

## **GENERAL TERMS AND CONDITIONS**

of **MTG - Medizinisch technische Geräte Erzeugungs- und Vertriebsgesellschaft m.b.H.** Commercial Court Vienna, FN 90155g

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The following GTC are structured as follows:

- I. General provisions for all types of contracts
- II. Special regulations for the purchase of devices
- III. Special regulations for lease of devices
- IV. Special regulations for maintenance contract

### **I. General provisions**

#### **1. Validity of the GTC**

- 1.1. MTG - Medizinisch technische Geräte Erzeugungs- und Vertriebsgesellschaft m.b.H. (hereinafter referred to as “company”) provides its services exclusively on the basis of the following General Terms and Conditions (GTC). The following General Terms and Conditions (GTC) apply to all business relationships between the company and the customer, even if they are not expressly referred to in individual cases.
- 1.2. The current version is decisive. Deviating, conflicting or supplementary terms and conditions of the customer, even if known, are not part of the contract, unless their validity is expressly agreed in writing by the company. GTC or general terms of use of the customer are expressly rejected by the company.
- 1.3. Changes to the GTC will be announced to the customer and shall be deemed agreed if the customer does not object to the changed GTC in writing within 14 days; The customer is expressly advised of the consequence of silence regarding the communication.
- 1.4. These GTC are primarily aimed at customers who are companies. With respect to consumers (especially start-up companies), they are only valid to the extent permitted under consumer protection law.

#### **2. Contractual object**

- 2.1. Among other things, the company sells high-performance devices under the name “papimi” that induce electromagnetic pulses directly into body cells. The devices are a

medical device. The current certificates shall be sent on request of the customer. The company also sells products, which do not classify as medical products.

- 2.2. The customer acknowledges and agrees that, as the operator of a medical device, the customer has obligations under medical device law. The customer is responsible for the obligations regarding operators.
- 2.3. All public licenses for installation and operation of the equipment must be obtained by the customer; related taxes, fees and charges are to be borne by the customer. The customer guarantees the company that the customer will meet the professional requirements for the operation of the equipment. The company is not obliged to check these requirements.
- 2.4. The customer undertakes at any time, subject to advance notification, to grant the company access to the device and to allow it to modify the device, insofar as this is required by the implementation of medical product regulations or a higher-grade classification.
- 2.5. For the purpose of traceability of the devices, the customer agrees to report to the company any change of location of the device and/or change of the owner or possessor and/or to allow the company to install a GPS transmitter.
- 2.6. Marketing measures that include the characteristics of the products distributed by the company must be coordinated with the company and be approved by it.

### **3. Services, order processing and cooperation obligations of the customer**

- 3.1. The scope of the services to be provided by the contracting parties arises from the specifications in the contract or any order confirmation.
- 3.2. Subsequent changes to the service content of the contract require the written confirmation of the company.
- 3.3. The customer shall provide the company in a timely and complete manner with all information and documents required for the performance of the service. The customer shall inform the company of all circumstances that are important for the execution of the order, even if they become known only during the execution of the order.
- 3.4. The operator (customer) is responsible for the periodic provision of proof (annual safety inspection - STK) vis-à-vis the authorities.

### **4. Events**

- 4.1. Specified performance periods are non-binding, unless expressly agreed as binding. Binding date agreements are only legally effective if they have been expressly confirmed by the company in writing.
- 4.2. If the company's performance is delayed for reasons beyond its control, such as events

of force majeure and other unforeseeable events that cannot be prevented by reasonable means, the performance obligations will be suspended for the duration and scope of the obstacle and the deadlines extended accordingly.

- 4.3. If the company is in default, the customer can only withdraw from the contract after having given the company a grace period of at least 2 months in writing and this has fruitlessly passed.

