General Terms and Conditions of Delivery and Payment

These General Terms and Conditions of Delivery and Payment (hereinafter referred to as "General Terms") shall only apply to entrepreneurs within the meaning of Section 1 Austrian Consumer Protection Act (*Konsumentenschutzgesetz*).

1. Application of the general terms and conditions of delivery and payment

1.1 These General Terms shall apply to offers, the acceptance of offers, order confirmations and any contracts regarding the sale or manufacture of our goods, deliveries and our rendering of services (hereinafter collectively referred to as **"Deliveries"**) as well as to the provision of documents (including sales brochures, price lists, etc) in this context. Any general terms of the orderer shall only apply if explicitly approved by us in writing.

1.2 For the purpose of these General Terms the term "orderer" shall in purchase contracts also refer to the "buyer" of goods.

1.3 In addition, the applicable foreign trade rules, including any embargo regulations, shall apply in case of export transactions. The orderer shall at his own expense obtain all necessary export documents, and, if Deliveries are made to EU member countries, shall provide the VAT identification number. If he fails to do so, the orderer shall bear any VAT.

2. Offer and Acceptance

2.1 All our offers shall be subject to confirmation. Illustrations, drawings, weight indications etc. relating to an offer by us may marginally deviate from the actual Deliveries. No claims by the orderer shall arise from such deviations. Furthermore, we reserve the right to correct any errors contained in sales brochures, price lists, offer documents or any other documentations which are due to misapprehensions and shall not be liable for any damages arising from such errors. The same shall apply to errors made by our suppliers or subcontractors. The orderer shall be responsible for the accuracy of orders. Any reference to standards, specifications for materials, or control reports, or any reference to characteristics, dimensions, weights or fitness for a specific use of the goods shall not be deemed to be a guarantee, evidence of conformity, producer confirmation, nor any other confirmation or seal, like for example "CE" or "GS".

2.2 Any ancillary or special agreements must be made in writing to be effective. The acceptance of an order for delivery against outstanding invoice is always subject to a sufficient credit line given by the trade credit insurance effected by us.

2.3 We reserve the right of ownership and the copyright in cost estimates, samples, drawings and other documents or the rights of use thereof, respectively. Such items and documents may not be disclosed to any third party without our prior, explicit consent and shall be returned to us upon our request.

2.4 If we receive the Deliveries from our suppliers or subcontractors, we shall be entitled to withdraw from agreements with the orderer if such supplier or subcontractor fails to timely deliver, provided that the delay in delivery is not caused by us.

3. Prices, place of performance and delivery

3.1 The price shall be the price stated by us, or, if no prices have been stated by us, the price valid at the time of the order from our then current price lists (which is made available to the orderer upon the orderer's request).

3.2 Place of performance shall be our factory or the factory of our affiliated company from which delivery is made in each case in which delivery ex works was agreed; in any other case, place of performance shall be our warehouse from which delivery is made.

3.3 Subject to any other express provision, prices shall be ex works including loading in the factory, but excluding packaging. Prices shall be exclusive of VAT, VAT to be paid additionally to us by the orderer. Any special packaging, including any packaging required by law, shall be invoiced to the orderer in the amount of the orderer's expense and shall become the property of the orderer.

3.4 Unless agreed otherwise, if we undertook the installation or assembly, the orderer shall in addition to the agreed remuneration pay any additional costs, such as travel costs, costs of the transport of tools, transport costs, costs of personal luggage, other expenses and parts of remuneration.

3.5 Any costs estimates, service plans, engineering services as well as other consulting activities made or rendered by us must be paid for separately by the orderer on the basis of the statutory provisions for engineering services.

4. Shipment and passing of risk

4.1 We shall arrange for the shipping and packaging of goods in our sole discretion, but shall not be liable for choosing the most cost-efficient method. The risks inherent of the method so chosen by us shall be borne by the orderer. The unobjected acceptance of the Delivery by the shipping company or carrier shall be deemed to be evidence of a proper packaging.

4.2 The shipment of the goods shall be made at the expense and risk of the orderer; this shall equally apply in any case where "freight prepaid" has been agreed. The risk of loss or deterioration shall pass to the orderer with handing over of the Delivery to the shipping company or the carrier. If the orderer causes a delay of shipping, the risk shall pass to the orderer upon the Delivery being ready for shipment. Any costs incurred with us due to an extension of the holding time (see 6. 4 below) shall be invoiced to the orderer.

