

## **1. Introduction**

Unless otherwise agreed in writing, the following General Terms and Conditions shall be effective (hereinafter referred to as the "Terms") for Esbjerg Maritime Service ApS, Lillebæltsvej 42, 6715 Esbjerg N, Denmark (hereinafter referred to as EMS), products, deliveries, letting of equipment, agency services, engineering services, hiring out of manpower and/or other services supplier by EMS to the Customer.

The Customer's General Conditions of Purchase will not be considered irrespective these are a part of the Customer's sales documents, including acceptance. This applies whenever the Conditions of Purchase are presented.

## **2. Offer, Order and Acceptance**

EMS's written offer which does not indicate a period within which acceptance must be given lapses if the acceptance accordingly has not arrived to EMS within 30 days from the date of the offer. Oral offers have to be accepted immediately. EMS's offers are made subject to the goods, products or services being unsold. EMS's services or supplies only cover what appears from the order confirmation /invoice. Modifications in or amendments to the original agreement are not binding without written confirmation from EMS. At any time a security for the full amount can be required e.g. in the form of a bankers guarantee – before delivery /installation will be commenced.

## **3. Prices**

All prices are in Danish kroner exclusive VAT, freight, customs, taxes and other expenses. If the prices of the offered or agreed delivery or service is changed as a result of the changes in the purchasing prices, commodity prices, exchange rates, freight, customs, taxes, amendments of laws regarding hired out personnel, collective agreements etc., EMS is entitled to change the offered and / or agreed prices towards the Customer. Unless otherwise agreed the price will be Ex Works.

All variable costs are defrayed by the Customer, including crew changes, meals and accommodation, weather downtime, maritime cost, vessels and charter costs, air freight costs, or freight charges and/or transportation to and from the work site.

EMS prices and schedule are based upon unrestricted access at all times in order to perform the work and any changes hereto shall entitle EMS to adjustments in the contract price and time extensions and change to the programme

## **4. Payment**

Unless otherwise agreed in writing payment has to take place according to the payment terms printed on the invoice. By late payment a default interest will be charged at the rate of 2 % per month as from the due date. Payment by set-off can not take place if the counterclaim has been disputed. If the Customer does not comply with the terms of payment this will be considered as a material breach which entitles EMS to stop further deliveries and to demand for the immediate payment if any outstanding amount due as well as not due.

## **5. Cancellation and Modification of the Order**

If EMS approves a modification or cancellation of the order the Customer is obliged to pay the expenses in connection with this modification or cancellation. In connection with a cancellation in whole or in part the Customer is obliged to compensate EMS's loss of profits.

In the event of the unjustified cancellation of the agreement, an unjustified termination or the hindrance of the performance by the Customer, EMS reserves the right to bill the Customer for lump-sum damage

compensation in the amount of 30% of the order value, unless the Customer is able to prove that EMS's loss is significantly lower. EMS reserves the right to assertion of proven higher damage.

## **6. Product Information and Modifications**

Data contained in product information are binding only to the extent that EMS expressly has made references in writing thereto. EMS is entitled to without notice to make modifications to all product specifications if this can take place without any significant inconvenience for the Customer. Drawings, specifications and the like, which have been submitted by EMS before or after conclusion of the Agreement, shall remain the property of EMS and shall not be disclosed without EMS's written consent.

If the Customer requests any variations in ordered products or services EMS is not obliged to perform these variations without a new written agreement including the requested variations are accepted by both parties.

## **7. Delivery and Transportation**

Delivery time and place of delivery is stated on the order confirmation. Delivery terms are otherwise agreed ex-works so that the Customer bears the risks and expenses in connection with the delivery.

## **8. Delivery Time**

Delivery times are non-binding, if not confirmed expressly in writing. Any obligation to deliver is subject to the prompt and orderly fulfilment of the obligations of the Customer.

The delivery time is stipulated by EMS in accordance with the conditions which existed at the time when the offer was made and/or concluded. Unless otherwise agreed in writing a postponement of the delivery time by 10 working days will be considered as delivery on time in every respect, so that the Customer for that reason can not exercise a right towards EMS. EMS shall without undue delay notify the Customer about changes in delivery time.

Partial deliveries and invoices are permissible to the extent that this is reasonable for the Customer.

