



General Terms and Conditions

for the supply of services and goods by EMI Twente B.V. (hereinafter: "EMI"), located in Enschede, the Netherlands, registered with the trade register of the Chamber of Commerce under number: 77488784.

Research and development services, sample and prototype development, feasibility studies, engineering work, consultancy, sale of special equipment and similar services contracted by EMI are subject to the following General Terms and Conditions.

Any divergent, contrary, or additional terms requested and/or supplemented by the Client are hereby explicitly rejected.

Definitions

- Agreement:** these general terms and conditions and the Quotation between EMI and the Client.
- Background:** all information, methods, techniques, Know-how, software and materials (regardless of the form or medium in which they are disclosed or stored) as well as any IPR pertaining thereto, which is in the possession of a Party prior to commencement of the Research, or is generated by a Party before or outside the Research and which is necessary to carry out the Research and which a Party contributes to the Research.
- Client:** the client for which EMI executes the Research.
- Confidential Information:** all information of whatever nature or in whatever form which is disclosed by a Party ("the Disclosing Party") to the other Party ("the Receiving Party") in connection with the Research, and which:
- a) if disclosed in tangible form, was marked as "confidential" at the time of such disclosure; or
 - b) if disclosed orally, was stated to be confidential at the time of such disclosure and confirmed as "confidential" in writing and/or via email within thirty (30) calendar days upon disclosure.
- IPR:** intellectual property rights, including without limitation, patents and patent applications, copyrights, database rights, design rights, and any similar forms of statutory protection, arising or available anywhere in the world.
- Know-how:** all non-tangible knowledge, information, processes, procedures, instructions, not covered by IPR.
- New Know-how:** all Know-how generated within the Research by or on behalf of a Party.
- Part(y)(ies):** a party or the parties to the Agreement.
- Quotation:** the quotation forwarded by EMI to the Client to which these general terms and conditions apply integrally.



Research: the research as specified in the Quotation.

Results: all inventions, results, materials, methods, processes, products, programmes, software, findings or discoveries generated within the Research by or on behalf of a Party, and the IPR relating thereto, excluding New Know-how.

Article 1 – Offers

- 1.1. The Research shall comprise the work defined in the Quotation of EMI.
- 1.2. Offers are non-binding and valid for a period of thirty (30) days, unless otherwise stated. Prices stated in the Quotation are excl. of VAT.
- 1.3. No purchase order shall be binding on EMI unless confirmed by EMI in writing.
- 1.4. If a purchase order is placed by the Client without a prior offer and the Client takes delivery of the Research, this shall in any case constitute as Agreement under these General Terms and Conditions and as a confirmation of the purchase order. Additional arrangements shall require the written approval of EMI.
- 1.5. All notifications relating to the Agreement shall be made in writing

Article 2 – Execution of the Agreement

- 2.1. EMI shall carry out the Agreement to the best of its ability and insight and in accordance with the demands of good workmanship. However, EMI cannot guarantee that the expected results will be achieved and therefore the Agreement will be a best effort obligation (“inspanningsverplichting”) and shall not constitute an obligation to perform or a guarantee commitment (“resultaatsverplichting”).
- 2.2. EMI has the right to have certain activities carried out by third parties, if and in so far as a proper execution of the Research so requires.
- 2.3. The Client will see to it that all information of which EMI indicates that it is necessary for the execution of the Research or whereof the Client in good faith can be expected to understand that it is necessary, will be provided to EMI on time and as soon as possible. If the information necessary for the execution of the Agreement is not provided to EMI on time, then EMI shall be entitled to suspend the execution of the Agreement and/or to charge any extra cost, resulting from the delay, to the Client in accordance with the usual rates.
- 2.4. EMI cannot be held liable for damages of whatever nature, which have arisen due to the fact that the EMI has based itself on incorrect and/or incomplete data supplied by the Client, unless the incorrectness or incompleteness should have been obvious to EMI.
- 2.5. If it has been agreed that the Agreement shall be executed in stages, then EMI can suspend the execution of those parts that belong to a following stage until the Client has approved of the results of the previous stage in writing.

