

## EMFIT LTD'S STANDARD TERMS AND CONDITIONS FOR SALE OF PRODUCTS (1/2001)

These Standard Terms and Conditions for Sale of Products shall apply to and govern any and all Emfit Ltd's ("Emfit") sale of Product and Equipment, unless otherwise expressly stated in writing.

### 1. COMMERCIAL TERMS

#### 1.1 Order Procedure.

Acceptance of Contracting Party's orders will only be effective upon issuance of Emfit's order acknowledgement form. Emfit will use all reasonable efforts to meet the delivery date(s) on the acknowledgement form. All delivery dates are estimates only and Emfit shall not be liable for failure to deliver on any specified date.

#### 1.2 Deliveries.

Products will be delivered Ex Works (as defined in Incoterms 2000) named place of destination. Products will be deemed accepted upon receipt by Contracting Party.

#### 1.3 Partial Delivery.

Unless otherwise specified on Contracting Party's order, Emfit may make partial deliveries and invoice for them separately. Such deliveries shall not relieve Contracting Party of its obligation to accept other parts of its order.

#### 1.4 Allocation.

Should orders for products exceed Emfit's available inventory, Emfit will allocate its available inventory and make deliveries on a basis Emfit deems equitable, in its sole discretion, and without liability to Contracting Party on account of the method of allocation chosen or its implementation.

#### 1.5 Cancellation.

Emfit reserves the right to cancel order placed by Contracting Party and accepted by Emfit as set forth above, or to refuse or delay shipment thereof, if Contracting Party

- (i) fails to make any payment as provided in this Agreement or under the terms of payment set forth in any invoice or otherwise agreed to by Emfit and Contracting Party,
- (ii) fails to meet reasonable credit or financial requirements established by Emfit, including any limitations on allowable credit, or
- (iii) otherwise fails to comply with the terms and conditions of this Agreement.

#### 1.6 Rescheduling and Reconfiguration Charges.

Contracting Party may reschedule or reconfigure all or part of the order once at no charge, as long as the written request is received by Emfit at least thirty (30) days prior to the scheduled delivery date and the rescheduled delivery date is within sixty (60) days of the original date. If the order is rescheduled or reconfigured at Contracting Party's request on any other basis, or if Emfit reschedules the order because Contracting Party fails to meet an obligation under this agreement, Emfit may charge Contracting Party a restocking fee equal to ten percent (10 %) of the list price of the rescheduled or reconfigured portion of the order.

### 2. PRICES, PAYMENT AND RETENTION OF TITLE

#### 2.1 Prices.

Prices for Emfit Products shall be Emfit's applicable price list, less the calculated discount, if any. Emfit may, at its sole discretion change the prices and such changes shall become effective thirty (30) days after Notice to Contracting Party.

#### 2.2 Terms of Payment.

All payment hereunder shall be in Finnish markkas (FIM) or Euros (EUR), if not otherwise stipulated on Emfit's invoice. Terms of payment to Emfit for the order for Products, or any part thereof, are net thirty (30) days from date of invoice or shipment, whichever is later.

#### 2.3 Taxes.

Prices and license fees for Products are exclusive of all customs duties, sales, VAT, withholding and other taxes based upon the value of Products, and Contracting Party shall be responsible for the payment of all such taxes and duties.

#### 2.4 Interests.

In case of delay in payment, interest at the rate of eleven percent (11 %) per annum, calculated from the day after each payment is due, shall be owing by the Contracting Party without notice.

#### 2.5 Retention of Title.

Emfit retains the title to Products until the purchase price of Products and all other payments related to Products have been fully and properly paid.

### 3. WARRANTY

3.1 Unless otherwise separately agreed in writing with respect to one or more Product(s), Emfit warrants that Equipment will be free from defects in workmanship or material under normal use and service and conform to Emfit's published specifications for a period twelve (12) months from the date of shipment from Emfit.

3.2 Contracting Party's exclusive remedy and Emfit's entire liability under these warranties will be the repair or, at Emfit's option, replacement of Products. If such repair or replacement is not reasonably achievable, Emfit will refund the purchase price. Unless otherwise agreed, repair or replacement will be undertaken at a service location authorized by Emfit.