The time of delivery is extended reasonably in case of unforeseeable events, which EMS despite reasonable care and efforts, and by using appropriate means, are not able to avert, irrespective of whether such circumstances occurred at EMS's company or EMS suppliers. Such unforeseeable events include breakdowns, official interventions, power supply difficulties, transport deficiencies, delay in supply of important raw materials or products, as well as strike and lockout. EMS will inform the ordering party about such impediments immediately.

If a delivery time is explicit confirmed in writing by EMS, the liquidated damages for delay in delivery shall be payable at a rate of 2 % of the Purchase Price of the Products for each commenced week of delay. The liquidated damages shall not exceed 20 % of the Purchase Price of the Products; however the maximum, aggregated, cumulative legal liability for EMS regarding delays cannot exceed DKK 100.000 per year for all delays regarding the same customer in the same calendar year. The Customer cannot exercise other remedies for breach of contract regarding delays.

## **10. Defects and Complaints**

Upon delivery the Customer shall without undue delay and within 3 days from receipt of the products perform such an examination of the goods or products sold as proper trade practices require.

If the Customer wants to invoke a defect the Customer shall without undue delay and within 14 days after the defect has been discovered or should have been discovered give EMS Written Notice specifying the defect. The notice shall contain a description of how the defect manifests itself. Notice of a defect shall be given immediately if there is a reason to believe that the defect may cause damage.

If the Customer has or should have discovered a defect and the Customer fails to make a complaint as stated the Customer shall forfeit his right to make any claim in respect of the defect.

If the Customer has not invoked a defect within 12 months after the delivery date towards EMS, the Customer shall forfeit his right to make any claim in respect of the defect. If the delivery is used more intensely than agreed or used more intensively than it could have been assumed at the closing of the Agreement this period shall be reduced proportionally.

EMS is obliged to remedy any defect due to faulty design, materials or manufacturing. At EMS's choice de-fects in the goods or products sold shall be remedied, delivered anew or the purchase price of the item sold will be credited the Customer. For the Parts of the delivery which is repaired or replaced EMS assumes the same obligations that apply to the original delivery for a period of 12 months. For the other parts of the deliv-ery the stated period shall only be extended with that period in which it has not been able to use the delivery due to defects. Notwithstanding the above-mentioned EMS shall have no liability for defects of any part of the delivery for not more than 18 months from the takeover.

Changes or modifications of the good sold without EMS's consent deprives EMS of all responsibility and lia-bility.

There shall be no warranty of any kind of purchased products or services provided.

EMS's liability is limited to the defects arising out of the assumed working conditions in the agreement and the proper use of the delivery. EMS is not liable for defects caused by material supplied by the Customer, constructions which are stipulated/specified by the Customer, mistakenly performed preparatory work per-formed by the Customer and circumstances occurring after the takeover including defects caused by faulty maintenance on the part of the Customer, changes in the delivery performed by the Customer without EMS's Written Consent, faulty repairs performed by Customer and normal wear and tear or deterioration.

The Suppler shall have no liability for defects beyond the above. This applies to any loss the defect may cause including loss of profits and any other consequential economic loss. The above limitation in EMS's lia-bility shall not apply where EMS has been guilty of gross negligence.

If defects occur within the 12 month period, the product and/or equipment have to be returned to EMS. The Customer is obliged to deliver the products and/or equipment to EMS for reparation and shall bear all costs and transportations risks in this regard.

EMS assess the need and cost of repairs, the risk of loss of, or damage to, such Products while at EMS facili-ty, including the transport phase to and from said facility.

If EMS finds it is necessary to repair on site, all travel related expenses, including maritime costs, air freight costs, vessels and charter costs or freight charges will be separately invoiced.

EXCEPT FOR THE ABOVE MENTIONED A) EMS DOES NOT MAKE, BY VIRTUE OF ANY AGREEMENT OR OTHERWISE, AND HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO ANY COMPONENTS DELIVERED BY CUSTOMER, ANY SERVICES, ANY PREVIOUSLY DEVELOPED MATERIAL, ANY NEWLY DEVELOPED MATERIAL OR ANY OTHER PROJECT DELIVERABLES, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND B) ALL PROJECTS ARE UNDERTAKEN, AND ALL PROJECT SERVICES, PREVIOUSLY DEVELOPED MATERIAL, NEWLY DEVELOPED MATERIAL, AND OTHER PROJECT DELIVERABLES ARE PROVIDED, BY EMS ON AN "AS IS" BASIS.

