



Conditions for Rental

1. Definitions and interpretation

In these Conditions, unless the context otherwise requires, the following definitions shall apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in the United States of America are open for business.

Conditions: the standard terms and conditions of rental set out in this document and (unless the context otherwise requires) including any special terms and conditions agreed in writing between you and eNeura in accordance with clause 2.4.

Contract: the binding contract for rental of the Device.

Default: any act, statement, omission, breach of obligation (whether expressed or implied, condition or warranty) contained in, precedent or collateral to the Contract, breach of duty under statute or at common law or negligence by or on the part of eNeura in connection with or arising out of the subject matter of the Contract in respect of which eNeura is legally liable to you. A number of defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such default.

Delivery: the transfer of physical possession of the Device to your address by courier.

Device: the sTMS (single-pulse transcranial magnetic stimulator) device which eNeura is to supply to you in accordance with the Conditions.

eNeura: eNeura Inc. whose registered office is at 1735 North First Street, Ste 105, San Jose, CA 95112 USA.

Patents: as defined in clause 13.1

Prescription: the written order from your physician to eNeura, submitted via eNeura's online ordering system or via other written method of submission, including email, fax or post, for you to use the Device, such order to include as a minimum your name and address for Delivery and the duration for which the Device has been prescribed.

RMA Number: return material authorization number.

Relevant Claim: any claim or action resulting in liability in respect of damage to property, or death or personal injury arising from any fault or defect in the materials or workmanship of the Device.

Rental Payments: the payment of an amount per calendar month and based on the length of the Prescription, multiplied by the number of months stated on the then current Prescription, payable in advance in US Dollars (or such other payment amount or frequency as may be agreed between the parties in writing), made by you for rental of the Device.

Rental Period: the period set out in clause 2.9.

Total Loss: the Device is, in eNeura's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.

SIM Rx Card: an electronic SIM loaded with specific Prescription-related information which must be inserted into the Device prior to operation.

2. Basis of the rental

- 2.1 By ordering the Device from eNeura, you are deemed to accept these Conditions.
- 2.2 eNeura shall loan and you shall rent the Device in accordance with any Prescription accepted by eNeura in writing, subject to the Prescription and these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any order is made or purported to be made by you.
- 2.3 You shall at all times remain liable for partial cost of the Device, not to exceed \$3,000, in accordance with these Conditions.
- 2.4 Quotations issued to you by eNeura may be withdrawn or varied at any time and unless otherwise specified shall be automatically withdrawn after 21 Business Days. No Contract shall in any event arise until your Prescription has been accepted by eNeura in writing via email sent directly to the prescribing physician and you. No variation of these Conditions shall be binding unless agreed in writing between the authorized representative of eNeura and you.
- 2.5 eNeura's employees or agents are not authorized to make any representations concerning the Device unless confirmed by eNeura in writing.
- 2.6 Any advice or recommendation given by eNeura or its employees or agents to you as to the storage, application or use of the Device which is contrary to documentation published by eNeura and is not confirmed in writing by eNeura is followed or acted upon entirely at your own risk and, accordingly, eNeura shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.7 Any samples, illustrations or descriptive material contained in eNeura's brochures, advertising material or elsewhere shall not form part of the Contract and shall be treated as approximate and for guidance only unless specifically stated otherwise. eNeura may at its discretion from time to time vary the design of the Device from that advertised without notice to you provided that any such variations do not constitute material alterations to the Device.
- 2.8 eNeura shall not, other than in the exercise of its rights under these Conditions or applicable law, interfere with your quiet possession of the Device.
- 2.9 The Rental Period shall commence upon receipt of payment and shall continue for as long as the Device is prescribed to you in accordance with a currently valid Prescription, unless the Contract is terminated earlier in accordance with its terms.
- 2.10 In the event you wish to extend the Rental Period by having your physician prescribe the Device for an amount of time beyond that stated in the then current Prescription, you shall, no later than 14 days prior to the expiry of the then current Rental Period, procure that your physician submit a new Prescription to eNeura and, upon acceptance of that Prescription, eNeura shall supply you with a new SIM Rx Card. The rental of the Device under any new Prescription shall at all times be subject to these Conditions.

3. Orders and specifications

- 3.1 eNeura shall have no liability for the accuracy of any Prescription (including any applicable specification) submitted by your physician, nor for your physician failing to give eNeura any necessary information relating to the Device within a sufficient time to enable eNeura to perform the Contract in accordance with its terms.
- 3.2 An order which has been accepted by eNeura may be cancelled in writing by you prior to shipment of the device to you, in which case prepaid rental fees will be refunded.

