

# SE Factory Terms and Conditions

Version 21-3-2018

## Article 1: Applicability

1. These terms and conditions apply to all offers, quotations, agreements and deliveries of items and/or services by SE Factory, located in Groningen, the Netherlands (hereinafter named: SE Factory) performed or concluded with a person/legal person (hereinafter named: the customer).
2. These conditions also apply to direct sale through the online store [www.emdrkit.com](http://www.emdrkit.com).

## Article 2: Offers

1. The order may be placed online or by email/telephone directly with SE Factory. Placing the order constitutes an offer to purchase from SE Factory and the customer's approval of these terms and conditions. The purchase is only established once SE Factory has accepted an order by sending the customer order confirmation. The customer must check this order confirmation carefully, and contact SE Factory immediately in the event of errors or inaccuracies.
2. SE Factory is entitled to refuse orders, or to attach certain conditions to the delivery. These conditions shall in that case be explicitly stated in the offer. Orders are always refused if the customer fails to provide all the necessary information, or if not all of the details in the appropriate fields on the webshop order form have been completed. If an order is not accepted, SE Factory communicates this at the latest within ten (10) working days after receiving the order.
3. Unless explicitly agreed otherwise, all offers are free of obligation and may be revoked by SE Factory within two working days, even after the customer has accepted. Delivery occurs while stocks last.
4. While all statements by SE Factory concerning numbers, sizes, weight and/or other indications of the products and/or the services are performed with care, SE Factory cannot guarantee no deviations will arise in this respect. Samples, diagrams or models displayed or provided are merely indications of the products and/or services in question. SE Factory is not bound by the content of folders, printed material, etc. unless this is explicitly referred to in the agreement. In the event of a discrepancy between the customer's order and SE Factory's confirmation, SE Factory's confirmation alone is binding. The customer must accept minor deviations.
5. SE Factory is entitled to charge the customer for all expenses it must incur for providing the offer.

## Article 3: Industrial and intellectual property rights

1. SE Factory declares that to its knowledge, the products do not infringe on third-party property rights applicable in the Netherlands. However, SE Factory is unable to indemnify the customer against any infringements on third-party intellectual property rights.
2. The customer ensures not to infringe on SE Factory's intellectual property rights or those of its suppliers relating to products, nor to allow third parties to do so or make this possible, for instance by copying products.

3. Unless agreed otherwise, SE Factory reserves copyrights, as well as all other intellectual or industrial property rights to the designs, drafts, images, diagrams, models, programming and quotations it provides. These items remain its property and may not be copied, disclosed to third parties or used in another way, irrespective of whether the customer has been charged for these, without explicit permission. The customer is obliged to return these items at SE Factory's first request subject to the payment of a penalty of €450 per violation and €100 per day or part of a day that the customer fails to respond to SE Factory's request. The above is without prejudice to all of SE Factory's other rights, including the right to claim compensation.

#### **Article 4: Packaging**

Necessary packaging is calculated at cost price and not taken back. SE Factory is to assess the necessity of using packaging.

#### **Article 5: Advice, designs and materials**

1. Information and advice provided by SE Factory is of a general nature only and without obligation.
2. SE Factory accepts no responsibility for any design elaborated by or on behalf of the customer, nor for any advice in response to that design. Customers are themselves responsible for the functional suitability of the materials prescribed by the customer. Functional suitability refers to the suitability of the material or the component for the customer's intended purpose, or its design.
3. For designs created by SE Factory itself, reference is made to the warranty provisions.
4. In the case of an assignment, with designs not created by SE Factory or on its behalf, SE Factory only assumes responsibility for the manufacture according to the assignment and for the reliability of the materials used insofar as these materials were not prescribed by the customer.
5. The customer is obliged to have third parties inspect the materials it uses. It bears the costs associated with this. After the materials or components have been processed, the customer is unable to claim that the material used is functionally unsuitable, nor other faults in the material it could have reasonably ascertained during the inspection.
6. With the assignment, if the customer wishes to transfer the responsibility for the design by it or on its behalf to SE Factory, the latter is not obliged to accept this responsibility. SE Factory must be provided sufficient time to make a decision on this transfer. SE Factory must furthermore have the opportunity to study and verify the entire design, and the customer must supply all the data and documents necessary or useful for this purpose.
7. SE Factory cannot be required to perform said investigation free of charge, unless it is already apparent from the quotation request that the customer wishes to transfer responsibility to SE Factory.
8. SE Factory in no instance accepts any responsibility for components and/or materials provided by the customer itself or prescribed by third parties.
9. If, when SE Factory delivers products to the customers, indications, directions or instructions are provided relating to product usage and purposes, the customer is obliged to abide by these. Unless the customer

