

Attachment: General service conditions (GSC)

I. Area of application

1. The following conditions are the basis of the services regarding medicine technical devices (in the following named "service device(s)") and their use by the purchaser, provided by EMOS Technology GmbH (in the following named "EMOS"). Regulations of the single contract are prior to this conditions.
2. Nature and scope of the services by EMOS are defined by the agreements taken with the purchaser in this regard, or by the offers of EMOS and, if the services are not specified in the offer, by the relative valid verification and check reports, and the relative valid working plans by EMOS.
EMOS provides all services as performances in the sense of § 611 ff BGB, unless not otherwise agreed explicitly.
3. Contradictory operational conditions by the purchaser are in no case part of the contract, unless their validity is accepted explicitly in writing.

II. The obligation of the purchaser to cooperate

1. The substantial obligations of the ordering party regarding the service devices include the use according to the instructions of use, control of function, and the exchange of consumption material in recommended intervals, and the cleaning according to the instructions of use.
2. In case of fault the ordering party has to take the necessary measures immediately, to protect persons and objects, and it has to inform EMOS. Detected the error it can not use the service device any more, unless the use was released by EMOS.
3. In its dominion the ordering party shall ensure that are respected the requirements of product liability law, especially the medicine devices law (MDL), together with the provisions of the regulations for users of medicine products, and the Medical Device Safety Plan Ordinance (MDSPO). EMOS points out that these obligations are punishable, see §§ 40 ff. MDL. The ordering party commits itself, within the systems of product monitoring and notification, § 29 MPG for medicine devices, to cooperate and to respect the compulsory notification.
4. If technical service is made onsite, the ordering party shall give free access to EMOS to reach the service device. If necessary, the surroundings (especially surgery room) have to be roughly cleaned. The ordering party also guarantees that qualified staff is available during the service performance. Furthermore the data (especially the data of the patients) relating to the service devices of the ordering party in short intervals have to be saved professionally. Furthermore the ordering party has to guarantee that are present the necessary supply connections, and the service devices are protected against the rest of the business. EMOS reserves the right to charge separately the ordering party for the costs arising in this contest because of waiting time, if for instance the agreed date was not kept, or the access to the service devices had to be created first.
5. If the ordering party requires the execution of works outside of the normal office hours of EMOS, the ordering party bears the related additional costs.

III. Service

Order, estimate of costs

1. If defect service devices are sent to EMOS, the receipt of the service order is made with an estimate of costs in writing. If there is a service contract between EMOS and the ordering party, the receipt of the service order is made by an order confirmation in writing.
After every sending of a device to be repaired EMOS makes an extensive entrance inspection, stating the present defects. With the sending of the device to be repaired the ordering party allows to EMOS to analyse the defects and to find the cause of the damage, and to dismount it possibly.

2. The estimate of costs in writing shall be released during 10 working days. If this will not happen within this period, and if the ordering party has received an other device to bridge the repairing for this period, are charged weekly rates of 250,00 Euro plus VAT.
3. If the planned costs for the repairing will go beyond 15%, EMOS will contact the purchaser.

Repair bridging

4. If the ordering party requires, EMOS provides an other device to bridge the period of repairing the defective device, if available. For this readiness EMOS charges a readiness and transport rate of 250,00 Euro plus VAT.
5. If the ordering party will not give the order to repair it, EMOS reserves the right to charge the analysis of the damage, the estimate of costs and the return to sender of the defective device with 147,00 Euro (shipment included) plus VAT. If the ordering party uses a repair bridging device, additional rates of 250,00 Euro are added for the loan device.
6. If the loaned devices are not returned to EMOS within the agreed time-limit of 10 working days from the re-delivery of the repaired devices, are charged rates of 250,00 Euro plus VAT per calendar week.
7. If the loaned devices are returned in an improper state, EMOS reserves the right to charge the costs for the repair of the device.
8. EMOS reserves the right to scrap or dispose the defective devices of the ordering party free of charge, which are in the house for more than 6 months, without notification.

