

EMS Group Americas, LLC: Invoice Terms & Conditions

Jurisdiction and Governing Law

These Terms and Conditions are governed by and construed in accordance with the laws of the State of Texas, with Harris County, Texas, as the exclusive jurisdiction for any disputes.

Website Updates and Acceptance

The content of these Terms and Conditions may be updated at any time by Seller. It is the Buyer's responsibility to review the most current version, which will be available on Seller's website. Accessing or referencing the Terms and Conditions on the website constitutes Buyer's acceptance of the terms as they exist at the time of access.

1. Definitions

- **Buyer:** The entity to which Seller provides Products, Services, and/or other tangible goods under the Contract.
 - **Seller:** EMS Group Americas, LLC, its affiliates, and its third-party vendors providing Products or Services under the Contract.
 - **Contract:** The agreement formed by Buyer's written acceptance of Seller's estimate or Buyer's purchase order, including these Terms and Conditions and any additional agreed-upon provisions.
 - **Products or Services:** The goods, consulting services, or other deliverables supplied by Seller under the Contract.
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2. Orders

Orders placed by Buyer are subject to acceptance by Seller. Any order cancellation by Buyer must be submitted in writing. Buyer is responsible for all costs incurred up to the date of cancellation, including labor, delivery charges, restocking fees, and used or unreturnable materials. If the order has shipped, Buyer is responsible for the full payment.

3. Contract Price

All prices are exclusive of taxes, duties, and similar charges unless otherwise stated. Buyer is responsible for these charges, excluding taxes on Seller's income or property. Any exemptions claimed by Buyer must be supported by valid, signed documentation.

4. Payment Terms

Payment is due in U.S. Dollars via cash, check, money order, ACH, wire transfer, or credit card (subject to a 4% surcharge). Payments must be made within 30 days of the invoice date unless

otherwise agreed in writing. Late payments incur interest at 1.0% per month or the maximum legal rate.

If Buyer disputes any invoice, a written notification must be provided within 30 days of receipt, detailing the dispute. Undisputed amounts must be paid promptly.

5. Buyer Non-Solicitation Clause

Buyer agrees not to directly or indirectly solicit, engage, or hire EMS Group Americas LLC's employees, customers, suppliers, or contractors for a period of three (3) years following the termination of the business relationship, unless explicitly approved in writing by Seller.

6. Acceptance and Modification of Terms

Acceptance of these Terms and Conditions is demonstrated by Buyer's actions, including, but not limited to:

- Signing and returning Seller's estimate.
- Sending a purchase order in response to the estimate.
- Providing instructions for shipment or performance.
- Paying for the Products or Services.

No Buyer documentation shall modify these Terms and Conditions. Any changes require written agreement signed by both parties.

7. Credit Card Disputes or Chargebacks

Buyer shall not initiate a dispute or chargeback with their credit card company for any invoices paid with a credit card without first notifying Seller in writing of the reason for the dispute or chargeback. Written notice of a dispute must be provided to Seller within thirty (30) days of the credit card transaction. Seller shall respond to the notice within fifteen (15) days to resolve the matter. If Buyer proceeds with a chargeback without prior written notice or resolution, Seller retains all rights under these Terms and Conditions, including those outlined in Sections 4 and 6.

8. Dispute Resolution

All claims, disputes, or controversies arising out of or relating to these Terms and Conditions shall first be addressed through good-faith negotiations between Buyer and Seller. If a resolution is not achieved, the dispute shall be resolved either by binding arbitration or civil action in Harris County, Texas, at Seller's sole discretion. Buyer waives any right to resolve such disputes by any means other than arbitration or litigation, as determined by Seller.

Arbitration proceedings, if elected, will be conducted in English under the rules of the American Arbitration Association. A panel of three arbitrators shall preside: one appointed by Buyer, one by Seller, and the third by the arbitration authority. The arbitrators shall have the authority to award specific performance. Judgment on the arbitration award may be entered in any court with jurisdiction.

The prevailing party in arbitration or litigation shall be entitled to recover reasonable attorneys' fees, costs, and other expenses from the non-prevailing party.

8. Refunds and Credits

Credits, including rebate credits, must be used within ninety (90) days of their issue date. If unused, Seller may apply the credit to any outstanding invoices. Credits expire one hundred eighty (180) days from the issue date.

9. Delivery and Shipping Terms

All deliveries are made on an "EXWORKS" basis at the point of shipment. Title and risk of loss pass to Buyer upon delivery to the carrier. Delivery dates provided by Seller are estimates only. Seller shall not be liable for delays or non-performance caused by factors beyond its reasonable control.

If Buyer cannot receive Products when ready for shipment, Seller may store the Products at Buyer's expense. In such cases:

1. Title and risk of loss pass to Buyer upon storage.
2. Delivery will be deemed complete.
3. A storage fee of 2% of the Product value may apply.

Seller's liability for non-delivery is limited to replacing Products within a reasonable time or adjusting the invoice to reflect the actual quantity delivered.

10. Returns

Products are custom-manufactured and non-returnable, except when defective or damaged. Seller may request a return of defective or damaged Products at its expense, subject to written approval. Buyer must accommodate return requests and may not initiate returns without Seller's consent.