states otherwise in writing, SE Factory may assume that the customer and its staff or the persons the customer assigned to work or stay with the product directly or indirectly, in the broadest sense of the word, are sufficiently competent in the language in which these indications or directions have been given in order to understand these and act accordingly, providing that the language used is Dutch or English. As far as possible, SE Factory is prepared to provide those instructions and directions, on written notice, in other languages, although the customer is obliged to pay the costs for this.

#### **Article 6: Prices**

1. All of SE Factory's prices are stated in Euros. Where applicable, SE Factory always clearly indicates whether prices include or exclude turnover tax, any commercial or dispatch costs, taxes or other levies. The prices and additional information in all of SE Factory's documents are subject to errors and amendments. Digital price lists sent to the customer are only valid if these have been returned signed by the customer.
2. The customer indemnifies SE Factory against all costs and damage that might ensue for SE Factory due to the fact:
  - a. that the customer is not properly registered for sales tax or a similar tax in a relevant EU member state; and/or
  - b. that the customer provides incorrect data to SE Factory and/or the authorities in field of turnover tax or a similar tax in a relevant EU member state or provides the data late.If not agreed otherwise, the price for delivering EXW (Ex Works) Groningen, the Netherlands, applies according to the latest version of the INCOTERMS.
3. For special services, unusual, particularly time-consuming activities or those requiring extra effort, SE Factory may charge an additional fee that will be calculated fairly. If SE Factory experiences idle hours due to activities performed by the consumer or third parties, SE factory may charge the consumer for these idle hours.
4. The prices stated are based on the material and raw-material prices, wages, social charges, fuel prices, etc. applicable at the time of assignment, and may be subject to fluctuations. SE Factory may charge any increase of these cost factors three months or more after the prices have been stated as above on to the buyer. Without prejudice to the general applicability of the above, it is in particular applicable to an amendment to import or export duties or other duties or taxes arising after the order confirmation has been sent, and to alteration to the Euro exchange rate compared with the foreign currency in which SE Factory sold its products.
5. The buyer agrees that where applicable, invoices are sent or made available by SE Factory in electronic form. A paper invoice shall be sent at the buyer's request.

#### **Article 7: Delivery period**

1. Delivery times are established approximately and are merely indicative. The delivery time takes effect once SE Factory possesses all the information necessary for implementing the agreement.
2. The delivery period stated by SE Factory for products and/or period for performing services is based on the circumstances applicable to SE Factory at the time the agreement was concluded and, insofar as depending on third-party services, on the information provided by those third parties to SE Factory. In no instance does exceeding these periods give entitlement to compensation. Nevertheless, following notice of default containing a reasonable further period for compliance of at least eight weeks, the buyer is entitled to

dissolve or cancel the agreement by registered letter without being entitled to any compensation for damage or costs.

3. SE Factory is entitled to stop supplying items that are out of stock or no longer available. SE Factory is at all times entitled to supply/deliver products in batches.

#### **Article 8: Delivery; risk transfer**

1. Unless agreed otherwise, delivery ex works (EXW, according to the latest version of the INCOTERMS) occurs at the location of the SE Factory's warehouse or store in question. SE Factory has delivered once the products have been made available to the buyer at SE Factory's business premises, uncleared and not unloaded in a vehicle. The buyer bears all costs and risks associated with collecting, loading and transporting the products. The risk for the products is transferred to the buyer at the moment SE Factory makes the products available to the buyer.
2. If the parties agree that SE Factory handles the transport, the risk for storage, loading, transport and unloading also rests with the buyer. The products travel uninsured, unless the buyer requests the products be insured at its expense during transport in a timely fashion. The buyer must provide insurance against these risks.
3. SE Factory is entitled to store products that are ready and, due to causes beyond its control, cannot be transported to the destination, or to have these stored, for the buyer's account and at its risk, and to require payment as if the delivery had taken place.
4. Regarding products manufactured abroad, SE Factory reserves the right to arrange the clearance to the exclusion of the buyer.
5. Unless agreed otherwise, export and import duties, stamp, station and clearance costs, taxes, etc. are at the buyer's expense.

