

# General Terms of Sale and Service of Adamczewski Elektronische Messtechnik GmbH



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## A. General Terms and Conditions

### Section 1 Scope

1. These General Terms of Sale and Service shall apply for all our fields of activity. These General Terms of Sale and Service shall therefore apply for the delivery of goods and software and, in particular, for services such as EMC services, development services and other services.
2. These General Terms of Sale and Service shall apply exclusively in our relationship with the customer. They shall also apply for all future business transactions as well as for all business contacts with the customer, such as the commencement of contractual negotiations or the initiation of a contract, even if they have not been expressly agreed upon again or not expressly referred to again. The applicability of general order or purchase terms of the customer is expressly rejected.
3. Acceptance of our services and deliveries by the customer shall be deemed acknowledgement of these General Terms of Sales and Service.

### Section 2 Conclusion of contract

1. Our offers are, unless agreed otherwise, subject to change and non-binding.
2. We shall only be bound to an order if we have issued a written order confirmation or if we start carrying out the order.

### Section 3 Scope of supply and service, performance deadlines, reservation of self-supply

1. Our written offer or our order confirmation shall be decisive for the scope of our delivery or service. Any side agreements or alterations must be confirmed by us in writing. If our offer or order confirmation was based on information provided by the customer (data, figures, illustrations, drawings, system requirements, etc.), our offer shall only be binding if this information was correct. Should it transpire after the contract has been concluded that the order cannot be carried out according to the information provided by the customer, we shall be entitled to withdraw from the contract unless the customer is prepared to accept the alternative solution proposed by us and to pay any additional costs actually incurred.

2. We shall, to a reasonable extent, be entitled to partial performance of all deliveries and services. We shall be entitled to use subcontractors to fulfil our contractual obligations.
3. As soon as we become aware of the risk of non-performance on the customer's part, we shall be entitled to provide deliveries of goods and services only against advance payment or provision of a security. Our right to withdraw from individual contracts already concluded in individual cases shall remain unaffected if and to the extent that the customer fails to make an advance payment or provide a security within a reasonable grace period.
4. Delivery and service periods are based on the most accurate information available to us but are generally non-binding. The start of the delivery period and compliance with delivery dates agreed with binding effect shall be dependent upon the customer duly and properly performing their obligations to cooperate, providing all necessary documents and making any agreed advance payments.
5. Where we have concluded a congruent cover transaction for the provision of our supplies and services, all agreed delivery and service deadlines shall be on the proviso that our supplier/subcontractor provides us correctly and punctually with the supplies and services we need to carry out the order. We are not in default if we do not receive said supplies and services correctly and punctually for reasons for which we are not responsible. In this case, we shall be entitled to withdraw from the contract. We shall inform the customer immediately of any such impediments to performance and reimburse them without delay for any services already rendered.
6. We are not in default in cases of force majeure or other extraordinary circumstances that have arisen through no fault of our own, in particular epidemics or pandemics, labour disputes, disruption of operations for which we are not responsible, riots, official measures or other unavoidable events. In this case, we shall also be entitled to withdraw from the contract if we are already in default. In particular, we are not in default for delivery delays that have been caused by any incorrect or late delivery by our suppliers for which we are not responsible. For impediments of a temporary nature, the delivery or service periods/dates shall be extended/postponed by the duration of the impediment plus a reasonable start-up period.

7. Where we are contractually obligated to render advance performance, we can refuse to do so if, after the contract has been concluded, it becomes obvious that our entitlement to counter-performance is at risk due to non-performance on the customer's part. This is the case in particular where the counter-performance to which we are entitled is at risk due to the customer's poor financial circumstances or where there is a threat of other impediments to performance, such as in cases of force majeure or other extraordinary circumstances that have arisen through no fault of our own, in particular epidemics or pandemics, labour disputes, disruption of operations for which we are not responsible, riots, official measures or other unavoidable events, export or import bans, acts of war, bankruptcy of sub-suppliers or absence of crucial staff due to illness.

