding the right of EMS to claim compensation for damages. If EMS informs the Principal about a necessary or desired change or extension, then the delivery time or the time of completion of the activities, will be extended or postponed for at least three weeks, while furthermore, if a change or extension of the activities takes place the delivery time or the time of completion will be further extended or postponed accordingly.	33.03	33.04	If it becomes apparent to EMS during the execution of the agreed activities that a change and/or extension thereof is necessary or desirable, then he will notify the Principal thereof, whereby in case for the Advisory a fixed price has been agreed, EMS will inform the Principal which price increase the change or extension shall bring along; if the Principal has not agreed by then or within fourteen days in writing with the proposed change(s) and/or extension(s) and the related price increase, then EMS will be authorized to suspend or stop the execution of the activities, in which case the Principal shall be liable to pay a fee to EMS for the already executed activities on the basis of the applicable rates of the Supplier, such notwithstanding the right of EMS to claim compensation for damages. If EMS informs the Principal about a necessary or desired change or extension, then the delivery time or the time of completion of the activities, will be extended or postponed for at least three weeks, while furthermore, if a change or extension of the activities takes place the delivery time or the time of completion will be further extended or postponed accordingly.
32.05	EMS shall deliver the Programs to be developed conform to the specification referred to in Article 33.1 ready for use. After the	33.04	33.05	Without the prior permission in writing of EMS the right of use regarding a Standard package may not be transferred to third parties. It is furthermore not permitted for the Principal to sell, rent out, sell, to give to third parties in used or to (have it) use(d) for the benefit of third parties a Standard package of any copy thereof, or to make these an object for a surety right.
		33.05	33.06	The source code of the Programs of a Standard package will not be made available to the Principal.
		33.06		The property of the Standard package and the rights of industrial and intellectual property regarding the Standard package remain with EMS and shall be respected by the Principal. The Principal shall not remove or make illegible indications regarding the rights of industrial or intellectual property, such as copy right indications.