

# **General Terms and Conditions (B2B) for the Webshop of EMS Electro Medical Systems GmbH**

## **Preamble**

These General Terms and Conditions (GTC) apply to all orders via the online shop of EMS Electro Medical Systems GmbH (hereinafter "EMS") by dental practices, dental professional partnerships, medical care centers (MVZ) as well as other institutions and companies in the dental field. EMS addresses the offer of the online shop exclusively to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB); orders by consumers (Section 13 BGB) are excluded.

## **1. Subject matter, scope and access**

1.1 EMS sells devices and consumables for dental professional prophylaxis according to the GBT method via the online shop, as well as promotional materials for commercial customers in the dental sector.

1.2 These GTC apply exclusively to declarations of intent, contracts and legal transactions or acts similar to legal transactions of EMS with its eShop customers. Deviating terms and conditions of the customer shall not apply unless EMS expressly agrees to their validity in writing.

1.3 EMS concludes contracts exclusively with entrepreneurs within the meaning of Section 14 BGB; the VAT identification number must be provided when placing the order.

## **2. Conclusion of contract**

2.1 Information in catalogs and on the website does not constitute a binding contractual offer; by placing the order, the customer submits a binding offer to conclude a purchase contract.

2.2 EMS accepts the order by express declaration, by sending an invoice or by dispatching the goods; acceptance or rejection shall take place within two weeks after receipt of the order.

## **3. Prices and shipping costs**

3.1 The prices valid on the day of the order ex works, net in euros plus value added tax shall apply.

3.2 All prices are exclusive of packaging and shipping costs. From an order value of €100 (net) per order, EMS shall bear the standard shipping costs within Germany, Austria and the Netherlands; forwarding, express and bulky item shipments are excluded and will be charged separately.

3.3 Current prices, costs and fees can be accessed in the online shop.

#### **4. Payment**

4.1 The customer may pay by credit card (VISA, Mastercard) or PayPal; payment is due immediately without deduction.

4.2 EMS reserves the right to exclude certain payment methods in individual cases or to deliver only against advance payment.

#### **5. Delivery periods and disruptions of performance**

5.1 Unless otherwise agreed, EMS shall deliver without undue delay, at the latest within 30 days after conclusion of the contract; the delivery period shall be deemed to have been met if the goods have left the warehouse within this period.

5.2 Delivery periods require the timely and proper fulfillment of the customer's obligations to cooperate; the defense of non-performance of the contract remains reserved.

5.3 Unforeseeable, unavoidable events beyond the control of EMS (force majeure, e.g. epidemics/pandemics, natural disasters, shortage of raw materials, labor disputes) release EMS for their duration from the obligation of timely delivery; this shall not apply if EMS is responsible for the delay.

5.4 Agreed delivery periods shall be extended by the duration of the delay in accordance with 5.2 and 5.3; EMS shall inform the customer of the occurrence and duration. If the end of the delay is not foreseeable or lasts longer than three months, either party shall be entitled to withdraw from the contract.

5.5 If delivery periods are exceeded, the customer shall set EMS a reasonable grace period.

#### **6. Place of performance, delivery, transfer of risk**

6.1 The place of performance is the registered office of EMS. In the case of shipment, the risk of accidental loss or accidental deterioration shall pass to the customer at the

latest upon handover to the commissioned transport company, even if EMS has borne the transport costs.

6.2 Delivery shall be made exclusively to a delivery address specified by the customer in Germany, Austria or the Netherlands.

6.3 To cover transport risk, deliveries up to €500.00 are automatically transport insured; the insurance costs are included in the shipping costs.

6.4 If the customer orders several items that cannot be shipped together, partial deliveries shall be permissible; in this case, shipping costs shall only be charged once.

6.5 Delivery shall be made by parcel service provider or freight forwarder; for freight shipments up to the doorstep. Further transport services can be agreed with the carrier; additional costs shall be borne directly by the customer.

6.6 EMS participates in a disposal system pursuant to Section 7 para. 1 Packaging Act (VerpackG); the customer may return sales packaging at designated collection points. For deliveries outside Germany, disposal shall take place in accordance with the respective national requirements and different return options may apply.

## **7. Acceptance, delay in acceptance and returns**

7.1 The customer is obliged to accept the goods.

7.2 If the customer does not accept the goods despite due date and reasonable grace period, EMS shall be entitled to withdraw from the contract and claim damages. The lump-sum compensation amounts to 20% of the agreed net purchase price; the customer retains the right to prove that no or significantly lower damage has occurred; EMS retains the right to prove higher damage. Costs for refused or uncollected shipments may be charged to the customer.

7.3 The statutory provisions on delay in acceptance (Sections 293 et seq. BGB) remain unaffected.

7.4 The return of defect-free goods is generally excluded; statutory warranty rights remain unaffected.

7.5 Returns as a gesture of goodwill: EMS may, at its reasonable discretion, grant a voluntary return of defect-free goods; there is no legal entitlement. Requirements include in particular: unused, unopened and complete goods in undamaged original packaging (for medical devices intact seals); minimum return value €100 (net); return costs and transport risks are borne by the customer; prior registration by email and confirmation (RMA number), shipments received without RMA may be refused; timely return shipment to the specified returns address, carriage forward shipments will not be accepted. After receipt, EMS shall inspect the goods; if the requirements are met, a credit note for the

value of the goods (excluding outward shipping costs) shall be issued, otherwise EMS may refuse the return or grant a partial credit note with the customer's consent; re-shipment on request and at the expense of the customer.

## **8. Obligation to inspect and give notice of defects; transport damage**

8.1 The customer shall inspect the goods immediately upon receipt for completeness, obvious defects and transport damage.