#### **Section 4 Prices, costs**

1. Our prices are net and, unless agreed otherwise in writing, always Free Carrier (FCA Incoterms 2020) for deliveries. With regard to services, the prices are based on performance of the service at the agreed place of performance. The invoice shall also include VAT at its statutory rate.
2. Where a performance period of more than four months between the date of the order confirmation and the performance of the service is agreed, we shall be entitled to pass on to the customer in the corresponding amount any cost increases incurred by us in the meantime due to price hikes. The same shall apply if a performance period of less than four months has been agreed, but the performance can only be provided by us later than four months after confirmation of the order for reasons for which the customer is responsible.
3. Unless otherwise agreed, per diems and travel expenses shall be invoiced separately. Please see our offer or order confirmation for our current per diem and travel expense allowances.

#### **Section 5 Payment terms**

1. Unless otherwise contractually agreed, payment shall be due 30 days after receipt of delivery or after our service has been rendered in full, without any deduction.
2. The customer shall not be entitled to make any deductions without express

agreement.

3. If the customer is in default of payment, they shall compensate us for the damages incurred as a result of the delay, in particular paying interest of 9 percentage points above the base interest rate. If the customer is in default of payment of a due amount or partial amount for more than 14 days, if the customer is in breach of the obligations arising from a reservation of title or if the counter-performance to which we are entitled is at risk due to the customer's poor financial circumstances, the entire remainder of all outstanding receivables shall be due for immediate payment.
4. Payment by bill of exchange or acceptance shall only be permitted by express agreement and then only on account of payment. Where additional costs are incurred as a result, these shall be borne by the customer.
5. Our claims for remuneration may only be offset against undisputed or legally established claims. The same shall apply for exercising a right of retention. The customer shall only be entitled to exercise a right of retention if it is based on the same contractual relationship.
6. The assignment of claims against us by the customer shall require our prior approval, which we shall only refuse for good cause.

## **Section 6 Retention of title**

1. We shall reserve title to all and any delivered goods until such times as all our current and future claims arising from the concluded contract and an ongoing business relationship (secured claims) have been settled in full.
2. The goods subject to retention of title may not be pledged to third parties or assigned by way of security until payment of the secured claims has been made in full. The customer shall inform us immediately in text or written form if and to what extent third parties gain access to the goods belonging to us.
3. In the event of a breach of contract by the customer, in particular failure to pay the due purchase price, we shall be entitled to withdraw from the contract and/or demand the return of the goods on the basis of the retention of title in accordance with the statutory provisions. The demand to have the goods returned does not automatically include a declaration to withdraw from the contract; in fact, we are only entitled to demand that the goods be returned and reserve the right to withdraw. If the customer fails to pay the due

purchase price, we may only assert these rights if we set the customer a reasonable deadline for payment prior to this, which expired fruitlessly, or if statutory provisions render the setting of such a deadline unnecessary.

4. The customer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply additionally.
  - 4.1. The retention of title shall extend to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we shall be regarded as the manufacturer. If, after processing, mixing or combining the goods with third-party goods, said party retains the right of ownership, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply for the resulting product as for the goods delivered under retention of title.
  - 4.2. The customer hereby assigns to us by way of security any and all claims against third parties, in their entirety or in the amount of our potential co-ownership share as per the previous paragraph, arising from the resale of the goods or the product. We accept the assignment. The customer's obligations specified in Part A, Section 6, no. 2. above shall also apply in respect of the assigned claims.
  - 4.3. The customer shall remain authorised, in addition to us, to collect the claim. We undertake not to collect the claim as long as the customer meets their payment obligations towards us, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other non-performance on the customer's part. If this is the case, however, we can demand that the customer disclose the assigned claims and their debtor to us, provide all information necessary to collect the debt, hand over the related documents and inform the debtors (third parties) of the assignment.
  - 4.4. If the marketable value of the securities exceeds the value of our claims by more than 10%, we shall release securities at our discretion at the customer's request.
5. The customer must treat the goods subject to retention of title with care. At our request and at their own expense, the customer must insure the goods

subject to retention of title adequately against fire, water and theft at replacement value. If the goods require maintenance and servicing, the customer must carry out this work at their own expense in good time.