3.3 UNLESS SPECIFIED IN THIS AGREEMENT, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, ARE DISCLAIMED, EXCEPT TO THE EXTENT THAT SUCH DISCLAIMERS ARE HELD TO BE LEGALLY INVALID.

### 4. INTELLECTUAL PROPERTY CLAIMS

4.1 Emfit will defend or settle at its option and expense any legal proceeding brought against Contracting Party to the extent that it is based on a claim that Products directly infringes a copyright or a U.S., any European or Finnish patent. Emfit will pay all damages and costs awarded by a court of final appeal attributable to such claim, provided that Contracting Party: (i) gives written notice of the claim promptly to Emfit; (ii) gives Emfit sole control of the defense and settlement of the claim; (iii) provides to Emfit all available information and assistance; and (iv) has not compromised or settled such claim.

4.2 If any Products are found to infringe, or in Emfit's opinion are likely to be found to infringe, Emfit may elect to: (i) obtain for Contracting Party the right to use such Products; (ii) replace or modify the Products so that they become non-infringing; or, if neither of these alternatives is reasonably available, (iii) remove the Products and refund Contracting Party's net book value for these Products.

4.3 Emfit has no obligation under this Article 4 for any claim which results from: (i) use of Products in combination with equipment, software or data provided by Contracting Party or any third party; (ii) Emfit's compliance with designs or specifications of Contracting Party; (iii) modification of Products by Contracting Party or any third party, or (iv) use of Product, and the claim could be avoided by the use of a different version made available to Contracting Party by Emfit.

4.4 This Article 4 states the entire liability of Emfit and exclusive remedies of Contracting Party for claims of infringement.

### 5. TRADEMARKS, LOGOS AND PRODUCT DESIGNS

5.1 "Emfit Trademarks" means all names, marks, logos, designs, trade dress and other brand designations used by Emfit in connection with Products. Contracting Party may refer to Products by the associated Emfit Trademarks, provided that such reference is not misleading and complies with the then current Emfit Trademark and Logo Policies. Contracting Party shall not remove, alter or add to any Emfit Trademarks, nor shall it co-logo Products. Contracting Party is granted no right, title or license to, or interest in, any Emfit Trademarks. Contracting Party acknowledges Emfit's right in Emfit trademarks and agrees that any use of Emfit Trademarks shall inure to the sole

benefit of Emfit. Contracting Party agrees not to (i) challenge Emfit's ownership or use of, (ii) register, or (iii) infringe any Emfit Trademarks, nor shall Contracting Party incorporate any Emfit Trademarks into Contracting Party's trademarks, service marks, company names, internet addresses, domain names, or any other similar designations. If Contracting Party acquires any rights in any Emfit Trademarks by operation of law or otherwise, it will immediately at no expense to Emfit assign such rights to Emfit along with any associated goodwill, applications, and/or registrations.

## 6. CONFIDENTIAL INFORMATION

If Emfit desires that information provided to Contracting Party under this Agreement be held in confidence, Emfit will identify the information as confidential or proprietary. Contracting Party may not disclose Emfit's confidential or proprietary information and may use it only for purposes specifically contemplated in this Agreement. Emfit will treat tangible business and financial information of Contracting Party that has been previously identified as confidential, with the same degree of care as it does its own similar information. The foregoing obligations do not apply to information which:

- (i) is or becomes known by recipient without an obligation to maintain its confidentiality;
- (ii) is or becomes generally known to the public through no act of omission of recipient, or
- (iii) is independently developed by recipient without use of confidential or proprietary information. This Section will not affect any other confidential disclosure agreement between the Parties.

## 7. LIMITATION OF LIABILITY

- (i) Emfit's aggregate liability to the Contracting Party for claims relating to this Agreement, whether for breach or in tort, shall be limited to the amount paid by Contracting Party for Products which are subject matter of the claims.
- (ii) Emfit will not be liable for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement (including loss of business, revenue, profits, use, data or other economic advantage), however it arises, whether for breach or in tort, even if Emfit has been previously advised of the possibility of such damage.
- (iii) Liability for damages shall be limited and excluded, even if any exclusive remedy provided for in this Agreement fails of its essential purpose.

