

## General Terms and Conditions (GTC)

MedicalDesktop AG, Leberngasse 19, 4600 Olten, Switzerland

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### 1 General regulations

#### 1.1 Scope and validity

- a) These General Terms and Conditions (GTC) regulate the conclusion, content and processing of contracts between the customers (hereinafter referred to as "customers") and MedicalDesktop AG (hereinafter referred to as "MDAG"), for the procurement, installation, maintenance and servicing of software of the Medical Desktop™ family as well as the provision of other IT services of MDAG.
- b) The GTC are an integral part of all offers and contracts between the customer and MDAG. Subsidiary agreements, amendments or supplements to the GTC only become effective with written confirmation.
- c) MDAG reserves the right to modify these GTC at any time; the new version of the GTC applies to all contracts concluded after their coming into force.

#### 1.2 Contract structure and contract conclusion

- a) The contract between MDAG and its customers consists of one or more contract documents and these GTC. The contract document can be an offer accepted by the customer or a written contract in the actual sense.
- b) The following contractual documents are mainly used:
  - I. License Agreement (for software of the MedicalDesktop™ family)
  - II. MedicalDesktop™ Software Maintenance, Support and Care Agreement (for MedicalDesktop™ family)
  - III. MedicalDesktop Cloud Services Contract
  - IV. MedicalDesktop Software / Hardware Rental Agreement
  - V. Individual IT maintenance and support contract (for maintenance, care and support of complete IT environments as well as individual third-party products such as hardware and software, laboratory and diagnostic equipment)
  - VI. Individual software development order (for individual extensions to Medical Desktop™ software products)
  - VII. Individual IT consulting or service contract
  - VIII. The existing GTC
- c) MDAG's offers, including any demonstrations offered, is free of charge.
- d) Unless otherwise specified in the offer, MDAG remains bound by the offer for 30 days from the date of issue of the offer.

- e) The contract is concluded by signing a separate contract or by written acceptance of the offer.
- f) The contract between MDAG and the customer can also be concluded by acceptance of the offer by conclusive action, i.e. by the customer accepting or using the services of MDAG.
- g) If subsequent order/contract changes involve additional costs for MDAG, these are borne by the customer according to the applicable rates of MDAG.
- h) If an order is cancelled prematurely by the client, the hours actually worked will be invoiced, regardless of the final result.

### **1.3 Customer's obligation to cooperate**

- a) The customer ensures that all necessary obligations to cooperate are fulfilled on time and to the required extent free of charge for MDAG. In addition, the client informs MDAG in a timely manner of all information and specifications necessary for the fulfilment of the contract.
- b) MDAG is entitled to have services it owes provided by third parties. It is also entitled to partial deliveries and partial services.

### **1.4 Terms of payment**

- a) Until the purchase price has been paid in full, products remain the property of MDAG and may neither be pledged nor assigned as collateral.
- b) All prices in all offers and contracts between the customer and MDAG are net, plus VAT without discount in Swiss currency.
- c) The remuneration covers all services actually rendered at the hourly rates or lump-sum fees agreed upon in the offer. Expenses and additional costs of MDAG will be charged additionally.
- d) Taxes and fees which are levied upon the conclusion or fulfilment of this contract or their increase are to be borne by the client.
- e) MDAG is entitled to demand advance payment or other guarantees at its own discretion.
- f) Invoices of MDAG for services/deliveries from all contractual relationships are to be paid within 30 days after the invoice is issued, net without discount.
- g) Non-compliance with the payment date triggers default of payment without an explicit reminder and MDAG is entitled to 8% interest on arrears as well as compensation for all reminder, collection, attorney and legal costs and further damages.
- h) In the case of intellectual property rights of third parties, especially in the case of software licenses of third-party manufacturers, the customer accepts the conditions of use and license of these third parties; MDAG will send the customer the conditions of use and license on request.

## **2 Procurement of hardware and software**

### **2.1 Delivery**

- a) The delivery times and dates are always subject to change for MDAG. A delivery period begins at the earliest with the order confirmation of MDAG, but never before clarification of all technical details. If no specific delivery date is expressly agreed, MDAG usually delivers in consultation with the customer.

- b) Operational disturbances, in particular non-delivery or delayed delivery by MDAG's contractual partners and events of force majeure entitle MDAG, to the exclusion of claims for damages by the customer, to extend the delivery periods and/or to cancel the delivery obligation.
- c) The delivery of products by MDAG is at the expense and risk of the customer. Damage must be reported to the carrier upon receipt of the goods.
- d) Complaints regarding the execution and quantity of the delivery must be made in writing to MDAG within 5 days after receipt of the goods, otherwise the delivery is considered approved.

## 2.2 Duty to give notice of defects

- a) The customer is obliged to inform MDAG immediately, but at the latest after 5 days, of any defects occurring during the guarantee period in third-party products delivered by MDAG. MDAG is not liable for damages resulting from late notification of defects.

