

General Terms and Conditions of MedCom Gesellschaft für medizinische Bildverarbeitung mbH

January 2019

These general terms and conditions apply, provided that nothing else has been explicitly agreed upon, for all offers and contracts of the company MedCom Gesellschaft für medizinische Bildverarbeitung mbH, Dolivostraße 11, 64293 Darmstadt (below also referred to in short as „MedCom“). They form part of the respective contract and are used among contractors in business transactions. Any conflicting general terms and conditions of the customer will not be recognized, even if we do not explicitly object to them. Deviating terms and conditions of the customer only apply if they have been previously acknowledged by MedCom in written form. These general terms and conditions apply in their respectively latest version for all subsequent business transactions without the need to expressly mention or agree on that fact on conclusion.

1. Subject matter of the contract

The nature and extent of the subject matter of the contract shall be defined by the respective agreement made with the customer.

2. Offers and contracts

2.1. All offers made by MedCom are non-binding.

2.2. Contracts come into existence only and exclusively after written confirmation by MedCom, or through a delivery or any other service delivered by MedCom. Provided that nothing else has been explicitly agreed upon in written form, separate agreements shall be made for the creation of software, the provision of training courses, software care and maintenance, as well as for any other services rendered.

2.3. If the order confirmation issued by MedCom deviates from the order made by the customer, the order confirmation and its contents apply, unless the customer objects to it immediately, and/or the deviation is so substantial that the customer's agreement cannot reasonably be expected.

3. Delivery dates, shipping, delivery

3.1. MedCom will immediately inform the customer if agreed delivery dates cannot be observed. If MedCom and the customer cannot reach an agreement on a new delivery date, the customer is entitled to specify a reasonable extension period, after the expiration of which the customer may withdraw from the contract.

3.2. Agreed delivery dates are only binding if their observance has not been made impossible by circumstances for which MedCom cannot be held responsible.

3.3. MedCom is entitled to make appropriate partial deliveries.

3.4. Insofar as the customer has the obligation to cooperate, MedCom is only committed to keeping agreed delivery dates if the customer meets his contractual obligations to cooperate. In case of non-fulfilment of the customer's obligations to cooperate, the delivery period will be extended by the time of the disturbance, except the case that the disturbance has no influence on the delay.

3.5. If the delivery period has been exceeded for reasons for which MedCom is responsible, the customer is entitled to specify a reasonable extension period, after the expiration of which he may withdraw from the contract.

3.6. Unless otherwise agreed upon in the particular contract, shipping costs shall be charged for all goods delivered by MedCom. Delivery may be carried out by third party engaged by MedCom for this purpose. .

3.7. Goods are delivered by standard shipping. If the customer requires a special, e.g. accelerated mode of shipment, additional costs shall be at his expense in any case, regardless of the individual contract.

3.8. The risk of accidental loss or accidental deterioration of the purchased object passes to the customer as soon as the purchased object is handed over to the person or institution commissioned with its delivery, or upon its delivery in case of the purchase to destination. This also applies to partial deliveries as specified in 3.3.

4. Obligation to examination and notification of complaints

4.1. The customer is obliged to examine the delivered goods immediately according to their condition, completeness and transport damage on the agreed place of destination. Unless agreed otherwise, complaints about eventual defaults are to be made immediately after the examination. Should no notification of defect be submitted, the warranty period will begin ten (10) workdays after the delivery.

4.2. In case of complaint about a hidden default, which has initially remained undetected despite of the orderly examination as specified above in paragraph 4.1, a different deadline regulation comes into effect, according to which the complaint must be submitted within ten workdays after the detection of the default.

4.3. Each complaint must be submitted to MedCom in detail within the period specified above, using the written form, e-mail or fax. A complaint by telephone is insufficient. The type and extent of the default must be clearly indicated in the complaint

5. Prices

5.1. Provided that nothing else has been agreed upon between MedCom and the customer (offer, order etc.), invoices will be issued with delivery

5.2. MedCom's prices including the license fees are given in EURO and do not include the value added tax applicable at the date of delivery. They result from the valid offer and the contract made on this ground. Should no offer exist, the price arises from the respective official price list of MedCom, valid at the date of the receipt of the customer's order. MedCom is entitled to modify the price list or to replace it by a new version. MedCom reserves the right to modify the products and services specified in the respectively valid price list, to end their production, or to replace them by new products and services.

5.3. Purchase prices include the costs for standard packaging. Should the customer request a special kind of packaging, the additional costs will be at his charge. Packaging costs for the delivery of spare parts, accessories and consumables will be charged separately

5.4. Any taxes, custom duties, fees, and charges in connection with importation and exportation will be on the charge of the customer.

