



E.M.S. Electro Medical Systems S.A.

General Terms and Conditions of Sale (GTC)

1. Scope and Validity

- 1.1 These General Terms & Conditions (GTC) govern all general aspects of the sale of goods and the performance of services by E.M.S. Electro Medical Systems S.A. (EMS) to customers unless otherwise agreed upon in writing in a separate agreement. The term "customers" refers to the resellers of EMS as well as the direct sales' customers. Customers hereby accept these GTC in particular, but not limited, by signing and returning Seller's quotation, by sending a purchase order in response to the quotation, by submitting instructions to Seller to ship the goods or by accepting and paying for the goods or services.
- 1.2 These present GTC apply to all present and future business transactions, even in case an individual order is given as part of an existing business relationship and these GTC are not specifically referred to.
- 1.3 General Terms & Conditions of the customer which are contrary to our terms and conditions shall only be binding on EMS if explicitly recognized in writing by EMS. Our field sales representatives are not authorized to confirm orders or to conclude contracts with customers.

2. Quotations, Completion of Sales

- 2.1 Quotations made by EMS shall be binding for thirty (30) days from the date it was made unless otherwise stated by EMS.
- 2.2 Completion of sales occurs when an order received has been confirmed in writing by EMS or when EMS responds to the sale by shipping the related goods to customer or when EMS has performed its services.
- 2.3 A EUR 50.00 fee may be invoiced for all orders lower than EUR 150.00

3. Delivery Times, Dispatch of Goods

- 3.1 The indicated delivery times are approximate and are not binding on EMS unless expressly stated otherwise. In case of express delivery, additional costs will be charged to the customer.
- 3.2 In the event of an act of God, force majeure or government measures involving EMS, suppliers or its suppliers' subcontractors EMS may have to completely or partially cancel any contract or order or to suspend the execution thereof without notice or liabilities for damages. EMS does not accept any procurement risks.
- 3.3 EMS shall be entitled to make partial deliveries.
- 3.4 All products are shipped EXW Nyon (Incoterms 2020) unless specified otherwise in the order acknowledgment or in writing in a separate agreement. All shipments are made for the account and the risk of the customer. Risk shall be transferred to customer when the shipment leaves EMS's factory or warehouse.
- 3.5 Any damage occurring during transport must be notified to EMS and in case of a reseller, to the carrier as well, in writing and with no delay, but within 5 days at the latest.
- 3.6 EMS shall reserve title on the goods delivered until full payment for said goods has been received. In the event of any attachment or pledging of goods by third parties, customer shall inform said third parties of the retention of title by EMS and promptly provide EMS with written notice thereof.

4. **Prices and Payment**

- 4.1 EMS' prices for its goods and services are always shown exclusive of VAT in the relevant currency. This principle applies for all EMS pricelists and order acknowledgments. Unless expressly specified otherwise in an EMS order acknowledgment EMS reserves the right to make price adjustments if market conditions change significantly or if resulting from fluctuations in the exchange rate.
- 4.2 All prices for products listed in an offer or otherwise provided by EMS are confidential and may not be disclosed to anyone outside the customer's organization without EMS' permission.
- 4.3 All costs incurred in connection with payment shall be borne by the customer.
- 4.4 Unless expressly specified otherwise, EMS invoices for goods and services are payable within 30 days of the invoice date in the currency specified in the invoice. EMS reserves the right to require cash in advance or cash on delivery. EMS may impose a service charge of 1,0% per month on past due amounts. In the event of past due balances EMS may refuse new orders and may cancel or delay shipment of outstanding orders.
- 4.5 Any payment requiring the establishment of a letter of credit shall be made on an irrevocable document, issued by a bank approved by EMS and indicating the total amount of the open contract. The terms of any such letter of credit shall comply with any specifications or requirements furnished by EMS to the customer. The customer shall bear and pay full cost, including all banking charges, incurred in connection with the issuance, confirmation, and amendment of each such letter of credit.
- 4.6 The customer shall refrain from making deductions of any kind from any payments due to EMS unless a credit memorandum has been issued by EMS to the customer. The customer shall have no right of set-off.
- 4.7 If a reseller, the customer is free to set its own pricing for the products it sells to end-users. However the customer shall respect the principles of EMS' pricing policies.

5. **Inspection and Acceptance Obligations and Notification of Defects**

- 5.1 Customer shall inspect the goods immediately upon receipt to ensure that they comply with the technical specifications.
- 5.2 Any defects with regard to EMS' goods and services must be reported promptly to EMS in writing as soon as discovered but no later than 8 working days after receipt of the goods or completion of the services. Any product or service not duly rejected by the customer within this deadline shall be deemed to meet the applicable product specifications.

6. **Returns of Products**

- 6.1 Returns of Products require prior written approval by EMS. Customer shall send a list of the products to be returned to EMS. EMS will issue a RMA (Return Material Authorization) number. No returns will be accepted without a RMA number and a list of products authorized for return. The RMA number is valid for 30 days from its date. If after this period of time, the Products are not returned, Customer shall request a new RMA number.
- 6.2 All returns must be current commercialized products, not used, in original condition and packaging and not be purchased since more than one year. All returns shall be made freight prepaid.
- 6.3 Upon receipt of returned products, EMS will carefully check the products and only credit such products that are fulfilling the above return conditions. Any incomplete, damaged or older products shall be refused for return.
- 6.4 Returns are subject to a 10% (ten percent) restocking charge.

