Landeskliniken-Holding
IHRE GESUNDHEIT. UNSER ZIEL.

GENERAL TERMS AND CONDITIONS FOR MEDICAL TECHNOLOGY

AGB-NÖLKH-MT

Version of 01.05.2014

CONTENTS

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1. Bases of contract

1.1. For the procurement processes of Niederösterreichische Landeskliniken-Holding (hereinafter also referred to as "NÖ LK-H" or "CL") within the medical technology category of services (medical technology devices and device-specific consumables), the following bodies of rules shall apply in the order of priority shown below:

1. the documents from NÖ LK-H procurement process
2. the version of these General Terms and Conditions (AGB-NÖLKH-MT), as defined in sec 1.2, unless in any individual case amended, supplemented or overridden by express written agreement, ancillary agreements or contract amendments.

1.2. The version of AGB-NÖLKH-MT in force as of the date the public procurement process is initiated shall apply. "Initiated" shall mean the point at which the public notification was made or, in the case of procurement processes without prior public notification, the date on which the invitation to tender was issued.

1.3. The CL's procurement process is subject to the rules on direct contract award under public procurement law, whether with or without prior public notification, and including the provisions set forth below, unless the CL has expressly selected another type of procedure.

2. General Terms and Conditions of Offer for Medical Technology

2.1. Preparing and submitting the offer

2.1.1. In preparing and submitting its offer, the Bidder shall comply with the provisions of the Austrian Federal Public Procurement Act 2006, as in force at the time the procurement process is initiated (German acronym: BVergG), and shall prepare its offer based on these Terms and Conditions of Offer (sec. 2) and the Terms and Conditions for Medical Technology (sec. 3).

2.1.2. The Bidder shall send, by post or courier, its fully completed offer (including the Schedule of Goods and Services) in a sealed envelope labelled as indicated in the procurement process within the period set for submission of bids to the specified office or shall deliver it there in person within normal business hours. The Bidder shall bear sole responsibility for ensuring that the offer is timely received.

2.1.3. The Bidder (in the case of bidding consortia: each member of the bidding consortia) shall affix one legally valid signature at the place indicated for this in the offer. Where the agency authority of the signatories is not apparent from the Commercial Register (e.g. managing director or *Prokurist*, evidence of the legal validity of the signature must be already provided at the time of submitting the bid (in such case, a power of attorney should be enclosed with the offer, on the basis of which the CL is able to determine that the signatory has signature authority)).

2.1.4. By providing its legally valid signature on the offer, the Bidder is deemed to acknowledge all of the rules of the procurement process, without limitation (in particular including the Schedule of Goods and Services and the contract law requirements).

2.1.5. In the case of direct contract award procedures, the offer or non-binding price information may also be submitted by facsimile or e-mail.

2.1.6. Both the offer and all documentation must be furnished in German. Copies of the current version of annexes and documentary evidence must be enclosed in German or English (where these are not already in German or English, copies of certified German translations must be provided) and should additionally be furnished in electronic form. All enquiries, correspondence etc. shall be undertaken in German.

2.1.7. In its offer, the Bidder shall furnish evidence that the medical products offered by it comport with the Austrian Medical Products Act, as currently in force (declaration of conformity of manufacture pursuant to Council Regulation 93/42/EEC).

2.1.8. The Bidder shall enclose with its offer the brochures and product data sheets for the products offered by it (demonstrating that minimum requirements are met), the completed NÖLKH-MT data sheet (Annex ./1), a detailed description of the scope of supply together with the types, article numbers, description of the relevant software packages, etc., as well as a list of all measures required by the manufacturer for operation, maintenance and testing purposes.

2.1.9. Evidence of compatibility (suitability for technically safe use) from an authorised body must be appended to the offer for accessories which are not listed in the user instructions for the medical product.

2.1.10. To the extent that third-party software subject to licence (e.g. Microsoft, Adobe etc.) will be used to ensure the proper functioning of the contract products supplied, such software shall be deemed to form a part of the procurement and be covered by the contract price. When submitting the offer, the following information must be disclosed:

- Precise product description (including article number) as per manufacturer's product list (e.g. Windows Server 2008 R2) and type of licence, e.g. in the case of Microsoft products: processor licensing, core licensing or server CAL licensing (account should be taken of required CALs).

2.1.11. Where the products which are the subject of the offer are to be connected to the CL's ICT network, the following documents must be enclosed together with the offer:

- in the case of direct connections (see sec. 3.3.4.1); information on computer operating system used, including details on the lifecycle thereof and on anti-virus software deployed as well as a description of the approach taken in updating signature patterns and in releasing and applying security patches. Where the contract product being supplied is based on an operating system from Microsoft, that operating system must be supplied with current anti-virus software. The anti-virus software shall constitute a component of the scope of supply and should be taken into account accordingly in the Bidder's offer.

or

- in the case of connections via a security feature (see sec. 3.3.4.2); information on the security feature and "system architecture" plan, including information on the type and manner of connection to the clinic network, communications with sub-systems and the ports, logs, approvals and the like required for this purpose.

and

- Information regarding the option of user authentication relative to the CL's active directory (see sec. 3.3.4.3)

2.1.12. No remuneration is payable by the CL for the Bidder's preparation of its bid together with the necessary preliminaries and calculations, the drafting and compilation of other schedules and documentary proofs listed and any presentations or testing operations necessary.

