

General Terms and Conditions of ENISCO by FORCAM GmbH

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General Terms and Conditions General Section

1. Field of Application

- 1.1 These General Terms and Conditions ("GTC") shall apply exclusively to all legal relations between ENISCO by FORCAM GmbH, Boeblingen, Herrenberger Str. 56, 71034 Boeblingen (hereinafter "ENISCO") and the customer ("Customer"), which have as their object (i) the provision of the software *E-MES* developed and produced by ENISCO (hereinafter "Software"), (ii) the provision of services in connection with the Software or (iii) maintenance services by ENISCO on the basis of a respective individual agreement between ENISCO and Customer ("Individual Agreement"). The customer is responsible that the information in the individual agreements, sent to ENISCO, is correct.
- 1.2 These GTC shall also apply to future contracts between ENISCO and Customer, without ENISCO having to refer to them in each Individual Agreement. ENISCO will inform the Customer about all changes of the GTC.
- 1.3 Conflicting, supplementary and/or deviating terms and conditions of the Customer are not applicable, even if ENISCO does not expressly object to their applicability in individual cases, irrespective of ENISCO's knowledge of these conflicting conditions.
- 1.4 If the Individual Agreements, the provisions of the Special Section and those of the General Section of the GTC contain contradictory provisions, the following priority shall apply, with the preceding provisions taking precedence over the following:
- Individual Agreement
 - Special Section of the GTC
 - General Section of the GTC

2. Services

- 2.1 Customer may commission ENISCO with various services, in particular (i) with the transfer of the Software, (ii) with the provision of services in connection with the Software or (iii) with maintenance services by ENISCO.
- 2.2 The scope of the services covered by the contract, including special technical features or other service-specific requirements (collectively referred to as "Special Features") shall be regulated in the Individual Agreement which refers to these GTC.
- 2.3 The contract is concluded with the order confirmation by ENISCO.

- 2.4 The services provided by ENISCO based on these GTC and any Individual Agreement are only to be used for the purposes set out in the Individual Agreement and these GTC and only in compliance with applicable local legislation, rules or regulations.
- 2.5 ENISCO has the right to unilaterally suspend services directly if the Customer does not use the services in accordance with the contract in the reasonable opinion of ENISCO and this could lead to liability or other disadvantages for ENISCO.

3. Customer's obligations to cooperate

- 3.1 Customer supports ENISCO in the provision of the contractual services by appropriately qualified and trained personnel, in particular in the compliance with necessary regulations of Customer regarding process safety.
- 3.2 Customer grants ENISCO access to its IT systems and facilities to the required extent, including remote access as determined by ENISCO (e.g. via VPN). Customer also ensures that all further cooperation services of Customer, which are necessary for the provision of the agreed services and which have been communicated to Customer, are provided to ENISCO in time, completely and at no charge. If Customer does not provide the necessary cooperation services or does not provide them in time, any resulting cost increases and delays shall be at Customer's expense and for Customer's account.
- 3.3 Customer is obliged to carry out regular, at least daily, data backups according to the information provided by ENISCO in the respective program documentation or by the manufacturer of the respective software or, in the absence of such information, in accordance with recognized principles of data processing.
- 3.4 Customer designates a contact person for all system-related issues. Should the contact person change, Customer shall inform ENISCO immediately of the name and contact information of the new contact person.
- 3.5 If the services concern a certain hardware or software configuration, Customer is obliged to inform ENISCO about every change of configuration in time, so that ENISCO is able to provide the services owed by contract.

4. Sub-contractor

ENISCO is entitled to have contractual services rendered by external employees and/or sub-contractors of ENISCO, provided that ENISCO remains the contact person for Customer for order and accounting matters. Any services rendered by an external employee and/or sub-contractor are subject to these GTC as if they were provided directly by ENISCO.

5. Customer's responsibility/duties

Customer is solely responsible for the installation, maintenance, testing and operation of systems, services and devices that are not expressly provided by ENISCO as part of the services to be provided by ENISCO. Insofar as it is necessary for the provision of services by

ENISCO, Customer shall ensure that any services, devices, cables and/or connections required and ordered by Customer from third parties are available at the time of the provision of services by ENISCO. ENISCO is not liable for delays in the provision of its services due to breaches of this obligation by Customer.

