

Terms and Conditions

*Conditions of sale, delivery and payment
for the Online Shop of EMAGine AG, Zug, Switzerland*

1. General

These terms and conditions of Sales and Deliveries shall be binding for all deliveries and services ("deliveries") of EMAGine AG ("EMAGine"). These terms and conditions comply with the Federal Law Against Unfair Competition (LCD; RS 241), the Order on the Indication of Prices (OIP; RS 942.211), and with the provisions of the Swiss Code of Obligations (CO; RS 220)

These terms and conditions also comply with the provisions of Ordinance of 11 December 1978 (OIP), on the Indication of the prices of medicines and medical devices

By placing the order, the buyer accepts EMAGine's conditions as binding. Any contrary purchasing conditions are invalid unless expressly accepted by EMAGine in written form. All agreements and legally relevant declarations of the parties to the contract have to be in writing in order to be valid. The buyer is aware that under Articles 184 et seq. CO, a sale contract can be electronically entered into just clicking on box "Buy"

EMAGine sells exclusively to ophthalmic distributors and customers in countries where no distributor is listed.

2. Offers and order confirmation

EMAGine's proposals are subject to change. Acceptance is denoted only after EMAGine's written order confirmation or by performing delivery of ordered goods. Any additional agreements, amendments and changes of a concluded contract or verbal consent by EMAGine's employees are only legally effective after EMAGine's written confirmation.

Offers which do not stipulate an acceptance period should not be binding. And, the contract shall be deemed to be concluded upon customer's receipt of EMAGine's written order confirmation, which can also be provided with an online confirmation.

3. Prices and terms of payment

Unless otherwise agreed upon, all prices shall be deemed to be in EUR net ex works. Packing, freight, carriage, insurance, taxes (e.g. federal, state or local property, sales, use, excise, gross receipts or other like taxes which may now or hereafter be applicable to the transaction and/or the sale of, value of or use of the Products or any services performed in connection therewith), custom duties, fees for export, transit, import and such other permits and certificates as may be necessary, assembling, installation and initiation are not included in the purchasing price of the products. If the customer claims an exemption from any tax, the customer shall submit the relevant exception certificate to EMAGine with the written order acknowledgment.

EMAGine shall be entitled to make any changes compared with the order confirmation, which leads to improvements. Also, if prices, which are a basis for cost calculation, increase between conclusion of the contract and complete delivery, EMAGine is entitled to increase the offered price and notify the customer.

Shipping costs for international orders will be calculated on an individual basis and disclosed to customer prior to shipment. After disclosure of shipping and transport costs, the customer has the option to withdraw from the presented offer. VAT is added separately.

EMAGine's invoices are payable immediately upon receipt, without deductions. Any deduction of discount requires a special written agreement.

Default interest in the amount of 7% above the respective base lending rate will be charged p.a. EMAGine reserves the right to assert further claims caused by delay.

4. Shipping, transfer of risk, insurance

Packaging will be charged separately and is non-refundable if not agreed otherwise.

Shipping mode and dispatch route are selected by EMAGine and in compliance with customary care. The risk of accidental perishing or accidental deterioration passes to the buyer as soon as the goods leave EMAGine's designated warehouse. This rule applies regardless of whether the goods are shipped from the place of fulfilment or which party pays the freight costs. Transport insurance is only provided by EMAGine if specifically requested.

5. Terms of delivery

The supplies are specified in the signed written order or online confirmation, including its annexes. Any material and services, which are not included shall be charged separately.

Any delivery dates provided by EMAGine are based on EMAGine's best judgment and do not represent fixed dates.

In case of force majeure or operating troubles at EMAGine's suppliers, the estimated delivery time will be reasonably extended. Should the delivery be delayed beyond this extension, or become impossible, the buyer is entitled either to accept a deadline of no less than three weeks or to withdraw from the contract.

No breach of contract or obligation to indemnify is assumed in case of force majeure. Force majeure is an extraordinary event or circumstance beyond the reasonable control of the parties which could not have reasonably been foreseen and neither the impediment nor its consequences could have been avoided or overcome, such as but not limited to natural disasters, fire, accidents, hostage-taking, war, whether declared or not, civil war or any other armed conflict, military or non-military, interference by any third party state or states, act of terrorism, sabotage or piracy, strike or boycott, epidemics, serious disruption of operations, late or deficient delivery by subcontractors of raw material, semi-finished or finished products, acts of omissions of government or any other acts of authorities whether lawful or unlawful.