#### **Article 9: Retention of title**

1. As long as the buyer has not yet met all its obligations, future or otherwise, toward SE Factory, the item delivered remains SE Factory's property and is delivered under suspensive condition. From the moment of first delivery, the buyer bears the risk for loss of or damage to the item delivered, due to any cause whatsoever.
2. If the items delivered by SE Factory have since been treated or processed by the buyer, the new item arising is deemed to have been manufactured by order of SE Factory. This remains the case, regardless whether the buyer has met all his obligations towards SE Factory.
3. Without SE Factory's knowledge and written consent, prior to payment the buyer is not authorised to pledge the item delivered to third parties or to transfer ownership of this, and SE Factory remains its owner until the buyer has paid all of its payment obligations toward SE Factory in full.
4. Should the buyer fail to observe any obligations toward SE Factory based on this agreement relating to items sold or work to be performed, the latter is entitled to take back the items - both the original items and the newly formed items - without notice of default. The buyer authorises SE Factory to enter the site where these items are located.

5. If and for as long as SE Factory owns the products, the buyer shall notify SE Factory immediately in writing if any part of the products is lost or damaged, or the products are seized and/or a claim is otherwise made on the products (or any part of these). Once the buyer has fulfilled all its payment obligations based on this and similar agreements, SE Factory grants the buyer ownership of the items delivered subject to SE Factory's right of lien, for the purpose of other claims SE Factory has against the buyer. The buyer shall grant SE Factory its cooperation in actions required within this scope.

#### **Article 10: Dissolution**

1. In the event of suspension of payment (provisional or otherwise), bankruptcy, cessation or liquidation of the buyer's company, all agreements with the buyer shall be legally dissolved, unless SE Factory informs the buyer within a reasonable time (where applicable, at the request of the administrator or the receiver) that it requires compliance with the agreement(s) concerned (or part of this/these), in which case SE Factory is entitled without notice of default to suspend implementation of the agreement(s) concerned until payment has been sufficiently ensured, without prejudice to SE Factory's other rights regarding any agreement with the buyer whatsoever, and without SE Factory being obliged to any compensation.
2. If the buyer fails to comply with any obligation toward SE Factory properly or within a set period or otherwise promptly, the buyer is legally in default and SE Factory is entitled, without notice of default or legal intervention:
  - a. to suspend implementation of that agreement and agreements directed associated with it, until payment is sufficiently ensured; and/or
  - b. wholly or partially to dissolve that agreement and agreements directed associated with it;this is without prejudice to SE Factory's other rights based on any agreement whatsoever and without SE being obliged to any compensation.
3. In the event a circumstance arises as intended in articles 10.1 and 10.2 above, all of SE Factory's claims against the buyer and the intended claims based on the agreement(s) in question respectively are payable immediately and in full, and SE Factory is entitled to take back the relevant products (already delivered or otherwise). In that case, SE Factory and its authorised representative(s) are entitled to enter the buyer's premises and buildings in order to seize the products. The buyer is obliged to take the measures necessary so that SE Factory is enabled to exercise its rights.
4. If SE Factory accepts dissolution, or at least proceeds to dissolution without there being any default on its part, it is at all times entitled to compensation for any financial loss such as costs, lost profit and reasonable costs for establishing damage and liability. In the case of partial dissolution, the buyer is unable to claim cancellation of services already performed by SE Factory, and SE Factory is entitled to payment for its services already performed undiminished.

#### **Article 11: Force majeure**

1. If the implementation of the agreement is impeded, SE Factory is entitled to suspend its obligations for the duration of the force majeure situation. Force majeure is understood to mean any circumstance outside SE Factory's control, that permanently or temporarily prevents compliance with the agreement, all circumstances that must reasonably be deemed to impede delivery or prompt delivery of the items sold, such as non-delivery or late delivery to SE Factory by suppliers, disruption or interruption to business or strikes, transport options or impediments, as well as the situation that implementing the work is impossible due to the item on which the work is to be performed is destroyed or lost, without this being attributable to SE Factory.