6. Remuneration and Payment

- 6.1 ENISCO will invoice the contractual services or license fees immediately after provision of the services or the software, but monthly at the latest. All invoice amounts are due immediately without deduction and must be paid within two weeks after the invoice date.
- 6.2 If an ENISCO employee has to travel to a place other than the registered office of ENISCO in order to provide services covered by the contract, ENISCO shall be reimbursed the costs and expenses for these travels by Customer.
- 6.3 Regarding due and unpaid invoice amounts, ENISCO reserves the right (i) to charge legal interest on all invoiced amounts from the due date determined above until full and final payment of these amounts and (ii) to charge reasonable collection costs incurred for these unpaid amounts, including, but not limited to, reasonable expenses for legal proceedings. ENISCO reserves the right to use an external service provider to collect unpaid invoices.
- 6.4 Unless otherwise prescribed by law or otherwise agreed by the parties, all prices, costs and other amounts payable by Customer under these GTV and any Individual Agreements shall be paid (i) in Euro (EUR), (ii) plus all applicable value added taxes, customs duties and other applicable sales taxes or comparable taxes and duties payable by Customer, (iii) free of any counterclaims and without deduction or withholding of any amount.
- 6.5 If Customer wants to dispute invoiced service fees in part or in full, Customer shall inform ENISCO in writing within sixty (60) calendar days from the respective invoice date, stating the reasons for disputing the corresponding service fees. After expiry of this period, Customer waives all rights to dispute the corresponding service fees and assert claims in this regard.
- 6.6 If Customer and ENISCO determine certain fees for recurring service charges as well as personnel costs in an Individual Agreement, these remain unchanged for at least one (1) year after the beginning of the corresponding service period. To compensate for wage and other cost increases or within the framework of the general increase of the license and maintenance prices for the Software, ENISCO may increase the tariffs for the respective recurring performance fees and personnel costs in each year following the performance period, by a maximum of five percent (5%) each time, if Customer is notified at least ninety (90) calendar days in advance. If the new price is more than 5% compared to the previously paid prices, Customer is entitled to terminate the Individual Agreement in writing with one month's notice, at the earliest at the time the new prices come into effect. If Customer does not terminate the contract, the price adjustment will take effect three months after receipt of the notification at the earliest. ENISCO will inform Customer about this consequence when announcing the adjustment.

7. Third Party Rights

- 7.1 ENISCO guarantees within the framework of the following provisions that the services provided by it are free of rights of third parties which conflict with their contractual use by Customer.
- 7.2 In the event that third parties assert such rights, Customer shall notify ENISCO immediately and shall grant ENISCO all requisite authority and powers of attorney to defend Customer against any third-party rights asserted.
- 7.3 In the event of a defect of title, ENISCO is entitled at its discretion
- to take suitable measures to eliminate third-party rights that impair the contractual use of the service by Customer or
 - to change or replace the service in such a way that it no longer infringes upon third party rights, if and to the extent that this does not affect the function of the service.
- 7.4 If ENISCO is unable to resolve the defect of title in accordance with the foregoing clause 7.3 within a reasonable period to be stipulated by Customer, even at second attempt, Customer can, irrespective of any claims to compensation or reimbursement of expenses pursuant to clause 8, choose to demand reduction (reduction of the agreed payment amount) or – in the case of material defects of title – to terminate the agreement.
- 7.5 Clauses 8.4 and 8.5 shall apply accordingly to claims based on defects of title.

8. Liability

- 8.1 ENISCO is only liable for damages caused by slight negligence if these are due to the violation of essential contractual obligations. "Essential contractual obligations" are such obligations, (i) the fulfilment of which makes the proper execution of a contract possible in the first place and (ii) on the fulfilment of which the contractual parties may regularly rely.
- 8.2 In the cases of paragraph 1 as well as in the case of damages which can be traced back to grossly negligent behaviour of a simple vicarious agent (i.e. not a managerial employee or organ), ENISCO's liability is limited to the foreseeable damage typical for the contract.
- 8.3 In the cases covered by paragraphs 1 and 2, ENISCO's liability for unforeseeable financial, special or accidental damages, consequential damages, loss of profit, loss of goodwill, capital costs, loss of interest is completely excluded. The mandatory provisions of the product liability law remain unaffected.
- 8.4 In the cases covered by paragraphs 1 and 2, ENISCO's liability for all claims for damages or indemnification in connection with this contract is limited to EUR 500,000.00 per claim and EUR 1,500,000 per year.
- 8.5 Customer's claims for damages in the cases covered by paragraphs 1 and 2 shall become time-barred at the latest after 12 months from the time when the claim arose and Customer obtains knowledge of the damage, and without regard to the origin of the claim and knowledge, at the latest three years after the time of the damaging event.

- 8.6 Except in cases of the assumption of a guarantee, in case of intent, fraudulent intent, grossly negligent conduct of executive employees or organs or in case of injury to life, health or body, the above limitations of liability including the statute of limitations shall apply to all claims for damages irrespective of their legal basis (including claims in tort).
- 8.7 ENISCO is only liable for the loss or damage of data or programs to the extent that their loss or damage could not have been avoided even by an appropriate precaution of the Customer in his area of responsibility (in particular through the creation of backup copies at least daily). Any further liability for the loss or damage of data or programs is subject to the other restrictions of this clause 8.
- 8.8 The above limitations of liability shall apply accordingly in the event of any claims for damages against employees or agents of ENISCO.

9. Force Majeure

ENISCO is not liable for the breach of obligations arising from these GTC or from Individual Agreements, which are caused by circumstances beyond the control of ENISCO or arise as a result of such circumstances ("force majeure"). This includes, but is not limited to, fire, flooding, cable or wire breaks, lightning strikes, persistent general power outages, changes in applicable laws and regulations, government or military actions, government ordered shutdowns, strikes, pandemics, civil unrest, terrorism and war.