7. **Medical Device Regulations, Traceability**

- 7.1 The Customer agrees to be compliant with all applicable Medical Devices regulations and standards as well as applicable traceability requirements.
- 7.2 If a reseller, the obligations of EMS and the customer with regard to regulatory issues and Quality Assurance are set forth in a separate Regulatory Agreement.

8. **Intellectual Property**

The present GTC and any related contractual provisions shall not be interpreted to mean that they transfer to the customer EMS' intellectual property rights to goods and services. EMS shall remain the exclusive holder of intellectual property rights to goods and services. All representations, plans and other documents generated under these GTC and any contractual provision shall remain with EMS.

9. **Warranty**

- 9.1 **Dental Devices and accessories**
Unless otherwise specified, all dental devices and accessories delivered pursuant to the present General Terms and Conditions shall be free from defects in material and workmanship:
 - for direct sales customers: for a period of twelve (12) months from the date of delivery.
 - for resellers: for a period of twelve (12) months from the date of the delivery to the end-user or, a maximum of eighteen (18) months from the date of shipment to the reseller, whichever occurs first.
- 9.2 **Pain Therapy Products and accessories**
Unless otherwise specified, all Pain Therapy devices and accessories delivered pursuant to the present General Terms and Conditions shall be free from defects in material and workmanship:
 - for direct sales customers: for a period of twenty-four (24) months from the date of delivery.
 - for resellers: for a period of twenty-four (24) months from the date of the delivery to the end-user or, a maximum of thirty (30) months from the date of shipment to the reseller, whichever occurs first.
- 9.3 **Urology Products and accessories**
Unless otherwise specified, devices and accessories delivered pursuant to the present General Terms and Conditions all Urology devices and accessories shall be free from defects in material and workmanship:
 - For the LaserClast Thulium Power, the LaserClast 35 and the Swiss LithoClast Trilogy lines, for a period of twenty-four (24) months from the date of delivery to the end-user or, a maximum of thirty (30) months from the date of shipment to the reseller, whichever occurs first.
 - For all other urology devices, for a period of twelve (12) months from the date of delivery to the end-user or, a maximum of eighteen (18) months from the date of shipment to the reseller, whichever occurs first.

The customer shall notify EMS of any complaint with regard to defects in writing promptly upon such defect has been discovered. Notification must contain all pertinent information.
- 9.4 EMS' warranty is limited according to the choice of EMS to the remedy of defects or delivery of a substitute. The customer must grant appropriate time and opportunity for this.
- 9.5 Replacement and repair of any product or product part shall not be deemed to renew or extend the initial warranty period.
- 9.6 EMS shall not be held responsible under the warranties contained in these GTC and any such warranty shall be null and void if:
 - a) a defect is attributable to normal wear and tear,
 - b) the products are used in other than their normal and customary manner,
 - c) the products have been subject to misuse, accident or neglect other than by EMS,

- d) unauthorized alterations, modifications or repairs have been made, or unapproved parts used in the assembly of the products by persons other than EMS or its authorized repair centers,
- e) the products have been improperly handled, maintained, installed or used by customer or third parties, or
- f) the products have been improperly disinfected or sterilized.

9.7 The warranty shall be null and void in case the products are used with accessories or spare parts that are not approved by EMS.

10. Liability

- 10.1 EMS shall be liable only for wilful misconduct and gross negligence. EMS shall in no way be liable for lost profits, collateral damage, indirect damage, direct damage, consequential damage or other similar types of damage.
- 10.2 The above exclusions and limits of liability do not apply in the case of fraudulent concealment of defects and in as far as the exclusions are possible under the applicable legal provisions.

11. Data Protection

EMS and customer undertake to comply with the relevant legal provisions regarding data protection. Personal data may only be processed for the purpose and to the extent required for the fulfilment of the contract and for safeguarding a high service and security standard. Personal data shall be collected, stored and passed on to third parties only as far as legally admissible. If you have any questions, comments or requests regarding your personal data, please send an email to the following address: privacy@ems-ch.com.

12. Applicable Law and Place of Jurisdiction

- 12.1 Swiss law shall exclusively apply to the legal relationship between EMS and the customer.
- 12.2 The application of the provisions of the United Nations Convention on Contracts for the International Sales of Goods (Vienne Convention 1980, CISG) and the international private law is expressly excluded.
- 12.3 All disputes arising from the present GTC or the underlying agreement or in connection therewith shall be subject to the ordinary courts at EMS' registered office in Nyon, Switzerland.
- 12.4 Unless stipulated otherwise the place of performance shall be EMS' registered office.
- 12.5 These GTC are edited in various languages. In case of conflict between the various languages the version in English language shall be the decisive edition.



Ernst Wühr
General Manager



Andrea Blumer
Senior Legal Advisor

Version: 29.03.2023

E.M.S. Electro Medical Systems S.A.
Chemin de la Vuarpillière 31
CH-1260 Nyon