## 8. IMPORT AND EXPORT LAWS

All Products and technical data delivered under this Agreement are subject to Finland export control laws and may be subject to export or import regulations in other countries. Contracting Party agrees to comply strictly with all such laws and regulations and acknowledges that it has the responsibility to obtain such licenses to export, re-export or import as may be required after delivery to Contracting Party.

## 9. GENERAL

### 9.1 Relationship of the Parties.

This Agreement is not intended to create a relationship such as a partnership, franchise, joint venture, agency, or employment relationship. Neither party may act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party.

### 9.2 Assignment.

Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement, without the prior written consent of the other party, except that Emfit may assign its right to payment and may assign this Agreement to an affiliated company.

### 9.3 Severability.

If any of the provisions, or portions thereof, of this Agreement are invalid under any applicable statute or rule of law, then, that provision notwithstanding, this Agreement shall remain in full force and effect and such provision shall be deemed omitted.

### 9.4 Headings.

The section headings contained herein are for reference only and shall not be considered substantive parts of this Agreement.

### 9.5 Force Majeure.

A party is not liable under this Agreement for non-performance caused by events or conditions beyond that party's control, if the party makes reasonable efforts to perform. This provision does not relieve Contracting Party of its obligation to make payments then owing.

### 9.6 Entire Agreement.

This Agreement is the Parties' entire agreement relating to its subject matter. It supersedes

- (i) all prior or contemporaneous oral or written communications, proposals and representation with respect to the subject matter; and
- (ii) any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties during the term of this Agreement. No modification to this Agreement will be binding, unless in writing and signed by an authorized representative of each Party.

### 9.8 Waiver or Delay.

Any Express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.

## 10. GOVERNING LAW

### 10.1 Governing Law and Dispute Resolution.

This Agreement shall be governed by and construed in accordance with the laws of Finland. Any dispute arising out of or in connection with this Agreement shall be finally and exclusively submitted to the Helsinki Chamber of Commerce to be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Helsinki Chamber of Commerce. The arbitral tribunal shall be composed of one (1) arbitrator. The place of arbitration shall be Helsinki, Finland. The language to be used in the arbitral proceedings shall be Finnish and/or English. However, Emfitech has a right, at its sole discretion, to claim any outstanding receivable from the Contracting Party at a district court.

### 10.2 Injunctive Relief

In addition to arbitration proceedings in any dispute which in any way affects any proprietary rights, including, but not limited to, patent, trade secret, copyright and trademark rights of Emfit, Emfit shall have the right to bring proceedings in any court having jurisdiction and proceed immediately by injunction, attachment or otherwise, to enforce or preserve its rights in its property or proprietary information, and to prohibit Contracting Party or any other party from using Emfit's property or proprietary information in violation of this Agreement or applicable law.

## 11. TERMINATION

### 11.1 Termination for Cause.

Either party may terminate this Agreement, by notice at any time prior to the expiration of the term in the event that:

- (i) one party defaults in any payment due to the other party and such default continues unremedied for a period of ten (10) days after notice of such default;
- (ii) a party materially defaults under any other obligation of such party under this Agreement and such default continues unremedied for a period of thirty (30) days after notice of such default; or
- (iii) a receiver, manager or liquidator is appointed over the whole or any part of business or assets of a party, a party makes an assignment for the benefit of its creditors, any proceedings are commenced by, for or against a party in bankruptcy, insolvency or debtor's relief law, a party becomes unable to pay its debts as they fall due, or an order is made or a resolution passed for the dissolution or winding up of a party.

### 11.2 Termination of Contracting Party.

If Contracting Party is merged, consolidated, sells all or substantially all of its assets, or implements or suffers any substantial change in management or control, Emfit may terminate this Agreement by notice at any time prior to the expiration of the term.

### 11.3 Survival.

Rights and obligations under this Agreement which by their nature should survive, will remain in effect after termination or expiration hereof.