4. Rental Payments

- 4.1 You shall pay the Rental Payments to eNeura, which Rental Payments shall become due after eNeura accepts the Prescription order and prior to shipment of the Device and/or renewal prescription SIM Rx card to You. The time of payment shall be of the essence of the Contract. All payments shall be made in full, in US dollars.
- 4.2 The Rental Payments are exclusive of applicable taxes which shall be payable by you at the rate and in the manner from time to time prescribed by law and, in the event eNeura is required to prepay any such sums, you will reimburse eNeura for the same.
- 4.3 If you fail to make any Rental Payment or other sums due under these Conditions on the due date then, without prejudice to any other right or remedy available to eNeura, eNeura shall be entitled to:
 - (a) cancel the Contract or suspend any further deliveries to you; and
 - (b) withhold shipment of additional Treatment Cards for the Device.
- 4.4 eNeura reserves the right by giving notice to you at any time before Delivery, to increase the Rental Payments to reflect any increase in the cost to eNeura which is due any change in Delivery dates, quantities or specifications for Devices which is requested by you, or any delay caused by instructions of you or failure by you to give eNeura accurate information or instructions.
- 4.5 Together with use of the Device, you shall also, for the duration of the Rental Period, be granted access to eNeura's online journal for data capture and entry of headache diary information.

5. Delivery and Returns

- 5.1 eNeura shall endeavor to deliver the Device within 15 Business Days from date of receipt of the Prescription but such date is not guaranteed unless previously agreed by eNeura in writing within 10 Business Days of receipt of the Prescription. The date quoted for Delivery shall be extended by a reasonable period if there is any delay caused by industrial dispute or by any cause beyond the reasonable control of eNeura.
- 5.2 In the event that you wish to return any defective Device to eNeura you shall first obtain an RMA Number from eNeura and shall then comply with eNeura's return procedures. As time is of the essence in reporting potential safety issues, you agree to notify eNeura of any perceived defects within a reasonable period of time after discovery of said perceived defect.
- 5.3 The Device should be returned by a courier service selected by eNeura, for which eNeura will supply a prepaid return label.

6. Risk and property

- 6.1 The Device shall at all times remain the property of eNeura and you shall have no right, title or interest in or to the Device (save the right to possession and use of the Device subject to these Conditions).
- 6.2 Risk of damage, loss or theft of the Device shall pass to you on Delivery, replacement cost not to exceed \$3,000. The Device shall remain at your sole risk during the Rental Period and any further term during which the Device is in your possession, custody or control (Risk Period) until such time as the Device is returned to eNeura.
- 6.3 You shall give immediate written notice to eNeura in the event of any loss, accident or damage to the Device or arising out of or in connection with your possession or use of the Device.

7. Limitations on Use and Training

- 7.1 The Device is for your personal use only and shall not be sold, offered for sale, underlet, lent other than in accordance with these Conditions. You shall not allow the creation of any mortgage, charge, lien or other security interest in respect of the Device.
- 7.2 You agree to use the Device in compliance with eNeura's instructions.
- 7.3 You shall be responsible for ensuring that your physician has provided you with sufficient explanation and demonstration as to the safe operation of the Device.
- 7.4 eNeura shall have no liability for any loss or damage suffered as a result of any failure of your physician to properly train you in accordance with this clause 7.

8. Renter's obligations

- 8.1 You shall at all times:
- ensure that the Device is kept and operated in a suitable environment and used only for the purposes for which it is designed;
 - take such steps (including compliance with all safety and usage instructions provided by eNeura) as may be necessary to ensure that the Device is at all times safe and without risk to health when it is being used or maintained;
 - keep the Device in as good an operating condition as it was on Delivery (fair wear and tear only excepted);
 - make no alteration to the Device and shall not remove any existing component(s) from the Device;
 - not do or permit to be done any act or thing which will or may jeopardize the right, title and/or interest of eNeura in the Device;
 - not suffer or permit the Device to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Device is so confiscated, seized or taken, you shall notify eNeura as soon as reasonably possible;
 - not use the Device for any unlawful purpose;
 - ensure that at all times the Device remains identifiable as being eNeura's property; and
 - deliver up the Device at the end of the Rental Period or on earlier termination of the Contract at such address as eNeura requires.
- 8.2 You acknowledge that eNeura shall not be responsible for any loss or damage arising out of or in connection with any negligence, misuse, mishandling of the Device or otherwise caused by you.
- 8.3 You shall, at the cost of eNeura, return the Device, as a matter of urgency, in the event that eNeura carries out a product recall of the Device.

9. Assignment

- 9.1 eNeura may assign its rights or delegate its obligations under the Contract, in whole or in part, without your consent.
- 9.2 These conditions inure to the benefit of eNeura and its successors and assigns.

10. Money Back Guarantee

- 10.1 eNeura offers a Money Back Guarantee for the initial 3-month prescription rental. To qualify for a full refund of the prescription payment (excluding shipping fee), the following requirements must be met:
- Use the sTMS device as prescribed;
 - Use the online *sTMS Patient Diary* for a minimum of 21 days each month for the 3 months of the initial prescription rental period;
 - If, after the initial 3-month prescription rental period, your diary data does not show a 30% reduction in headache days and/or a decrease in migraine severity, and you elect to discontinue use of sTMS, the prescription payment will be refunded;
- 10.2 The refund of the prescription fee paid will be issued within 15 business days of receipt of the returned device at eNeura's dock.
- 10.3 This Money Back Guarantee is valid one time only per customer;
- 10.4 The online *sTMS Patient Diary* does not allow any editing of data entered after 7 days from date of entry, and does not allow data to be back-dated;
- 10.5 No refunds will be issued for refill/renewal prescriptions filled after completion of the initial 3-month prescription.