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- 5.5. The delivery and installation of devices by MedCom including the instruction of service personnel is within the customer's scope of responsibility. The fees for the provision of such services will be charged by MedCom according to the service price list valid at the time of the rendering of the service.

6. Payment

- 6.1. Payment is due fourteen (14) days after issue of the invoice with no cash discount given. In case of partial deliveries, the respective net amount of the invoice for the partial delivery must be paid in full within 14 days. MedCom reserves the right to change the payment period in case of repeated delayed payment.
- 6.2. If the invoice has not been paid within the period specified above under 6.1., or on another due date, MedCom is entitled to bill default interest in the proven amount, but at no less than 3% above the base rate of the ECB without the need of a particular notification.
- 6.3. In the event of default in payment, MedCom is entitled to hold back further deliveries until payment has been made.
- 6.4. For a first order, payment in advance may be requested, as well as in the event of exceeding the available credit limit.
- 6.5. The customer is only entitled to offset, withhold or reduce payment if his counterclaims have been legally established, or if they have been explicitly acknowledged by MedCom.
- 6.6. In the event of a significant change in the customer's creditworthiness that only becomes known to MedCom after conclusion of the contract, or if the terms of payment are not met, MedCom is entitled to claim immediate payment of all open bills, to wholly or partially retreat from the contract, and/or to make delivery dependent upon prepayment and claim the restitution of already delivered goods without prejudice to further claims for damages, regardless of any previous agreement on particular payment terms.

7. Reservation of proprietary rights

- 7.1. MedCom reserves the right to the property of the delivered object until complete payment of all claims arising out of the current business relation has been made.
- 7.2. The customer has the obligation to handle the delivered object with care. Where inspection and maintenance work are required, the customer must have this carried out exclusively by the service provider authorized by MedCom.
- 7.3. The customer has the obligation to immediately inform MedCom of third party's access to the object of delivery, e.g. in case of a seizure, as well as of its eventual damage or destruction. The customer also has the obligation to immediately declare a change in ownership of the object of delivery, as well as a change of his own residence.
- 7.4. If the customer's conduct is contrary to the contract, especially in case of default in payment or violation of an obligation as specified above under 7.2 and 7.3, MedCom is entitled to withdraw from the contract and to demand the immediate return of the object of delivery..
- 7.5. As far as this is part of the regular business transactions of the customer, and especially as far as no license agreement is opposing, the customer has the right to resale of the purchased goods. For security reasons, he herewith assigns all claims out of such resale to MedCom. We herewith accept this assignment. MedCom will release this security if and as far as it surpasses MedCom's complete claims out of the current business relationship by more than 20%. Any resale must immediately be reported to MedCom. The claim against the bank which has issued or confirmed a letter of credit in favour of the customer (=reseller) in the course of the resale is also part of the claims arising from the resale.
- 7.6. MedCom reserves the proprietary and intellectual property rights for any documents provided before or after conclusion of the contract. They may only be made accessible to third party with the explicit permission by MedCom. Any such drawings and documents have to be restored to MedCom immediately and without request if the contract is not completed or dissolved.

8. Warranty

- 8.1. The warranty period for all contractually agreed products and services is one (1) year, beginning with the installation of the software according to the agreement, or with the delivery of the purchased goods by MedCom or a third party engaged by MedCom.
- 8.2. Provided that nothing else has been agreed upon explicitly in written form, the customer must set us a reasonable deadline for subsequent performance in the event of a defect. During the repair period, the customer is not entitled to reduce the agreed price or to withdraw from the contract.
- 8.3. It is within the scope of the customer's responsibility to make the object of the complaint available to MedCom or MedCom's representative for inspection and subsequent performance.
- 8.4. The handling of software errors is usually done by telephone. If the customer nevertheless requests on-site support by MedCom in the event of software problems, this will require a specific order which will be charged by MedCom..
- 8.5. Warranty is excluded for any defaults caused by use of consumables which do not meet the recommended specifications, as well as for any defaults caused by improper handling.
- 8.6. In the event of MedCom's obligation to subsequent performance, we may either repair the default or provide a new item, according to our own decision. MedCom has the right to engage third party for performing repairs.
- 8.7. Should the rectification or replacement fail after three attempts, the customer is entitled to reduce the agreed price or to withdraw from the contract. Withdrawal is excluded if MedCom's breach of duty proves to be irrelevant.
- 8.8. Regarding the warranty for software products provided by MedCom, MedCom guarantees that licensed software products meet the functions and features contained in their respective „Software Product Description“ valid at the issue date of the license. The technical details, specifications and performances described in the „Software Product Description“ are not to be understood as warranted characteristics, except the case they are explicitly declared as such. We assume no liability on software copies not delivered by MedCom, or not issued by MedCom or according to MedCom's standards. This disclaimer of warranty also applies to software run on a computer system which does not meet the minimum hardware configurations and software equipment, as required in the „Software Product Description“.