10. Indemnity Obligation

- 10.1 Each party shall keep the other party free from claims of third parties and all expenses (including reasonable expenses for legal proceedings) with respect to any infringement of third party intellectual or industrial property rights caused intentionally or negligently by it.
- 10.2 ENISCO's obligations under this clause 10 are subject to the restrictions of clause 8.
- 10.3 In all instances where one party (the "Indemnifying Party") is obligated to indemnify the other party (the "Indemnified Party") as provided in these GTC, the Indemnified Party shall notify the Indemnifying Party immediately upon becoming aware of the claim, damage, loss, suit or other event (the "Claim") giving rise to its right to indemnification under this Agreement. The Indemnified Party shall, at the expense of the Indemnifying Party, provide reasonable assistance to the Indemnifying Party in defending the claim (such as providing copies of documents or witness statements). The Indemnifying Party shall determine the defense of the claim, provided that the Indemnified Party shall be entitled to participate at its own expense with legal counsel of its choice in a secondary role. Any claim-related settlement or agreement reached or entered into by an Indemnified Party shall require the prior written consent of the Indemnifying Party, such content not being unreasonably withheld, conditioned or delayed.

11. Term and Termination

- 11.1 The term of an Individual Agreement between the Parties ("Term") shall commence on the Effective Date and shall end upon termination by either Party in accordance with the provisions of these GTC.

- 11.2 Performance periods shall commence on the date on which both Parties have concluded the individual agreement, unless a different commencement date is expressly stated therein.
- 11.3 Unless otherwise specified in the Individual Agreement or the provisions of the Special Section, an Individual Agreement may be terminated in writing with a notice period of three (3) months to the end of the respective current term. The right of extraordinary termination shall remain unaffected.
- 11.4 An Individual Agreement may be terminated without notice if a force majeure event continues for more than thirty (30) calendar days and to the extent that it affects the performance to be rendered under the respective Individual Agreement.

12. Confidentiality

- 12.1 "Confidential Information" means, with respect to a Party (the "Disclosing Party"), all non-public confidential information relating to the business of such Party (including any such subcontracted information), including, without limitation, data containing customer lists, information about customers, technical information (including technical layouts and designs, cable assignments, network configurations, etc.), and any other information relating to the business of such Party. Information about price calculations, business secrets, the financial situation, communication with customers or customer suggestions, benchmark information, satisfaction surveys or information about corporate planning or business projects and the provisions of these GTC including all Individual Agreements, regardless of whether they are named or marked as confidential. ENISCO and Customer will act in accordance with this clause 12, if they exchange Confidential Information in the sense of these GTC and/or an Individual Agreement.
- 12.2 Excluded from the definition of Confidential Information is such information that (i) was demonstrably and in a legally compliant manner known to the receiving party ("Receiving Party") without any confidentiality obligation prior to the time of disclosure; (ii) was independently developed by the Receiving Party without violation of these GTC; (iii) the Receiving Party lawfully received from a third party who was permitted to disclose it without restriction; (iv) are or will be available to the public or in the public domain from the date of disclosure to the Receiving Party without violation of these GTC; or (v) become known to the Receiving Party as a result of a legal or regulatory requirement or order, provided that the Receiving Party takes reasonable steps to inform the disclosing Party in a timely manner so that the disclosing Party may take legal action against such requirement or order.
- 12.3 The Confidential Information is subject to the Disclosing Party's control. Neither these GTCs nor the disclosure of the Confidential Information shall constitute a grant of rights of use of industrial property rights or intellectual property of the Disclosing Party or of its trade secrets or know-how to the Receiving Party, unless the Parties or the GTCs expressly provide that such right of use is granted.
- 12.4 The Receiving Party shall (i) keep the Confidential Information in strict confidence and (ii) not use such information for any purpose other than performance under these GTC or the Individual Agreement and/or otherwise disclose it to any third party in any form without the prior written consent of the Disclosing Party.

- 12.5 Excluded from the consent to disclosure are those employees, representatives or third parties who must obtain knowledge of the Confidential Information in order to perform the contractual services or who are obliged to do so in order to comply with the order of an authority and/or a court ("Authorized Recipients").

13. Suspension of Performance

- 13.1 ENISCO has the right, with notification to the Customer and without prejudice to all rights to terminate the contract, to suspend services if (i) this is necessary to comply with an official and/or judicial order; (ii) ENISCO has reason to believe that Customer is committing illegal or unlawful acts in relation to the use of the services; (iii) Customer prevents ENISCO from fulfilling a contractual obligation; (iv) Customer is in default of payment of the contractually agreed remuneration for more than twenty (20) calendar days; and/or (v) another provision of these GTC and/or an Individual Agreement entitles ENISCO to suspend all or some of its services.
- 13.2 If services are suspended due to an action or omission on the part of the customer, (i) Customer remains equally obliged to pay the respective service fee as if ENISCO had properly provided the service, and (ii) Customer must reimburse ENISCO for any additional fees and expenses incurred due to the suspension and/or continuation of the service.