11. Disclaimer of Warranty

Seller warrants that Products it manufactures comply with its specifications at the time of sale. Products not manufactured by Seller carry only the manufacturer's warranty, if any. SELLER

DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. No Seller personnel are authorized to modify these warranty disclaimers.

11. Limitation of Liability

UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, BUSINESS INTERRUPTION, LOSS OF DATA, OR REPAIR COSTS.

Seller's total liability shall not exceed the amount paid for the Products or Services giving rise to the claim. These limitations reflect the parties' agreed risk allocation and form the basis of Seller's pricing.

12. Indemnification

Both parties agree to indemnify, defend, and hold harmless the other from third-party claims for personal injury or property damage arising from their respective negligence.

Buyer further indemnifies Seller from claims arising from:

1. Compliance with Buyer's designs, specifications, or instructions.
 2. Modification of Products by anyone other than Seller.
 3. Use of Products in combination with other goods or services.
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13. Adequate Assurance

Seller reserves the right to cancel any order, require full or partial payment, or demand adequate assurance of performance from Buyer without liability to Seller under the following circumstances:

- (i) Buyer's insolvency;
- (ii) Buyer's filing of a voluntary petition in bankruptcy;
- (iii) the appointment of a receiver or trustee for Buyer; or
- (iv) Buyer's execution of an assignment for the benefit of creditors.

Seller may suspend performance until payment or adequate assurance of performance is received. Seller further reserves the right to cancel Buyer's credit and require payment in full at any time for any reason.

14. Intellectual Property Rights

Seller does not guarantee that goods received from suppliers and/or Buyers via Seller, including but not limited to goods, models, or drawings for the manufacture or delivery of Products or services, will not infringe any third-party intellectual property rights such as patents, copyrights, trademarks, or trade models.

In the absence of a written agreement to the contrary, Seller retains all copyrights and industrial property rights to its offers, designs, images, drawings, test models, software, templates, and other issued goods.

15. Compliance with Laws

Seller will take reasonable steps to ensure that Products or services comply with applicable laws and regulations, but Buyer acknowledges that Products or services may be used in various jurisdictions with differing regulations. Seller disclaims any representation or warranty of compliance with federal, state, or local laws, regulations, ordinances, or codes unless expressly stated in writing.

The sale, export, and use of Products or services are subject to U.S. and international export controls and trade laws, including U.S. Export Administration Regulations. Buyer agrees not to trans-ship, re-export, or divert Products or services to any destination or use contrary to applicable laws. Buyer agrees to indemnify and hold Seller harmless for costs, liabilities, or penalties arising from non-compliance.

Buyer warrants compliance with all applicable anti-bribery and anti-corruption laws, including the U.S. Foreign Corrupt Practices Act, and certifies that it is not subject to trade sanctions. Buyer also agrees to provide evidence of compliance upon Seller's request.

16. Amendment and Modification

These Terms and Conditions may only be amended or modified in writing, signed by authorized representatives of both Buyer and Seller.

17. Waiver

No waiver of any provision of these Terms and Conditions shall be valid unless explicitly stated in writing and signed by Seller. A failure or delay in exercising any right or remedy shall not constitute a waiver, nor shall a partial exercise preclude further enforcement of that right or remedy.

18. Confidential Information

All non-public, confidential, or proprietary information disclosed by Seller to Buyer—such as specifications, designs, plans, pricing, customer lists, and other business data—shall remain confidential and used solely for purposes of this Contract. Buyer shall not disclose such information without Seller’s written consent. Upon request, Buyer shall return all materials received from Seller.

This clause excludes information that is:

- (a) publicly available;
- (b) known to Buyer before disclosure; or
- (c) lawfully obtained from a third party without restriction.

Seller may seek injunctive relief in the event of a breach.

19. Force Majeure

Seller shall not be liable for delays or failure to perform caused by circumstances beyond its control, including acts of God, floods, fires, governmental actions, wars, terrorism, civil unrest, labor disputes, material shortages, or power outages.

Seller’s performance shall be extended for a period equal to the delay caused by the force majeure event. If the event continues, Seller may cancel the remaining performance obligations without liability by providing written notice to Buyer.

20. Assignment

Buyer may not assign any rights or delegate obligations under this Contract without Seller’s prior written consent. Any unauthorized assignment is void.

21. Relationship of the Parties

Buyer and Seller are independent contractors. Nothing in this Contract creates an agency, partnership, joint venture, or employment relationship. Neither party may bind the other to any obligation.

22. Governing Law

This Contract is governed by and construed under the laws of the State of Texas, without reference to conflict-of-law principles. The exclusive jurisdiction for any legal action shall be Harris County, Texas.

23. Notices

All notices must be in writing and delivered to the addresses specified in the Contract via personal delivery, certified mail, or overnight courier. Notices are effective upon receipt.

24. Severability

If any provision of this Contract is found to be invalid or unenforceable, it shall not affect the validity of the remaining provisions.

25. Survival

Provisions of this Contract intended to survive termination, such as compliance with laws, confidentiality, indemnification, and limitations of liability, shall remain in effect.

26. Complete Agreement

This Contract represents the entire agreement between Buyer and Seller, superseding all prior communications or agreements related to its subject matter.

27. Language

This Contract and all related documents shall be written and interpreted in English.