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FOR THE AVOIDANCE OF DOUBT, (A) EMS PROVIDES NO WARRANTY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY COMPONENTS IN ANY PRODUCTS, AND (B) CUSTOMER, NOT EMS, BEARS ALL RISK OF ANY DAMAGE, LOSS, LIABILITY, COST, OR EXPENSE RELATED TO ANY CLAIM THAT ANY SERVICES, COMPONENTS OR ANY SOFTWARE OR OTHER PROJECT DELIVERABLES INFRINGE ANY PATENTS, COPYRIGHTS, OR OTHER PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS.

#### **11. Retention of title**

EMS reserves, with the restrictions imposed by mandatory law, the right of ownership to the products sold, until the full purchase price and those in connection with the delivery of the sales object incurred expenses has been paid by the Customer or the agreed security has been provided and until this has taken place the Customer is not entitled to resell the sales object or to dispose of the articles in such a way that conflicts with EMS's retention of title.

In connection with changes and adjustments of the products however this takes place in such a way that the sales object does not lose its distinctiveness or identity the retention of title is maintained so that it comprises the changed and adjusted object to the value which the product represented without the performed changes and adjustments.

Once the Customer has paid or provided the agreed security for any debt and the retention of title has been passed to the Customer EMS is obliged to confirm this on demand.

#### **12. Limitation of liability regarding Customers property located on EMS facilities**

EMS DOES NOT MAKE, BY VIRTUE OF ANY AGREEMENT OR OTHERWISE, AND HEREBY EXPRESSLY DISCLAIMS, ANY LIABILITY OF ANY KIND WITH RESPECT TO ANY HANDLING, STORAGING AND WAREHOUSING OF CUSTOMERS PROPERTY OR PRODUCTS OR ANY COMPONENTS OR PRODUCTS OWNED BY CUSTOMER WHEN THE GOODS OR PROPERTY IS LOCATED AT EMS FACILITIES OR AT THIRD PARTY FACILITIES ACCORDING TO OR AS A NATURAL PART OF THE AGREEMENT.

FOR THE AVOIDANCE OF DOUBT, (A) EMS IS NOT RESPONSIBLE FOR ANY DAMAGE TO CUSTOMERS PROPERTY, AND (B) CUSTOMER, NOT EMS, BEARS ALL RISK OF ANY DAMAGE, LOSS, LIABILITY, COST, OR EXPENSE RELATED TO ANY DAMAGE TO CUSTOMERS PROPERTY OR PRODUCTS REGARDLESS THAT CUSTOMERS PROPERTY OR PRODUCTS ARE BEING STORED OR PLACED AT EMS FACILITIES.

CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD EMS HARMLESS AGAINST ANY CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, PROCEEDINGS, AWARDS, DAMAGES, LOSSES, FINES, PENALTIES, COSTS, EXPENSES AND LIABILITIES, INCLUDING LITIGATION COSTS AND REASONABLE ATTORNEY'S FEES ("CLAIM(S)") ARISING OUT OF DEATH, ILLNESS OR INJURY, OR PROPERTY LOSS OR DAMAGE, OR LOSS, DAMAGE OR COST, AS A RESULT OF OR IN CONNECTION WITH EMS' HANDLING, STORAGING OR WAREHOUSING OF CUSTOMERS PROPERTY OR ANY COMPONENTS OR PRODUCTS OWNED BY CUSTOMER WHEN THE GOODS OR PROPERTY IS LOCATED AT EMS FACILITIES OR AT THIRD PARTY FACILITIES ACCORDING TO OR AS A NATURAL PART OF THE AGREEMENT.

Customer shall take out All-Risk insurance covering any and all damages and losses including damage, fire and water damage and theft regardless of cause to Customers property or products, while the products are being handled, stored or warehoused at EMS facility. Customer shall agree to make Subcontractor co-insured on all policy's and waive all rights to subrogation or recourse against EMS.

If the Customer handles own property or products at the EMS facility, the Customer are obliged to maintain and keep in force adequate general third party liability insurance, including public liability and products liability insurance covering any and all damages to EMS property, products and personnel.