14. Data Protection

- 14.1 The Parties undertake to comply with the relevant data protection laws to the extent that the legal obligation of the respective party is sufficient in connection with the contractual relationship between the Parties.
- 14.2 If and insofar as ENISCO processes personal data of the Customer or gains access to personal data of the Customer within the framework of the provision of the contractual services, the Parties conclude a separate contract data processing agreement.

15. Publications, Advertising

- 15.1 ENISCO is entitled, after prior approval by Customer, to advertise with the name of the Customer and a description of the project without separate remuneration and to use picture and film material related to the project. The Customer may not unreasonably refuse the release of the advertising.
- 15.2 Corresponding release requests from ENISCO must be processed and answered by the customer within 14 days.

16. Obligations Under Export Trade Law

- 16.1 Customer is obligated to comply with the respectively applicable export economy regulations as well as the relevant EU regulations for export and shipment. The contract is subject to the condition precedent that the necessary export permits are available and that no further obstacles to exportation exist on the part of German or foreign legislation.
- 16.2 Upon ENISCO's request, Customer must submit a final destination declaration, which complies with the requirements of the provisions mentioned in clause 16.1.

17. Changes

ENISCO reserves the right to make changes or additions to these GTC, the Individual Agreements as well as other agreements and procedures concerning the contractual services, provided that this appears necessary to ENISCO and Customer is not disadvantaged by this contrary to good faith. ENISCO will notify Customer of such changes or additions by means of a notification in text form. They are considered approved if Customer does not object in writing within one month after notification and Customer has been informed in advance about the possibilities of objection and the consequences of the expiry of the objection period.

18. Final Provisions

- 18.1 German law shall apply, excluding the UN Convention on Contracts for the International Sale of Goods and conflict of laws provisions.
- 18.2 Exclusive place of performance for both Parties is Stuttgart. The place of jurisdiction is Stuttgart. However, ENISCO is also entitled to sue Customer at his general place of jurisdiction.
- 18.3 Should individual provisions of these GTC be or become invalid, the validity of the remaining contractual terms and conditions shall not be affected. In this case, the contracting Parties undertake to replace the invalid provision by a valid provision which comes as close as possible to the economic purpose of the invalid provision. The same applies to any gaps in the agreements.

General Terms and Conditions Special Section

The Special Section of the GTC contains provisions for

- Use of the Software („Licensing Terms“) (I)
- Services („Terms & Conditions of Service“) (II)
- Maintenance services („Terms & Conditions of Software Maintenance“) (III)

I. Licensing Terms

1. Subject Matter of the License

- 1.1 The subject of the following Licensing Terms is the Software permanently provided to the Customer together with the corresponding program documentation. The exact description of the Software provided is stated in the offer. Maintenance of the Software, update services and other services such as installation of the Software, implementation or adaptation services and data migration are not covered by the contract. For this purpose, separate agreements based on the Terms & Conditions of Software Maintenance or the Terms & Conditions of Services shall be concluded.
- 1.2 In the absence of any provision to the contrary in the offer, Customer shall receive the Software exclusively in object code format. At ENISCO's choice, the Software can be provided as a download, on standard data storage media or by other suitable means. The installation of the Software does not constitute part of the transfer based on these Licensing Terms.
- 1.3 The Software and the program documentation supplied with it are subject to copyright. ENISCO holds the exclusive rights in the Software in relation to the Customer. Customer shall be granted a permanent, non-exclusive right of use on the Software, transferable only as stipulated in clause 2.5 and in accordance with the Licensing Terms. Customer is not entitled to receive the source code and the development documentation for the Software.

2. Scope of the License

- 2.1 The Customer is entitled to use the Software as necessary in the course of its own commercial purposes in accordance with this clause 2 and the scope specified in more detail in the offer.
- 2.2 “Use” means loading, displaying, running, transferring and storing the Software for the purposes of executing it and processing stored data on the Customer's system upon which the Software is installed.
- 2.3 Customer is authorized to make a security copy of the Software, which must be labelled with a copy of the original label (including the copyright notice). The use of the security copy is permissible only in the event of the deterioration or loss of the copy of the Software originally provided by ENISCO. Any use of the security copy by the Customer shall also be governed by these Licensing Terms.

- 2.4 Otherwise, in all instances of use going beyond authorized use stipulated in clause 2.1, Customer is not permitted to use the Software or the program documentation, or to copy parts thereof, without ENISCO's prior written consent.
- 2.5 Customer is not authorized to use the Software outside its business or for purposes other than its own commercial purposes, or to allow third parties who are not part of its business to use the Software or – subject to clause 2.8 – to temporarily or permanently transfer the Software to third parties.
- 2.6 If third party software products (hereinafter: "Third-party Software") are required for the operation of the Software, or if the same are provided together with the Software, ENISCO shall notify the customer of this in the offer. Third-party Software shall be governed by the applicable licensing terms of the rights holder in each case.
- 2.7 The Customer is not authorized without ENISCO's consent to process, amend or otherwise adapt the Software, to link it with other programs by means other than via the interfaces provided, to decompile it into another form of presentation, to remove, circumvent or amend any security codes or the characteristics serving to designate the Software, or to remove information contained in the program documentation pertaining to the manufacturer, copyrights or other proprietary rights of ENISCO. This shall be without prejudice to the provisions of Section 69 d (3) and Section 69 e German Copyright Act (Urhebergesetz, UrhG).
- 2.8 Customer is entitled in accordance with these Licensing Terms to transfer the Software in its entirety, together with the license, on a permanent basis to any subsequent purchaser, provided Customer does not retain any copies of the Software and the corresponding program documentation – not even in parts, refrains from any further use of the transferred Software, deletes any program copies he may have and informs ENISCO of the name and address of the purchaser.
- 2.9 Changes of use, e.g. change of location, must be notified to ENISCO in writing.
- 2.10 The costs and expenses incurred by ENISCO for the license transfer according to clause 2.8 or changes of use according to clause 2.9 are borne by Customer.