6. If the effectiveness of this retention of title depends on the registration thereof, e.g. in public registers in the customer's country, we shall be entitled and authorised by the customer to effect this registration at the customer's expense. The customer shall be obligated to cooperate at no charge to the extent necessary to effect said registration.

## **Section 7 Duties of the customer to cooperate and provide information**

1. The customer shall support us and our employees to a reasonable and customary extent. Where we are required to have our employees perform project-related work or services on the customer's premises, we may request support in the form of workrooms and workplaces with computers and telephones, the costs of which shall be borne by the customer.
2. The customer shall provide us with the material, information and data that we need to perform our services. Data and data storage media must be technically flawless. Insofar as special legal or operational safety regulations apply on the customer's premises, the customer must inform us of this before we perform our services.
3. The customer shall not be permitted to issue instructions to our employees regarding the specific form in which the services should be performed, unless instructions relating to safety requirements and company regulations within the company's premises are necessary. Instructions on individual issues regarding the work or services to be performed by us must be addressed to the contact persons appointed by us for the project and not to the employees assigned by us to the task. We shall always decide the necessary measures to be taken within the scope of our performance obligations on our own authority.
4. Immediately upon conclusion of the contract, the customer shall provide us with the valid VAT ID no. issued to them by a Member State of the European Union. The customer shall also inform us at any time of any changes to the VAT ID no. Should we incur any damage due to the customer failing to provide the VAT ID no. or providing an incorrect or incomplete VAT ID no., in

particular due to a resulting loss of tax exemption for intra-community deliveries as per Section 4 (1)b and Section 6a of the German Value Added Tax Act, the customer shall be obligated to provide compensation. This shall not apply where the customer is not responsible for the breach of obligation.

## **Section 8 Miscellaneous: Place of performance, place of jurisdiction, applicable law, data processing, severability**

1. The place of performance shall be our place of business in Zaberfeld, Germany.
2. The exclusive place of jurisdiction for all disputes arising between the parties from the contractual relationship shall be Heilbronn Regional Court, insofar as the customer is a merchant, a legal entity under public law or a special fund under public law or the customer has no general place of jurisdiction within the Federal Republic of Germany or has moved their place of jurisdiction abroad. As an exception to this, we shall also be entitled to take legal action against the customer at their general place of jurisdiction.  
A merchant is any entrepreneur who is entered in the commercial register or who operates a commercial business and requires a commercially organised business operation. The customer has their general place of jurisdiction abroad if their place of business is located abroad.
3. The customer is aware that data from business transactions, including personal data, must be stored, processed and shared with third parties to the extent necessary for business purposes. The customer agrees to this collection and processing of data.
4. Should a provision of these General Terms and Conditions of Delivery and Payment or a provision within the framework of any other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements.
5. The customer shall only be entitled to offset counterclaims from other legal relationships insofar as these are undisputed or have been legally established.
6. The contractual and other legal relationships with our customers shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).



## **B. Special Terms and Conditions for the Delivery of Goods and for the Manufacture and Delivery of Customised Goods**

### **Section 1 Scope**

The following Special Terms and Conditions shall apply additionally to the General Terms of Part A, for all contracts with the customer for the delivery of goods and for the production and delivery of goods according to individual specifications (customised goods).

### **Section 2 Scope of service**

1. Our contractual duty is to transfer ownership and surrender the purchase object. Our contractual duty shall not extend to the fitting, installation or configuration of the purchase object, unless this has been expressly agreed.
2. Transport insurance for goods requiring shipment shall only be taken out upon express request. In this case, transport insurance shall be taken out in the customer's name and for their account.