Article 3 – Term of the Agreement; time-limit of execution

A term agreed for the execution is not a deadline, unless otherwise expressly agreed in writing. Should EMI recognize that the agreed term can't be met, then it shall notify the Client of the reasons for delay and shall agree on an appropriate adjustment with Client.



Article 4 – Alteration of the Agreement

- 4.1. If during the course of the Agreement it appears necessary to alter or complement the activities to be carried out in order to ensure adequate performance, then the Parties will adapt the Agreement accordingly in writing, in due time and after mutual consultation.
- 4.2. If Parties were to agree that the Agreement is changed or adapted, then the date the execution is completed may be influenced on that account. EMI shall inform Client thereof as soon as possible.
- 4.3. If the alteration or adaptation of the Agreement were to have financial and/or qualitative consequences, then EMI will inform the Client thereof beforehand. If a fixed fee has been agreed on, EMI will indicate to what extent the alteration or adaptation of the Agreement will result in an adaptation of the fee.
- 4.4. Contrary to the provisions in paragraph 3 of this article, EMI will not be able to charge additional costs if the alteration or adaptation results from circumstances that can be attributed to EMI.

Article 5 – Samples

- 5.1. The Client bears the responsibility for the selection, representativeness, coding, brand and product names, and the provision to EMI of any samples, materials, raw materials, products, semi-finished products, and end products to be researched. The Client is obliged to notify EMI of any hazardous properties of any samples, materials, raw materials, products, semi-finished products, and end products in a clear manner in writing and to mark the samples, materials, raw materials, products, semi-finished products, and end products as hazardous.
- 5.2. Unless agreed otherwise, samples or, as the case may be, what is left thereof, which Client has made available to EMI in connection with the execution of the Agreement, shall immediately be picked up at EMI by Client upon completion of the Project and Client shall give EMI a confirmation of receipt for this. If Client fails to pick up the (remnants of the) samples within two (2) weeks after finalizing the Project, EMI shall have the right to store, to destroy or dispose otherwise of these for risk and account of Client. Transport and storage of the samples and the remnants thereof shall be for risk and account of Client.

Article 6 – Project Results, Background and rights of use

- 6.1. Results generated by EMI within the Research shall be owned by Client.
- 6.2. New Know-how shall be owned by the Party generating such New Know-how. For the avoidance of doubt, any (New) Know-how, residual knowledge and results of the Research pertaining to the enhancement and/or improvement of analytical knowledge and/or one of EMI's working methods and/or EMI's Background shall remain solely owned by EMI.
- 6.3. This Agreement does not affect the ownership of any Background.
- 6.4. Each Party grants the other Party a royalty-free, non-exclusive license to use its Background, Results and New Know-how only for the purpose of carrying out the Research, but for no other purpose. Neither Party may grant any sub-license to use the other Party's Background, Results and New Know-how.



- 6.5. If the use of Background and/or New Know-how of EMI is needed for Client to practice any of Client's Results, EMI shall grant, unless prohibited by an agreement in effect on or before the effective date, to the Client a non-exclusive, non-transferable, non-sublicensable, world-wide, perpetual, irrevocable license under its Background and/or New Know-how to practice Client's own Results under fair and reasonable conditions to be agreed upon in advance, in writing. A request for access rights pursuant to this Article 6.5, may be made up to twelve (12) months after the end of the Agreement.
- 6.6 EMI shall retain at all times a royalty-free, non-exclusive, worldwide, perpetual, irrevocable license (with the right to sublicense) on the Results and New Know-how of Client for (commercial) contract research, research and development and non-commercial research and educational activities (including but not limited to research in national and European projects executed with public funding).

