

EMSERE – GENERAL TERMS AND CONDITIONS 2021

ARTICLE 1 – GENERAL

- 1.1 These general Terms and Conditions (the “**Terms and Conditions**”) apply to all contracts and agreements relating to sales, rentals, deliveries, supplies of goods and/or the performance of services (each of these contracts & agreements are hereafter referred to as the “**Agreement**”) between Emsere (“**Emsere**”) and any other party (the “**Customer**”) as well as to all offers, proposals and quotations provided by Emsere.
- 1.2 Any deviations or amendments to these Terms and Conditions and/or the Agreement shall require Emsere’s express written consent.
- 1.3 Should any provision in the Agreement and/or these Terms and Conditions be invalidated or void, the other provisions shall remain in force without prejudice, unless the Agreement becomes unreasonable to respect and uphold.
- 1.4 All quotations offers and proposals by Emsere are non-binding, without prejudice and subject to confirmation in writing. All illustrations, drawings, dimensions, weight specifications, etc. pertaining to a quotation, offer or proposal shall be regarded as an estimate unless Emsere has expressly stated that they are to be regarded as an accurate specification.
- 1.5 Any Agreement shall only come into effect once Emsere issues a written confirmation of an order to Customer.
- 1.6 These Terms and Conditions prevail over any of Customer’s general terms and conditions. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms and Conditions or any Agreement. If a particular Agreement does not address a particular issue, then the relevant provision in these Terms and Conditions shall apply. In the event of a conflict between these Terms and Conditions and a provision in an Agreement between Customer and Emsere, the applicable provisions of the Agreement shall prevail.

ARTICLE 2 - RENTAL CONDITIONS

- 2.1 The stipulations in this Article 2 shall only apply to (i) Agreements between Emsere and a Customer pertaining to the rental of one or more objects (the “**Rented Object**”) from Emsere by a Customer; and/or (ii) Agreements under which Emsere places a Rented Object at the disposal of a Customer or a user designated by a Customer as described in Article 2.3.
- 2.2 No rental Agreement shall be formed between Emsere and Customer until (a) the day specified in a rental Agreement that is signed by all parties or (b) the Effective Date specified in a Statement of Work relating to the rental of goods that is signed by all parties.
- 2.3 The rental fee agreed to in the Agreement is payable by Customer until (i) the Agreement has been duly terminated and (ii) the Rented Object is returned to the Emsere location of origin.
- 2.4 Customer shall not acquire ownership, title, property, right, equity or interest in the Rented Object other than its leasehold interest solely as lessee and subject to these Terms and Conditions. Customer shall maintain Emsere’s identifying label/mark on the Rented Objects. Customer is not allowed to enter into any subrental of any Rented Object.
- 2.5 No modifications to the Rented Object of any nature by Customer are permitted. Prior to shipment, the Rented Object is verified and accompanied by applicable certification concerning the performance, electrical safety, frequency and temperature, depending on the type of Rented Object. The certification may be provided by Emsere on paper and/or via email and/or through any other digital communication method chosen by Emsere.
- 2.6 Customer shall notify Emsere immediately or as soon as reasonably possible, in writing, of any defect of the Rented Object. Emsere can arrange for the repair or replacement of the Rented Object at the expense of Customer. If Emsere determines the defect is caused by manufacturing flaws, Emsere shall provide for repair and/or replacement of the Rented Object free of charge to Customer.
- 2.7 If the Rented Object displays a defect, Customer shall be entitled to require Emsere to resolve the defect free of charge, either by means of repair, replacement or re-execution, at Emsere’s discretion, provided that the following conditions are met:
 - a) the cause of the defect is attributable to Emsere or to a manufacturing flaw;