11. Warranties, liability and remedies

- 11.1 eNeura warrants that the Device will correspond with its approved specification at the time of Delivery and will be of satisfactory quality and fit for the purpose held out by eNeura. eNeura shall use all reasonable endeavors to remedy, free of charge, any material defect in the Device which manifests itself while the device is subject to the Contract.
- 11.2 The above warranty is given by eNeura subject to the following conditions:
- You notify eNeura of any defect in writing or via telephone within 5 Business Days of the defect occurring;
 - eNeura shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, failure to follow eNeura's instructions (whether oral or in writing), misuse of the Device (including any use by unqualified personnel, use contrary to eNeura's instruction manual or use otherwise than in accordance with the FDA approved use), alteration, or repair of the Device without eNeura's approval; and
 - the above warranty does not extend to parts, materials or equipment not manufactured by eNeura, in respect of which you shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to eNeura.
- 11.3 Save as expressly provided in these Conditions all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

Liability and Remedies

- 11.4 The success of the Device is not guaranteed and the liability of eNeura shall not exceed the Rental Payments paid by you under the Contract.
- 11.5 Nothing in these Conditions shall exclude or limit in any way either party's liability for:
- death or personal injury caused by its own negligence; or
 - fraud or fraudulent misrepresentation.
- 11.6 If any part of this clause is found to be unenforceable by any court or competent authority or would be found to be unenforceable if it were interpreted or construed in a particular way, then, it is the parties express intention that the relevant wording should be interpreted or construed so as to avoid such a finding and that, in the event of such a finding, the remainder of the provision in question shall be interpreted or construed to give it full effect.

12. Termination

- 12.1 eNeura may, without prejudice to any other right or remedy, terminate the Contract immediately by written notice if:
- you default in any of your payment obligations;
 - you commit a material breach of these Conditions which is irremediable, or which breach (if remediable) is not remedied within 5 Business Days after the service of written notice from eNeura requiring it to do so; or
 - Total Loss occurs in relation to the Device;
- 12.2 Upon termination of the Contract, however caused:
- eNeura's consent to your possession of the Device shall terminate; and
 - without prejudice to any other rights or remedies you may have, you shall pay to eNeura on demand:
 - all Rental Payments and other sums due but unpaid at the date of such demand; and
 - any costs and expenses incurred by eNeura in recovering the Device and/or collecting any sums due under these Conditions (including any storage, repair, insurance, transport and legal costs).
- 12.3 Upon termination of the Contract pursuant to clause 12.1(c), without prejudice to any other rights or remedies of eNeura, you shall pay to eNeura on demand an amount equal to the Rental Payment multiplied by the number of months remaining in the product life of the Device, as notified to you by eNeura in writing.

13. Force Majeure

- 13.1 Neither party shall be in breach of these Conditions nor liable for delay in performing, or failure to perform, any of its obligations under these Conditions if such delay or failure result from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 10 Business Days' written notice to other party.

14. Confidential Information

- 14.1 Neither party shall, during and after termination of the Contract, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature.
- 14.2 Each party shall on demand and on termination of this agreement surrender to the other party all materials relating to such confidential information in its or its personnel's, agents' or representatives' possession.

15. Intellectual Property

- 15.1 The Device includes patents which are the property of eNeura (Patents). eNeura owns the copyright, design right, patents, trademarks and all other intellectual property rights in the Patents and the Device.
- 15.2 You agree that the Patents may not be reproduced or used in any way except with the prior written consent of eNeura.
- 15.3 eNeura has not knowingly infringed any registered patent rights of any third party in the United States but does not warrant or give any assurance to you that any Patent does not infringe the patent rights of any third party.

16. Indemnity

- 16.1 Subject to you fulfilling all the conditions in Contract, eNeura shall indemnify you against any Relevant Claim suffered by you, save where such Relevant Claim arises in connection with any act or omission of you.

17. General

- 17.1 No single or partial exercise or failure or delay in exercising any right, power or remedy by either party shall constitute a waiver by that party of or impair or preclude any further exercise of that or any right, power or remedy arising under the Contract or otherwise.
- 17.2 To the extent that any provision of these Conditions is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of these Conditions, it shall not affect the enforceability of the remainder of these Conditions nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 17.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 17.4 This Contract (and any relevant written order confirmation(s)) sets out the entire agreement and understanding between the parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Contract.
- 17.5 No variation of these Conditions shall be valid unless it is in writing and signed by both parties.

17.6 Exclusion of third party rights

Unless expressly provided in this Contract, no term of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

18. Governing law and jurisdiction

- 18.1 These Conditions shall be governed by and construed in accordance with the laws of the State of California and each of the parties irrevocably submits for all purposes in connection with these Conditions to the exclusive jurisdiction of the courts of California.