

Service and Repair Terms and Conditions

IMPORTANT: THESE SERVICE AND REPAIR TERMS AND CONDITIONS (THIS “AGREEMENT”), WILL APPLY TO ANY SERVICE OR REPAIR ORDER IF THE SERVICE OR REPAIR IS OUTSIDE THE TERMS OF EMIST’S LIMITED WARRANTY. YOUR SHIPMENT OF PRODUCTS TO EMIST FOR SERVICE OR REPAIR CONSTITUTES YOUR AGREEMENT WITH EMIST TO THESE TERMS AND CONDITIONS.

1. Services and Products.

1.1 Services. For service and repair orders, EMist will service your EMist product as described to you for the estimated charges stated, unless such charges are revised with your prior consent.

1.2 Parts and Labor. In servicing or repairing your product, EMist may provide both parts and labor. EMist will use parts or products that are new or equivalent to new in performance and reliability. EMist will retain the replaced part or product that is exchanged during service as its property, and the replacement part or product will become your property. Replaced parts and products are generally repairable and are exchanged or repaired by EMist, pursuant to the terms hereof.

1.3 Direct Mail-In Service. If EMist is not able to troubleshoot and service your product over the phone, you will ship your product to EMist’s repair service location in accordance with EMist’s instructions via ground shipping through a third party carrier. You may want to consider insuring your package in case of damage or loss during shipment and you may arrange expedited shipping at your own cost. Once service is complete, the EMist repair service location will return the repaired product or provide a replacement product to you.

1.4 Changes to Service Options. EMist reserves the right to change at any time the service options available to you.

1.5 Service Exclusions and Diagnostic Fee. EMist may charge you a diagnostic fee of not more than one hundred dollars (\$100.00) plus shipping charges (“Diagnostic Fee”), if EMist inspects your product and determines that (i) your product does not require service, (ii) service is required due to the failure of parts that are neither supplied by EMist nor EMist-branded, (iii) additional labor or parts are required that were not specified in the original estimated charges and you do not agree to authorize service based on EMist’s revised estimated charges, or (iv) the product has failed due to improper use or maintenance, accident, abuse, liquid spill or submersion, neglect, misuse (including faulty repair or maintenance by anyone other than EMist or an EMist Authorized Service Provider), unauthorized modification, extreme environment (including extreme temperature or humidity), extreme physical or electrical stress or interference, fluctuation or surges of electrical power, fire, acts of God or other external causes (“Service Exclusions”).

1.6 Delivery. EMist will provide an estimate on when any service or repairs will be complete or when a replacement product will be shipped to you. Once your order has been prepared for shipment or has shipped, EMist is unable to change the shipping address.

1.7 Customer’s Responsibility. EMist will provide you with shipping and packing instructions through third party carriers. You will be responsible for products that are lost or damaged as a result of failure to follow EMist’s or any third party carrier’s instructions.

(a) Abandoned Property. Unless otherwise agreed to in writing by EMist, EMist will ship your repaired or replacement product to the mailing address you furnished when you authorized service. If your product is returned to EMist because delivery could not be completed at the address given, you do not provide an address at which EMist or its agent may deliver your product or you fail to pay for any service repair or shipping charges, EMist will notify you that it considers your product to be abandoned. EMist will send notice to the mailing address or email address you furnished when you authorized service (“Notice”). In the event that your product is abandoned, EMist may dispose of your product after sixty (60) days of providing you Notice, and, specifically, may sell your product at a private or public sale to pay for any outstanding service performed. EMist reserves its statutory and any other lawful liens for unpaid charges.

2. Orders and Payment

2.1 Payment. Terms of payment are within EMist’s sole discretion, and unless otherwise agreed to by EMist, payment must be received prior to EMist performing any services or repairs and returning the product.

2.2 Payment Methods. EMist allows you to make purchases or place orders (that require security for the return of the replaced part or product) using credit card, debit card or check card, or some other prearranged payment method unless EMist has agreed to some other credit terms.

2.3 Prices. EMist endeavors to offer you competitive prices on current EMist products and services. Your total order price will include the price of the product or service on the day of order processing. EMist reserves the right to change prices for products or services displayed at any time and particularly to correct pricing errors that appear.

2.4 Sales Tax. In addition to the price of your purchase, EMist will charge you sales tax on applicable transactions based on your shipping address and the sales tax rate in effect at the time your order is billed. If the sales tax rate for the state to which your order is being shipped changes before the product is shipped, the rate in effect at the time your order is invoiced will apply. The proof of purchase that EMist sends to you will include any applicable sales tax.

2.5 Refunds. Except as described in the Warranty and Limitation of Liability section below, EMist does not provide refunds for service orders.