## 12. Engineering

If EMS provides any engineering/consultancy services regarding calculations, fabrication or supervising of EMS or Customers products, EMS shall be responsible in the performance of the services for exercising the degree of skill and care consistent with customarily accepted professional and technical practices and procedures for Engineers performing the type of services required for the Project. No other standards or warranties, expressed or implied, including warranties of marketability or fitness for a particular purpose apply.

EMS will not be responsible for the acts or omissions of any others, except for its own employees. EMS will not supervise, direct or have control over any of Customers work. EMS will not have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction, for work site health or safety precautions or programs, or for any failure of the Customer, or others, to comply with contracts, plans, specifications or laws.

All documents, data, calculations and work papers prepared or furnished by EMS are instruments of service and will remain EMS's property. Designs, reports, data and other work product delivered to or on behalf of the Customer are for the Customers use only for the limited purposes disclosed to EMS and subject to the Customer paying for the services to provide said work product. Any delayed use, use at another site, use on another project, or use by a third party will be at the user's sole risk and the Customer agrees to indemnify and defend EMS against any liabilities resulting there from. Any technology, methodology, or technical information learned or developed by EMS will remain its property.

EMS shall not be liable for any defects caused by material supplied by Customer or constructions or calculations which are stipulated/specified by Customer.

Subject to these conditions the ABR89 (Almindelige bestemmelser for teknisk rådgivning og bistand) terms and conditions apply for any engineering or consultancy services performed by EMS.

Any and all liability for EMS shall be limited to DKK 500.000 per incident i.e. a series of Serial Defects with the same root cause.

However and regardless of anything stated contrary hereto in the above mentioned the maximum, aggregated, cumulative legal liability for EMS regarding engineering services, shall be limited to DKK 1.000.000 per year for all incidents occurred in the same and in a given calendar year.

This limitation applies to all injuries, damages, claims, losses, expenses and defense costs, whether based in contract, negligence, strict liability, statutory, trespass, indemnity, misrepresentation or any other theory of liability. No claim will be valid if presented to EMS more than three years after substantial completion of the services or, if shorter, the applicable statute of limitations period.

All claims for consequential damages, punitive damages and/or losses and/or any indirect damages and/or losses what so ever mentioned as but not limited to loss of production, loss of profit, loss of goodwill, loss of turn over, loss of customers, loss of data, loss of third parties, loss of use of assets, loss of use of property, diminution of value of property or goods, delays, cost to obtain replacement samples, loss of contracts, business interruptions or similar or identical consequential and/or indirect losses and any other indirect losses under this are expressly agreed to be excluded from both parties liability. EMS will not be liable to anyone for injuries or deaths of any persons, except to the extent that such liability is covered by insurance.

EMS maintain in effect at all times insurance coverage for engineering services at the limits set forth herein:

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|------------------------|---------------|----------------------------------------|
| Professional Liability | DKK 500.000   | (per occurrence)                       |
|                        | DKK 1.000.000 | (per year for any and all occurrences) |

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THE FOREGOING SHALL NOT LIMIT THE INDEMNIFICATION, DEFENSE AND HOLD HARMLESS OBLIGATIONS SET FORTH IN THIS AGREEMENT.

THE CUSTOMER ASSUMES THE ENTIRE RISK AS TO THE USE OF THE DELIVERABLE, AND ANY RESULTS GENERATED THEREBY. EMS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT AND ANY WARRANTY IN THIRD PARTY PRODUCTS. ANY WARRANTY FROM EMS, WHETHER GRANTED PURSUANT TO THIS AGREEMENT, OR BY LAW, SHALL BE VOID IF THE DELIVERABLE IS MODIFIED AFTER ACCEPTANCE.

WITH THE EXCEPTION OF LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT THE CUSTOMER AGREES TO HOLD HARMLESS, INDEMNIFY, AND DEFEND EMS AND ITS AFFILIATES AND SUB-CONSULTANTS AND THEIR EMPLOYEES, AGAINST ALL CLAIMS, FINES AND PENALTIES, ATTORNEYS´ FEES AND OTHER COSTS OF SETTLEMENT AND DEFENSE, WHICH CLAIMS, SUITS, FINES, PENALTIES OR COSTS ARISE OUT OF OR ARE RELATED TO EMS´S ENGINEERING WORK OR SERVICES.