## **5. Payments, retention of title**

- 5.1. Unless otherwise agreed, the company's invoices are due for immediate payment.
- 5.2. The equipment supplied by the company remains the property of the company until full payment of the remuneration, including all ancillary liabilities.
- 5.3. In the event of default of payment by the customer, the statutory default interest shall apply in the amount applicable to business transactions. Furthermore, in the event of default of payment, the customer undertakes to reimburse the company for the dunning and collection charges incurred, insofar as they are necessary for the purpose of pursuing legal action. In any case, this includes the costs of two reminder letters of € 15.00 each and the material costs of a reminder letter from a lawyer commissioned with the collection. The assertion of further rights and claims remains unaffected.
- 5.4. In the event of default of payment by the customer, the company may immediately make due all services and partial services rendered, also in the context of other contracts concluded with the customer. Furthermore, the company is not obliged to render any further services until the outstanding amount has been paid. In particular, the company is entitled to deactivate devices remotely in the event of default of payment or other material breaches of contract by the customer.
- 5.5. If the payment has been agreed in instalments, the company reserves the right, in the case of non-timely payment of instalments or ancillary claims, to demand immediate payment of all outstanding debt. Payment is accordingly agreed as immediately due.
- 5.6. The customer is not entitled to offset claims against the company's own claims unless the claim of the customer has been acknowledged in writing by the company or judicially determined.

## **6. Remuneration**

- 6.1. Unless otherwise agreed, the claim for remuneration of the company arises in full with the provision of services.
- 6.2. The company is entitled to make intermediate or advance invoices or to call up account payments.
- 6.3. The remuneration is understood as a net fee plus value added tax at the statutory rate, plus any additional official charges (e.g. customs duties).
- 6.4. All services of the company, which are not expressly compensated by the agreed remuneration, are to be paid separately.
- 6.5. Estimates of the company are non-binding and are to be understood as a cost estimate.
- 6.6. For all commissioned services of the company, which are cancelled by the customer (for whatever reason), the company is entitled to the agreed remuneration. The

crediting provision of § 1168 AGBG is excluded.

## **7. Reference**

- 7.1. Subject to the written revocation of the customer, which is possible at any time, the company is entitled to point out the business relationship with the customer on its own advertising media and in particular on its Internet website with the name and company logo (reference note).
- 7.2. The customer acknowledges and agrees that the company may publish the position of devices in a “finder” retrievable on its own website (position marking on a map together with contact data of the customer).

## **8. Warranty/Liability**

- 8.1. The customer shall notify any defects without delay, in any case within ten working days after acceptance, and regarding concealed defects within ten working days after their detection, in writing under description of the defect; otherwise, the delivery/service is considered approved. In this case, the assertion of warranty claims and claims for damages as well as the right to claim an error due to defects are excluded.
- 8.2. In the case of justified and timely notice of defects, the customer has the right to demand improvement of performance by the company. The company shall remedy the defects within a reasonable period, whereby the customer has to allow the company all necessary measures for the investigation and correction of the defects.
- 8.3. The company is entitled to refuse to improve the performance if it is impossible or disproportionately expensive for the company. In this case, the customer is entitled to statutory exchange or reduction rights.
- 8.4. A warranty is excluded if the devices are opened by unauthorised professionals or improper modifications to the devices are made.
- 8.5. The liability of the company and its officers, employees, contractors or other vicarious agents (“people”) is limited to intent or gross negligence; liability for slight negligence is excluded. This disclaimer of liability does not apply to personal injury or damage to property that the company has accepted for processing. Insofar as the liability of the company is excluded or limited, this also applies to the personal liability of the company’s “people”.
- 8.6. Any liability of the company for loss of profit or lost revenue is excluded.

## **9. Miscellaneous**

- 9.1. There are no verbal or written agreements in addition to this contract. Any written or verbal agreements made prior to the conclusion of this contract that are in conflict with this contract shall cease to be valid upon conclusion of the contract.

- 9.2. Changes or additions to this contract must be made in writing; transmission via fax or e-mail suffices. The written-form requirement also applies to the departure from the written form.
- 9.3. Unless otherwise required by law, all communications must be sent in writing to the address last notified in writing.
- 9.4. No legal declaration may be derived from the company's silence on a particular statement or measure.