3. Warranty and Limitation of Liability

3.1 Service Warranty. For all service orders, EMist warrants that (1) services performed will conform to their description for sixty (60) days from the date of service, and (2) all parts or products used in service will be free from defects in materials and workmanship for sixty (60) days from the date of service. This warranty is an express limited warranty. If non-conforming service is provided or a defect arises in a replacement part or product during the applicable warranty period, EMist will at its option, either (a) re-perform services to conform to their description (b) repair or replace the part or product, using parts or products that are new or equivalent to new in performance and reliability, or (c) refund the sums paid to EMist for service.

3.2 Disclaimer of Warranty. EXCEPT FOR THE EXPRESS LIMITED WARRANTY

STATED HEREIN, EMIST DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE PRODUCTS, EXPRESS, STATUTORY OR IMPLIED, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3.3 Limitation of Liability. EXCEPT AS SET FORTH HEREIN, EMIST'S LIABILITY SHALL BE LIMITED TO THE COST OF REPAIRING PRODUCTS WITHIN A REASONABLE PERIOD. UNDER NO CIRCUMSTANCES SHALL EMIST BE LIABLE TO YOU FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, OF ANY NATURE WHATSOEVER, ARISING FROM NONCONFORMITY OF PRODUCTS, DEFECTIVE PRODUCTS, OR DELAY IN SHIPMENT, OR ANY OTHER BREACH OF THIS AGREEMENT BY EMIST.

3.4 Some states, provinces and jurisdictions do not allow the exclusion or limitation of incidental or consequential damages or exclusions or limitations on the duration of implied warranties or conditions, so these limitations or exclusions may not apply to you. The express limited warranty gives you specific legal rights, and you may also have other rights that vary by state, province or jurisdiction.

4. Export Control. You may not use or otherwise export or re-export the products serviced except as authorized by the laws of the jurisdiction in which the products were obtained. In particular, but without limitation, the products may not be exported or re-exported in violation of export laws, including if applicable export or re-export into any US-embargoed countries or to anyone on the US Treasury Department's list of Specially Designated Nationals or the US Department of Commerce Denied Person's List or Entity List. You represent that you are not located in any country or on any list where the provision of product to you would violate applicable law. You also agree that you will not use products for any purposes prohibited by applicable law.

5. General

5.1 Change Terms. EMist reserves the right to change this Agreement at any time.

5.2 Cancellation. Upon acceptance of a service order, EMist initiates service and the service order may not be cancelled without EMist's consent.

5.3 Product/Service Changes. EMist may make changes to any products or services offered online, or to the applicable prices for any such products or services, at any time, without notice. The information provided online with respect to products and services may be out of date, and EMist makes no commitment to update the information provided online with respect to such products and services.

5.4 Governing Law. All matters involving the validity, interpretation and application of this Agreement will be controlled by the laws of the State of Texas, United States of America without regard to the conflict of law provisions. The Parties also agree that THIS AGREEMENT IS WHOLLY PERFORMABLE IN TARRANT COUNTY, TEXAS, UNITED STATES OF AMERICA.

5.5 No Changes to the Agreement. No EMist employee or agent has the authority to vary any of the terms and conditions of this Agreement.

5.6 Unenforceable Terms. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining

terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

5.7 No Waiver. The waiver or failure of Emist to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which EMist may be entitled.

5.8 No Third Party Beneficiaries. Neither this Agreement nor any interest in this Agreement may be assigned by either Party without the prior express written approval of the non-assigning Party, which may be withheld or denied in its sole and absolute discretion.

5.9 Entire Agreement. The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein. No change can be made to this Agreement other than in writing and signed by EMist.

5.10 Force Majeure. EMist shall be free from any liability for delay or failure in shipment arising from accidents, perils of the sea, fire, earthquake, civil commotion, terrorist acts, war or consequences of war, government acts, government shutdowns, pandemics, governmental health and safety restrictions act or default of carrier or any other contingency of whatsoever nature beyond EMist's control.

5.11 United States of America

i) Interpretation. The provisions of this section will control if inconsistent with any provision of this Agreement.

ii) NOTICES TO CALIFORNIA CONSUMERS ONLY

a) An estimate for repairs, as required (section 9844 of the California Business and Professions Code), shall be given to the customer by the service dealer in writing. The service dealer may not charge for work done or parts supplied in excess of the estimate without the prior consent of the customer. Where provided in writing the service dealer may charge a reasonable fee for services provided in determining the nature of the malfunction in preparation of a written estimate for repair.

b) A buyer of this product in California has the right to have this product serviced and repaired during the warranty period. The warranty period will be extended for the number of whole days that the product has been out of the buyer's hands for warranty repairs. If a defect exists during the warranty period, the warranty will not expire until the defect has been fixed. The warranty period also will be extended if the warranty repairs have not been performed due to delays caused by circumstances beyond the control of the buyer, or if the warranty repairs did not remedy the defect and the buyer notifies the manufacturer or seller of the failure of the repairs within 60 days after they were completed. If, after a reasonable number of attempts, the defect has not been fixed, the buyer may return this product for a replacement or a refund subject, in either case, to deduction of a reasonable charge for usage. The time extension does not affect the protection or remedies the buyer has under other laws.