



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

GENERAL CONDITIONS OF PURCHASE (GTCP)

1. Subject

- 1.1** The Buyer is understood to be the company E.M.S. Electro Medical Systems S.A. ("EMS")
- 1.2** The Supplier is understood to be any legal or natural person who has entered into a contract with EMS for Supplies, regardless of the form and/or name of the contract.
- 1.3** The term "Supply(ies)" covers all works, equipment, installations, materials, components, parts, etc. as well as all services.
- 1.4** The present General Terms and Conditions of Purchase (hereinafter: ("GTCP")) are applicable to all present and future Orders from EMS, including the case where a specific order is requested by EMS from a Supplier with whom a commercial relationship exists and during which no prior reference has been made to the General Terms and Conditions of Purchase.
- 1.5** Deviations from these GTCP must be expressly authorized in writing by EMS and/or specifically stated in writing in its Order.

2. Validity of the order

- 2.1** Any Order made verbally must be confirmed in writing to be valid.
- 2.2** The Supplier shall have a period of 5 calendar days from the date of receipt to acknowledge receipt of the order and confirm it, failing which it shall be deemed to accept it without reservation.
- 2.3** Unreserved acceptance of the Order shall also be presumed upon commencement of its execution by the Supplier or upon receipt of a deposit by the Supplier.
- 2.4** Any order accepted by the Supplier shall imply acceptance of these GTCP, the Supplier waiving the right to invoke its own general terms and conditions of sale, even if these appear in its acknowledgement of receipt or in any other document.

3. Compliance and quality

- 3.1** The Supplier undertakes to deliver the Supplies in accordance with the terms of the Order as well as with the plans, specifications and terms of reference accepted by EMS and the Supplier, as well as with the initial samples presented and accepted by EMS. The Supplies must comply with the regulatory and legal standards in force, in particular the REACH and ROHS regulations.
- 3.2** Any changes to the Order specifications by the Supplier shall be subject to the prior written approval of EMS.
- 3.3** Upon execution of an Order, the supplier undertakes to comply with the requirements of ISO 9001 and/or ISO 13485 and/or the European Medical Devices Directive 2017/745 and/or 21CFR part 820 or any other contract signed with EMS. This includes the requirement for a "zero defect" target and continuous improvement of its performance.

- 3.4 The Supplier undertakes to comply with all legislation and regulations applicable to medical devices as well as traceability standards in this field to the extent applicable.
- 3.5 At EMS's request, the Supplier undertakes to provide all information on the Supplies, in particular on their origin and composition, as soon as possible.

4. Delivery deadline, dispatch of Supplies and conditions

4.1 Delivery deadline

- 4.1.1 Any change to the delivery deadlines must be authorized in writing by EMS.
- 4.1.2 The Supplier undertakes to comply with the delivery deadline, place and terms indicated in the Order.
- 4.1.3 Subject to a reasonable period of notice, EMS reserves the right to unilaterally change the quantities and/or the planned delivery date.
- 4.1.4 The Supplier undertakes to inform EMS immediately of any event that may cause a delay in delivery. In case of delay, EMS reserves the right to:
 - a) require delivery by express service at the Supplier's expense;
 - b) terminate all or part of the unfulfilled Order without compensation;
 - c) purchase undelivered Supplies from another supplier. In this case, the costs resulting from this transfer shall be charged in full to the defaulting Supplier;
 - d) apply late payment penalties of two percent (2%) of the total value of the Order for each week of delay, commencing on the 7th day of delay, subject to a maximum of five percent (5%) per week of delay. These penalties may be offset against the amount of the sums still due to the Supplier.
- 4.1.5 In addition to the payment of penalties for delay, the Supplier is obliged to compensate EMS for all costs and expenses relating to complaints and/or interruptions in the production chain caused by this delay, without prejudice to a claim for damages, and this within 90 days of the planned delivery date.

4.2 Dispatch

- 4.2.1 Unless otherwise agreed, the place of performance of the contract shall be the address indicated on the order form.
- 4.2.2 If not specified in the Order, the Supplier is responsible for the choice of packaging. He undertakes to deliver the Supplies packaged in accordance with the norms and standards in force in Switzerland. The Supplier shall be solely responsible for any deterioration of the Supply resulting from inappropriate packaging.
- 4.2.3 The Supplier is obliged to attach to the shipment a delivery note containing all the information concerning the packaging, the nature of the packaging and the references appearing on the Order as well as, in the case of a service, a note specifying the details of the service provided.
- 4.2.4 The risk of the item passes to EMS only upon receipt of the Supplies at the intended location. The risks associated with the transport of the Supply shall be borne exclusively by the Supplier.
- 4.2.5 Any damage known to the Supplier to have occurred during the transport of the Supplies must be notified to EMS in writing as soon as possible, but within a maximum of 5 days.