IV. Prices and payment

1. The prices quoted in the offer by EMOS are valid. The prices are indicated in EURO and they are plus the respective applicable value added tax. If no prices are given or agreed in the offer, are applied the newest price lists by EMOS for service performances in the respective area.
2. The invoices have to be paid after receipt according to the terms of payment.
3. Interests shall be paid on arrears, notwithstanding a fault of the ordering party, with the legal default interest. In case of arrears are reserved the legal rights of compensation and withdrawal from the contract. In presence of arrears are charged 5,00 Euro per monition, unless there have not arised higher costs.
4. If we get to know circumstances that question the credit worthiness of the ordering party at the date of maturity, after the conclusion of the contract, we are entitled to - taking into account the values to be realised of possible claims assigned already for guarantee or security property received already - to make dependant the further elaboration and delivery of the order on the presentation of a suitable guarantee. Therefore a suitable time-limit will be agreed in writing with the ordering party before, to give the guarantee. If the guarantee will not be given within the agreed time-limit, or if the ordering party defaulted in payment, we have the right to lodge immediately all open claims, deferred claims as well, against the ordering party. If we accepted cheque or bill of exchange not yet due, we have the possibility to demand immediate payment, against return of the bill of exchange or cheque.
5. The ordering party is entitled to count up its counter claims only if they are legally proved, undoubted or recognised by us.
6. If we get to know circumstances questioning the credit worthiness of the ordering party, all deferred claims are due immediately.
7. We reserve the right to use the payment to compensate the oldest due invoice items, plus the accrued interests and costs, namely in this order: costs, interests, main claim.
8. Costs to eliminate malfunctions and damages of products are charged to the ordering party, if they were caused by improper treatment, influence of third persons or force majeure. The same applies to damages and malfunctions that were caused by environmental conditions in the working place, by the power supply unit or by the accessories that not comply with the special specifications of the product.

V. Shipment

1. The ordering party pays all costs of shipment, if not otherwise agreed.

VI. Warranty and liability

1. The ordering party has to inform EMOS in writing about the visible defects in the service performance within 8 days after the delivery. Other defects within 2 weeks after detection, and after delivery of the devices, for new devices within 12 months at latest. No warranty is given for used devices. If defects are communicated too late they can not be taken into account.
2. EMOS will remedy immediately the defects in service performances which were rightly notified.
3. For any reason it may be EMOS pays damages only
 - a) in case of intention,
 - b) in case of gross negligent,
 - c) in case of violation of life, body or health,
 - d) in case of defects that were maliciously concealed by EMOS,
 - e) if EMOS has taken a guarantee,
 - f) according to the regulations of the product liability law, or
 - g) in case of violation of an essential contractual obligation
3. If EMOS violates an essential contractual obligation according to point 2, let. g), namely an obligation which actually has to be fulfilled to make possible the orderly execution of the contract, and a contractual party trusts and may trust normally that this obligation is respected, and as well if the breach of such an obligation compromises the achievement of the contract scope, with simple negligent, then the obligation by EMOS to provide compensation is limited to the foreseeable damage, typical for the contract. This also applies to lost profit or other damage of the property.
4. In every case the amount of the compensation provided by EMOS is limited to the value of the order, notwithstanding the legal ground, excepted the cases described in point VI. 2 a)-f).
5. For limitation shall apply the statutory provisions, if it has not been otherwise agreed by this general contract conditions for service performances.

VII. Retention of title

1. If EMOS delivers replacement for repair, replaced goods or other commercial goods, these goods remain property of EMOS, until the complete payment of all open obligations in the business relationship. EMOS is retained the producer if the delivered objects are connected with a property of a third person.

VIII. Force majeure

1. In the event of force majeure EMOS is exempt from any liability for delay / non compliancy of contractual obligations, and EMOS is entitled to prolongate the delivery of the performance reasonably.
2. Force majeure is every unforeseen or unavoidable event or every chain of events and occurrences outside the usual sphere of influence of EMOS, inhibiting the fulfillment of the contractual obligations.

IX. Confidentiality

1. The ordering party commits itself to treat confidentially every information with confidential nature (included information in instructions of use, technical manuals, catalogues, descriptions) during the business relationship with EMOS and afterwards. The documents with confidential information must be returned to EMOS at the end of the business relationship without beeing asked.

