

# Standard Terms and Conditions of Business

of  
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Germany

- referred to below as “the User” -

## Preamble

These Standard Terms and Conditions of Business regulate the basis on which the User’s services are provided to the customer. The User is active in the field of software and hardware solutions for the integrated, digital operating theatre. It globally distributes IT-based solutions which collect, centralise and evaluate surgical data from the operating theatre, thereby increasing patient safety and the efficiency of clinical working processes. The services offered by the User include the sale of software and hardware, as well as the connection and integration of its services in the customer’s existing infrastructure.

## § 1 General Provisions

(1) All of the User’s deliveries, services and offers are made exclusively on the basis of these Standard Terms and Conditions of Business. This form is an integral part of all contracts that are entered into by the User with the customer relating to services or deliveries offered by the User. They also apply to all future deliveries, services or offers to the customer, even if they have not been separately agreed to again. Different, conflicting or supplementary standard terms and conditions of the customer will only become an integral part of the contract if the User has expressly approved them. This requirement for express approval applies in all cases.

(2) Individual agreements made with the customer (including ancillary agreements, supplements and amendments) that are made in an individual case always take precedence over these Standard Terms and Conditions. Ancillary agreements must be made in writing.

(3) Legally relevant declarations and notices to be given to the User by the customer after the conclusion of a contract (e.g. the setting of deadlines, notices of defects, declarations relating to cancellation or reductions) must be made in writing or text in order to be effective.

(4) References to the applicability of statutory provisions are for the purposes of clarification only. Statutory provisions therefore also apply where there is no such clarification, unless they are directly modified or expressly excluded by these Standard Terms and Conditions of Business.

## **§ 2 Conclusion of contract, performance**

(1) The extent and content of the services owed by the User are derived exclusively from the offer presented by it. The User reserves the right to make technical or creative deviations from particulars in brochures, catalogues and written documents, as well as changes to models, constructions and materials resulting from technical advancements and the further development of the products and services offered, insofar as such deviations are reasonable for the customer.

(2) Offers shall be deemed to be accepted and orders placed when confirmed by the User, or at the latest when the first contractual service is performed. In the event that a framework agreement exists, the contract shall be deemed to be concluded and legally binding when the customer calls for performance of the services, unless the framework agreement provides otherwise.

(3) Contracts relating to the User's services (including offer and acceptance) can only be entered into in writing, whereby the text form equates to the written form. Amendments and supplements to contracts must also be in writing in order to be effective.

(4) If the contractual product cannot be delivered because the User, without fault on its own part, has not received delivery from a supplier notwithstanding its contractual duty, the User is entitled to cancel the contract. In this event the User will notify the customer that the contractual product is no longer available and refund any payments already made without delay. In the case of monthly software licence fees, the customer is entitled to terminate the contract and any payments made until termination is effective shall remain with the supplier.

(5) In the event that the customer does not accept the goods ordered by it, the User reserves the right to claim flat-rate compensation in the amount of 15% of the contractual remuneration. The customer is at liberty to prove that no loss was incurred or that it was less than the estimated loss.

## § 3 Transfer of risk

(1) Unless otherwise provided by the contract, delivery is agreed “ex works”, so that the risk of accidental loss or accidental deterioration of the goods is transferred to the customer when the goods are handed over to the transporter. This also applies to software products delivered by the User.

(2) The customer bears the cost of storage after risk is transferred. In the event that goods are stored by the User, the storage costs are 0.25% of the amount invoiced in respect of the delivery items to be stored for each full week of storage. The parties reserve the right to claim and prove further or lesser storage costs.

(3) Prospective deadlines and dates provided by the User for deliveries and services are always only approximate, unless a definite deadline or date is promised or agreed. If shipment was agreed, the delivery deadlines and dates relate to the time of handover to the shipper, carrier or other third party instructed in relation to transport.

(4) If the customer wishes, the User will take out transportation insurance in respect of delivery; the costs accruing in this regard shall be borne by the customer.

## § 4 Prices and payment

(1) All prices stated are fixed prices. The prices are net prices plus the valid statutory value added tax.