5. Inspection and reception

- 5.1** EMS, possibly accompanied by its client, reserves the right to inspect the quality of the manufacture of the Supplies at any time, with prior notification, on the premises of the Supplier or its subcontractors.
- 5.2** The participation of EMS in the acceptance operations of the Supplies does not relieve the Supplier of its responsibility.
- 5.3** Upon receipt of the Supplies, EMS shall check the packaging, identity and quantity of the Supplies received.
- 5.4** The Supplier waives the right to invoke the lateness of a claim by EMS.
- 5.5** The absence of objections and/or reservations by EMS at the time of delivery of the Supplies and/or at the time of payment for the Supplies may not under any circumstances be considered as tacit acceptance of the conformity of the Supplies delivered.

6. Prices - Invoicing - Terms of payment

- 6.1** Prices are fixed and non-revisable unless EMS has given its prior written consent. They are "duty paid" DAP unless otherwise stated in the order, place of delivery indicated on the Order (packaging, transport and insurance included).
- 6.2** The selling price of the parts/services shall be the same as the price indicated on the order, with the exception of the hypothesis that additional costs, justified and accepted in advance in writing by EMS, may apply, for example in the event of a necessary change in packaging or logistics due to a shortage or for any other good reason.
- 6.3** Invoices must include all the information appearing on the Order for the purposes of identification and control of the Supplies, as well as all the regulatory information (exact name of the Supply, quantity, unit price, mode of transport).
- 6.4** Invoices shall be paid within sixty (60) days of the end of a month from the date of issue of the invoice, unless otherwise stated.

7. Liability

- 7.1** The Supplier shall be fully responsible for the design and manufacture of the Supplies in accordance with the documents, standards and samples referred to in Article 3 of the GTCP.
- 7.2** The Supplier is responsible, unless otherwise stated, for the technical choices regardless of EMS' assistance during the development, even if EMS did not raise a defect and/or accepted the Supply upon receipt or during the initial sample examination procedure.

8. Guarantee for defects

- 8.1** The Supplier guarantees the Supplies for three (3) years from the date of delivery against any defect or malfunction, whether apparent or hidden, resulting from a design, material and/or manufacturing defect, without excluding a longer applicable legal guarantee.
- 8.2** EMS reserves the right to refuse the Supplies in the event that they do not conform. The Supply shall be returned to the Supplier at the latter's expense and risk.
- 8.3** Upon expiry of the contractual warranty, the Supplier shall remain liable for all direct or indirect consequences arising from the statutory warranty for defects, in particular the regulations concerning hidden defects or those concerning defects

in an item of property. Any clause limiting or excluding the legal guarantees offered shall be deemed unwritten.

- 8.4** In any case, the Supplier shall compensate EMS for any direct or indirect damage suffered by EMS as a result of the non-conformity of the Supplies

9. Product recall

- 9.1** In the event of a product recall by the Supplier after delivery to EMS, the Supplier shall immediately notify EMS and shall be held responsible. He shall compensate EMS for the direct and indirect damage suffered by EMS as a result.
- 9.2** In the event that EMS's customer decides to recall a product incorporating the Supply, the Supplier shall indemnify EMS to the extent of its liability, for all direct and indirect damages suffered by EMS.

10. Spare parts

With regard to the "after-sales" obligations in force in the medical device sector and independently of the end of the contract between EMS and the Supplier and/or the cessation of Orders as a result, the Supplier undertakes to hold the stock necessary to deliver any spare parts or a Supply equivalent to the Supplies delivered during the contract, for a period of seven (7) years after the cessation of mass production of EMS's products manufactured with the Supplier's components

11. Assignment and subcontracting

The Supplier may not assign his rights or subcontract his tasks without the written consent of EMS.

12. Transfer of ownership

EMS becomes the owner of the Supplies upon delivery. EMS does not recognize any retention of title clause.

13. Special tools and equipment

- 13.1** Special tools and equipment supplied by EMS and/or manufactured specifically for the execution of the Order are the exclusive property of EMS.
- 13.2** Special tools and equipment shall not be subject to any right of retention on the part of the Supplier, nor to any attachment by the Supplier's creditors. Special tools and equipment shall be returned at the first request of EMS at the Supplier's expense.
- 13.3** A contract for the loan of special tools and equipment shall be signed between EMS and the Supplier. Even in the absence of such a contract, the special tools and equipment shall be deemed to be deposited with the Supplier as an accessory to the Order.
- 13.4** Special tools and equipment may only be used by the Supplier for the purposes of the Order.
- 13.5** The Supplier must take all necessary measures to allow the designation of special tools and equipment, in particular by affixing sealed metal identification plates or by cold marking with an indication that they are the property of EMS and that they are non-transferable and unseizable.
- 13.6** The Supplier, as custodian, assumes custody and risk of the special tools and equipment and guarantees their maintenance and proper functioning.