2. The ordering party is entitled to give confidential information to his employees to extent necessary to realise the provisions of this agreement. Sharing information with third persons is allowed only with an explicit consent in writing by EMOS.
3. EMOS will treat confidentially the gained insights during the activity.

X. Generals

1. If one provision of this general contractual conditions for service performance should be invalid or null and void or become so, so the validity of the other provisions remain unaffected. In such a case the invalid or null and void provision shall be interpreted, reinterpreted or replaced in such a way that the intended economic scope will be reached. This shall not apply if the adherence to the contract would constitute unreasonable hardship for a contractual party.
2. Place of fulfillment for delivery is the relative place of departure of the goods. Place of fulfillment for payment - also for payment with bill of exchange - is Illmensee.
3. Place of jurisdiction is Sigmaringen. But EMOS is entitled to choose a court at the place of the ordering party.
4. German material and process-related right is applied, excluding the convention of the United Nations regarding international purchase of goods CISG.
5. Placing orders the ordering party agrees to the storage and sharing of personal and other data to prove credit worthiness, debt collection and the messages according to the medicine devices law. On request we will communicate to the ordering party the consequences when refusing the consent.

I. Generals

1. These general terms of sale and delivery are the basis for all our offers. We accept orders only on these terms. We do not accept the terms of the ordering party that deviate in whole or in part from our terms of sale and delivery, unless we have given our consent explicitly. Our terms of sale and delivery also apply exclusively, if we execute unconditionally the delivery to the ordering party knowing the contradictory or deviating terms of the ordering party.
2. Our general terms of sale and delivery also apply to all future affairs with the ordering party.
3. The contract is concluded on the basis of these terms of sale and delivery, and our offers or order confirmations in writing. All agreements to execute this contract are laid down in the contract in writing.

II. Offers

1. Our offers are non-binding. A contract shall be concluded only, if we accept the order with and order confirmation in writing.
2. We reserve the rights of ownership and the copyright of the pictures, illustrations, calculations and other documents. The same applies to written documents named "confidential". The ordering party needs our explicit consent in writing before sharing them with third persons.

III. Prices

1. Our prices are ex works Illmensee, excluded are cargo, packaging, insurance, toll and other costs. The packaging is charged separately and it is not taken back.
2. The legal VAT is not included in our prices. It is shown separately on the day of invoicing with the legal amount.
3. Agreed prices in the contract are based on the costs for wages, material and energy. If these costs may change between the date of the contract and its execution, we reserve the right to change the prices accordingly. This right shall not apply if we change costs that we did not take into account culpably in the price calculation. We will provide proof to the ordering party of the changed costs upon request.

IV. Payments

1. Payments shall be made only directly to us within the agreed payment period, without any deduction. No discount for due balance.
2. Interests shall be paid on arrears, notwithstanding a fault of the ordering party, with the legal default interest. In case of arrears are reserved the legal rights of compensation and withdrawal from the contract. In presence of arrears are charged 5,00 Euro per month, unless there have not arisen higher costs.
3. If we get to know circumstances that question the credit worthiness of the ordering party at the date of maturity, we are entitled to - taking into account the values to be realised of possible claims assigned already for guarantee or security property received already - to make dependent the further elaboration and delivery of the order on the presence on the presentation of a suitable guarantee. Therefore a suitable time-limit will be agreed in writing with the ordering party before, to give the guarantee. If the guarantee will not be given within the agreed time-limit, or if the ordering party defaulted in payment, we have the right to lodge immediately all open claims, deferred claims as well, against the ordering party. If we accepted cheque or bills of exchange not yet due, we have the possibility to demand immediate payment, against return of the bill of exchange or cheque.

4. The ordering party is entitled to count up its counter claims only if they are legally proved, undoubted or recognised by us.
5. If we get to know circumstances questioning the credit worthiness of the ordering party, all deferred claims are due immediately.
6. We reserve the right to use the payment to compensate the oldest due invoice items, plus the accrued interests and costs, namely in this order: costs, interests, main claim.