### **13. Manpower**

If EMS hires out manpower to Customer, the workers engaged by the Customer for the aforesaid purpose shall be working under the direct supervision and control of the Customer. EMS has no control or influence over the workplace or the activities to be performed.

The Customer is charged for the hours worked by the workers from the time when the workers leave EMS´s facility, with a minimum charge of 3 hours pr. worker. EMS makes all associated payments including payroll tax and social security contributions.

In the event that a worker is injured or otherwise unable to perform the work, EMS will do its best to find a substitute worker without undue delay. However EMS shall be entitled to charge the Customer for the actual hours worked. The Customer shall be obliged to pay the fees for any temporary worker irrespective of weath-er downtime, access restrictions or other events for circumstances including force majeure events which pre-vents the performance of the work.

Temporary workers may be entitled to sick leave pay and payment for public holidays. If this occurs the Customer are charged at cost, being the worker´s pay rate plus overhead, excluding any margin. Where the duties performed by a worker change and would result in a rise in hourly pay to that employee under a collective agreement, it is the Customer´s duty to notify EMS of those changes and to meet a resulting increase in hourly payments or back payments as may occur.

Changes in rates and charges as a consequence of obligations under collective agreements and changes to or as a consequence of laws and regulations, such as tax and social security legislation and regulations, will be passed on to the Customer with effect from the date of the changes and will accordingly be payable by the Customer even where such changes occur during the term of an ongoing contract of hire.

In the event that an engagement is made between the Customer and the workers which have been provided by EMS during an assignment or within 3 months after the conclusion of an assignment, for any period of time, the Customer agree to pay to EMS a separate placement fee amounting to DKK 40.000. This fee will apply to any engagement made between any temporary employee introduced by EMS to the Customer, or any associated, company or entity.

Subject to the provisions of mandatory law, EMS is not obliged to pay any compensation for loss or damage of any kind caused directly or indirectly to the temporary worker or to things or persons with or of the Customer or a third party, where such loss or damage occurs as a consequence of: (i) the posting of the temporary workers by EMS to the Customer, even if it transpires that the temporary worker does not



meet the re-quirements made of him by the Customer, (ii) unilateral termination of the temporary employment contract by the worker or (iii) acts or omissions of the temporary worker, the Customer itself or a third party.

Any liability of EMS for direct loss or damage will in any event be limited, per occurrence, to 60 % of the rele-vant amount invoiced or yet to be invoiced regarding the involved worker.

The Customer is obliged to arrange for adequate liability insurance including industrial injury insurance and worker's compensation providing full cover for any loss or damage suffered by the temporary worker con-cerned or EMS. The Customer must in any event indemnify EMS against any claims of the temporary worker or third parties for compensation for loss or damage as suffered by the temporary worker concerned or third parties.

#### **14. General limitation of liability and Indemnifications**

Subject to any limitation mentioned above, any and all other contractual liability for EMS shall further be lim-ited to DKK 500.000 per incident of contract breach i.e. a series of Serial Defects with the same root cause or any other individual breach of contract.

However and regardless of anything stated contrary hereto in the above or elsewhere in the contract, the maximum, aggregated, cumulative legal contractual liability for EMS under this Agreement shall be limited to DKK 2.000.000 per year for all incidents or liability occurred in the same and in a given calendar year.

The above mentioned limitations shall not apply (i) to any damage or loss caused by intentional, willful mis-conduct or gross negligence on the part of the liable Party, (ii) to the extent any such limitation is prohibited under any mandatory laws.

All claims for consequential damages, punitive damages and/or losses and/or any indirect damages and/or losses what so ever mentioned as but not limited to loss of production, loss of profit, loss of goodwill, loss of turn over, loss of customers, loss of data, loss of third parties, loss of use of assets, loss of contracts, busi-ness interruptions or similar or identical consequential and/or indirect losses and any other indirect losses under this are expressly agreed to be excluded from both parties liability under the agreement.

THE FOREGOING SHALL NOT LIMIT THE INDEMNIFICATION, DEFENSE AND HOLD HARMLESS OBLIGATIONS SET FORTH IN THIS AGREEMENT.