2. If the situation of force majeure has lasted for three months, both parties have the right to dissolve the agreement in writing, wholly or partially. In that case, SE Factory is entitled to a portion of the agreed price based on the work performed and the costs incurred.

#### **Article 12: Items not collected**

1. If the buyer has failed to collect its items in SE Factory's possession, despite the fact they have been made available, irrespective of whether payment of sums owed has occurred or must occur prior to or upon delivery, SE Factory is entitled to sell these, or to have these sold, for and on behalf of the buyer, following written notice of default. The buyer still owes the full cost price, plus the interest, costs and any compensation for damages due, however, when applicable, less the net income from the sale to the third party.
2. From the moment the items are made available to the buyer, the risk of the items being wholly or partially destroyed lies with the buyer in full.

#### **Article 13: Payment method**

1. Unless agreed otherwise in writing, payment of amounts invoiced by SE Factory must occur without any restriction, deduction or settlement, within 30 days following the invoice date. Either in cash at SE Factory's offices, or to a bank account to be indicated by SE Factory.
2. In the absence of payment within the aforementioned period, the buyer is legally in default. In that case, any payment discounts applicable to the buyer expire, and payment of statutory interests is claimed, from the due date until the last payment is received.
3. If the buyer fails to pay promptly, in other words within 30 days following the invoice date, SE Factory is immediately entitled to proceed to recover the amount owed. SE Factory explicitly indicates that if the buyer is a legal person, or a natural person performing a profession or business, SE Factory claims full remuneration of the collection costs, incurred by SE Factory both legally and judicially and extra-judicially, with a minimum of 15% of the principal sum or a minimum of €250.00.

#### **Article 14: Security**

1. SE Factory is entitled to suspend compliance with its obligations or to terminate the work in an incomplete state, until the buyer has provided security for complying with all of its obligations at SE Factory's request and to its satisfaction.
2. If the buyer is declared bankrupt or suspension of payment is requested, SE Factory is entitled without any further notice of default to dissolve the agreement wholly or partially, without SE Factory being obliged to any compensation or guarantee, and without prejudice to its right to claim the purchase price from the buyer, plus the costs it must incur as a result of the non-fulfilment, and minus the costs it saves due to the termination.
3. The buyer is not entitled to settle a claim on its part with a claim from SE Factory, unless it is allowed to do so based on a legal verdict in final judgment.

## **Article 15: Claims and complaints**

1. The buyer is obliged to inspect the products with care immediately following receipt at the location of destination or, if this is earlier, following receipt by itself or by a third party acting under instruction, or to have this performed.
2. Any complaints concerning faults to products attributable to material or manufacturing defects, as well as discrepancies in quantity, weight, composition or quality between the products delivered and their description stated on the order confirmation and/or invoice, including complaints concerning invoices, must be communicated to SE Factory in writing at the latest eight days after the products have arrived, stating the fault alleged fault. Faults that could not have reasonably been established within the aforementioned period must be reported to SE Factory in writing immediately after being established, at the latest within 30 days after the products have arrived. The buyer forfeits all rights and authorities available to it due to defects if buyer failed to complained within the aforementioned periods, and/or has not offered SE Factory the opportunity to rectify the faults. After the periods have expired, the items delivered are deemed irrevocably and unconditionally accepted, and the buyer is obliged to pay for the products. If the buyer complains about a product's faults promptly, correctly and appropriately, the liability for SE Factory resulting from this is limited to the obligations described in article 17, according to the nature of the complaint in accordance with the other provisions of article 16 (warranty). Submitting a complaint does not mean the buyer's payment obligation concerning the disputed items is suspended. The buyer is not at liberty to return products without consulting with SE Factory beforehand. The costs of returning are born by the buyer, and the products remain at its risk.
3. After discovering any fault, the buyer is obliged to cease use, treatment, processing or installation of the products concerned immediately.
4. Unless agreed otherwise in writing, SE Factory does not handle complaints concerning delivered goods that have been used.