8.2 Obvious defects and quantity deviations must be reported in writing or in text form within seven (7) calendar days after receipt of the goods; hidden defects immediately after discovery, at the latest within seven (7) calendar days. Timely dispatch shall suffice for compliance with the deadline.

8.3 If the customer is a merchant within the meaning of the German Commercial Code (HGB), Section 377 HGB shall also apply; in this case, the notice of defects must be made immediately, at the latest within five (5) working days after receipt of the goods.

8.4 If notification is not made in due time, the goods shall be deemed approved; warranty claims due to the respective defect are excluded unless the defect was fraudulently concealed.

8.5 Externally visible damage to the transport packaging and recognizable damage to the goods resulting therefrom must be noted on the waybill/delivery note, confirmed by the deliverer and reported to EMS in writing within 48 hours enclosing the note so that EMS can fulfill its obligation to notify the transport insurer.

## **9. Warranty**

9.1 The warranty period is one year from delivery of the goods. Statutory limitation periods for recourse claims (Section 445b BGB) remain unaffected. The shortened period does not apply in cases of intent, fraudulent intent, assumed guarantee of quality, injury to life, body or health, claims under the Product Liability Act, grossly negligent breach of duty or breach of essential contractual obligations.

9.2 In the event of a defect, the customer shall grant EMS a reasonable period for subsequent performance. EMS may refuse the chosen type of subsequent performance if it involves disproportionate costs; in this case, the claim shall be limited to the other type of subsequent performance; if this is also disproportionate, EMS may refuse subsequent performance altogether.

9.3 Warranty or guarantee claims do not exist for defects resulting from application errors by the customer or when using unsuitable accessories, unless EMS is responsible for these effects.

9.4 Returns of defective goods shall be sent to: EMS Electro Medical Systems GmbH, Stahlgruberring 12, 81829 Munich.

## **10. Liability**

10.1 Claims for damages due to breaches of duty and from tort as well as claims for reimbursement of futile expenses are excluded against EMS and its vicarious agents unless the damage was caused intentionally or by gross negligence.

10.2 This limitation does not apply in the event of breach of essential contractual obligations, injury to life, body or health, or damages due to the absence of guaranteed characteristics or under the Product Liability Act.

10.3 In cases of slightly negligent breach of essential contractual obligations, EMS shall not be liable insofar as the damage is unforeseeable and atypical; this shall not apply in the event of injury to life, body or health or claims under the Product Liability Act.

10.4 The customer cannot claim damages as a result of avoidance due to errors without fault or printing or transmission errors that entitle EMS to contest.

## **11. Retention of title**

11.1 The delivered goods remain the property of EMS until full payment of the purchase price; moreover, until all claims existing at the time of conclusion of the contract have been fulfilled (total claim).

11.2 Before full payment, the customer is not entitled to resell, process, combine or mix the goods. If the customer violates this, the retention of title extends to the goods resulting from processing, mixing or combining; claims from resale etc. are already now assigned by the customer to EMS; EMS accepts the assignment.

11.3 If the customer falls into default of payment or an insolvency application is filed, EMS shall be entitled to take back the goods; this does not constitute withdrawal.

11.4 EMS undertakes to release securities upon request insofar as their value exceeds the total claim by more than 25%; the selection of the securities to be released lies with EMS.

11.5 The customer may not pledge, assign by way of security or make any other dispositions regarding reserved goods that jeopardize the ownership of EMS.

11.6 In contracts with retention of title, EMS shall be entitled to withdraw if the buyer defaults on payment of the purchase price or a total claim of more than €250; this is limited to contracts in which the value of the goods delivered is a maximum of 120% of the total claim.

## **12. Set-off, retention**

12.1 The customer may only set off counterclaims that are undisputed, legally established or ready for decision.

12.2 The customer is only entitled to rights of retention to the extent that his counterclaim is based on the same contractual relationship (connected claim) or is undisputed, legally established or ready for decision.

12.3 Paragraphs 1 and 2 do not apply to counter-rights arising from the same contractual relationship, in particular objections due to defects (Section 320 BGB) from the respective purchase contract.

## **13. Online registration, access data**

13.1 Registration is required for the use of the online shop; EMS checks the authorization to register; after registration, a user account is set up; EMS may change access data later and will inform of new data without undue delay.

13.2 The customer is responsible for the protection of access data, ensures access for authorized employees and keeps the access data secret; in case of suspicion of misuse, the password must be changed immediately or EMS must be informed.

13.3 In the event of justified suspicion of misuse, EMS is entitled to block access immediately; EMS informs the customer about the blocking.

13.4 EMS is not liable for damages resulting from misuse or loss of access data unless EMS is responsible for the damage.

## **14. Data protection**

Data processing by EMS takes place in accordance with the General Data Protection Regulation (GDPR), the Federal Data Protection Act (BDSG) and the Telecommunications Digital Services Data Protection Act (TTDSG). Details can be found in the privacy policy on the EMS website.

## **15. Place of jurisdiction, applicable law**

15.1 The place of jurisdiction for all disputes arising from or in connection with the purchase contracts between the customer and EMS is Munich city; however, EMS is also entitled to sue the customer at its registered office.

15.2 German law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and German private international law.

## **16. Amendments to the GTC**

16.1 EMS is entitled to amend these GTC with effect for the future. Amendments become effective if they are incorporated into a legal transaction or if EMS points out the amendments, the customer can take note of them and does not object within four weeks of receipt of the notice of amendment; EMS will separately point out the deadline and consequences.

## **17. Final provisions**

Oral side agreements, ancillary and supplementary agreements require written confirmation by EMS. Should individual provisions be or become invalid, the validity of the contract and the remaining provisions shall remain unaffected.