Article 7 – Termination of the Agreement; immediately payable claims

- 7.1. Client may not terminate the Agreement prematurely, unless Article 7.2 applies. However, if the Client terminates this Agreement prematurely, Client shall compensate EMI fully for all of its non-cancellable costs and commitments, including but not limited to the (fixed) fee agreed upon within the Quotation.
- 7.2. If a Party is in breach of any provision of the Agreement and (if it is capable of remedy) the breach has not been remedied within thirty (30) days after receipt of written notice specifying the breach and requiring its remedy, then the other Party may (partially) terminate this Agreement with immediate effect by giving notice to the defaulting Party. Such (partially) termination shall not affect the performance of obligations by the defaulting Party or the rights of the other Party which are due or exist before the date of (partially) termination.
- 7.3. The claims which the EMI has on the Client are immediately payable in the following cases:
- a. circumstances which have become known to the EMI after concluding the Agreement, provide sufficient grounds for the EMI to fear that the Client will be unable to meet his obligations;
 - b. if the EMI has asked the Client to provide surety in respect of the performance and this surety is not provided or insufficiently so;
 - c. In the said cases the EMI will be entitled to suspend further execution of the Agreement or to proceed to (partially) terminate the Agreement, this without prejudice to the right of the EMI to claim damages.
- 7.4. If circumstances were to arise with regard to persons and/or materials of which the EMI avails itself for the execution of the Agreement or is used to avail itself, and which are of such a nature that execution of the Agreement becomes impossible or so difficult and/or disproportionately expensive that observance of the Agreement can no longer be reasonably expected, then the EMI is entitled to (partially) terminate the Agreement.

Article 8 – Defects; terms of complaint

- 8.1. Complaints about the activities carried out should be reported by the Client to EMI in writing, within ten (10) calendar days after discovery, but at the latest within sixty (60) calendar days after completion of the activities in question.
- 8.2. If a complaint is justified, EMI will carry out the activities as agreed, unless this has meanwhile become useless. If this is the case, the Client should make it known in writing. If the carrying out of the agreed service is no longer possible or has lost its purpose, EMI can only be held liable within the limits of Article 11 of these General Terms and Conditions.
- 8.3. Even when the Client lodges a complaint on time, his obligation to pay shall remain.

Article 9 – Fees

- 9.1. The fee shall be a fixed price. Notwithstanding this, the contracting Parties may agree that the fee will be charged according to cost (time-spent basis), where applicable with a maximum cost limit. All prices are excluding VAT.
- 9.2. If Parties agree that more work will be carried out than determined in the Agreement, this extra work will be carried out under the same conditions as originally agreed, unless EMI and the client have agreed otherwise explicitly and in writing.
- 9.3. For assignments with a duration of over sixty (60) calendar days the cost due shall be charged periodically.
- 9.4. If EMI and the Client have agreed to a fixed fee then EMI shall nevertheless be entitled to raise this fee or those rates: the EMI may pass on increases in the wages of its staff members, as well as cost of materials and travelling expenses. Such a raise can only be charged to the Client if he has been informed thereof before the date of commencement.

Article 10 – Payments

- 10.1. Payments must be made within thirty (30) calendar days of receipt of the relevant invoice. The Client shall pay the costs concerned by the method of payment to be specified by EMI. Upon expiration of said period of thirty (30) calendar days, the Client shall be in default and will be obliged to pay an interest of one percent (1%) per month on the amount due, as from the first day the Client was in default.
- 10.2. In case of a winding-up, bankruptcy or a moratorium of the Client, the Client's obligations shall be due on demand.
- 10.3. Contestation of an invoice by the Client shall not suspend the fulfilment of its payment obligations.
- 10.4. Payments made by the Client shall always serve to settle firstly all interest and costs due, secondly the invoices due and payable that have been outstanding longest, even when the Client states that the payment relates to an invoice of a later date.
- 10.5. Payments shall be effected without discounts, settlement, withholding or counterclaim.



- 10.6. The Client owes the EMI the legal cost incurred by the EMI in all courts, except when the Client can prove that these are unreasonably high. This applies only if the EMI and the Client are engaged in legal procedures with regard to an Agreement to which these general terms and conditions apply and a court decision becomes final and conclusive whereby the Client is put fully or to a great extent in the wrong.