## **Article 16: Warranty**

1. If a complaint has been submitted promptly, correctly and in accordance with the provisions of article 15, and SE Factory reasonably believes it has been demonstrated the products do not function properly, SE Factory can decide either to redeliver the products proving to be effective free of charge with the products proving to be defective being returned, or to repair the products concerning thoroughly, or to grant a discount on the purchase price to be established in consultation with the buyer. By performing one of the aforementioned actions, SE Factory shall be fully discharged from its warranty obligations in this regard and shall not be obliged to pay any further remuneration/compensation. If SE Factory delivers products to the buyer that SE Factory has acquired from suppliers, SE Factory is in no instance obliged to any further warranty or liability toward the buyer beyond what SE Factory is able to claim from its supplier. If it concerns products sold under factory warranty or parts warranty, there is only a warranty on any defective or faulty separate components or parts of the products delivered by SE Factory to the buyer. Furthermore, any administrative, dispatch and delivery costs and all additional costs related to the negotiation of this factory warranty or parts warranty with SE Factory's supplier are borne by the buyer in full and without reservation. All dispatch costs from the buyer to SE Factory are always borne by the buyer.
2. The provisions in section 2 of book 7 of the Civil Code are excluded between the parties.
3. No warranty is provided for batteries, wires, stands and other wear parts. SE Factory reserves the right to provide no or variant warranties on reduced items.

4. There is only warranty on products sold by SE Factory if this has been stated unambiguously and clearly on the orders, assignments, or invoices. The warranty period commences following delivery.
5. The products remain fully at the buyer's risk in the event SE Factory performs repair activities on the products, unless the repair is the result of a defective service on the part of SE Factory and the buyer cannot be reasonably expected to insure the products for the above risk. Should the buyer perform any repairs or changes without prior permission from SE Factory, or have third parties perform these, SE Factory shall not be obliged to observe its warranty obligations. This also applies if the buyer or associated parties have used the products improperly, being understood to mean any usage for which the item is reasonably employed and according to the instruction manual.
6. Any warranty from SE Factory does not apply if and as long as the buyer is in default toward SE Factory, the items have been exposed to abnormal circumstances or have been handled carelessly or injudiciously, the items have been stored for longer than usual and SE Factory has not been enabled to investigate the fault. Every warranty expires one year following delivery.

#### **Article 17: Liability**

1. EMDR products are exclusively available for trained EMDR therapists and may therefore only be used by experts.
2. EMDR products have been designed to support trained EMDR therapists with the EMDR treatment. Therapists are at all times responsible themselves for the result of the treatment in which the EMDR kit is used. SE Factory is not liable for the results of the treatment and any complaints from a client.
3. Neither SE Factory nor the buyer restrict or exclude liability toward each other due to any liability that cannot be legally excluded.
4. SE Factory's liability is at all times limited to that which is stated in articles 16 and 17 of these terms and conditions. SE Factory is in no instance liable for any particular, indirect or consequential damage to the buyer or third parties, including loss of profit, income or turnover, damage to goodwill or reputation, environmental damage, loss of use of any product, system or network. SE Factory's liability toward the buyer, for any reason whatsoever, if in each event (with a cohesive series of events counting as one event) limited to the purchase price concerned (excluding VAT). If no purchase price can be indicated, SE Factory's liability is restricted to the amount received in this regard from its corporate liability insurer.
5. Except in the case of serious gross negligence or intent on the part of SE Factory or its upper management, the buyer shall indemnify SE Factory against all third-party liabilities, for any reason whatsoever, concerning payment for damage, costs or interests, associated with any delivery obligation, delivering items, the items delivered themselves or using these, or any activities or recommendations.
6. If the agreement concerns items SE Factory purchases or has purchased from third parties, SE Factory's liability is furthermore restricted to that which SE Factory's supplier or the third party/parties engaged by SE Factory is/are liable toward SE Factory.

#### **Article 18: Applicable law and competent judge**

1. All agreements concluded with SE Factory are subject to Dutch law.

2. Disputes that might arise between SE Factory and the buyer concerning or resulting from an agreement concluded between them shall in principle be settled by the competent judge in the District of Noord-Nederland. The Cantonal Judge of the buyer's place of business or district is nevertheless competent for claims by SE Factory.
3. Applicability of the Vienna Sales Convention (UN Vienna Convention 11 April 1980 on international sales agreements concerning movable property) is excluded.
4. Insofar as these terms and conditions have also been drawn up in a language other than Dutch, the Dutch text is decisive in the event of discrepancies.
5. Should one or more of the provisions of these conditions or any other agreement with SE Factory conflict with any legislation, the provision concerned expires and it shall be replaced with a new legally permissible, comparable provision to be determined by SE Factory. The agreement otherwise remains in force.