3. Term of the License

- 3.1 The license shall commence on the date stipulated in the offer and is granted on a permanent basis, i.e. without any limitation as to time. The right to ordinary termination is hereby excluded for both Parties.
- 3.2 The right to termination of the license for good cause ("aus wichtigem Grund") remains unaffected. For ENISCO, good cause exists in particular if Customer culpably and materially breaches the terms set forth in clause 2 of these Licensing Terms. In this case, Customer shall not be entitled to any claim to reimbursement of the payment made in return for the provision of the Software and the grant of the license. ENISCO reserves the right to assert further claims to compensation.
- 3.3 When the license ends, the customer's right of use in the Software provided shall expire. It must then delete any and all copies installed on its systems, as well as all copies of the Software on separate data storage media, and destroy the program documentation provided. ENISCO must

be provided with a written assurance of the complete deletion and destruction and, at ENISCO's request, suitable evidence must be furnished.

4. Inspection, Subsequent Licensing

- 4.1 Customer is required to notify ENISCO without delay of any changes to the scope of use pursuant to clause 2.1. In the event of amendments to the scope of use with effects on the remuneration payable for the use and maintenance of the Software, Customer shall be required, with effect as from the time of the change in scope of use, to pay the resulting additional license fees and increased annual maintenance fees based on the valid ENISCO price list.
- 4.2 As a rule, ENISCO is authorized to evaluate the use of the Software once per year by means of review – in electronic form or otherwise. Reviews shall take place regularly in the form of self-reporting.
- 4.3 If Customer refuses to provide self-reporting, or if it fails to provide meaningful results and there are objective indications of a breach of the law by Customer, ENISCO shall be authorized to carry out on-site reviews or to have the same carried out by third party auditors required by virtue of their profession to maintain confidentiality. ENISCO shall provide reasonable advance notice of any on-site inspections in the form of 15 working days' notice.
- 4.4 During such inspections, Customer undertakes to cooperate with ENISCO as reasonable and, if necessary, to provide access to its systems and relevant documentation.
- 4.5 Customer's interest in maintaining confidentiality as well as protecting its business operations against any disruption shall be reasonably taken into account. Reasonable costs of the inspection by ENISCO shall be borne by Customer if the results of the inspection demonstrate non-contractual use.
- 4.6 If an inspection demonstrates, or if in any other way shows that the use of the Software by the Customer exceeds the license granted to it, Customer is obligated to re-license the additional use based on the then valid ENISCO price list.
- 4.7 In addition to the subsequent licensing pursuant to clause 4.6, a surcharge of 50% of the license fee to be paid shall be payable pursuant to clause 4.6.

5. Customer's Obligations

- 5.1 Customer has acquainted itself with the main functional characteristics of the Software and shall bear the risk that the Software does not meet its requirements and needs.
- 5.2 If changes or additions to hardware and/or the operating system of the customer are necessary for the proper installation and functioning of the Software, the customer must carry out such changes at its own costs.
- 5.3 The customer shall take reasonable precautionary measures for the event that the Software does not function properly, in whole or in part, (e.g. by regularly saving data, diagnosing faults, regularly reviewing data processing results, etc.).