V. Transfer of risk, shipment

1. The risk of sinking, loss or damage of the goods passes with shipment ex works, or with the provision of the goods if the ordering party collects them.
2. If shipment is delayed due to the ordering party, the risk passes to the ordering party already on the day of readiness for shipment.
3. If the ordering party has not given special shipping instructions, we are entitled to regulate the shipment in the best way in our opinion.
4. Upon request in writing of the ordering party we insure the shipment on its costs against theft, breaking, damage of transport, of fire, of water, and other risks that can be insured.
5. All costs for shipment are on the ordering party, if not otherwise agreed.

VI. Delivery periods

1. Only the delivery periods confirmed by EMOS are applied. Without an explicit, different agreement the delivery periods shall not be deemed to be fixed transactions.
2. The confirmed delivery periods are only binding if the ordering party satisfies in time and orderly the contractual and other obligations.
3. The delivery periods begin only after the answering of the necessary technical questions regarding the delivery, and the incoming of an agreed account in advance.
4. The delivery period is respected if we have delivered the goods to the person named to carry out the shipment. If the goods are not shipped according to the contract, the ordering party has received an information about our readiness to deliver, before the end of the delivery period.
5. If the shipment delays because of circumstances for which we are not responsible, the delivery period will be extended for the time of obstruction. This applies especially to disorders in the works for which we or our suppliers are not responsible, for instance strike, lock out or intervention by the authorities, and force majeure. If a binding delivery period prolongates because of such an obstruction over three months and it will not be foreseeable that the difficulty of delivery will end in other four weeks, both parties are entitled to withdraw from the contract.
6. In the case of delayed delivery the ordering party has to set in writing a suitable additional period of at least four more weeks.
7. If the ordering party is in delay of receipt, we are entitled to ask a compensation for the duration of the delay for possible additional costs, included the normal costs of storage, also if they are stored in our company. After a suitable additional period to receive the goods we are also entitled to dispose of the goods in another way, and to deliver again to the ordering party within a suitable delivery period. Further claims remain reserved.

VII. Claims for defects

1. The ordering party has to examine the goods immediately after the delivery, it has to look for possible defects, differences in quantity or wrong deliveries. It has to inform in writing EMOS immediately about a wrong delivery in whole or in part. The time-limit for defects which were visible during the careful examination in accordance with the nature of the good is max. 8 days after the receipt of the goods. Other defects must be reported immediately after their discovery.

2. If there is a defect in the sold good for which we are responsible, we are entitled to eliminate the defect or to deliver replacement, at our own discretion.
3. If the elimination of the defect failed, the ordering party is entitled to demand at his own discretion the withdrawal of the contract or a reduction (appropriate reduction of the purchasing price).
4. The liability for defects excludes defects caused by inadequate or improper use, incorrect mounting or starting by the user or by third persons engaged by the ordering party, natural wear and tear, incorrect or negligent treatment.
5. The prescription period of the claims for defects is twentyfour months from the passage of the risk.
6. If the delivered good has not the guaranteed quality, we are liable for compensation for damage according to the legal regulations. This does not apply if the scope of the relative guarantee covers only the contract compliance of the underlying delivery, but not the risk of consequential damages of the defects. The regulation in paragraph VIII. remain unaffected.

VIII. Other liability for breach of duty and other damages

1. Compensation claims of the ordering party - as well non-contractual or precontractual - are excluded in the cases of our own and of our legal representatives and assistants slightly negligent breach of the duty. This does not apply in the case of slightly negligent breach of a substantial contractual duty. But in this case the liability is limited to the foreseeable, typical damage.
2. In any case we are responsible only for own gross fault or gross fault of our senior managers, and gross fault of our assistants when complying to a substantial contractual duty.
3. The claims in accordance with the product liability law and claims because of violation of life, body or health, or because of gross fault (see point 2) remain unaffected of paragraph VII. and this paragraph VIII.
4. If the liability for damages is excluded or limited for us, this applies also for the personal liability of our employees, workers, staff, representatives and assistants.