The start of the delivery date stated by EMAGine is subject to timely and proper fulfilment of EMAGine's customer's duties. EMAGine reserves the right of defence of non-performance of contract.

The buyer can make a claim for damages caused by failure to observe contractually agreed delivery dates only in case of gross negligence or intent.

Partial shipments and partial invoices are permitted.

Should the customer fail to accept products upon delivery by EMAGine or EMAGine's agents on or about the delivery date set forth in the offer and/or order acknowledgment or order confirmation or as otherwise agreed, EMAGine should be entitled to make arrangements for the storage of the product and be entitled to charge the customer for all storage, insurance and other costs and expenses incurred by EMAGine, plus a handling and administrative charge of up to one thousand five hundred EURs (€1500).

6. Retention of title

The delivered goods remain EMAGine's property until they are paid in full (goods subject to retention of title).

Customers shall take all necessary measures for the protection of the proprietary rights of EMAGine. EMAGine is entitled, with customer's participation, to apply for registration of the reservation of the proprietary rights.

If there are no possibilities of reservation of proprietary rights according to national law in the country of customers which can be compared with the regulations of Switzerland, EMAGine may ask for an advance payment, a bank guarantee or a letter of credit in the amount of the order in question.

7. Compensation for damages due to order cancellation

Should the buyer refuse to fulfil the contract, EMAGine is entitled to demand compensation for damages in the amount of 20% of the order value (expenses plus lost profit) pursuant to articles 160,161,162 and 163 of Swiss

Code of obligations. For custom-made products, the full order value must be paid unless the buyer can prove that EMAGine caused the a part or full damage to the products.

8. Warranty and claims

Warranty claims by the buyer are subject to his/her fulfilment of inspection and notification duties, as laid down in § 197 and 201 of the Swiss Code of Obligations.

Apparent defects must be reported to EMAGine in writing within 5 working days after receipt of the goods. The period to disclose non-apparent defects is 1 year.

If the contract with companies is for new goods, warranty claims will fall under the statute of limitation 12 months after delivery of the goods. When supplying second-hand goods, warranty to companies is excluded.

If despite all due care the delivered goods have a defect that already existed at time of risk transfer, EMAGine will have the option to either repair or replace the goods, provided that the notice of defect was given in due time. The buyer must always give EMAGine the opportunity of subsequent performance within a reasonable period.

Should the subsequent performance fail, the buyer – notwithstanding any claims for damages – may withdraw from the contract or reduce payment.

9. Right of Withdrawal

When concluding a distance sale transaction, consumers generally have a statutory right of withdrawal, about which EMAGine informs in section 8 above. Exceptions to the right of withdrawal are regulated in section 9.2. Section 9.3 contains the statutory model withdrawal form.

9.1 Statutory right of withdrawal

The buyer has the right to cancel the contract concluded through our written order confirmation without giving any reason, **fourteen (14) days from the day on which he acquires, or someone he nominates (other than the carrier) acquires, physical possession of the ordered Products**. If more than one item is ordered under the same contract, then the cancellation period ends at the end of 14 days after the day on which the last of the Products comes into buyer's (or his nominated recipient's) possession.

In order to exercise the right of withdrawal, buyer **must send EMAGine a clear statement** (e.g. a letter sent by post or email to EMAGine, email:) informing it about his decision to make use of this statutory right of withdrawal. Once received by EMAGine, buyer will receive an email confirming his statement of withdrawal. In order to do so, buyer may use the below model withdrawal form, but this is not mandatory. Alternatively, Buyer may contact the Concierge Service via phone by calling the specific service number provided for your country. You can find a list with the specific country numbers and further contact information (a link has to be provided).

If the buyer exercises the statutory right of withdrawal, **he must return the Products with all supplied accessories within 14 days after having exercised its right of withdrawal**, in accordance with the instructions provided by EMAGine.

EMAGine will refund the purchase price, including shipping fees immediately after receipt of the returned Product(s) and no later than fourteen (14) days from that date. The payment details used for the order will also be used for the refund, unless indicated otherwise by the buyer.

