

# Standard Warranty Terms and Conditions

EMBS Sp. z o.o.

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Standard Warranty Terms and Conditions (Eng.)  
Public

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Registered in Poland No.  
Sąd Rejonowy w Gliwicach X Wydział Gospodarczy  
KRS: 80666, NIP: 648-23-26-274  
Paid-in share capital: PLN 79 000 000

## 1. DEFINITIONS

- **“Battery Capacity”** means, in respect of any Goods, [energy gain from discharging the battery with 0,2C current in ambient temperature of 25°C until 2,5V per cell in series of the pack].
- **“Company”** means **EMBS sp. z.o.o.**, a limited liability company with its registered office in Gliwice, Poland.
- **“Conditions”** mean these conditions of the Warranty.
- **“Contract”** means, in respect of any Goods to which the Warranty applies, the contract (including the relevant order, order acknowledgement and the Company’s Standard Conditions of Sale) under which such Goods are purchased by the Customer from the Company.
- **“Customer”** means an undertaking whose order for Goods has been accepted by the Company;
- **“Dedicated charger”** means the charger specified in the Manual – Battery User Guide supplied to the Customer for the charging of the Goods.
- **“Defect”** means a failure of Goods or Replacement Goods to comply with the terms of the relevant Contract (subject to Condition 3.2), including mechanical or electrical breakdown, and “Defective Goods” shall be interpreted accordingly.
- **“Goods”** means the products intended to be sold by the Company to the Customer pursuant to the Customer’s order.
- **“Identification Sticker”** means the sticker attached to each unit of Goods when originally supplied to the Customer, carrying a unique serial number and bar code and production date.
- **“Manual”** means the Battery User Guide supplied to the Customer and setting out how the Customer must properly use the Goods.
- **“Repaired Goods”** means any Defective Goods which are repaired pursuant to the Warranty and returned to the Customer.
- **“Replacement Goods”** means replacement Goods supplied to the Customer in place of Defective Goods, pursuant to the Warranty, which will (subject to Condition 3.2) be of the same or similar specification to the replaced Goods, and shall be compatible with older versions of the pack.
- **“Standard Conditions of Sale”** means the Company’s Terms and Conditions of Sale, forming part of the Contract, to which the sale of the Goods are subject.
- **“Warranty”** means, in respect of any Goods, the warranty cover (in Polish “*Gwarancja*”) provided by the Company in respect of such Goods, being comprised of the relevant Certificate and these Conditions.
- **“Warranty Card”** means a paper certificate with the serial number(s) of the Goods.
- **“Warranty Claim Card”** means the COMPLAINT NOTIFICATION FORM attached to this agreement.
- **“Warranty Period”** means the period of twelve (12) months from invoice date.

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## 2. GENERAL PROVISIONS

2.1. The Customer agrees to be bound by these Conditions in respect of the Warranty. The Warranty shall be governed solely in accordance with these Conditions, and shall exclude the use of any other conditions (contract templates, general purchase terms and conditions) accepted, issued or applied by the Customer (defensive clause). Any departures from these Conditions shall require the Company's express acceptance in writing, given by an authorised person. In respect of the subject matter of the Warranty, in the event of a conflict between these Conditions and the Contract subject to which the relevant Goods are purchased, these Conditions will prevail.

2.2 The Warranty for the Goods shall apply for the Warranty Period subject to the Conditions herein.

2.3. Following purchase of the Goods, the Customer will be provided with a Warranty Card. The Warranty Card and these Conditions will form the contract between the Company and the Customer in respect of the Warranty.

2.4. A variation of these Conditions is valid only if it is in writing and signed by or on behalf of the Company and the Customer.

2.5. Any agreed amendments to these Conditions in any particular Warranty shall not mean that the Company accepts such amendments for other or future Warranties.

## 3. RECTIFICATION OF DEFECTS

3.1. The Company agrees to rectify Defects affecting the relevant Goods during the Warranty Period, subject to these Conditions.

3.2. A reduction in the Battery Capacity of Goods shall only be treated as a Defect where the Battery Capacity of the Goods falls below 80% of the nominal maximum Battery Capacity for such Goods, as stated in the Goods' specification (the "Minimum Capacity Level"). In respect of the Battery Capacity of any Repaired Goods or Replacement Goods, the Company's obligations under the Warranty shall be limited to ensuring that such Goods exceed the Minimum Capacity Level for the remainder of the original Warranty Period.

3.3. Where any Goods turn out to be Defective, then the Company will, at its absolute discretion, either repair or replace the Defective Goods. The Company will bear the costs of any such repair or replacement, including parts and labour charges. The Company will usually elect to repair Defective Goods unless (a) it cannot obtain the spare parts to repair it, or (b) it can replace the Goods for less than the cost of the repair. For the avoidance of doubt, the Company may elect to supply used Goods as Replacement Goods, and there is no obligation on the Company for Replacement Goods to be brand new.

