

General Terms and Conditions General Terms and Conditions (T&C)

1. Scope of Application

The present T&C apply to any and all deliveries and performances of the company Andreas Baaske Medical GmbH & Co.KG (referred to as "Baaske Medical" hereinafter), including without limitation to deliveries of hardware, software and systems as well as to hardware and software development, project management, engineering services and to other services and maintenance contracts. The Customer to the respective applicable contract or other legal relationship with Baaske Medical hereunder shall be referred to as the "Customer" hereinafter. The present T&C shall also apply where we are aware of terms and conditions contradicting to or deviating from the present T&C and deliver the goods or render the services without expressly reserving any rights in respect of such contradicting or deviating T&C.

2. Offer and Conclusion of Contract

2.1 Our offers are non-binding, unless agreed to the contrary. A contract shall only be concluded upon our confirmation of the order in text form or by the Customer's acceptance of the delivered goods.

2.2 The scope of the delivery/performance shall be determined by our confirmation of the order.

2.3 We make reserve of deviations from the documents pertaining to the offer, even after confirmation of the order, where such deviations are imperative for technical reasons and where they are, with regard to the intended use of the goods, reasonably acceptable to the Customer. We retain title and any and all intellectual and industrial property rights in estimates of cost, drawings and other documents; such documents may not be made available to third parties. Should we not be mandated in an applicable instance, all drawings and other documents shall be returned to us immediately upon our request.

2.4 Any transfer or assignments of rights and obligations arising from the contract shall require our written consent.

2.5 We shall be entitled to have third parties perform our contractual obligations in full or in part. Baaske Medical shall, however, remain the party to the contract.

3. Prices and Payment Terms

3.1 Unless agreed to the contrary, the list prices applicable at the time of the confirmation of the order shall apply. As far as third party devices are concerned, the terms and conditions of the applicable manufacturer shall apply.

3.2 The prices shall apply net cash from Lübbecke, without software, separate accessories, installation, training, packaging and shipping cost, and plus VAT as applicable at the time of delivery. Where cash discounts are agreed, they shall solely relate to the net value of the applicable goods.

3.3 Invoices shall be due and payable immediately.. The Customer shall be in default, without a reminder being necessary, if and once such party has not paid within 14 days from receipt of the invoice or of an equivalent payment schedule. Payment shall only be considered made once that we

freely dispose of the respective funds. Bills or cheques shall only be accepted upon special agreement and only on account of payment, not instead of payment, and they shall be deemed payment only after encashment. Discount charges and collection charges shall be borne by the Customer.

3.4 Should the Customer not accept the applicable goods or services, we shall be entitled to either insist on acceptance or to claim 20% of the purchase price as a flat compensation for damages and expenses, or, where the amount of the actual damages is higher, to claim such higher amount. The Customer shall remain free to prove that the amount of the damages is lower.

3.5 For the duration of the Customer's default of acceptance we shall be entitled to store the delivered items, at the risk of the Customer, in our premises or at a location of a third party. For the duration of the default of acceptance the Customer shall pay us Euro 25 per month as a compensation for the storage expenses incurred by us, or, if the amount of the actual damages is higher, such higher amount. The Customer shall remain free to prove that the amount of the damages is lower.

3.6 The Customer shall have a withholding right only if and to the extent that its counterclaim is based on the same contractual relationship. The Customer shall not be entitled to set-off unless the respective counterclaims have been established as final or have been accepted by us.

3.7 Unless provided to the contrary in our confirmation of the order, delivery shall be made on a cash-on-delivery basis or against advance payment.

4. Period of Delivery

4.1 Where periods of delivery or other time limits are not expressly agreed as binding they shall be considered as non-binding information only.

4.2 Should we culpably fail to meet an expressly agreed time limit or should we culpably get in default for other reasons, the Customer shall concede to us an adequate curing period of at least 14 days, starting with our receipt of the Customer's written notice initiating our default under the applicable laws, or, in case of a time limit determined by a fixed calendar date, with such date.

4.3 Periods of delivery shall be deemed complied with: a) In case of delivery without set-up: if the goods left our warehouse or the warehouse of our supplier for the intended purpose within the respective period of delivery. b) In case of delivery with set-up: if the set-up of the equipment was completed within the period of delivery. c) In case of software services of any kind, or of development services or of other services: if the data carrier or the developed system was transferred or if an applicable other service was rendered within the applicable period of delivery.

4.4 In case of a delay of acceptance by the Customer a written notice by us indicating our readiness for delivery shall be sufficient to initiate the Customer's default of acceptance.

4.5 We shall be entitled to partial deliveries where a delivery in parts and at time intervals is, in consideration of the respective applicable order, reasonably acceptable to the Customer.

5. Delivery, Shipping, Passing of Risk

5.1 Partial deliveries shall, with regard to payment obligations, passing of risk and warranty obligations, be considered as independent deliveries.

5.2 Loading and shipment shall be made uninsured at the risk of the Customer. Additional cost resulting from a different mode of shipment requested by the Customer shall be borne by same.