5. Conditions of payment and setting off

5.1 Subject to any other provisions the purchase price or the remuneration shall be paid within 14 days from the date of the invoice, net. Payment by bill of exchange may only be made upon special agreement, and any costs of such bill of exchange or discount charges shall be borne by the orderer. In such case, payment shall only be deemed to have been effected upon our cashing of such bill of exchange. No allowances or reductions of interest shall be granted for payment by bill of exchange or in case of down payments.

5.2 If the orderer is in default, we shall be entitled to demand interest from that date, such interest amounting to 9,2 % points above the base interest rate pursuant to Section 456 Austrian Commercial Code (*Unternehmensgesetzbuch*). We shall at any time be entitled to provide evidence for a higher loss. The same shall apply if deferment has been granted for any payment which had already been due. If the orderer is in default, we shall in addition be entitled to terminate the contract or suspend any further Deliveries to the orderer; this shall not be deemed to be a waiver of any other rights or claims we may have.

5.3 The orderer may only offset claims if such claims are undisputed or if they have been confirmed by a final court decision.

5.4 Outstanding claims shall immediately become due if the orderer fails to comply with the agreed due dates for payment, or if he requests the postponement of the due date or a settlement, or if he ceases to make payments.

5.5 In such case we shall be entitled to withhold our contractual performance until our outstanding claims have been paid in full, or retract our unpaid Deliveries at the orderer's expense, provided, however, that we have not yet completed our performance.

6. Time of delivery

6.1 The delivery deadline shall begin upon the sending of the order confirmation, but no earlier than upon the submittal by the orderer of all documents and permits, and the receipt of the agreed down payments, and clarification of all details regarding the order. The delivery date shall be deemed to be met if the Delivery has left the factory or notice of readiness for shipment has been given on or before the delivery date. However, we do not warrant any delivery dates.

6.2 The delivery deadline shall be extended in case of measures in connection with labour disputes, in particular strike and lockout, unforeseeable interruption of operation or inevitable shortage of raw materials or energy, or any other unpredictable impediments for which we are not responsible, to the extent such circumstances significantly affect the completion or shipment of the Delivery. This shall equally apply if such circumstances occur with suppliers or subcontractors and even if we were already indefault.

6.3 If the orderer suffers any losses as a result of a delay of delivery which is due to our fault, the orderer shall be entitled to claim compensation for such delay, unless the delay did not cause the orderer any disadvantage. Such compensation shall be 0.5 % for each full calendar week of delay, but no more than 5 % of the value of such part of the Delivery which cannot be used in time or cannot be used according to its contractual purpose as a result of the delay. The orderer bears the burden of proof. The orderer cannot claim any further damages based by the delay. Such restriction shall not apply if it was agreed that time is of the essence, if the delay was caused by gross negligence or intentional act on our side, on the side of our representatives or vicarious agents, or if we violate any of our obligations hereunder which is vital for the fulfilment of the purpose of the agreement ("cardinal" obligation).

6.4 If the shipment is delayed by more than 30 calendar days upon request of the orderer, we shall invoice to the orderer the actual costs incurred because of the storage, but in any case, a minimum amount of 0.5 % of the invoice amount for each month of storage in our warehouse. In addition, we shall invoice any costs arising in connection with the preparation of the Delivery for repeated shipment (e. g. new charging of batteries) at the end of the delay. We shall be entitled to otherwise dispose of the Delivery after having set a reasonable deadline if such deadline expired without results; we may then effect the Delivery to the orderer after expiry of another extended reasonable period.

6.5 Damage claims of the orderer for delays of delivery and claims for damages instead of performance exceeding the limitations set forth in Section 6.3, shall in all cases of delayed deliveries be excluded, even after expiry of a delivery deadline set for us. Claims for damages instead of performance may only be claimed by the orderer if the delay of delivery is caused by gross negligence or intentional act by us or any at least negligent violation of any of our obligations hereunder which is vital for the fulfilment of the purpose of the agreement ("cardinal" obligation).

7. Delivery

7.1 Upon written request from the orderer we shall at the expense of the orderer take out an insurance covering theft and breakage, transport, fire and water damage as well as any other insurable risks. For subsequent deliveries or supplement deliveries we shall separately invoice the transport costs. Section 4 of these General Terms shall apply accordingly.

7.2 We shall be entitled to make partial deliveries if and to the extent this is reasonable in accordance with the principles of good faith. Any deviations from the contractual delivery quantities are permitted, provided they are within the scope of commercial practice.

8. Reserved ownership rights

8.1 The individual items of a Delivery remain our property until all of our claims against the orderer under the business relationship have been satisfied. Until the Delivery has been paid in full the orderer shall keep the goods in trust on our behalf, store them separated from its own goods or any goods of third parties, store them properly, secure and insure them against all usual risks and identify them as our property. If the realisable value of all security interests we may have exceeds the amount of all secured claims by more than 10 % we shall upon request of the orderer release a respective part of such security interests.