9. Handling of warranty claims

- 9.1. MedCom supports the system administrator designated by the customer at the beginning of the warranty period, or his substitute whose name the customer will communicate to MedCom. The system administrator shall diagnose technical problems in collaboration with MedCom and perform the necessary action on site.

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- 9.2. Hard- and software deficiencies must be declared to MedCom by the system administrator, either by telephone or in written form, giving an accurate description of serial and license numbers, type designation, as well as the malfunction or the nature of the fault. Complaints are accepted and handled during office hours on workdays from 9.00 to 17.00.
- 9.3. Default verification for software is done exclusively on systems for which the software is licensed. Only faults which may be reproduced by MedCom, with the platforms and environment available, can be processed further. In case of software faults which are not easy to reproduce, a machine-readable sample (up to 80 lines) generated by the error function is made available to MedCom.
- 9.4. On MedCom's request, defective products must be sent to a notified body in the Federal Republic of Germany for inspection, with no postage charged on MedCom.
- 9.5. The customer will perform testing procedures provided by MedCom and reasonable for the customer. The results will be communicated to MedCom.
- 9.6. MedCom is entitled to commission third party with service performances.
- 10. Customer's obligations to cooperate in the context of the warranty**
- 10.1. According to accident prevention regulations, the customer will ensure the presence of a responsible person on the site of installation during the service and maintenance performance, if needed.
- 10.2. The customer must immediately inform MedCom if services will be performed on sites exposed to X-ray, radioactive or other ionising radiation. He must meet all requirements for radiation protection as specified in the relevant regulations on radiation protection and X-ray exposure for working in the respective areas.
- 10.3. The customer shall ensure that hardware which has not been delivered by MedCom (third party hardware) meets all legal security standards. He has the obligation to regularly create appropriate backup copies of all programs and files.
- 11. Starting up**
- MedCom will give the customer telephonic support with the installation of systems and system upgrades. On-site-installation of systems and system upgrades, as well as of optional software, may be ordered separately if needed.
- 12. Liability**
- 12.1. To the extent legally permitted, MedCom and its executives and staff assume no liability for direct, indirect, incidental, special and exemplary damages, as well as for punitive and consequential damages, especially damages for loss of profit, downtime, lost data and other non-pecuniary damages (even if MedCom has been informed on the possible occurrence of such damages), regardless of their cause, and whether they result from the contract, unauthorized action or any other cause.
- 12.2. Regardless of deviating provisions in the present General Terms and Conditions, the limitations of liability according to point 12.1. do not apply in the event of wilful intent or gross negligence on the part of MedCom, or for a liability according to the product liability law.
- 12.3. MedCom shall not be liable to the customer for compensations due to non- or mis-performance, except the case that the products delivered by MedCom lack a feature explicitly guaranteed by MedCom.
- 12.4. The liability for destroyed or lost client data is limited on the costs for copying such data from back-up copies created by the client.
- 12.5. The extent of MedCom's liability is limited to the amount of such damages as could have reasonably been reckoned with on the conclusion of the contract.
- 12.6. Claims for damages expire according to the legal regulations, but not later than a year after delivery or performance of the unsatisfactory service.
- 12.7. As far as MedCom's liability has not been excluded according to the aforementioned provisions, it is limited to a maximum amount of EURO one million (€ 1.000.000,-) per liability case and to a maximum amount of EURO five hundred thousand (€ 500.000,-) for financial and property damages.
- 13. Software License**
- Provided that nothing else has been agreed upon explicitly in written form between MedCom and the customer, the following provisions apply regarding the software license granted to the customer by MedCom:
- 13.1. The software delivered by MedCom is protected by copyright. The right to utilization, and especially to reproduction is conceded exclusively to MedCom and/or its license suppliers (according to the contractual extent). Except a backup copy for archiving purposes, the customer must not create any other copies of the software or the corresponding documentation. The customer shall transfer all copyright marks present in the software to this archive copy.
- 13.2. The customer is granted a non-exclusive license by MedCom, which allows him to use the software delivered to him, and the corresponding documentation within the contractual extent. This applies according to the number of users for whom the respective license fee has been paid. The right to lend the delivered software is expressly excluded. The transfer of the license requests the explicit written consent of MedCom.
- 13.3. Unless expressly permitted, the client must neither modify nor decompile, disassemble, decode, extract the software, nor apply any other form of reverse engineering. For interfacing information, the customer shall contact MedCom directly.
- 13.4. The customer may print copies of the online documentation, according to the number of applications for which a license fee has been paid. The customer may end his right of use at any time by destroying the software and the corresponding documentation, as well as all existing copies, and giving MedCom a written notification about this.
- 13.5. The right of use shall expire by instant termination on the part of MedCom, if the customer violates the provisions of the present section „Software License“, and /or those of the section „Secrecy“.
- 13.6. If the right of use expires, the customer has the obligation to instantly destroy all copies of the software and the corresponding documentation or to hand them back to MedCom.
- 13.7. The MedCom software is confidential information by MedCom and/or its license suppliers. The customer takes the obligation to take appropriate measures to protect the software against unauthorized exposure or utilization and against unauthorized copying.
- 13.8. In case of loss, theft or other disappearance of the opening control, MedCom shall not provide compensation. Such loss requests a renewed order of the product and should therefore be insured by the client.