### **Section 3 Transfer of risk**

1. Unless otherwise agreed, the risk of loss or deterioration of the goods shall pass to the customer when the goods are handed over for shipment, even if partial deliveries are made. If shipment is delayed for reasons for which the customer is responsible, the risk shall pass to the customer as soon as they have received notification that the goods are ready for dispatch.
2. If an acceptance procedure has been agreed with the customer, the risk shall pass to the customer upon acceptance of the goods. The customer shall accept the goods or the completed service within the agreed period or within a reasonable period, but no later than two weeks after handover or – if a handover is not possible due to the nature of the service – upon completion. For a service that requires acceptance, the period shall commence upon us notifying the customer that the service has been completed. The service provided by us shall be deemed accepted upon expiry of the agreed

acceptance period if the customer fails to declare acceptance in text or written form or fails to state in text or written form which defects are still to be rectified. We shall inform the customer of these legal consequences when notifying them that the work is completed.

#### **Section 4 Premature termination of contracts for work and materials**

The following applies for contracts for work and materials under Section 650 BGB [German Civil Code]:

1. If the customer terminates the contract prior to the completion of our work performance, the customer shall be obligated to pay the agreed remuneration in full, less any expenses we save as a result of the termination of the contract. Whatever we gain or maliciously neglect to gain by using our manpower elsewhere shall also be deducted.
2. The parties agree that, in deviation from Section 648, sentence 3 BGB, it is assumed that we are entitled to 10% of the agreed remuneration attributable to the part of the work not yet performed. The parties have the option to prove greater or lesser saved expenses or other income earned or maliciously not earned elsewhere.

#### **Section 5 Warranty and general liability**

1. The limitation period for claims due to defects in our deliveries and services shall be one year from the commencement of the statutory limitation period. After expiry of this year, we shall, in particular, also be permitted to refuse remedial action without the customer being able to assert any claims against us for reduction, withdrawal or compensation. This shortened limitation period shall not apply for claims for damages other than those due to refused remedial action and it shall generally not apply for claims where there is fraudulent concealment of the defect, a warranty has been assumed or in case of intent.
2. In order to determine whether the item is free from defects at the time of transfer of risk, a quality agreement between the parties – if one exists – shall take precedence over the objective requirements within the meaning of Section 434 (3) BGB for the item.

3. A presupposed use of the item within the meaning of Section 434 (2) 2 BGB requires comprehensive written information from the customer about the intended purpose of use prior to conclusion of the contract as well as our expressly declared consent in regard to this.
4. The item delivered by us meets the objective requirements for customary quality with regard to the durability of the item in accordance with Section 434 (3) sentence 1 (2), sentence 2 BGB if the item has the ability to retain its required functions and performance under normal use at the time of the transfer of risk.
5. Under the following conditions, the customer may assert claims for remedial action due to defects in the service or delivery to be provided by us:
  - 5.1. The customer shall give us the necessary time and opportunity to duly provide the remedial action and, in particular, shall hand over the defective item for inspection purposes.
  - 5.2. If the delivered item is defective, we can initially choose to either provide remedial action by rectifying the defect (repair) or by delivering a non-defective item (replacement). The right to refuse the chosen method of remedial action under the statutory requirements shall remain unaffected.
  - 5.3. We shall be entitled to make the due remedial action contingent upon the customer paying the purchase price owed. The customer shall, however, be entitled to withhold a part of the purchase price that is reasonable in relation to the defect.
  - 5.4. In the event of a defect, we shall be entitled to make subsequent delivery contingent upon the customer returning the defective item and any benefits derived from it concurrently in accordance with Sections 346 and 348 BGB. There is no obligation to take back the replaced item.
  - 5.5. If a defect actually exists, we shall bear the costs necessary for inspection and remedial action, in particular transport, travel, labour and material costs.
    - 5.5.1. If the customer has installed the defective item in compliance with its type and purpose into another item or has attached it to another item after the defect became apparent, we shall not be obligated to reimburse the customer for the costs necessary to remove the defective item and install or attach the repaired or non-defective replacement item.