8.2 The orderer shall be entitled to process the goods which are under reservation of title; any such processing shall be made for us. Processed or modified goods shall be considered to be goods under reservation of title. The same shall apply to combinations or mixtures, however, we reserve the right of ownership only in proportion of the value of the Delivery made by us to the aggregate value of the combinations or mixtures if the things the Delivery is combined or mixed with are owned by third parties. The orderer shall not be entitled to any other disposal of the goods under reservation of title, in particular they may not be subjected to pledge or transfer by way of security.

Goods under reservation of title may not be resold unless within the ordinary course of business and unless the orderer receives adequate payment for such goods from the party receiving the goods, or the orderer makes the reservation that the goods remain the property of the orderer until full payment by the party receiving the goods. If goods under reservation of title are resold the orderer hereby assigns to us any claims he may have from such resale against his customers together with all ancillary rights up to the final invoice amount of our claims against the orderer. Upon request, the orderer shall inform his customers of such assignment and submit to us all documents and information necessary for the assertion of the claims. Any payments (including insurance payments, if any) shall be kept by the orderer on our behalf up to the final invoice amount of our claims against the orderer. These monies shall be kept by the orderer separately from its assets or the assets of third parties.

8.3 The orderer shall immediately inform us of all pledges, seizures or any other interventions by third parties to enable us to take legal steps. If the orderer fails to inform us, the orderer shall be liable for resulting damages. Intervention costs incurred with us shall be borne by the orderer, provided that the intervention was successful and the resulting costs could not be collected by way of compulsory execution from the defendant of such intervention action.

8.4 Should this retention of title provision be invalid under the law of the country in which the Delivery is situated, such security which in the relevant country corresponds to the above retention of title provision shall be deemed to have been agreed upon.

8.5 Should a more extensive retention of title clause as the one provided for in this Section 8 be permitted by the law of the country in which the Delivery is situated, such as the assignment of the orderers future claims resulting from the resale of the Deliveries we made, or the extension of the retention of title to any future Deliveries, the orderer shall, upon our request, implement such clause.

9. Taking delivery

9.1 The orderer shall not refuse to take delivery for minor defects.

9.2 Any defects must be notified in writing without undue delay and in no event later than within 7 days after the orderer has taken delivery. If a defect is not discoverable within such period despite careful inspection of the Delivery ("hidden defect"), notice of the defect shall be given immediately upon the discovery of the defect. A hidden defect does not prolong the warranty/limitation period.

10. Warranties

We shall be liable for defects of the Deliveries as follows:

10.1 Scope of warranty by us

10.1.1 A Delivery shall only be deemed to be defective if it turns out to be unfit for use or significantly impaired in its usefulness due to its defective design or defective or inappropriate materials, unless such design or use of materials had been agreed. We shall not warrant for the fitness of the Delivery for a specific purpose, unless we expressly assumed such warranty. With respect to any newly manufactured products the technical state-of-the-art at the time of their completion shall be relevant. Any subsequently modified scientific knowledge shall not constitute a defect of the Deliveries.

With regard to products manufactured by third parties our warranty obligation shall be limited to the assignment of any warranty claims we may have against the supplier of such products.

Any indications contained in information brochures, prospectuses etc. shall merely be considered descriptions of materials and do not contain any legally binding product description, nor do they constitute any guaranteed characteristics. Unclear mounting instructions shall not constitute a defect of the Deliveries. In such case the orderer shall identify the lack of clarity in writing and request us to comment on the mounting instructions in writing. If the mounting is continued despite unclear instructions, we shall not be liable or subject to warranty obligations.

10.1.2 We do not give any warranties concerning limitations of usability, defective products or damages, inter alia resulting from the following: Any use other than the intended use or improper use; defective installation, assembly, placing into operation or use by the orderer or third parties; usual wear and tear; use of inappropriate equipment by the orderer; exchange of materials; defective construction works; inappropriate building ground; chemical or electro-mechanical or electrical impacts or defective execution of works by subcontractors. The same shall apply to damage caused by negligence of the orderer or by any other reasons after the passing of risk. Claims in connection with the Delivery shall also be excluded, if, for example, modifications have been made by the orderer or any third party without our prior consent, or repairs have been carried out without informing us in advance, or if maintenance works have not been carried out properly or not in the prescribed regular intervals.