SUPPLIER SHALL DEFEND, INDEMNIFY AND HOLD EMS HARMLESS AGAINST ANY CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, PROCEEDINGS, AWARDS, DAMAGES, LOSSES, FINES, PENALTIES, COSTS, EXPENSES AND LIABILITIES, INCLUDING LITIGATION COSTS AND REASONABLE ATTORNEY'S FEES ("CLAIM(S)") ARISING OUT OF DEATH, ILLNESS OR INJURY, OR PROPERTY LOSS OR DAMAGE, OR LOSS, DAMAGE OR COST, AS A RESULT OF OR IN CONNECTION WITH (I) THE NEGLIGENT ACT OR OMISSION OF CUSTOMER OR ANY OF ITS EMPLOYEES UNDER THE AGREEMENT, (II) CUSTOMER'S (OR ANY OF ITS EMPLOYEES') BREACH OF CUSTOMERS'S OBLIGATIONS UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION AS A RESULT OF DEFECTS IN ANY PRODUCT(S) OR (III) ANY USE OF EMS PRODUCTS, DELIVERIES, LETTING OF EQUIPMENT, AGENCY SERVICES, ENGINEERING SERVICES, HIRING OUT OF MANPOWER OR ANY OTHER EMS SERVICES ON OFFSHORE INSTALLATIONS AND VESSELS (EXCLUDING WORKS PERFORMED ON SHIPS IN HARBOUR OR SHIPS DOCKED).

THE CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD EMS HARMLESS AGAINST ANY CLAIMS ARISING OUT OF ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHT, OR ANY LITIGATION BASED THEREON, WITH RESPECT TO ANY PRODUCTS AND/OR SERVICES (OR PART THEREOF), OR USE THEREOF, EXCEPT TO THE EXTENT THAT SUCH INFRINGEMENT

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RESULTS SOLELY FROM THE MANUFACTURE OF THE PRODUCTS PURSUANT TO DETAILED PROPRIETARY DESIGNS FURNISHED BY EMS.

### **15. Force Majeure**

Neither Party can be held responsible for non-fulfilment of agreements, provided the non-fulfilling Party proves that this is caused by force majeure.

The following circumstances shall be considered as Force Majeure if they impede the performance of the agreements or makes performance unreasonably onerous and if they occurs after the offer has been made and which are beyond the control of EMS including: industrial disputes (national or local strikes and lockouts), fire, war, rebellions, riots, weather conditions, natural disasters, exchange controls, public seizure, ban on im-port- and export, interruption of the common communication services including supply of energy, a substantial increase in prices- and/or duties, exchange rate fluctuations, difficulties with production- and delivery, delays from subcontractors which are due to circumstances which EMS cannot be blamed and the occurrence of force majeure and/or hardship among relevant subcontractors.

### **16. Product liability**

Product Liability damages regarding Customers products which have been processed and incorporated in Customers products by EMS shall be limited to DKK 1.000.000 per year for all incidents or liability occurred in the same and in a given calendar year.

EMS has Product Liability on its own products according to the provisions of the Danish Product Liability law. EMS renounces liability for product damages on any other basis. The Product Liability shall be limited to DKK 10.000.000 per year for all incidents or liability occurred in the same and in a given calendar year.

The Customer shall immediately inform EMS if a third party claims product liability towards the Customer. To the extent EMS will be imposed liability against a third party, the Customer is engaged to compensate EMS to the same extent, as EMS's liability is limited cf. the above-mentioned article.

EMS shall under no circumstances be liable for consequential damages, punitive damages and/or losses and/or any indirect damages and/or losses what so ever mentioned as but not limited to loss of production, loss of profit, loss of goodwill, loss of turn over, loss of customers, loss of data, loss of third parties, loss of use of assets, loss of contracts, business interruptions or similar or identical consequential and/or indirect losses and any other indirect losses.

If EMS should be sued by a third party due to product liability the Customer accepts to be joined as a party during the proceedings or as a sued by the Court or Arbitration Tribunal which hear the case.

### **16. Disputes, Governing Law and Jurisdiction**

Disputes between the parties which can not be settled amicably shall be settled by the Court of Esbjerg by use of Danish Law. However Danish private international law which refers to foreign law and the International Sale of Goods Act (CISG) shall not be applicable.