IX. Other duties of the ordering party

In his dominion the ordering party shall ensure that are respected the requirements of product liability law, especially the medicine devices law (MDL). First of all it will make sure that only qualified and professional staff handle the products. It will ensure that our devices are not combined with products of other producers, unless we expressly allowed this combination. We point out that these duties are punishable according to § 43 of the MDL. If the ordering party resells the products within its business, it will ensure also that the buyer will be properly instructed. It will as well ensure that only qualified staff according to § 32 of the MDL will give such instructions. The ordering party undertakes to cooperate in the monitoring and reporting system, according to § 29 MDL, and to respect the described reporting duties. It will send all important information - also without our request - in case of events leading to death or serious decline of the state of health of a patient, user or other person, and in case of events leading to one of these events without suitable help. First of namely the nature of the product, the catalogue number, possibly serial or charge numbers, information about the connected equipment and/or accessories, details of the event, included data and consequences for patients and user etc..

X. Retention of title

1. We reserve the right of ownership of the delivered goods until all debts in the business relationship with the ordering party are paid, accessory claims included, claims for damage and cash of cheques and bills of exchange. (If one of our claim is included in a current invoice, the retention remains and refers to the accepted balance).
2. The ordering party undertakes to store carefully the retained goods for the seller, to maintain and to repair them on own costs, and to insure them sufficiently against theft, breaking, fire and water and other damages, within the scope to be expected of a prudent businessman on own costs to the value as new, and to prove it on request. Hereby it cedes in advance the claims of the insurance contracts to the seller.
3. If the ordering party shows behaviour contrary to the contract, especially in case of delay of payment, we are entitled to take back the delivered goods without setting an additional time-limit. If we take back the goods that does not mean a withdraw of the contract, unless we declared this expressly. If we withdraw of the contract, we have the right to ask a suitable compensation for the period in which our goods were handed over for use, taken into account the meanwhile occurred decrease in value. Hereby the ordering party grants us entrance to his commercial rooms and to his company, if this would be necessary to collect the delivered goods. More legal claims resulting from the withdrawal remain unaffected.
4. We are free to attach the delivered good. This does not mean that we waive the retention of property. If the ordering party refuses the seizure it loses the right to contract fulfillment.
5. In case of seizure of the retained goods or other interventions of third persons, or ceded claims in case of longer retention of property, the ordering party has to inform us immediately in writing, so that we can take action according to § 771 ZPO. The ordering party has to refund the costs arising with the intervention, especially the legal and extra-legal costs of an action according to § 771 ZPO, if it will be impossible to collect them.
6. The ordering party, unless it is a reseller, is not allowed to sell the goods up to the complete payment, neither burden the goods, neither dispose in another way.
7. For resellers applies the following:
 - a) The ordering party is entitled to sell the retained goods within the ordinary business. But this does not apply, if between the ordering party and his customers is stipulated a prohibition of cession of the purchase price claim. The ordering party is not entitled to seizures, assignments as security or other chargings. The ordering party has to make dependent the transfer of ownership on the complete payment of the goods by its customer when he resells the goods.
 - b) Already now the ordering party cedes to us all claims resulting from the reselling of the retained goods, with all accessory and security rights, bills of exchange and cheques included, in advance, to secure all our claims against the ordering party resulting from the business relationship. If the retained goods are sold together with other goods at a complete price, the cession is limited to the proportional amount of our invoice for the retained goods.
 - c) The ordering party is entitled to collect the claims of the reselling. Our right to collect the claim ourselves remain unaffected. But we commit ourselves not to collect the claim, as long as the ordering party assumes its payment duties arising from the earned profits, and it is not in delay, and especially there is no application to open insolvency proceedings. If the direct debit authorisation of the ordering party has expired, it has to inform us on our request about the ceded claims and the debtor, about all necessary data to collect the claim, to send the relative documents, and to inform the debtor about the cession.
 - d) We commit ourselves to free the securities to which we are entitled, on request of the ordering party, at our discretion immediately to the extent, that their value exceeds the claims to be secured not only temporarily by more than 20 %.

XI. Others

1. Place of fulfillment for delivery is the relative place of departure of the goods. Place of fulfillment for payment - also for payment with bill of exchange - is Illmensee.
 2. Place of jurisdiction is Sigmaringen. But the parties are also entitled to take action at the general place of jurisdiction of the defendant.
 3. German material and process-related right is applied, excluding the Uniform Law on the Sale of Goods.
 4. Placing orders the ordering party agrees in the storage and sharing of personal and other data, to prove credit worthiness, debt collection and the messages according to the medicine devices law. On request we will communicate to the ordering party the consequences when refusing the consent.
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