## 2.3 Guaranty

- a) The guaranty period for the third-party products (hardware and software) supplied by MDAG is exclusively based on the guaranty period defined by the manufacturer, supplier or licensor. This applies to the scope of services, the guarantee period, the conditions for the assertion of the guarantee and all other rights of the customer.
- b) The warranty rights against MDAG for third party products consist exclusively of MDAG claiming these against the manufacturer, supplier or licensor on behalf of the customer. If the manufacturer, supplier, licence partner do not voluntarily fulfil the warranty obligation, MDAG assigns the warranty rights to the customer for legal enforcement.
- c) Any expenses that arise in connection with the claiming of warranty rights for third-party products (e.g. the return of a defective product, procurement of a replacement product, etc.) are at the expense of the customer. If MDAG carries out this work on behalf of the customer, it will be invoiced at the current rates of MDAG according to the time and effort involved.
- d) MDAG does not give any guaranty for software from third parties, even if such software is integrated into MDAG's programs.
- e) MDAG is not liable for damages, which are due to software errors of software not produced by MDAG. MDAG is also not liable for damages caused by computer viruses.
- f) MDAG accepts no responsibility for any damaging consequences of a service interruption. In particular, MDAG does not compensate for lost profit or indirect damage in this respect.

## 3 Warranty and Liability for MedicalDesktop™ Software

- a) MDAG emphasizes that given the current state of technology, it is not possible to create software in such a way that it always works without errors in all applications and combinations, especially when used with different hardware components and software versions.
- b) The customer must report defects immediately after they become known, but at the latest after 5 days. If the software is defective, MDAG can repair or replace it. Several improvements are permitted. If the software does not work even then, the customer can demand a price reduction or exchange at its discretion.
- c) The warranty for the products of the MedicalDesktop™ software family is 12 months from installation date.

- d) Products of the Medical Desktop™ software family, which have a verifiable program error subject to warranty, will be improved by MDAG free of charge. Any further claims against MDAG, in particular compensation for damages or withdrawal from the contract, are excluded. The guaranty does not cover damage as a result of other reasons, which are not the responsibility of MDAG.
- e) A program error subject to warranty is only present under the following conditions:
  - the error must be documented and reproducible and
  - when used as intended on the designated computer system and under the conditions of use and operation defined in the instructions, the error causes a deviation in functions and performance which eliminates or considerably reduces the application for the intended use.
- c) Upon request, MDAG will participate in the search for the source of the error, even if the error occurs when several systems or components work together. If MDAG can prove that the error was not caused by the software of the Medical Desktop™ family maintained by MDAG, these services will be invoiced at MDAG's current rates.
- d) MDAG is not liable for the correct selection, implementation and use of its software products. This applies in particular in the event that the hardware or operating systems are not suitable for the products. In particular, liability is excluded for all indirect damage caused by the software, insofar as this is legally permissible.
- e) Apart from the warranty services described above, any further warranty obligation is completely waived by MDAG.

## 4 MedicalDesktop™ Cloud Services

### 4.1 Service description

- a) MDAG provides the customer with services on the Internet for a fee. MDAG's obligation to perform results from the service descriptions of MDAG and from the contracts with the customers.

### 4.2 Commencement of subscription and termination notice period

- a) The subscription begins on the start date requested by the customer.
- a) Unless otherwise agreed, contracts are valid for an indefinite period of time and can be terminated at the end of each month with a notice period of 3 months after a minimum contract period of 4 years.

### 1.2 Invoicing

- a) The Cloud services/subscriptions are charged in advance annually or biannually.
- b) Cloud services/subscriptions, which are billed on a usage basis ("pay per use" principle), are billed monthly and in arrears. The billing is based on a usage report, which is automatically generated by the system and included in the invoice. Any complaints in the usage report must be reported to MDAG within 5 days, otherwise the usage report is deemed to be approved.
- c) Any changes in the number of users, services and additional options used can be adjusted continuously, even on a monthly basis. These changes to user accounts or other customer-specific adaptations will be invoiced to the customer according to the applicable effort involved.
- d) If the customer is in default of payment, MDAG is entitled to prevent the use of the services provided.

- e) If the customer subsequently settles the invoice with default of payment and requests the reactivation of the services, he must pay a reactivation fee of CHF 200.

### **1.3 Responsibility and liability**

- a) MDAG will provide its services professionally and carefully and in accordance with the agreed specifications. MDAG guarantees to maintain the agreed service levels. In addition, MDAG will deploy sufficiently qualified employees within the framework of the provision of service.
- b) MDAG guarantees that the services made available during the contract period essentially correspond to the specifications described in the service descriptions of MDAG and in the contracts with the clients.
- c) MDAG endeavors to keep the availability of the services as high as possible. If the client notices a disruption of the services, this must be reported immediately after discovery. If the services are not available or only available to a limited extent, the customer has the right to demand rectification. MDAG rectifies the defect within a reasonable period of time and bears the resulting costs. Further warranty claims of the customer are, as far as legally permissible, excluded.
- d) Announced interruptions of the services, in particular as a result of maintenance work, are not regarded as faults.