(2) The cost of delivery and packaging will be shown separately. Statutory duties in the destination country, such as transport insurance and environmental and administrative charges are borne by the customer.

(3) Unless otherwise agreed or stated, payments are due immediately after an invoice is received. Invoices are issued at the time of delivery/performance.

(4) The customer only has a right of set off if his counterclaim has been established by law and is unappealable or is not contested or has been accepted in writing by the User.

(5) The customer is only entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

## § 5 Retention of title

(1) The User retains title to the subject matter of the contract until the purchase price is paid in full.

(2) If the customer is in breach of contract, the User is entitled to rescind the contract and take back the subject matter of the contract. In particular, until title to the subject matter of the contract is transferred to him, the customer has a duty to treat the subject matter of the contract with care. The customer must adequately insure the subject matter of the contract against loss by fire, water and theft for its value when new. If servicing and inspection work become necessary, the customer must effect these in good time at its own cost. Until title is transferred, the customer must give notice of the User's ownership and inform the User in writing without delay if the delivered item is seized or subjected to interventions by third parties. If the third party is not in a position to reimburse the judicial and extra judicial costs of a claim pursuant to § 771 of the German Code of Civil Procedure (§771 ZPO), the customer is liable to the User for any shortfall.

(3) The customer is entitled to resell the reserved goods in its usual course of business. However, he is not entitled to pledge them or transfer them by way of security. He therefore hereby assigns to the User the rights against the purchaser arising from any resale of the retained goods in the amount of the final invoice (including value added tax). This assignment applies regardless of whether the item purchased is sold without or after processing. Notwithstanding the assignment, the customer remains authorised to collect the debt. This does not affect the authority of the User to collect the debt itself. If the customer is in breach of contract - in particular if the customer is in default of a payment – the User can demand that the customer discloses the assigned debts and relevant debtors, informs the relevant debtors of the assignment and provides the User with all documents and information necessary to assert the claims. However, the User will not collect the debt as long as the customer performs his payment obligations from the sales proceeds received, is not in default of payment and – in particular – has not applied to institute insolvency proceedings and payments have not been suspended.

(4) In the event that the reserved goods are combined or mixed with other objects that are not owned by the User, the customer undertakes to grant the User co-ownership of the newly created object in that proportion of the invoice value of the retained goods to the other goods. The treatment and processing of retained goods take place for the User as creator within the meaning of § 950 of the German Civil Code (§ 950 BGB), without placing the User under any obligation. Otherwise, the same applies to any new goods created by processing as to the retained goods.

(5) The User undertakes to release the securities to which it is entitled on request by the customer if the value of its securities exceeds the value of debts to be secured by more than 20%. The User has the right to choose which securities are released.

## **§ 6 Guarantee**

(1) According to the currently recognised state-of-the-art, it is not possible to develop complex hard- and software products that are completely free from defects. The agreed quality of hardware and software distributed by the User may therefore not be completely free from defects, rather it is only intended that the hardware and software do not contain any program errors which would affect the functionality of the product for the purpose provided in the contract.

(2) The User does not guarantee that the program functions will satisfy the customer's requirements or that the program functions selected by the customer will work together. The warranty for material defects does not apply to defects based on the contract product being employed in a hardware and software environment that does not meet stated requirements or for alterations and modifications which the customer has carried out to the contract product without having the right to do so.

(3) In the event of a material defect, the User is first entitled to provide subsequent performance of the contract i.e. at its option either remove the defect ("repair") or deliver a new product. If subsequent performance fails, the customer has the right - after a reasonable extension of time – to withdraw from the contract or claim a reduction in price. The statutory provisions otherwise apply.

(4) Pursuant to § 377 of the German Commercial Code (§377 HGB), the customer undertakes to check that the goods are complete and correct according to the invoice without delay after receipt of delivery and, if applicable, to report any defects to the User without delay. If the customer fails to make such report, the goods will be deemed to be accepted unless the defect is a hidden defect.

(5) Insignificant defects which do not interfere with the functionality of the subject matter of the delivery or service do not entitle the customer to refuse acceptance.