5.3 Should the dispatch be delayed at the request of the Customer or should such delay be attributable to the Customer's fault, we shall put the goods into storage at the cost and the risk of the Customer. Section 3.5 shall apply accordingly. In such event a notice indicating that the goods are ready for dispatch shall be equivalent to the actual dispatch of the goods.

6. Installation

6.1 Installation and start-up at the location of the Customer shall require a separate order and shall be invoiced separately.

6.2 In case of installations any and all required preparatory works by the Customer must be completed. The Customer shall make available the required facilities for the installation and shall assist in the operation of all connected third party devices and shall, to the extent possible, facilitate the installation work also outside regular business hours.

6.3 Unless provided to the contrary, the Customer shall bear the cost for travelling to the location and back, including travel time, travel cost and expenses in accordance with our applicable current prices for services.

7. Acceptance

7.1 Acceptance shall be made promptly after delivery and installation.

7.2 A record concerning the acceptance may be prepared. Start-up or use without any reservations being made shall be considered as acceptance.

7.3 In respect of defects in connection with the installation the provisions of section 10 shall apply accordingly.

8. Software License

8.1 Software including subsequent updates shall, as a rule, be acknowledged between the parties as copyright-protected. The Customer shall purchase a non-exclusive software license subject to the following terms and conditions:

8.2. The software may solely be used, whether in total or in parts, on the central unit, and may be copied and modified on such central unit under the condition that the copyright notice of Baaske Medical or of the manufacturer as well as all other notices on industrial or intellectual property rights, if any, shall be attached to any and all copies.

8.3 Should an outage of the central unit prohibit the use of the software, then the software may be temporarily set up on another central unit.

8.4 The Customer shall not make the software available to any third party.

8.5 No further rights in the software shall be granted to the Customer.

9. Retention of Title

9.1 We shall retain title in the goods until we have received payment for any and all claims resulting from the contract including ancillary claims..

9.2 The Customer shall be entitled to sell the goods within the ordinary course of business. The Customer, however, hereby already transfers and assigns to us any and all claims against the purchaser or against third parties arising from the resale of the goods. Such transfer and assignment shall also include any and all ancillary rights. We hereby accept such transfer and assignment of claims. Where the goods were, in course of an intended use, processed, or combined or mixed with other materials, the aforesaid transfer and assignment shall be made at the amount of the invoice value of our goods which were used for such processing, combining or mixing. At our request the Customer shall notify its debtor of the aforesaid transfer and assignment and provide us with the information and documents which are necessary for the collection of the claim. The Customer shall be entitled and obligated, unless determined by us to the contrary, to collect the counter-value of the resold goods. We shall acquire title and property in such counter-value without any further steps being necessary, and the Customer shall store such counter-value for us separately from the other funds.

9.3 The Customer shall be entitled to sell the goods within the ordinary course of business. In case of seizures or other interventions of third parties the Customer shall promptly notify us in writing. In every case of intervention of third parties the Customer shall promptly notify us and inform the applicable third party of the retention of title or, respectively, of the transfer and assignment.

9.4 Upon request of the Customer we shall release securities if and to the extent that the realizable value of such securities exceeds our claim by more than 20%. We make reserve to select, at our free discretion, the securities which are to be released.

10. Warranty/ Liability/ Limitation

10.1 The Customer shall inspect the goods received with regard to completeness, damage from transportation, apparent defects, condition and qualities of the goods. Apparent defects shall be notified to us in writing within two weeks from delivery. This shall also apply to a defect which becomes apparent only at a later point of time, with the aforesaid time limit beginning at the time when the immediately aforesaid defect becomes known. For purposes of compliance with the aforesaid time limit the date of receipt of the written notice of defects shall be relevant. Damage which is apparent at the time of receipt must be notified to the forwarding agent or carrier immediately.

10.2 We shall not be under any warranty obligation if the Customer has not notified us in time and in writing. If and to the extent that there is a defect of the goods which we are responsible for and which was timely notified by the Customer we shall, subject to the applicable preconditions under the applicable laws, cure such defect. The Customer shall, for each applicable defect, grant an adequate curing period of at least 14 days.

10.3 The cure can be made, at our choice, either by way of remedying the defect or by way of delivery of new goods. During the cure the Customer shall not abate the price or cancel the contract..

10.4 The Customer may assert further claims regarding the defect only if and once that the cure has failed or has been refused. This shall not affect the right of the Customer to claim further damages subject to the conditions stated below.

10.5 We shall be liable, regardless of the below limitations of liability, for damage of life, body or

health arising from a negligent or intentional breach of an obligation by Baaske Medical or by its statutory representatives or by persons assisting Baaske Medical in the performance of its obligations, as well as for damage coming under the scope of liability of the German product liability statute ("Produkthaftungsgesetz") and for damage arising from intentional or grossly negligent breaches of contractual obligations or bad faith of Baaske Medical or of its statutory representatives or of persons assisting Baaske Medical in the performance of its obligations.