- b) Emsere has been notified in writing within seven (7) working days of the moment the defect could reasonably have been discovered;
 - c) any additions, alterations and repairs to the Rented Object have been carried out by Emsere or by another party with Emsere's prior written consent; and
 - d) any consumables used comply with Emsere's specifications.
- 2.8 Customer shall, at its own expense, maintain, service and keep each Rented Object:
- a) in the same condition as that when delivered to its location, barring normal wear and tear occurring as a result of its use;
 - b) in compliance with the manufacturer's maintenance requirements; and
 - c) in compliance with applicable law.
- 2.9 Customer shall, at its own expense, provide and maintain for each Rented Object insurance against loss, theft and damage ("**Property Insurance**"):
- a) for an insured amount that covers the loss value or full replacement value of such Rented Object, whichever is greater; and
 - b) upon request by Emsere, Customer shall provide to Emsere evidence of such insurance.
- 2.10 Customer is entitled to designate a user (the "**Designee**"), at whose premises the Rented Object will be placed and who will use the Rented Object, without prejudice to the obligations of Customer based on the Agreement.
- 2.11 If there is a Designee, Customer shall provide Emsere with all relevant (company) information of Designee, which includes the company name and address details. Customer remains at all times responsible for all its obligations under the Agreement and the Terms and Conditions, without prejudice to the possible liability of third parties (including Designee) vis-à-vis Emsere.
- 2.12 If there is a Designee, Customer shall ensure that Designee complies with all the obligations Customer has vis-à-vis Emsere under the relevant Agreement and these Terms and Conditions. Customer shall hold Emsere fully harmless for any damages incurred by Designee as a result of any non-compliance by Designee to the obligations under the relevant Agreement and these Terms and Conditions.
- 2.13 Prior to delivery of the Rented Object(s) by Emsere, Customer may be obliged to pay a deposit (the "**Deposit**") to Emsere pursuant and subject to the conditions stated in the relevant Agreement.
- 2.14 Deposit cannot be used by Customer to settle any payments, full payments should be made and upon confirmation of payment, the deposit will be returned.
- 2.15 Emsere shall be entitled to, at its own discretion, off-set the Deposit on discovery of any damages or defects to the Rental Object upon receipt of Rental Object. Emsere shall credit the Deposit (or, as the case may be: any remainder of the Deposit after off-set with a claim) to Customer without interest after Customer has complied with all its obligations from the relevant Agreement and these Terms and Conditions.
- 2.16 Customer shall, at its own expense, no later than the expiration of the rental period:
- a) sanitize, uninstall, inspect and properly pack each Rented Object; and
 - b) return each Rented Object to Emsere by delivering the Rented Object to Emsere's establishment of origin or alternatively, if agreed by both parties in writing, Emsere will ensure return transportation of the Rented Object on behalf of and at the expense of the Customer.
- 2.17 If the Rented Object is not (well) sanitized, uninstalled, inspected and/or packed at the agreed time of pickup for return transportation, Customer will be obliged to reimburse any costs incurred by Emsere in the preparation for return.
- 2.18 Should Customer decide to terminate the Rental Agreement in accordance with the Agreement and these Terms and Conditions, Customer shall notify Emsere in writing.
- 2.19 The monthly rental fee agreed to in the Agreement is payable for each month or each part of a month the rental Agreement is in force. At the end of the rental period, Emsere shall calculate the total number of months the Rented Object was rented by Customer and the amount of monthly rental fees paid by Customer. Based on the aforementioned calculation, Emsere will send a final invoice to Customer, which (i) states the amount of rental fee still to be paid by Customer to Emsere (if any) or the amount of repayable rental fee to be paid by Emsere to Customer (if any); and (ii) which specifies the Deposit repayable by Emsere (if any); and (i) which specifies any off-set amounts deductible from the Deposit (if any). Emsere may choose, at its own full discretion, not to charge Customer for a partial month.