6. Warranty

- 6.1 A defect exists if the Software does not have the characteristics agreed in the offer, meaning that the use of the Software is limited to a significant degree.
- 6.2 Technical data, specifications and performance output information issued in public statements, in particular in advertising material, shall not constitute agreed characteristics. The functioning of Software shall be governed by the description in the user documentation and the supplementary agreements. This information shall not be deemed to constitute any guarantee within the meaning of Section 443 German Civil Code (Bürgerliches Gesetzbuch, BGB).
- 6.3 Customer must inspect the Software immediately upon receipt (also if provided as a download) and provide notice to ENISCO, in writing, and assert any claims to defects without delay, but no later than seven working days from receipt, and in the case of latent defects, seven working days from these becoming evident. This also applies to new versions and Software provided to the Customer as a download.
- 6.4 Claims to defects shall become time-barred after twelve months.
- 6.5 ENISCO shall not provide any guarantee for errors in the Software
- If these are caused by incorrect use by the Customer which could have been avoided through proper consultation of the program documentation; this also applies to non-existent or insufficient backup-measures;
 - Based on viruses or other external interference such as fire, accident, loss of power etc.;
 - Based on the fact that the Software was used in an operating environment different from that approved by ENISCO or based on defects in the hardware, the operating system or Software produced by other manufacturers;
 - If these are based on the unauthorized amendment of the Software by Customer or third parties;
- 6.6 If there is a defect in the Software for which ENISCO is liable, Customer is free to choose whether to demand that ENISCO render subsequent performance within a reasonable time period in the form of removing the defect or providing a replacement. If the defect does not impede the functioning of the Software or not to a material degree, ENISCO is entitled to resolve the defect by supplying a new version or an update within the scope of the separately concluded Maintenance Agreement (Cf. clause 1.4).
- 6.7 ENISCO can refuse to render subsequent performance if Customer has not yet paid in full and Customer does not have any legitimate interest in withholding the unpaid amount.
- 6.8 Furthermore, ENISCO can refuse to render subsequent performance if Customer failed to report the defect together with a clear description of the symptoms of the defects, providing written or electronic records within the scope of clause 6.3.
- 6.9 If defects within the meaning of clause 6.1 are established, Customer is under an obligation to provide ENISCO with all information required to analyze the defect and render subsequent performance and to provide ENISCO or the persons instructed by ENISCO unrestricted access,

at ENISCO's discretion directly and/or by means of remote transmission, to the Software and the Customer's system upon which the Software is installed. An error notice must include information on the type of error, the application in which the error arose, as well as any steps taken to resolve the error. The error must be described in such a manner that it can be reproduced. If, on the Customer's instruction, ENISCO carries out an error analysis and it transpires that there is not, in fact, any defect that ENISCO is required to resolve, ENISCO can charge Customer for the expenses incurred based on its applicable hourly rates.

6.10 Customer is entitled to cancel the agreement only if it notified ENISCO, in writing, of the defect as defined in clause 6.1, taking account of the provisions set forth in clause 6.8, if three remedial measures by ENISCO were unsuccessful, if the Software deviates from material aspects of the agreed specifications due to the defect, if the Software is not capable of providing the agreed function, if Customer cannot be sufficiently compensated by means of a reduction in the license fee, and if it is unreasonable to expect Customer to keep the Software.

6.11 Further claims are excluded.

II. Terms & Conditions of Service

1. Subject Matter and Scope of Service

1.1 These Terms & Conditions of Service of ENISCO are applicable to all services that ENISCO provides and that are directly or indirectly related to the Software provided to the Customer. The precise description of the Software provided regarding which services are provided by ENISCO according to these Terms & Conditions of Service, results from the offer.

1.2 The services to be rendered by ENISCO shall be stipulated in the offer. These may include, in particular, advice, training, installation, implementation, adjustments to the Software (amendments, customizing), programming and data migration.

2. Change Requests

2.1 If Customer requests additional services, extensions or other amendments to the services defined in the offer provided by ENISCO ("Change Requests"), these must be agreed and paid for separately. Such changes are to be ordered using the Change Request Process described below.

2.2 Customer shall notify ENISCO of its Change Request in writing. Having reviewed the technical feasibility of the Change Request, ENISCO shall prepare a Change Request Offer. This Change Request Offer will contain a description of the additional services to be rendered in order to fulfil the Change Request and/or a detailed description of the change in service. In addition, the Change Request Offer shall include a quote for the expected additional cost, as well as an estimate of any effects in terms of timing on the original contractual agreement.

2.3 The Change Request shall become part of the service owed only upon the customer's written acceptance of ENISCO's Change Request Offer.

3. Rights of Use

- 3.1 Unless otherwise agreed, ENISCO shall grant Customer in respect of software parts or other work results created specifically for Customer a simple, permanent, irrevocable, non-transferable right of use, to the exclusion of any right to issue sub-licenses, for the Customer's own commercial use by the number of authorized users stipulated in the license agreement. These rights include agreed interim results, training documentation and aids.
- 3.2 The granting of the rights of use mentioned above in clause 3.1. is subject to full payment of the agreed remuneration.
- 3.3 ENISCO guarantees that the services rendered by it are free from third-party rights that would preclude their contractual use by the customer.

4. Remuneration

- 4.1 Unless otherwise agreed by the Parties, remuneration for the services rendered shall be charged based on time expended at the hourly or day rates stipulated in the offer by ENISCO per hour of work commenced. In the absence of any specific provision to this effect in the offer from ENISCO, the remuneration due shall be stated on ENISCO's current valid price list. A day rate comprises eight work hours during customary working hours between 8:00 a.m. and 5:00 p.m. on working days (excluding Saturdays). In the case of services rendered outside standard working hours, the customer shall pay a surcharge of 100% normal day rate. For services provided on statutory holidays in Baden-Württemberg, a surcharge of 150% standard daily rate shall be charged.
- 4.2 Unless otherwise agreed, travel times, travel expenses and ancillary expenses shall be charged in accordance with the applicable ENISCO price list plus a 10% administration fee.