10.6 Information regarding our goods shall not constitute a guaranteed quality or durability of such goods, unless an express guarantee is given in writing. For damage caused by the absence of a guaranteed quality or durability but which damage does not occur directly on the goods themselves, we shall only be liable if and to the extent that the risk of such damage is apparently covered by the guarantee.

10.7 We shall not be liable for damage caused by normal negligence (as opposed to gross negligence), unless such negligence concerns a breach of contractual obligations which are especially important for the achievement of the contractual purpose ("Kardinalpflichten") and the breach of which (obligations) results in a damage which is typically related to the contract and is foreseeable. The present limitations of liability shall also apply in respect of the liability of the statutory representatives, executive employees and other representatives of Baaske Medical.

10.8 Any further liability shall be excluded, regardless of the legal nature of the asserted claim. If and to the extent that the liability of Baaske Medical is excluded or limited this shall also apply to the personal liability of its employees, representatives and persons assisting it in the performance of its obligations.

10.9 There shall be no warranty for defects and damage which result from unsuitable or inappropriate use, inobservance of usage instructions or incorrect or negligent handling. This shall, without limitation, apply to the operation of devices with a wrong kind of current or with a wrong voltage and to the connection to unsuitable current sources and to the combination of unsuitable components or to the use of the system outside of its intended purpose and declaration of conformity or with other or further components. The same shall apply to defects or damage arising from fire, lightning, explosion or grid related electrical surge, humidity of any kind, wrong or missing program software and/or processed data or to updates by the Customer without authorisation, unless the Customer proves that such circumstances have not caused the defect in question. Furthermore, there shall be no warranty where the Customer commissions interventions and/or reparations of devices without prior written consent or by persons which were not authorised by us, provided that it is possible that the disturbance is related to such interventions and/or reparations. For purposes of avoidance of loss of data in consequence of repair or defect of goods, the Customer is hereby adverted to the necessity of securing data at regular intervals, as any liability for such consequential harm caused by a defect, as well as for loss of profit or other financial losses, shall be excluded.

10.10 Warranty claims and other contractual claims shall be time-barred after expiration of one year from the time when they came into being, unless such claims result from an intentional breach of an obligation.

10.11 As far as evaluations of a situation, analysis of a situation or recommendations are concerned,

we shall only be liable for the actual results on the basis of the information made available to us. The future occurrence of a fact, a situation or of a conclusion of the analysis shall be neither warranted nor represented. 10.12 Used goods are sold under exclusion of any warranty whatsoever.

11. Cancellation and Compensation in Case of Non-Execution

11.1 We shall be entitled to cancel the contract if the Customer does not fulfil its obligations set forth under section 9.2 hereunder or if it has informed incorrectly or incompletely on the facts constituting its creditworthiness. In case of contracts for the performance of a continuing obligation a termination for cause is permissible and, without limitation, justified in case of a breach of sections 3.4, 8 and 9.

11.2 In case of a cancellation or if the order can not be carried out for reasons within the responsibility of the Customer, the Customer shall pay us, with regard to accrued expenses and loss of profit, a flat compensation at the amount of 10% of the purchase price, or, if the actual damages are higher, such higher amount. The Customer shall remain free to prove that the amount of the damages is lower.

12. Exchange

Our goods shall, as a rule, be excluded from exchange.

13. Software, Literature In case of delivery of software, the special license terms and conditions of the manufacturer shall apply in addition. By taking over the software the Customer acknowledges the validity of such aforesaid license terms and conditions.

14. Notice Obligations

The Customer shall promptly inform us on all occurrences within the meaning of the German Medical Devices Safety Plan Ordinance ("Medizinprodukte-Sicherheitsplan-Verordnung", abbr. "MPSV") if and to the extent that such occurrences are related to the medical devices delivered or manufactured by us, even if such occurrences do not constitute a warranty case at the same time. Copies of notices to applicable authorities shall be made available to us.

15. Use of Information Regarding the Customer

The personal information transferred to us will solely be collected, processed, used and transmitted to service provider partners of us if and to the extent that it is necessary for carrying out the contract.

16. Court of Jurisdiction, Place of Performance, Partial Invalidity and Applicable Laws

16.1 The relationships between the parties to the contract shall be exclusively governed by the laws of the Federal Republic of Germany under exclusion of the UN-Convention on the International Sale of Goods (CISG).

16.2 For any and all disputes from legal relationships subject to the present T&C and where the Customer is a merchant, a body corporate organised under public law or a separate estate organised

under public law, the parties agree that the courts of Preußisch Oldendorf shall have jurisdiction. We reserve the right, however, to bring an action against the Customer before the courts of the Customer's principal place of business, under the laws in force there.

16.3 Should individual provisions of this contract be or become invalid, the remaining provisions of this contract shall remain binding, unless the adherence to the contract would place undue hardship on one of the parties. The parties shall, in such event, replace the invalid provision by a valid provision which comes as close as possible to the intended commercial purpose of the invalid provision.