- 5.5.2.** If the customer has installed the defective item in compliance with its type and purpose into another item or has attached it to another item before the defect became apparent, we shall – within the scope of remedial action – only be obligated to reimburse the customer for the costs necessary to remove the defective item and install or attach the repaired or non-defective replacement item if they have given us the opportunity prior to this to carry out these actions ourselves within a reasonable period of time.
- 5.5.3.** The customer shall bear the costs of remedial action incurred as a result of the purchased item being moved to a place other than the customer's place of business after its delivery.
- 5.5.4.** If a request by the customer for rectification of a defect turns out to be unjustified, we may demand that the customer reimburse us for the costs incurred.
- 6.** The customer may only demand compensation:
- 6.1.** For damages, which are due to
- a wilful or grossly negligent breach of obligation on our part or
  - a wilful or grossly negligent breach of obligation on the part of one of our legal representatives, senior managers or vicarious agents,
- and which are not material contractual obligations and are not primary or secondary obligations in connection with defects in our deliveries or services.
- 6.2.** For damages that are due to a wilful or negligent breach of material contractual obligations on our part or on the part of one of our legal representatives, senior managers or vicarious agents. Material contractual obligations within the meaning of Sections 6.1 and 6.2 above are obligations that must be fulfilled for the proper performance of the contract, and which the customer can reasonably expect to be fulfilled.
- 6.3.** Furthermore, we shall be liable for damages due to the negligent or wilful breach of obligations in connection with defects in our delivery or service (obligations of remedial action or secondary obligations) and
- 6.4.** for damages that fall within the scope of protection of a warranty (assurance) or a guarantee of quality or durability expressly granted by us.
- 7.** In the event of a breach of a material contractual obligation due to simple negligence, the amount of liability shall be limited to the damage typically to

be expected and foreseeable for us at the time of conclusion of the contract while exercising due diligence.

8. Claims for damages asserted by the customer for the breach of a material contractual obligation due to simple negligence shall lapse one year after the commencement of the statutory limitation period. Exempted are damages resulting from injury to life, limb or health.
9. Rights of the customer under Sections 445a, 445b and 478 BGB in the event that claims are asserted against the customer or their downstream buyers in a supply chain shall, in accordance with the following regulations, remain unaffected in all other respects:
  - 9.1. The customer shall bear the burden of proving that the expenses for remedial action were necessary and that, in accordance with Section 439 (4) BGB, they could neither have refused their buyer remedial action nor used a cheaper method of remedial action.
  - 9.2. The claim under Section 445a(1) BGB shall lapse in accordance with Section 445b (1) BGB two years after we have delivered the item to the customer. This period of limitation shall apply even if a longer period would apply under Section 438 BGB.
  - 9.3. The statute of limitations for the customer's claims against us due to defects in a newly manufactured sold item as defined in Sections 437 and 445a (1) BGB shall commence two months at the earliest after the date on which the customer settles their buyer's claims, provided the claims in the relationship between the customer and their buyer had not yet lapsed. This suspension of the statute of limitations shall end five years at the latest after we have delivered the item to the customer.
10. Claims under Section 327u BGB shall remain unaffected by the aforementioned regulations and subsist to the extent permitted by law within the statutory time limits.
11. Claims for damages against us arising from statutory liability, e.g. under the Product Liability Act, and from injury to life, limb or health, shall remain unaffected by the aforementioned regulations and subsist to the extent permitted by law within the statutory time limits.

## C. Special Terms and Conditions for the Supply of Software

### Section 1 Scope

The following Special Terms and Conditions shall apply additionally to the General Terms of Part A, insofar as software is provided within the scope of services specified in Part B.

### Section 2 Scope of delivery and usage rights, technical safeguards

#### 1. Delivery and scope of delivery

The software, which we have developed ourselves, (hereinafter 'Adamczewski Elektronische Meßtechnik-Software'), including any program corrections, shall be delivered in each case in the form of the object code provided on a commercially available data storage medium or online by remote maintenance or as a download from our homepage. Application documentation is also included in the scope of delivery. Unless otherwise agreed between the parties, the application documentation can be provided either in the form of an operating manual or on a data storage medium, at our discretion. We do not have a contractual duty to provide the software's source code.

#### 2. Software usage rights

Unless otherwise agreed between ourselves and the customer, the customer shall be granted a non-exclusive, non-transferable, non-sublicensable right, unlimited by time or place, to use software developed by us. In the absence of other agreements, the usage right authorises the customer to use the software on a single PC or a single machine (single-user licence).