3.4. Where the Company elects to inspect and/or repair any Defective Goods, such Goods (in whole pack form) will need to be returned or shipped to the Company's premises for inspection and repair. The Company will reimburse the reasonable costs of such transportation except where the Products are found not to be Defective, in which case the Company shall also be entitled to charge to the Customer the reasonable cost of the inspection of the Goods.

3.5. Any replaced Goods or parts will become the property of the Company.

## 4. SCOPE OF WARRANTY

4.1. The Company shall not be obliged to rectify Defects in Goods:

- a. the integrity of which has been breached in any way following first supply by the Company, or
- b. resulting from transport damage for which the Company is not responsible, or
- c. caused by damage or by use, operation or treatment of the Goods inconsistent with normal use, including non-compliance with the provisions of the Manual in the use of the Goods, such as (without limitation) –

- i. the Goods have been stored in inadequate conditions or for too long, or otherwise not adequately maintained in accordance with the Manual on proper maintenance, or
  - ii. the Goods have been exposed to fire, flooding, extreme temperatures, lightning or other abnormal external conditions, or
  - iii. the Goods have been installed or used improperly (or for an abnormal purpose), including in a manner inconsistent with the technical or safety laws or standards in the country where it is installed or used, or
  - iv. the quality of the Goods has been deteriorated as a result of neglect, or the condition of (or defects in) systems with which the Goods are used or incorporated, or
  - v. the Goods have been adjusted or adapted without the Company's prior written consent, including without limitation upgrading the Goods beyond specifications or features described in the Manual, or modifications to the Goods made to conform it to national or local technical or safety standards in countries other than those for which the Goods were specifically designed and manufactured,
  - vi. if a charger other than a Dedicated Charger was used to charge the Goods, or
- d. that are limited to minor variances from nominal features of no significance to the Goods' fitness for purpose, or
- e. that have not been reported to the Company within 48 hours in accordance with Condition 5.1, and otherwise in accordance with these Conditions, or
- f. for which the Warranty has not been fully paid.
- 4.2. The Company reserves the right to invalidate the Warranty if repairs or other interventions have been performed on the Goods by persons not authorised by the Company to take such action, or if the Goods are fitted with non-original spare parts, extras or accessories.
- 4.3. The Company reserves the right to refuse to repair any Goods that do not carry the correct Identification Sticker, or are not otherwise identifiable as the Goods to which the warranty relates.
- 4.4. The Warranty shall not apply to Goods which have been transported and used outside of the European Union.
- 4.5. Services provided under the Warranty neither –
- a) extend the Warranty Period in respect of Repaired Goods, or
  - b) commence a new Warranty Period in respect of Replacement Goods.
- Accordingly, the Warranty Period for Replacement Goods or for spare parts incorporated within Repaired Goods shall end with the expiry of the Warranty Period for the original purchased Goods.
- 4.6. The Warranty will be automatically cancelled if the Customer submits a claim knowing it to be false, fraudulent or a misrepresentation, but the Warranty Period shall not otherwise be affected by the Customer making a claim.

## 5. MAKING A CLAIM FOR RECTIFICATION OF DEFECTS

- 5.1. Any claim of the Customer under the Warranty which is based on any Defect of the Goods or incompatibility of these Goods with the terms of the Contract must be reported to the Company within 48 hours following their discovery by the Customer.
- 5.2. Where the Customer wishes to make a claim under the Warranty, it shall submit a completed Warranty Claim Card with all relevant information about: (i) the affected Goods (including, without limitation, the relevant serial number and barcode, purchase invoice) and (ii) the alleged Defects.
- 5.3. To raise a complaint, the Customer should gather all necessary information and evidence connected with this specific complaint and fill the "Warranty Claim Card". All fields must be filled with data under pain

of nullity. In the next step, the complete “Warranty Claim Card ” (with necessary attachments such as pictures, reports etc., as necessary) must be delivered to the Company at the following e-mail address: [\\_BTGGliwiceQS-Reklamacje@embatterysystems.com](mailto:_BTGGliwiceQS-Reklamacje@embatterysystems.com)

5.4. After submitting the complaint, the Customer will be informed within 72 hours that the complaint has been received and registered by the Company. In case there is no feedback, the Customer should contact its Company sales representative. Based on received information, the Company will consider the complaint and inform the Customer about next steps in proceeding. In the event that the relevant Goods have not yet been returned to the Company but are needed by the Company for further analysis, the Customer will be asked to deliver such Goods to the Company. This request must be fulfilled.