ARTICLE 3 – SALES CONDITIONS

- 3.1 The stipulations in this Article 3 shall only apply to Agreements between Emsere and a Customer pertaining to the sale of one or more objects (the “**Purchased Object**”).
- 3.2 Title to the Purchased Object shall only pass to Customer once Customer has paid (i) all amounts due to Emsere in connection with the sale of the relevant Purchased Object, (ii) all possible interest amounts payable to Emsere as a result of a late payment by Customer in connection with the sale of the relevant Purchased Object and (iii) all damages incurred by Emsere as a result of a breach by Customer of the relevant purchase Agreement, including but not limited to reasonable extrajudicial collection costs.
- 3.3 If the title to the Purchased Object has not yet passed to Customer at the moment the Purchased Object is lost or damaged during shipment to a designated location, Customer shall still be obliged to pay the agreed purchase price to Emsere. When Emsere and Customer have agreed that Emsere will keep the Purchased Object in storage for Customer at an Emsere warehouse or elsewhere before shipment, the risks of loss of the Purchased Object and/or damages to the Purchased Object during the storage period shall be borne by Emsere.
- 3.4 When the parties have agreed that Emsere shall arrange the transportation of the Purchased Object to a location designated by Buyer, the risks of loss of the Purchased Object and/or damages to the Purchased Object during the shipment shall be borne by Emsere. Replacement of the Purchased Object will only take place after written acceptance of the insurance claim, filed by Emsere against Courier Company. At Emsere’s discretion necessary repairs to the Purchased Object will be performed at no charge to Customer, except for cosmetic damages that do not impact the operating conditions of the Purchased Object. Regular applicable transport costs relating to repairs or replacement will not be charged to Customer. Customer may request for Emsere to provide temporary replacement of the Purchased Object. If Emsere can offer this service, any related rental fees and transport costs will be borne by Customer.
- 3.5 In the event of late payment by Customer, Emsere shall be entitled to repossess or arrange for the return of any Purchased Object to Emsere without prior notice of default and without any judicial intervention being needed. Customer hereby irrevocably grants Emsere access to all sites and buildings of Customer and/or Designee to this end.

ARTICLE 4 - DELIVERY

- 4.1 All delivery periods relating to a Rented Object and/or a Purchased Object indicated by Emsere shall be deemed indicative and non-binding, unless the parties have expressly agreed otherwise.
- 4.2 The indicated delivery period will start (i) on the day on which the Agreement comes into force; or (ii) on the day on which an agreed (partial or entire) prepayment and/or Deposit is/are paid in full to Emsere; or (iii) on the day on which all information to be provided by Customer which is relevant to the execution of the Agreement is received by Emsere, whichever occurs later.
- 4.3 Emsere is at all times authorized to make partial deliveries. Customer is obliged to accept the Rented Object and/or Purchased Object (both types of objects hereafter collectively referred to as “**Goods**”). A minor defect such as the non-availability or partial availability of the appropriate documentation that does not substantially impede the use of the Goods shall neither constitute grounds to claim failure to meet a deadline nor to refuse to accept or pay for the Goods.
- 4.4 Only after receiving the prior written consent of Emsere, Customer is entitled to relocate the Goods. Emsere can arrange for transportation of the Goods on the request and at the expense of Customer, for instance in case of relocation or at the end of the Agreement. All costs relating to transportation of the Goods are borne by Customer.
- 4.5 It is the responsibility of Customer to inspect the (condition of the) Goods promptly upon receipt. Any visible defects and/or visible damages to the Goods must be reported in writing by Customer to Emsere within two (2) working days after the delivery. All non-visible defects and/or non-visible damages to the Goods that exist at the moment of delivery must be reported to Emsere in writing no later than five (5) working days after the delivery of the relevant Goods. All defects and/or damages to the Goods that do **not** exist at the moment of delivery and/or that are discovered at any later moment must be reported to Emsere in writing no later than five (5) working days after their discovery.
- 4.6 In the event that no defects or damages are reported within the time limit set out in Article 4.5, Customer will be presumed to have received the Goods without any defects or damages. In such a case, any

claim by Customer as a result of defects and/or damages to the Goods existing at the moment of delivery will be deemed to have lapsed.

- 4.7 For the avoidance of any doubt, the presumption described in Article 4.6 shall also apply if Customer has not received the Goods in person but instead has (implicitly or explicitly) authorized any other person or entity (for example a user of the Goods, a Designee or a study site operator) to receive the Goods on Customer's behalf.