- 9.5. The contracting parties are obliged to inform the other contracting party of any changes to their address without delay; otherwise, notifications sent to the address last notified in writing shall be deemed received and legally effective.
- 9.6. The invalidity or ineffectiveness of individual provisions of this contract shall not affect the validity of the remaining provisions of the contract. In this case, those provisions shall be deemed agreed which are legally valid and which come closest to the purpose of the invalid or ineffective provisions, provided that they nevertheless correspond to the original intention of the contracting parties. The same applies in the case of a contract gap.
- 9.7. The contracting parties undertake to protect each other's business and trade secrets. This obligation also applies after termination of the contract. The contracting parties further undertake to impose a corresponding obligation on their employees and other vicarious agents.

## **10. Place of Performance/Applicable Law/Jurisdiction**

- 10.1. The seat of the company in Vienna is agreed as the place of performance for all obligations resulting from or in connection with this contract.
- 10.2. The application of the substantive law of the Republic of Austria under exclusion of the UN Sales Convention is agreed for this contract.
- 10.3. For any disputes arising out of or in connection with this contract, the exclusive jurisdiction of the competent court in Vienna is agreed.

## **II. Special regulations for the purchase of papimi devices**

### **11. Purchasing regulations**

- 11.1. The objects of purchase are papimi devices, which are high-performance devices that induce electromagnetic impulses directly into body cells. The obligations of the company from the purchase agreement include the delivery of the devices to the site, their connection and commissioning and the initial training of the customer's operating staff.
- 11.2. The services provided by the company do not include the execution of preparatory work such as the creation of a power and network connection. The costs for this must be borne by the customer.
- 11.3. At delivery/installation, the customer must give the company access to the place of installation.
- 11.4. After the test run, the transfer of the system takes place, which is to be documented by a takeover protocol. Acceptance has taken place at the latest with the use of the device by the customer.

- 11.5. In the case of insignificant defects with simultaneous use of the devices, the customer is not entitled to - even partial - withholding of payments.
- 11.6. Potential risks are transferred to the customer from the time the devices are set up at the site.
- 11.7. The ownership of the equipment remains reserved to the company until it has been paid in full. In the case of a qualified default of payment after a reminder, the entrepreneur is entitled to collect the equipment while maintaining the contract.
- 11.8. The company shall undertake the initial training and instruction of the customer's operating staff during commissioning. The customer is obliged to provide the operating staff in sufficient numbers and free of charge for training during commissioning.
- 11.9. The company recommends that the customer adequately insure the devices.

### **III. Special regulations for lease of papimi therapy devices**

#### **12. Rental regulations**

- 12.1. The subject of the lease are papimi therapy devices and their accessories. The provisions of points 11.1. until 11.5. apply mutatis mutandis to the lease.
- 12.2. Unless otherwise agreed, the monthly lease fee is payable monthly in advance.
- 12.3. The contracting parties are entitled to dissolve the contract for good cause without granting a grace period. Good cause exists in particular if the other contracting party breaches essential provisions of this contract despite a written warning with a grace period of 14 days to remedy the breach of the contract.
- 12.4. If the company enters into obligations towards third parties in fulfilment of the contract with the customer, which are effective beyond the end of the contract, the customer assumes these obligations and indemnifies the company of damages and claims.
- 12.5. The customer is obliged to notify the company of malfunctions or damage to the equipment without delay.
- 12.6. The costs of a possible billing of the lease are borne by the customer.

### **IV. Maintenance**

#### **13. Maintenance regulations for papimi customers**

- 13.1. The company offers the customer an additional maintenance contract.
- 13.2. The maintenance fee is, unless otherwise agreed in writing, to be paid in advance.
- 13.3. The maintenance services include the services specified by the manufacturer, but at least 1 service on site each year.
- 13.4. Maintenance does not include the replacement of wearing parts (except those

specified in the maintenance contract), as well as damage to the equipment which is the responsibility of the customer or the operating staff.