We shall not be liable for defects of the Delivery resulting from product descriptions or specifications of the orderer. The same shall apply to parts, materials or any other equipment manufactured by the orderer or on its behalf, unless the manufacturer of such products assumes responsibility for them in relation to us.

10.1.3 Any exclusions or limitations of our liability/warranty obligations contained in this Section 10 shall not apply in cases of section 13.2 below.

10.2 Warranty claims

10.2.1 We shall cure defects of, replace or re-deliver all parts or services which show a defect within the warranty period, provided that the reason for the defect was already existent at the time of the passing of the risk and the orderer timely notified us of the defect. If we are unwilling or unable to cure the defect or replace the defective Delivery, the orderer may chose to either request a reduction of the price or, after expiry of a reasonable notice period without results, cancellation of the contract. For minor defects the orderer may not request a cancellation but only a reduction.

10.2.2 The orderer shall not be entitled to claims for expenses incurred in connection with the curing of defects, including but not limited to transport costs, tolls, labour costs and costs of materials, to the extent such expenses increase because the item of the Delivery has subsequently been transported to a location other than the seat of the orderer or the agreed location.

10.2.3 The orderer shall have the right to take recourse against us pursuant to Section 933b Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) (recourse of the contractor) only to the extent this does not exceed the statutory claims customers may have against the orderer. The provision of Section 10.2.2 hereunder shall apply accordingly to the scope of the recourse claim of the orderer against us pursuant to Section 933b Austrian Civil Code.

10.2.4 The orderer shall have no further claims against us or any of our vicarious agents and no claims other than those provided for in this Section 10 in connection with defects of Deliveries. The same shall apply to defects which do not exist in the Delivery itself. In such case the provisions of 13.2 and 13.3 shall apply.

10.3 Handling of claims and statute of limitation

10.3.1 If the orderer claims the existence of a defect, we shall immediately be given opportunity for verification within reasonable time and, if applicable, provide the orderer with the defective parts of the Delivery. Any parts which have been exchanged shall become our property.

10.3.2 The orderer shall only be entitled to withhold payments if notice of defect has been given and its justification is beyond doubt. If a notice of defect was given in error, the orderer shall reimburse us for any costs incurred in connection with the clarification.

10.3.3 Claims for defects of the deliveries shall be subject to a limitation period (warranty period) of 12 months starting with the passing of risk. This shall not apply where longer mandatory limitation periods are prescribed by law. Subject to Section 13.3 below, the statutory provisions on the suspension of limitation periods, interruption and resumption of limitation periods shall remain unaffected.

11. Default, delay and unforeseeable events

11.1 The orderer may terminate the contract if the performance finally becomes impossible for us before the passing of risk. If the orderer claims damages, we shall pay damages if the default is due to our fault. Subject to the provisions of Section 13.2 the claims for damages of the orderer shall be limited to 10 % of the value of such part of the Delivery which cannot be used for the intended purpose due to the defaut.

11.2 In case of a delay of delivery within the meaning of these General Terms, the orderer may grant a reasonable grace period, expressly stating that the orderer will reject acceptance of the Delivery if such grace period expires without result. The orderer may only withdraw from the relevant part of the contract, however, if the grace period expires without result due to our fault.

11.3 The orderer shall have no further claims, including but not limited to the claims for termination or reduction or the compensation for damages of any kind, even damages which did not occur to the Delivery itself. Sections 6.5 and 13.2 hereunder shall remain unaffected.

11.4 If the orderer withdraws from the contract because of reasons we are not responsible for, we shall be entitled to receive a compensation for any damage incurred: Such compensation shall amount to a minimum of 25 % of the order value. In case of return of the Delivery we shall reimburse the orderer, such reimbursement not exceeding 50 % of the invoice value. We shall not be obliged to take back any Delivery. Any ancillary costs in connection with the return of a Delivery shall be borne by the orderer.

11.5 If unpredictable events result in significant modifications of the economic importance of the Delivery, or have a major impact on our business, the contract shall be reasonably amended in accordance with the principles of good faith. We may terminate the contract if such amendments are economically not justifiable.

12. Industrial Property Rights

12.1 If Deliveries have to be manufactured or processed by us according to specifications of the orderer, the orderer shall indemnify us against any loss, damage, costs or other expenses to by paid by us or which we are willing to pay for a violation of any patents, copyrights, trademarks or other industrial property rights of third parties resulting from such contractual processing of the Delivery according to specifications given by the orderer.

12.2 We reserve the right to change the description of the Deliveries with regard to the specifications made by the orderer if required by statutory provisions or any rights of third parties, provided, however, that such modified description of the Deliveries does not result in a deterioration of the Deliveries as to their quality orusability.