ARTICLE 5 – PRICE & PAYMENT

- 5.1 All prices offered by Emsere are reviewed and renewed on an annual basis and are available to Customer on request. Nevertheless, price changes shall not affect the agreed upon rental amount during the rental period of any rental Agreement.
- 5.2 Unless expressly indicated otherwise by Emsere, all prices offered by Emsere are excluding any applicable duties and taxes payable in the context of the Agreement. Any duties and tax amounts (if applicable) shall be charged separately.
- 5.2 Customer shall pay any amount(s) resulting from the Agreement and/or the Terms and Conditions (the "**Payment Amount**") to Emsere in the amounts and (if applicable) in accordance with the payment schedules set out in the relevant Agreement. Payments by Customer must be made without any deductions or Deposit off-set of any nature. The date of payment shall be deemed to be the date upon which the payment is received on Emsere's (bank) account.
- 5.3 Unless otherwise agreed in writing between the parties, all costs concerning the transport and delivery of the Goods, which includes packing material, special services or other freight charges, are borne by Customer and are not included in the rental fee and/or purchase price as specified in the Agreement.
- 5.4 Unless otherwise agreed in writing between the parties, all Payment Amounts are due no more than thirty (30) calendar days after the invoice date. All payment terms agreed between the parties must be considered to be final.
- 5.5 If Emsere has reason to believe that Customer may not comply with its payment obligations under the Agreement or the Terms and Conditions, such as in the event of (i) a suspension of payments, (ii) bankruptcy or an application for bankruptcy on the part of Customer, (iii) administration, (iv) seizure of Customer's assets, (v) suspension of operations or liquidation of the company of Customer, (vi) a previous Payment Amount not being paid on time, etc., Emsere may require full payment in cash before or upon delivery of the Goods.
- 5.6 If the Payment Amount has not been fully paid within the payment deadline referred to in Article 5.4, Customer shall be obliged to pay interest on the outstanding Payment Amount at the statutory commercial interest rate without any prior notice of default being required. The statutory commercial interest rate shall also be charged on any interest amount due but not paid within 12 months.
- 5.7 If the Payment Amount has not been fully paid within the payment deadline referred to in Article 5.4, Customer shall be obliged to pay all judicial and extrajudicial collection costs incurred by Emsere in full.
- 5.8 If the Payment Amount has not been fully paid within the payment deadline referred to in Article 5.4, Emsere shall be entitled to suspend performance under the Agreement until such time as full payment is received.
- 5.9 If Customer fails to pay in full after a notice of default has been sent by Emsere, Emsere is entitled to terminate or dissolve all or part of the Agreement.
- 5.10 In the case of bankruptcy or suspension of payments on the part of Customer or seizure of Customer's assets, all amounts owed by Customer to Emsere shall be due and payable immediately and in full.
- 5.11 The above does not affect Emsere's right to claim damages incurred as a result of non-compliance with the agreement by Customer.

ARTICLE 6 – USAGE OF GOODS

- 6.1 As long as the ownership or the rights to the Goods have not passed to Customer, Customer shall keep the Goods free and clear of any and all levies, liens, security interests and encumbrances of any kind, and shall give Emsere prompt notice of any judicial process affecting the Goods.
- 6.2 Customer shall use the Goods with due care and attention and shall ensure that the Goods are exclusively used for their designated purpose. The Goods should be used by authorized and competent persons in accordance with the applicable laws, the relevant manual(s) and other operating instructions.

ARTICLE 7 – NON-ATTRIBUTABLE FAILURE/FORCE MAJEURE

- 7.1 A failure by Emsere to comply with an obligation from the Agreement or the Terms and Conditions shall not be regarded as attributable if it is the result of or is related to a circumstance which is beyond the control of Emsere, whether it could have been foreseen or not. Such circumstances include but are not restricted to: war, invasion, hostilities or a similar circumstance (whether war is declared or not), mobilization, riots or other civil unrest, sabotage, terrorism, threats or terrorism, fire, flood, earthquake, lightning strike, implosion, explosion or escape of dangerous gases or substances, natural disasters, extreme weather conditions, pandemics, strikes, sit-ins, boycotts or blockades and measures taken by a domestic or foreign Government such as the imposition of import, export, delivery or production bans. If a failure by Emsere to comply with an obligation from the Agreement or the Terms and Conditions is not attributable to Emsere, Customer shall not be entitled to claim any damages from Emsere as a result of Emsere's non-compliance with the Agreement.
- 7.2 If Emsere fails to comply with the Agreement, without this being attributable to Emsere, and if it is certain to remain impossible for Emsere to comply with the Agreement on a permanent basis, the Agreement may be terminated by Customer, taking into account a notice period of thirty (30) calendar days in the event of a rental Agreement. If compliance with the Agreement by Emsere is not certain to remain permanently impossible, the delivery period will be extended by the period during which compliance may be possible, and the Agreement may not be terminated by Customer. If compliance with the Agreement is not possible within a three (3) months period, Customer has the option to terminate the Agreement.
- 7.3 If Emsere incurs extra costs in complying with the Agreement as a result of circumstances not attributable to Emsere, Emsere shall be entitled to charge these costs to Customer in all reasonableness.