### **1.4 Maintenance**

- a) The services are continuously maintained by MDAG. This maintenance work is carried out, whenever possible, in such a way that there is no impairment of the services.
- b) Larger planned maintenance work which can lead to short-term failures of the services is announced 48 hours in advance by e-mail and carried out as announced. Care will be taken to ensure that this maintenance work takes place outside normal office hours.
- c) In an emergency, the specified notice periods may also be shorter.

### **1.5 Duties of the Customer**

- a) The customer is solely responsible for the content of data stored on the systems of MDAG and the use of the services in accordance with the law. If an illegal use is reported by a competent authority, if it is obvious or if there is considerable suspicion of such a use, in particular based on information from third parties, MDAG is entitled to interrupt the provision of its contractual services, to suspend the services for a certain period of time and/or to dissolve the contract without notice or compensation. On the basis of a court order or an official directive, MDAG is also legally obliged to hand over the customer's data
- b) We expressly reserve the right to take further measures as well as to assert claims for damages in court in the case of illegal use.

### **1.6 Contract Termination**

- a) In the event of termination of the contract, regardless of the reason, both parties shall cooperate for the purpose of proper termination of the contract and transfer of the customer's data. MDAG is obliged to hand over all data belonging to the customer upon termination of the contract and to support the customer in the necessary migration actions.
- b) The customer is obliged to inform MDAG in good time before the end of the contract of the support required for the migration actions. MDAG will provide the customer with an offer for the necessary services on request.

- c) Services in connection with these services will be invoiced at MDAG's current rates.
- d) If the parties cannot agree on a procedure concerning the migration of the customer's data, MDAG will provide the customer with a copy of his data on a data carrier upon termination of the contract.
- e) Upon termination of the contract or after the migration of the customer's data, MDAG will permanently delete all data of the customer that remain in the systems at this point in time unless MDAG has a legal obligation to retain
- f) them. The customer is entitled to control the deletion of the data on the systems at his own expense or by independent third parties before the time of the termination of the service.

### **1.7 Data protection and data security**

- a) MDAG is aware that in the context of providing the MedicalDesktop™ Services it acts as an order data processor in accordance with Art. 10a DSG and may only process the customer's data for the agreed purposes. In particular, MDAG will not pass on the customer's data to unauthorized third parties, unless there is a legal obligation to surrender the data, e.g. due to a court order or an official directive.
- b) MDAG takes appropriate technical and organizational measures to protect the customer's data from access by unauthorized third parties. MDAG stores the data only in Switzerland. The measures to guarantee data security are described in the service descriptions of the individual services and in the security concept and correspond to the standards customary in the industry. The customer is obliged to check these and to agree additional security measures with MDAG if these are not sufficient for them.
- c) MDAG cannot be held liable for any loss of data.

## **5 Final Provisions**

### **5.1 Confidentiality**

- a) The contracting parties shall treat all matters which are neither obvious nor generally customary as confidential. In case of doubt, matters are to be treated confidentially and there is a mutual duty of consultation.
- c) This obligation to confidentiality already exists during the contractual negotiations and continues after termination of the contractual relationship as long as a confidentiality interest worthy of protection exists. Legal obligations to provide information remain reserved.
- d) If one of the contracting parties violates the above obligation of confidentiality, it shall owe the other party a contractual penalty, unless it can prove that it is not at fault. This penalty shall amount to an annual fee at the time of the violation but shall not exceed CHF 50,000 per case. Payment of the contractual penalty does not release the other party from the obligation of confidentiality.

### **5.2 Liability for damages**

- a) MDAG is liable for the damage caused by it or by a third party commissioned by it from the contractual relationship if it does not prove that neither it nor commissioned third parties are at fault, whereby any liability for slight negligence is excluded. In any case, liability for any kind of indirect damage, such as loss of profit etc., is excluded. MDAG is liable up to the amount of an annual remuneration of the customer, but up to a maximum of CHF 10,000. Excluded from this limitation is liability for personal injury and damage to property. Furthermore, within the scope of what is legally permissible, all liability is excluded.

**5.3 Assignment, transfer and pledge**

- a) Rights and obligations arising from the contractual relationship and the contract as a whole may not be assigned, transferred or pledged to third parties, either in whole or in part, without the prior written consent of the contractual partner. This consent shall not be denied without reason.

**5.4 Applicable law / place of jurisdiction**

This contract shall be governed by Swiss law, namely the provisions of the Swiss Code of Obligations

(OR). Place of jurisdiction is Solothurn.