#### 3. Further rights, in particular to make copies beyond the extent necessary for use according to the contract, shall not be granted. The customer shall not be authorised to make changes to the software except for the right to correct errors. The customer's right to correct errors shall only apply if we refused or failed to correct the error ourselves prior to this. The customer shall be permitted to make a backup copy if, prior to this, we were asked to provide a backup copy and we refused to do so or we failed to provide a backup copy immediately at no charge.

4. Software labels, in particular copyright notices, brand names, serial numbers and similar, must not be removed, altered or rendered illegible.
5. The Adamczewski Elektronische Meßtechnik-Software may contain free and open-source software ('FOSS'). Licence and copyright information about this software can be found either in the documentation provided separately or integrated into the Adamczewski Elektronische Meßtechnik-Software, accessible via a menu.

### **Section 3 Third-party software**

Where we provide third-party software, the licence terms and conditions of said third party shall apply with regard to the permissible use of the software by the customer. It is our contractual duty to solely provide this third-party software in unaltered form.

### **Section 4 Custom programming**

1. Custom programming shall only form part of our services where this has been expressly agreed. Unless agreed otherwise, the following shall apply for custom programming:
  2. Section 2 above shall apply for custom programming, including the granting of rights.
  3. We shall be entitled to integrate custom programming into our standard software and to make this available to the general public. An obligation to maintain confidentiality as set forth in Part A, Section 8 does not apply in this respect.
4. Custom programming, including any programme corrections, shall be delivered in the form of the object code provided on a commercially available data storage medium or installed by remote maintenance or as a download from our homepage.

## **Section 5 Warranty and general liability**

1. The terms and conditions of warranty and general liability as set forth in Part B, Section 5 shall apply.

The following shall apply additionally for claims for remedial action:

2. We are entitled to provide subsequent improvement on the customer's premises or by way of remote maintenance. We also comply with our duty to provide subsequent improvement by providing downloadable updates which include an automatic installation routine and by offering the customer telephone support to resolve any installation problems that might arise.
3. If we are unable to rectify the defect or provide non-defective subsequent delivery, we shall provide the customer with workaround options. The workarounds shall be deemed to be remedial action, provided that these do not cause any significant impairment of the functionality or processes of the software. Workarounds are temporary methods of bypassing errors or malfunctions without interfering with the source code.
4. In the event of subsequent improvement, the user documentation shall also be adapted to the extent necessary.

## **D. Special Terms and Conditions for the Performance of Services**

### **Section 1 Scope**

The following Special Terms and Conditions for the Performance of Services shall apply additionally to the General Terms of Part A for all contracts with the customer for the provision of services, in particular EMC services, development services and other services.

### **Section 2 Liability**

1. The customer may only demand compensation:
  - 1.1. For damages, which are due to
    - a wilful or grossly negligent breach of obligation on our part or
    - a wilful or grossly negligent breach of obligation on the part of one of our legal representatives, senior managers or vicarious agents,and which are not material contractual obligations and are not primary or secondary obligations in connection with defects in our services.



**1.2.** For damages that are due to a wilful or negligent breach of material contractual obligations on our part or on the part of one of our legal representatives, senior managers or vicarious agents.

Material contractual obligations within the meaning of Sections 1.1 and 1.2 above are obligations that must be fulfilled for the proper performance of the contract, and which the customer can reasonably expect to be fulfilled.

- 2.** In the event of a breach of a material contractual obligation due to simple negligence, the amount of liability shall be limited to the damage typically to be expected and foreseeable for us at the time of conclusion of the contract while exercising due diligence.
- 3.** Claims for damages asserted by the customer for the breach of a material contractual obligation due to simple negligence shall lapse one year after the commencement of the statutory limitation period. Exempted are damages resulting from injury to life, limb or health.
- 4.** Claims for damages against us arising from statutory liability, e.g. under the Product Liability Act, and from injury to life, limb or health, shall remain unaffected by the aforementioned regulations and subsist to the extent permitted by law within the statutory time limits.

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