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- 13.9. The customer commits himself to indemnify MedCom from any claims or legal conflicts, including attorney fees, arising from the sale or use of revised programs.
- 13.10. The customer is obliged to place a copyright mark of the issuer on all complete or partial copies, adaptations or transfers of the software, using the same form as on the original version of the licensed software.
- 13.11. The customer is obliged to complete and send back eventually received software license registration documents and installation protocols within thirty (30) days to MedCom. He is also obliged to maintain records on the licensed software including its respective version, the serial number of the licensed device, the place where the licensed software is kept and the number of the created copies. The customer will make these records available to MedCom if requested.
- 13.12. The software license only authorizes the use of the currently licensed version.
- 13.13. Source codes offered for licensing by the issuer may only be provided on the basis of a separately concluded source code software license contract.
- 14. Property rights and export regulations**
- 14.1. MedCom does not give any warranty regarding eventual patents, especially not regarding their patentability, their validity, or their commercial viability. The same applies to other property rights.
- 14.2. Should third party asset claims for violation of industrial property rights against the customer regarding the delivered items, or should the customer himself assert such claims, the customer has the obligation to immediately inform MedCom in writing. MedCom shall not be obliged to maintain the property rights under complaint for the duration of the contract, nor to defend them against third party's attacks. MedCom takes no liability for damages arising from violations of property rights.
- 14.3. If the delivered items have been developed and produced according to concepts or instructions of the client, the client must indemnify MedCom against all claims, liabilities, burdens and costs, claimed by third party for violation of patents, copyrights, registered designs or other property rights. Eventual legal costs must be reasonably advanced to MedCom.
- 14.4. If items delivered by MedCom are exported by the customer, the customer undertakes to observe the valid legal regulations for the exportation, in case of re-exportation of goods of American or Canadian origin this also applies to the respective regulations concerning these countries.
- 15. Force majeure**
- 15.1. Neither MedCom nor the customer shall be liable for non-performance or delay if these are partially or wholly caused by events of force majeure. Events of force majeure are, amongst others, war and similar circumstances, forces of nature, breakdowns, lack of work force, power or raw material, strike, lockout, traffic disorders and orders of public authority. For the duration of these disorders and their impacts, MedCom shall be released from its supply obligation, and entitled to the choice either to deliver the agreed amount or to withdraw from the contract following the reestablishment of normal conditions. If the disorder lasts for more than 8 weeks, the customer also has the right to withdraw from the contract, provided that no delivery has yet been performed.
- 15.2. This provision does not release the customer from the obligation to make his contractual payments after MedCom has performed orderly delivery.
- 16. Secrecy and data protection**
- 16.1. Information made available to the customer on the basis of the business relation, as well as information which may be classified as confidential according to the circumstances, must be treated confidentially. It will be identified as such („confidential information“). Confidential information must not be passed on to third party and may only be used for the explicitly provided purpose.
- 16.2. All kinds of confidential information must be handed out to MedCom immediately on request, all eventual copies be destroyed, and a declaration be made to that effect.
- 16.3. The customer agrees to the use of his data received from the business relation to MedCom's own commercial purposes, within the company including subsidiaries, complying with data protection rules.
- 16.4. Both parties undertake to observe the currently valid regulations of data protection laws.
- 17. Final clauses**
- 17.1. The customer may pass on rights and obligations resulting from the contractual relationship existing with MedCom to third party only with MedCom's explicit prior authorization.
- 17.2. Should individual provisions of these conditions be or become invalid, this shall not affect the validity of the remaining regulations. Invalid provisions are to be replaced by valid provisions that come as close as possible to the intended purpose.
- 17.3. Place of performance is Darmstadt, Germany
- 17.4. The contract concluded with MedCom is subject to the law of the Federal Republic of Germany.
- 17.5. Place of jurisdiction is Darmstadt, Germany. Nevertheless, MedCom is entitled to choose another place of jurisdiction.
- 17.6. Any amendments to all contracts existing with MedCom require the written form in order to be valid.