ARTICLE 8 – DEFAULT & TERMINATION

- 8.1 Emsere shall only be deemed to be in default if Emsere fails to comply with all or part of its obligations toward a Customer as a result of circumstances that are directly attributable to Emsere and after the expiry of a three (3) months additional period of time Customer has granted to Emsere in writing. In such a case, Customer shall only be entitled to terminate or dissolve the Agreement if, taking into account all circumstances of the individual matter, Customer cannot reasonably be expected to uphold the Agreement.
- 8.2 Customer is not entitled to terminate, dissolve or demand cancellation of the Agreement as a result of or based on a delay in delivery time.

ARTICLE 9 – LIABILITY FOR DAMAGE

- 9.1 Emsere will not be liable for any damages of any nature incurred, directly or indirectly, by Customer as a result of the non-compliance of Emsere with (part of) the Agreement and the Terms and Conditions, including lost profits, consequential losses and/or damages to goods, property and/or persons unless such (a) loss(es) and/or damage(s) is/are the result(s) of willful misconduct or gross negligence on the part of Emsere.
- 9.2 Emsere will not be liable for any damages incurred by Customer as a result of a delay in the delivery of the Goods unless such damage(s) is/are the result of willful misconduct or gross negligence on the part of Emsere.
- 9.2 Emsere will not be liable for any (consequential) damages resulting from or caused by the (proper or improper) use of the Rented Object or by the unsuitability of the Goods for the purpose for which Customer intends to use the Goods.
- 9.3 In the event that it should be established in or out of court that Emsere, notwithstanding the above, is liable, on any grounds, Emsere shall only be liable to the extent and under the conditions that:
- the claim for damages does not consist of indirect damages, consequential damages, trading losses, lost profits;
 - the claim for damages arising from an individual Agreement (or, as the case may be, a number of Agreements combined) is limited to the value of the relevant Agreement (or Agreements, respectively) whereby the value of an Agreement relating to the purchase of goods is equal to the purchase price of the purchased goods and the value of an Agreement relating to the rental of goods is equal to the yearly rental price of the rented goods.

- 9.4 Customer shall indemnify, defend and hold harmless Emsere and its affiliates and their respective representatives (collectively, “**Indemnitees**”) against any and all damages arising out of or relating to:
- a) the selection, manufacture, delivery, purchase, acceptance or rejection of the Goods or the ownership of the Goods;
 - b) the rent, possession, maintenance, use, condition, repair, return, disposition or operation of the Goods or any parts or upgrades thereto (including, without limitation, latent and other defects, whether or not discoverable by Emsere or Customer);
 - c) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Customer pursuant to any Agreement;
 - d) any assertion of the infringement of patent, trade secret, trademark, copyright or other intellectual property rights of third parties; or
 - e) any and all liabilities of Emsere vis-à-vis third parties of any nature in relation to the Agreement.

ARTICLE 10 – MISCELLANEOUS

- 10.1 If Customer exports the Goods during the term or after the fulfillment of the Agreement, Customer shall be obliged to comply with the applicable national and international export regulations and shall indemnify Emsere against all claims by third parties in relation to any infringement of these export regulations by Customer.
- 10.2 The Emsere Privacy Statement, as it may be in force from time to time, including all updates and amendments thereto, may be downloaded by Customer from Emsere’s website. Upon Customer’s first request, Emsere shall send a copy of the latest Privacy Statement to Customer by regular or electronic mail.
- 10.3 Each Party shall maintain adequate levels and types of insurance coverage appropriate to its business, including without limitation workers’ compensation, commercial general liability, and errors and omissions coverage.
- Upon request by Customer, Emsere shall provide evidence of such insurance.

ARTICLE 11 – APPLICABLE LAW & DISPUTES

- 11.1 The laws of The Netherlands, with the exception of the Vienna Sales Convention (CISG), shall govern the Agreement and these Terms and Conditions.
- 11.2 The competent court of The Hague shall have sole jurisdiction over all disputes based on an Agreement (including these Terms and Conditions).

***Emsere B.V.** is registered with the Dutch Chamber of Commerce under number 28066287 with business address in Leiden, Tieleman en Drosweg 17, 2314 XW, The Netherlands.*