14. Intellectual and industrial property rights

- 14.1** The Supplier grants EMS a non-exclusive license to use, free of charge, all intellectual and/or industrial property rights relating to the Supplies, for the duration of the validity of said rights and for all countries, with a view to direct and/or indirect exploitation by EMS.
- 14.2** The Supplier guarantees EMS and its clients against any claim, infringement or unfair competition that may be brought by a third party against EMS or its clients, concerning the Supplies. The Supplier shall be solely responsible for all harmful consequences resulting from such action towards EMS and its customers.

15. Confidentiality

- 15.1** All confidential information, i.e. all documents, information, studies, plans, samples, data, prototypes, equipment and know-how of whatever nature (technical, commercial, etc.) and in whatever form (email, oral and written disclosure, etc.) which have been made available to the Supplier, whether prior to or during the execution of the Order, shall remain the property of EMS. They may not be disclosed to third parties and/or used by the Supplier for its own purposes without the prior written consent of EMS.
- 15.2** The obligations of confidentiality shall remain in force despite the termination of the contractual relationship for a period of five (5) years after the completion of the Orders. For confidential information that constitutes a business secret, the Supplier's obligation of confidentiality shall remain in force as long as such confidential information remains a business secret under the applicable legislation.

16. Insurance policy

- 16.1** For the duration of the contractual relationship with EMS, the supplier must maintain adequate product liability insurance in accordance with current industry standards.
- 16.2** The Supplier shall take out an insurance policy guaranteeing the replacement value as new of the specific tools and equipment, covering the risks of loss, theft, destruction and any damage that they may suffer and/or cause. The insurance must include a waiver of all claims against EMS and its insurer.
- 16.3** At the request of EMS, the Supplier shall provide all necessary insurance certificates and evidence. The insurance policies taken out by the Supplier do not alter the nature, content or extent of its obligations and responsibilities to EMS.
- 16.4** The Supplier shall notify EMS in writing of any changes in its liability insurance policies if these are cancelled, not renewed, reduced or in case of any other substantial change.
- 16.5** The Supplier shall be liable for any failure to maintain an adequate insurance policy in accordance with the foregoing provisions.

17. Termination

- 17.1** In the event of non-performance by the Supplier of one of its contractual obligations, EMS may automatically terminate the contractual relationship, including Orders in progress, by registered letter with acknowledgement of receipt, thirty (30) days after formal notice by registered letter with acknowledgement of receipt has remained without effect during this period, without prejudice to any damages that EMS may claim.

17.2 In the event of gross negligence, intent or gross negligence, EMS is entitled to terminate the contractual relationship immediately by right.

18. Data protection

EMS and the Supplier undertake to comply with the legal provisions applicable to the processing and protection of personal data. Personal data may only be processed for the purpose and to the extent required for the execution of the contract between the two parties and shall be stored at a high service and security level. Personal data may be collected, stored and transmitted to a third party only in compliance with applicable laws. If a question, comment or request arises in connection with the processing of personal data, the Supplier may contact the following address: privacy@ems-ch.com.

19. Anti-corruption and employment conditions

19.1 The Supplier undertakes to comply with all applicable anti-corruption laws and regulations and to ensure that its subcontractors and assistants comply with them.

19.2 The Supplier with its registered office or branch in Switzerland undertakes to comply with Swiss health and safety standards and the principle of equal pay for men and women: The Supplier with its headquarters abroad undertakes to comply with the relevant locally applicable standards, but at least the core conventions of the International Labour Organisation (www.ilo.org).

20. General provisions

20.1 Divisibility, non-renunciation and language

20.1.1 The invalidity of one of the clauses of the GTCP shall not lead to the invalidity of the other clauses. The invalid clause shall be replaced by a clause intended to achieve an equivalent economic and legal effect to the original clause.

20.1.2 The failure of either party to exercise any of its rights under the GTCP shall not be construed, regardless of the duration, extent or frequency of such forbearance, as a waiver or relinquishment of its right to subsequently enforce any of the provisions of the GTCP at any time.

20.1.3 These GTCP are drawn up in different languages. In case of conflict between the versions, the French version takes precedence.

20.2 Change in the supplier's situation


In the event of a change of management, transfer of control, merger or absorption of the Supplier, the latter must immediately inform EMS, which may terminate outstanding orders without notice.

20.3 Applicable law & dispute resolution

20.3.1 Swiss law shall apply exclusively to the execution of orders between EMS and the Supplier, with the exception of conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna on 11 April 1980 and the Swiss Federal Act on Private International Law is expressly excluded.

20.3.2 Any dispute arising out of or in connection with the business relationship between EMS and the Supplier and not amicably resolved shall be brought before the competent court at the registered office of EMS whose legal domicile is Nyon in Switzerland.

20.3.3 Clauses 20.3.1 and 20.3.2 shall apply even in the event of an incidental claim, multiple defendants or a warranty claim, and regardless of the method and terms of payment.



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