(6) The guarantee period is one year from delivery or, where acceptance is necessary, from acceptance. Otherwise, the provisions agreed in the relevant individual contract between the User and the customer in relation to the assertion of warranty claims apply. A reduction of the statutory limitation period does not apply in relation to compensation claims arising from injury to life, limb or health or to losses caused intentionally or by the gross negligence of the User or its vicarious agents.

(7) Any claims of the customer relating to expenses necessarily incurred for the purpose of subsequent fulfilment (particularly the cost of transportation, tolls, labour

and materials) are excluded if the expenses are increased because the goods delivered by the User have been transferred to a place other than the customer's place of business, unless such transfer accords with the intended use of the goods.

(8) The warranty does not apply if the customer alters the subject matter of the contract or has it altered by a third party without the consent of the User and this renders the repair impossible or unreasonably more difficult. In any event, the customer must bear the additional cost of repair caused by the alteration.

## **§ 7 Confidentiality**

(1) Each of the parties provides a confidentiality undertaking to the other encompassing all information, documents and materials directly or indirectly disclosed or made available to one another.

(2) This undertaking excludes information that:

a) was verifiably already known to the contracting party at the time the contract was entered into or obtained from a third party without breaching a confidentiality agreement, statutory provisions or order of the authorities after the contract was entered into;

b) was publicly known at the time the contract was entered into or that was made known to the public afterwards, unless by a breach of this contract;

c) must be disclosed on the basis of statutory obligations or an order of the court or the authorities. To the extent that this is permitted and possible, the recipient of the information obliged to disclose it will give advance notice to the other party and provide it the opportunity to take action to prevent disclosure.

(3) The confidentiality undertaking shall continue to exist beyond the end of the contract.

## **§ 8 Liability**

(1) The User is liable without limitation for intentional acts and gross negligence, as well as in the event of injury to life, limb or health. However, for slight negligence the User is only liable in the event of a breach of a material contractual obligation, delay or impossibility which is the responsibility of the User. Liability is limited to losses that are typical for the type of contract and were foreseeable to the User based on the circumstances known to it at the time the contract was entered into. The User is also liable without limitation for losses for which mandatory statutory provisions, e.g. the

German Medical Products Law (Medizinproduktegesetz) or the German Product Liability Act (Produkthaftungsgesetz) provide for liability.

(2) The User is only liable for loss of data to the extent described in the above paragraphs and then only if such loss would not have been avoided by appropriate data back-up measures on the part of the customer.

(3) The limitations of liability also apply by way of analogy to the User's vicarious agents.

(4) Any further liability of the User is excluded. In particular, the User is not liable for data made available by the customer, unless the User appropriates it by dissemination.

## **§ 9 Miscellaneous**

(1) The law of the Federal Republic of Germany, excluding the UN Sales Convention, applies to contracts between the User and the customer. In Germany, Austria and Switzerland, the language of the contract is exclusively German; in all other countries it is English.

(2) The place of jurisdiction for all disputes arising out of contractual relationships between the User and the customer is the registered office of the User.

(3) The User is entitled to amend the above Standard Terms and Conditions of Business at any time. In this case, the User will communicate the amendments to the Standard Terms and Conditions of Business in writing or text. The customer will be given the opportunity to object to the amended Standard Terms and Conditions of Business within two weeks. If he does not do so, the customer is deemed to consent to the amendment. These Standard Terms and Conditions of Business shall otherwise continue to apply unchanged.

(4) If individual provisions of the above Standard Terms and Conditions of Business are wholly or partly invalid, this shall not affect the validity of the other provisions. To the extent that they exist, statutory provisions shall apply in the place of the invalid provision.

(5) The parties are aware that the contract software may be subject to export and import restrictions. In particular, authorisation requirements may exist or using the hardware and/or software or related technologies abroad may be subject to restrictions. The customer will comply with the applicable export and import control provisions of the Federal Republic of Germany, the European Union and the United States of America and all other applicable provisions. The performance of the contract by the User is subject to the condition that performance is not impeded by the

national and international provisions of export and import law or other statutory provisions, such as, for example, the German Medical Products Law (Medizinproduktegesetz).

(6) In the event of the delivery of software, the licence conditions and/or user conditions of the delivered software shall apply in addition to these Standard Terms and Conditions of Business.