III. Terms & Conditions of Software Maintenance

1. Subject Matter and Scope of Maintenance

- 1.1 The subject matter of the maintenance is the Software provided to the customer based on the Licensing Terms. The precise description of the Software with respect to which maintenance services are to be provided pursuant to these Terms & Conditions of Software Maintenance is stated in the offer.
- 1.2 The maintenance of Software by ENISCO may also include, as stipulated in the offer, the following services:
- Hotline Service (Cf. clause 2, below);
 - Support Service (Cf. clause 3, below);
 - Update Service (Cf. clause 4, below).
- 1.3 These Terms & Conditions of Software Maintenance shall also apply to later versions of the Software provided to ENISCO's customer in the course of the Update Services as defined in clause 4.1, unless otherwise agreed upon provision of the later version in each case. Following

release of a new version, the maintenance services will be continued for the predecessor version for the period of 6 months in each case.

- 1.4 Maintenance services always apply to all licenses to the Software held by Customer. Thus, Customer must either utilize maintenance services for all licenses for the relevant software product or terminate maintenance in its entirety in accordance with the provisions of these Terms & Conditions of Software Maintenance for all licenses in the relevant software product.
- 1.5 If in its offer, in addition to the maintenance of the Software, ENISCO also takes on the maintenance of individual programmable logic controllers (PLC) as specified in the offer, ENISCO shall be entitled to have a third party carry out maintenance of the PLC.

2. Hotline Service

- 2.1 As part of the Hotline Service, Customer can access trained ENISCO employees to answer questions relating to the contractually specified use of the program, in particular relating to the operation and possible uses of the Software (Helpdesk).
- 2.2 The Hotline Service is also available to Customer to record fault reports. As far as possible, such faults or programming errors will be resolved via the Hotline Service through the provision of a simple solution to be implemented by Customer (First Level Support). Where this is not possible, the fault will be passed on to ENISCO's Support Service (see clause 3) or to the support services of the manufacturer in each case.
- 2.3 The Standard Hotline Service is available between 8 a.m. and 5 p.m. CET on working days (Monday to Friday, excluding public holidays at the German ENISCO Headquarter). The offer may specify deviating agreements. The contact details (direct telephone number and e-mail) for the hotline service will be communicated after conclusion of the contract. ENISCO is entitled to update these contact details at any time. ENISCO shall notify the customer of any such change in good time.

3. Support Service

- 3.1 Faults occurring during contractual use of the Software by Customer and reported to the Hotline Service will be dealt with by ENISCO's Support Service (Second Level Support). A fault exists if the Software does not perform the functions stated in the program documentation; if it provides incorrect results; if it randomly ceases operation or otherwise does not operate as intended, causing a significant impediment to the contractual use of the Software.
- 3.2 As part of its Support Service, ENISCO undertakes to identify the cause of the fault, to diagnose the fault and to resolve the fault or, if the resolution of the fault would entail unreasonable effort, to reinstate availability of the Software by providing an alternative solution.
- 3.3 Measures performed in the course of the Support Service shall be carried out during the times stipulated in clause 2.3. Outside these times such measures can be provided only in exceptional cases, on the basis of a separate agreement and against separate payment.

- 3.4 For the purposes of fault handling, ENISCO Support Service Centre staff categorize faults reported by the Hotline Service according to the following priority categories:

Priority P1: Prevents operation

A fault prevents operation if the use of the Software is not possible, and such interruption is not merely temporary in nature on account of malfunction, incorrect output or exceeding response periods, or is seriously restricted to such a degree that key commercial processes can no longer be performed.

Priority P2: Impedes operation

Operation is impeded if the use of the Software is not impossible or is seriously restricted on account of malfunction, incorrect output or exceeding response periods, but nevertheless there is a disruption to workplace functionality with a significant effect on business processes.

Priority P3: Other Fault

Other faults exist if the use of the Software is not significantly restricted, in particular if workplace functionality is not affected.

- 3.5 As part of its Support Service, within the Hotline hours stipulated in clause 2.3, ENISCO shall provide the response times stipulated in the offer, in each case calculated from the time the Hotline Service receives the detailed fault report pursuant to clause 6.1 (call receipt). The response time is the time within which a qualified member of Support Service Center staff at ENISCO actively accepts the fault reported and initiates handling of the fault by telephone, e-mail or via remote access.
- 3.6 If a Priority P1 reported fault cannot be resolved within 8 hours from call receipt (during Hotline hours as stipulated in clause 2.3), an escalation procedure will be automatically initiated at ENISCO. ENISCO shall appoint a responsible member of staff for the customer, who will handle the fault and coordinate all internal and external measures. This shall include, for example:
- Preparing an action plan together with Customer
 - Informing ENISCO Management
 - Submitting requests to ENISCO's Development Division
- 3.7 The appointed staff member shall be the Customer's personal contact and will keep Customer updated with regard to all activities. The entire system will be monitored for a certain period after the fault has been resolved. During this phase, the appointed staff member shall continue to be available to provide support and advice to the customer.
- 3.8 In all other cases other than those described in the foregoing clause 3.6, the ENISCO Hotline Service employee who took receipt of the fault report shall continue to be the main contact person for the customer concerning the handling of the fault. The Hotline Service employee shall coordinate all necessary measures and inform the contact person at the customer at regular intervals of the status of the fault handling.
- 3.9 If on-site support at the customer is part of the Support-Service as agreed in the offer, ENISCO shall, if necessary, perform Support Services on site at the customer's premises.