Buyer must return or hand over the Products to us immediately and without undue delay and in any event no later than fourteen (14) days from the date on which he notifies EMAGine of the withdrawal. This period shall be deemed to have been observed if buyer dispatch the Product before the expiry of the fourteen (14) day period. Buyer shall bear the direct costs of returning the Product.

Buyer shall be liable for any loss in value of the Product if this loss in value resulted from the handling of the Product which was not necessary for the purpose of checking its condition, properties and functionality.

9.2 Exceptions to the right of withdrawal

The right of withdrawal does not exist for the delivery of goods that are clearly tailored to the personal needs of the buyer. This applies in particular to Products that have been customized or engraved at the buyer's request.

9.3 Model Withdrawal Form

Model Withdrawal Form

(complete and return this form only if you wish to withdraw from the contract)

- To EMAGine, email:
- Hereby I/we (*) give notice that I/we (*) withdraw from my/our (*) contract of sale of the following goods (*)
- Ordered on (*)/received on (*)
- Customer name(s)
- Customer address(es)
- Customer signature (only required for paper forms)
- Date

(*) Delete where inapplicable

10. Returns

Should the buyer exercise the right of withdrawal in accordance with Section 8, EMAGine, in deviation from Section 8, willing to bear the costs for the return of Product if buyer follows the return instructions below. Buyer's statutory right of withdrawal and defects warranty rights remain unaffected.

- Notify the EMAGine Concierge to inform that Buyer made or wish to make use of his statutory right of withdrawal under Section 8, via phone by calling the specific service number provided for the country. A list with the specific country numbers and further contact information can be found (add a link.....)
- The EMAGine Concierge will verify the original purchase and that the return is being made during the fourteen (14)-day return period, starting from the delivery date.
- **Please follow the return instructions indicated by EMAGine** and include the Product along with all accessories, the product manual, the certificate, the e-Warranty card and all other documents in its original box within the original shipping package.
- Buyer must seal the parcel carefully with adhesive tape and **label it with the return label** as created by the EMAGine Concierge and **provided to him in a PDF document. EMAGine bears the return shipping costs if the return label created by EMAGine is used.**
- At the day of pickup, the driver of the delivery company will collect the parcel. Buyer will receive an email confirmation once the parcel is received by the EMAGine Service Centre.

Important Notice:

Products must be returned in their original condition, in a new, unused and perfect state, with all protection, tags and stickers attached to them, with the original box and delivery package, including all accessories and documentation. EMAGine will refuse returns if the Product shows signs of wear or has been used or altered from its original condition in any way. EMAGine also reserves the right to deduct from the refunded amount sums to reflect any reduction in the value of the products resulting from the handling of the products by the buyer beyond what is necessary to establish that it were provided with the correct product and that it functions correctly.

EMAGine will insure the Product during return shipment to us as long as the buyer follows the instructions provided in the above Section Otherwise, EMAGine is under no obligation to maintain insurance and the safe shipment of any Product will be at the sole risk and responsibility of the buyer.

The buyer is advised to keep a proof of return shipment.

Upon receiving a return, EMAGine will verify that the returned Product satisfies the conditions of the return rules. **EMAGine will apply a strict quality control. If the products do not meet quality control standards, EMAGine will refuse the return, and the Products will be sent back to the buyer. If the returned Product satisfies the quality control, EMAGine will proceed with the applicable refund within 14 days of receipt of the Product.**

11. Place of jurisdiction

Place of payment and exclusive jurisdiction for all disputes arising from this contract is Zug, Switzerland. However, EMAGine is free to choose to prosecute customer at the customer's domicile.

12. Indemnity

Customer shall indemnify, defend, reimburse, and hold EMAGine harmless from and against all costs, losses, liabilities, damages and expenses (including attorneys' fees and expenses), arising out of or resulting from (i) any breach by customer of any of its obligations hereunder or (ii) any actual or threatened claim, demand, action or proceeding initiated by any third party arising out of or resulting from any act of omission of the customer.

13. Miscellaneous:

This contract and all legal relations between the parties are governed by the law of the Switzerland, excluding the United Nations Convention of Contracts for International Sale of Goods (CISG).

All agreements made between the parties are in writing in the respectively concluded contract; verbal agreements are invalid. Should parts of these conditions be or become invalid, the validity of the remaining conditions and of the contract will remain unaffected. The parties agree to replace the invalid provision by a legally valid one whose commercial purpose comes closest to the invalid provision.

Zug, Switzerland
October 14, 2020