13. Claims for damages and exclusion of liability

13.1 Claims for damages for breach of a duty to consult shall be excluded unless the orderer can show the existence of a separate consultation agreement. Generally, claims for damages shall be limited to the typical damage which could reasonably be foreseen at the conclusion of a contract. Generally, we shall only be liable for damage caused intentionally or by gross negligence on our side or gross negligence of any of our legal representatives or vicarious agents. Any other claims for damages against us, including any non-contractual damage claims, shall be excluded.

13.2 This shall not apply if we are liable pursuant to mandatory statutory provisions, including but not limited to any liability for personal injury caused by us, any of our legal representatives or vicarious agents. Our liability for the at least negligent violation of any of our contractual obligations which are vital for the achievement of the purpose of the contract ("cardinal" obligations), the fraudulent concealment of defects, or for characteristics of goods, for which we have given a guarantee shall remain unaffected. The above provisions shall not affect the allocation of the burden of proof.

13.3 The limitation period for damage claims shall begin to run at the time the claiming party becomes aware of the circumstances constituting the claim. The orderer shall in any event be obliged to inform us of any relevant circumstances. If the defects are cured, the limitation period shall not begin to run again with the completion of such curing of defects.

14. **Data Protection**

14.1 “Personal Data” means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.
The orderer will:

(a) treat Personal Data of all our personnel and prospective personnel as our confidential information;
(b) take appropriate technical and organizational security measures to protect Personal Data;
(c) use and permit employees and third parties to use Personal Data pursuant to our instructions only for purposes directly related to the performance of obligations under the purchase order and these Terms and Conditions;
(d) refrain from transferring Personal Data out of the European Union unless we have given our prior consent to the transfer and the orderer has satisfied any further requirements reasonably imposed by us;
(e) indemnify us against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which we may suffer or incur arising out of any breach of this clause; and
(f) promptly notify us about: any legally binding request for disclosure of Personal Data by a law enforcement agency (unless otherwise prohibited); any accidental or unauthorized processing of Personal Data; and any requests received from individuals to whom Personal Data relates, without responding to that request unless it has been otherwise authorized to do so by us.

14.2 The orderer explicitly agrees that we, our employees, sub-contractors and/or agents may process and use Personal Data related to the performance of obligations under the purchase order and these Terms and Conditions in our internal systems and transmit this data to companies affiliated with us. The orderer warrants and represents that it has complied with all applicable privacy laws and local laws in relation to obtaining and transferring relevant Personal Data to us. We maintain an information notice explaining how we will process Personal Data at https://www.enersys.com/emea/crm. The orderer undertakes to promulgate this information notice to individuals whose personal data forms part of the Personal Data.

15. (1) Orderer shall not sell, export or re-export, directly or indirectly, into or for use in the Russian Federation or Belarus any goods supplied under or in connection with this Agreement that fall within the scope of Article 12g of Council Regulation (EU) No 833/2014 or its successor regulations.

(2) The Orderer will make every effort to ensure that the purpose of paragraph (1) has not been thwarted by third parties further down the commercial chain, including potential sellers.

(3) The Orderer establishes and maintains an appropriate monitoring mechanism to detect behaviour by third parties further down the trade chain, including where possible resellers, that would defeat the purpose of paragraph (1).

(4) Any violation of section (1), (2) or (3) constitutes a material breach of this Agreement and Seller shall be entitled to seek appropriate remedies, including, but not limited to:

(i) termination of this Agreement; AND

(ii) a penalty of 100% of the total value of this Agreement or the price of the goods exported, whichever is greater.

(5) The orderer will immediately inform Us of any problems in the application of paragraph. (1), (2) or (3), including any relevant actions of third parties that would defeat the purpose of paragraph. (1). The orderer shall make available to the orderer Information relating to compliance with the obligations arising from paragraphs (1), (2) and (3) within two weeks of a normal request for such information.

16. Application, confidentiality, place of jurisdiction and governing law

16.1 These General Terms shall replace any former written or oral agreements between the Parties, to the extent such former agreements are in contradiction to these General Terms. Any such former agreements shall no longer be valid upon these General Terms becoming effective. Any framework agreements concluded between the Parties in writing shall remain unaffected.

16.2 These General Terms shall not be disclosed by any of the Parties to any third party without the prior written approval of the other Party.

16.3 Place of jurisdiction shall be the court competent for commercial matters in the First District of Vienna, Austria; however, we may also bring an action before the competent courts at the seat of the orderer.

16.4 All legal relationships to which these General Terms apply shall be governed by Austrian law; the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not apply.