5.5 In case of necessity to deliver the Goods to the Company pursuant to the information obtained from the Client in accordance with section 5.2 and 5.3 above, the Company will determine the conditions of such transport in accordance with the binding ADR rules relating to the transport of hazardous materials. If the Company determines that the above mentioned Goods can be transported pursuant to ADR908 rule, the Company will deliver to the Customer adequate packaging to be used for the transport of hazardous materials. In such case, the Customer will be obligated to pack the Goods in accordance with the UE ADR requirements as published on the following website: [www.unece.org](http://www.unece.org). If the Company determines that the Goods may not be transported pursuant to ADR908 rule, due to the fact that such Goods create real danger in transport, the Company will inform the Customer about the nearest recycling company and the Customer will be obligated to deliver the faulty Goods to such company in accordance with the EU ADR911 requirements available on the following: [www.unece.org](http://www.unece.org). The Company will reimburse the Customer with the cost of the recycling of the faulty Goods.

5.6. The Customer is obligated to execute all the respective customs duties in transport should they be applicable on the FCA basis [Customer’s localization].

5.7. The Customer will be informed about the decision whether the complaint has been accepted or rejected, by e-mail within 14 days of the later of submitting the complaint or returning the Goods (if it was necessary for analysis). No feedback from the Customer to the Company within 10 working days after sending the decision will be considered as agreement by the Customer on the given conclusions and the complaint will be considered closed on the Company’s side.

## 6. FORCE MAJEURE

6.1. The Company shall not be responsible or liable if its performance of any of its obligations under the Warranty is prevented, interrupted or delayed by any ‘force majeure event’, being any cause beyond the Company’s control (including, without limitation, Acts of God, epidemics, acts of government, strikes, war (declared or not) or lock-out).

6.2. The Company’s performance shall be deemed suspended for the period that the force majeure event continues, and the Company will be granted an extension of time for performance for the duration of that period.

## 7. LIMITATION OF THE COMPANY’S LIABILITY

7.1. Subject to Conditions 7.2 and 7.4, the Company excludes all warranties (express, implied, statutory or otherwise) in respect of the Goods regarding quality, performance, accuracy, reliability, fitness for a particular purpose, or otherwise.

7.2. The Company does not exclude any warranty or liability which cannot be excluded pursuant to the law, such as liability for wilful misconduct or fraud. Any warranty or liability that cannot be fully excluded under Condition 7.1 will be limited to the maximum extent permitted by applicable law, and to the Warranty Period.

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7.3. The Company shall not be liable for any actions or omissions of third parties which assist the Company in performance of its obligation, as well as persons commissioned to perform the obligation.

7.4. For the avoidance of doubt and notwithstanding the above, the Company's only obligation under the Warranty is to repair or replace the Defective Goods in accordance with Condition 3.3, and the Company shall not be liable for any loss or damage to products, service, the Warranty or otherwise, or for any indirect or consequential loss including loss of profit. This applies whether that loss or damage relates to –

- a) impaired, or the non-operation of, Goods through defects or through unavailability (while with the Company) causing downtime, loss of user time or business interruption; or
- b) inaccuracy of output from the Goods or associated products.

7.5. In any event, subject to Condition 7.2, the liability of the Company for any and all claims, damages and causes of action arising out of any breach of the Warranty will be limited to the 80% of price paid for such Warranty.

7.6 For avoidance of any doubts, it is confirmed that pursuant to the Contract executed with the Customer, the parties to the Contract excluded the Company's responsibility for the warranty in the case of faulty products (in Polish: "odpowiedzialność z tytułu rękojmi").

## 8. APPLICATION OF STANDARD CONDITIONS OF SALE TO REPLACEMENT GOODS

The provisions in the Standard Conditions of Sale relating to the following subject matters shall apply to any Replacement Goods:-

- Intellectual Property Rights;
- Components, Software, Designs; and
- Sanctions.

For the avoidance of doubt, the unexpired portion of the Warranty (but no additional period) shall apply in respect of any Replacement Goods supplied to the Customer thereunder.

## 9. GENERAL

9.1. WAIVER. The waiver by the Company of any breach of any of these Conditions shall not prevent the subsequent enforcement of that Condition and shall not be deemed to be a waiver of any subsequent breach of that or any other Condition.

9.2. SEPARATE PROVISIONS. Each of these Conditions and part (including a sub-clause or part thereof) shall be constructed as a separate provision applying and surviving even if one or more other Conditions or parts is held to be invalid, unlawful or otherwise unenforceable by a competent authority, in which case the remaining Conditions and parts shall remain in full force and effect.

9.3. ENTIRE AGREEMENT. The Contract represents the whole agreement between the parties in respect of the Warranty and supersedes all previous agreements between the parties relating to the subject matter. Each party acknowledges that:

- a) in entering into the Warranty, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, covenant, indemnity, undertaking, commitment, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Warranty; and
- b) in respect of the Warranty, all other terms and conditions (including but not limited to those in any Contract) are expressly excluded to the fullest extent permissible by law, in accordance with Condition 2.1.

9.4. RIGHTS OF THIRD PARTIES. The Warranty is only for the benefit of the Customer, and is not transferable to any new owner of the Goods. No benefits will be given to any other person under this Warranty.