4. Update Service

- 4.1 As part of the Update Service, ENISCO shall provide Customer new program releases of the Software and the relevant program documentation in object code format in the form of a download or on machine-readable data storage media.
- 4.2 The Update Service shall not apply to extensions to the Software with improved functions that are provided by ENISCO as new standard programs or modules (Upgrades). Customer can additionally purchase licenses for the use of such Upgrades at the prices stated in the valid price list.
- 4.3 With regard to Customer's rights of use in the context of new program versions provided in the course of the Update Service, the Licensing Terms under which the original program was provided shall apply. ENISCO's warranty and liability for the new program versions is governed by ENISCO's Licensing Terms.

5. Exclusion: Services not included

- 5.1 ENISCO is not under any obligation to provide maintenance services pursuant to these Terms and Conditions of Software Maintenance
- Outside the times for Hotline and Support Services stated in clause 2.3;
 - If the Software is used contrary to the provisions of the applicable licensing terms in each case;
 - If the Software is altered by Customer or third parties;
 - For faults in the Software caused by incorrect use by Customer and which could have been avoided by carefully consulting the program documentation;
 - For faults in the Software based on viruses or other external influences beyond ENISCO's reasonable control;
 - For faults in the Software based on errors in the hardware, the operating system or other computer programs;
 - For the reinstatement of stored data that, contrary to clause 6.4, were not sufficiently protected against loss by Customer.
- 5.2 Furthermore, the installation onto Customer's system of the Software and new program versions provided in the course of the Update Service pursuant to clause 4.1, implementing release transitions, performing any necessary adjustment programming, as well as training Customer's employees, are not included in the scope of maintenance services. ENISCO shall provide such services on request by Customer in return for separate payment based on ENISCO's Terms and Conditions of Service.
- 5.3 Customer shall voluntarily notify ENISCO of any changes to the installation site of the Software. Additional expenses incurred by ENISCO in the course of the provision of the maintenance services resulting from the change of the installation site shall be borne by Customer.

6. Customer's Cooperation Obligations

- 6.1 When reporting faults to the Hotline Service, Customer shall provide ENISCO with all available error reports, log files, interim and test results, as well as all other documents and information required for the analysis and processing of the error. The fault must be described in such a manner that it can be reproduced. If ENISCO performs an error analysis at Customer's request and it turns out that there is no fault that ENISCO is required to remedy pursuant to these Terms and Conditions of Software Maintenance, ENISCO can charge Customer the corresponding expenses on the basis of the hourly rates of ENISCO valid at the time.
- 6.2 For the purposes of providing maintenance services, in particular in the course of the Support Service, Customer shall grant ENISCO and its employees unrestricted access to the Software, the hardware and the operating system of the Customer. In the event of a fault, Customer furthermore undertakes to grant ENISCO remote access to the Software (e.g. per VPN).
- 6.3 Customer shall appoint up to three authorized and qualified contacts, who shall be authorized to call the ENISCO Hotline directly. In addition, Customer shall appoint an employee working at the installation site of the Software as the main contact authorized to take all decisions concerning the provision of maintenance services or who shall without delay arrange for such decisions to be taken.

7. Remuneration

- 7.1 The fee for the maintenance services to be rendered pursuant to these Terms and Conditions of Maintenance is stipulated in the offer of ENISCO.
- 7.2 Remuneration for the maintenance services shall be invoiced to Customer in accordance with the provisions set forth in the offer. Regular maintenance fees are payable in advance and are due for the first time upon commencement of the contract and thereafter at the intervals stipulated in the offer. If ENISCO provides maintenance services on a cost basis, these shall, as a rule, be charged to the customer subsequently on a monthly basis. The timely payment of the maintenance fees is a prerequisite for the provision of the maintenance services in the contract year concerned.
- 7.3 In the case of extensions of use through the purchase of additional licenses during the term of the maintenance agreement, the annual maintenance fees shall increase pro rata. The increased maintenance fees are payable as from such time as use of the additional licenses commences.

8. Term, Termination

- 8.1 ENISCO's obligation to provide the maintenance services governed by these terms begins on the commencement date stated in the ENISCO offer.
- 8.2 The maintenance agreement is concluded for the minimum term stipulated in the ENISCO offer. Unless terminated, in writing, by one of the contracting Parties with a notice period of three months to the end of the minimum term or any extension period, upon expiry of the minimum term the maintenance agreement shall be extended for a further year in each case. The maintenance

agreement cannot be ordinarily terminated by either party during the minimum term or any extension period.

- 8.3 The maintenance agreement shall end without the need for termination if the customer ends the license granted for the Software to be maintained in accordance with the applicable licensing terms. In this case, ENISCO is not required to reimburse any maintenance fees already paid for periods up to the termination.
- 8.4 This is without prejudice to the right to terminate the maintenance agreement for cause (“aus wichtigem Grund”).
- 8.5 Notice of termination must be given in writing.