Article 11 – Liability

- 11.1. EMI is only liable for imputable damage suffered by the Client as a result of non-(timely)compliance by EMI or by employees or third parties hired by EMI. The maximum amount for which EMI will be liable is the amount payable by the Client to EMI in accordance with the Research carried out under the Agreement. These limitations of liability do not apply in the event that the damage is caused by a wilful act or gross negligence on the part of EMI, any liability due to slight negligence shall be excluded. If the execution of the Agreement takes longer than 1 (one) year, EMI's liability will be limited to the (average) amount that the Client owed EMI in the previous year (years). Under no circumstances will EMI be liable for indirect damage, including but not limited to: consequential damage, loss of profit, lost savings and damage due to business stagnation.
- 11.2. The Client will indemnify EMI from any liability against third parties for damage that is the result of the provision of incorrect information to EMI.
- 11.3. In respect of any information or materials (e.g. Results, New Know-how and Background) supplied by EMI to the Client or vice versa under the Research, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. Therefore, the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and no Party granting access rights shall be liable in case of infringement of proprietary rights of a third Party resulting from the other Party exercising its access rights.
- 11.4. The limitations of liability included in these terms do not apply, if the damages are to be blamed on a wilful act or gross negligence on the part of EMI.

Article 12 – Confidentiality, use of Client's name, trademark(s) and/or logo(s)

- 12.1. Neither Party will, either during the Research or five (5) years after the termination and/or expiration of the Agreement, disclose to any third party, nor use for any purpose except carrying out the Research, any of the other Party's Confidential Information.
- 12.2. Neither Party will be in breach of any obligation to keep any Confidential Information confidential or not to disclose it to any third party to the extent that it:
- a. is part of the public domain without violation of this Agreement;
 - b. is known and on record at the Receiving Party prior to disclosure by the Disclosing Party.



- c. is lawfully obtained by the Receiving Party from a third party who is not bound by similar confidentiality obligations;
 - d. is developed by the Receiving Party completely independently of any such disclosure by the Disclosing Party;
 - e. is ascertainable from a commercially available product; or
 - f. is disclosed pursuant to administrative or judicial action, provided that the Receiving Party shall use its best efforts to maintain the confidentiality of the Confidential Information.
- 12.3. EMI shall be allowed to use Client's name, trademark(s) and/or logos in its marketing materials including but not limited to: company presentation, brochures, website and LinkedIn postings.

Article 13 – Hiring Personnel

The Client will not hire any employees of EMI that were involved in the Research carried out under the Agreement for a period of at least 1 (one) year after completion of the Research, without prior written permission from EMI.

Article 14 – Force Majeure

- 14.1. Force majeure shall mean: circumstances which prevent fulfilment of the obligation and for which EMI cannot be held responsible. These will include, if and in so far as these circumstances have made fulfilment of the obligation impossible or if they make it unreasonably difficult to do so:
- a. strikes in organizations other than the EMI, wildcat strikes or political strikes in the organization of the EMI, (worldwide) pandemics, acts of god, a general lack of the necessary raw materials and other matters or services required for the realization of the agreed performance; unforeseen delays at the suppliers or other third parties on which the EMI depends and general transport problems.
- 14.2. During force majeure the obligations of EMI shall be suspended. If the period in which fulfilment of the obligations is impossible for the EMI due to force majeure, lasts longer than three (3) months, then each Party shall be entitled to terminate the Agreement without an obligation to pay damages in that case.
- 14.3. If EMI already has fulfilled part of its obligations when the force majeure arises, or if it can only partly meet its obligations, then EMI shall be entitled to invoice the part which has already been carried out or, as the case may be, the part which can be carried out. The Client is obliged to settle this invoice as if it were a separate Agreement. However, this does not apply when that part, which has already been carried out or, as the case may be, can be carried out, does not have an independent value.



Article 15 – Settling of disputes; applicable law

- 15.1. Any agreement between EMI and the Client shall be governed by and construed in accordance with the laws of the Netherlands.
- 15.2. Contrary to the legal stipulations as regards the competence of the civil court, any:
 - a. dispute between the Client and EMI with regard to intellectual property rights shall be settled by the District Court in The Hague, provided the court is competent; and
 - b. All other disputes between the Client and the EMI shall be settled by the District Court in Overijssel, provided the court is competent.