2.1.13. The Bidder's preparation of its offer for goods and services to be rendered within Austria shall take account of the labour and social law rules applicable within Austria. The Bidder hereby undertakes to comply with these rules in performing the contract within Austria and shall be liable for ensuring that all of its sub-contractors likewise comply with them. In the event a contract is awarded, the Bidder shall furthermore comply with the duties arising from Conventions Nos. 29, 87, 94, 95, 98, 100, 105, 111, 138, 182 and 183 of the International Labour Organisation, BGBl. No. 228/1950, No. 20/1952, No. 39/1954, No. 81/1958, No. 86/1961, No. 111/1973, BGBl. III No. 41/2002, BGBl. lll No. 200/2001 and BGBl. III No. 105/2004. These rules and regulations are available for inspection by interested parties and Bidders at the Niederösterreich Chamber of Commerce and the Niederösterreich Chamber of Labour; relevant information regarding the rules of labour and social law in force at the place of performance during performance of the contract may likewise be obtained from these institutions.

2.2. Sub-contractors and 'necessary sub-contractors'

2.2.1. Upon special request by the CL, the Bidder shall furnish evidence of the authorisation/licensure of any sub-contractor (affiliated entity or other sub-contractor), for each sub-area of goods and services to be furnished by the sub-contractor, even in the event that the Bidder does not require such proof in order to establish its suitability ("optional sub-contractor") (note, however, that caution is required in the case of "necessary sub-contractors"; see sec. 2.2.2).

2.2.2. Where the Bidder does not itself hold the requisite authority or licensure, or technical, financial and commercial capacity, it will need to rely on the capacities of its sub-contractors ("necessary sub-contractor") and must identify such sub-contractor specifically in any event. In the event of such identification of a sub-contractor, the following evidentiary proof must be enclosed with the offer.

- Documentary proof establishing that the capacities present at the sub-contractor are in fact available to the Bidder for performance of the contract (sub-contractor undertaking).
- Declaration on sub-contractor's joint and several liability to the CL in the event that the Bidder is relying on the capacities of the sub-contractor in order to furnish evidence of its financial and commercial capacity.
- All documentation of suitability required from the Bidder, to the extent these are relevant to the sub-areas of goods and services of the sub-contractor.

2.3. Sub-contractor goods and services

2.3.1. Delegation of the entire contract is impermissible; excepted herefrom are purchase agreements and delegation to affiliated entities. The assignment and delegation of sub-areas of goods and services shall, in addition, only be deemed permissible to the extent that the sub-contractor has the authority and licensure, technical, financial and commercial capacity required to perform its sub-areas as well as the necessary reliability and, in particular, professionalism.

2.3.2. Except in cases of permitted engagement of a sub-contractor, the CO shall render the goods and services exclusively on its own. The CO may only engage those sub-contractors it has identified in its offer or in the course of a suitability review undertaken prior to this, and may only engage such sub-contractors to the extent of the foregoing.

2.3.3. The CO's engagement of any sub-contractor who has not hitherto been identified shall only be permitted with the CL's prior written consent.
2.3.4. As a fundamental rule, the CL shall consent to a change of sub-contractors and a new engagement of a sub-contractor if a substantive need to do so exists and the CO furnishes evidence that the new sub-contractor is at least of equal quality to the original provider of the goods and services. In connection with this, the CL reserves the right to demand all such documentary proof with respect to the new sub-contractor as the CO was required to furnish for itself.
2.3.5. In all cases, the CO shall be liable to the CL for its sub-contractors pursuant to sec. 1313 a Austrian Civil Code. This liability shall also apply with respect to mere suppliers, wherever the CL has no control over the CO's decisions on engaging them or selecting such suppliers. Upon the CL's request, the CO shall produce the agreements entered into with its sub-contractors to the CL for its review.
2.3.6. The CO hereby undertakes to acknowledge payments by the CL to sub-contractors as having debt-discharging effect in the event that the CO is in default through its own fault with respect to its payment obligations to sub-contractors under this agreement (contingent assignment of receivables).

2.4. Bidding consortia

2.4.1. Bidding consortia (BCs) are permitted. By submitting its offer, the BC is deemed to undertake that, in the event the contract is awarded to it, it shall constitute a joint venture with joint and several liability (German acronym: ARGE) within the meaning of the Austrian Public Procurement Act [German acronym: BVergG] (general partnership under the Civil Code). ARGEs which are already in existence shall submit a copy of their ARGE agreement to the CL upon request.
2.4.2. The goods and services covered by the Invitation to Tender represent a global contract which may require authorities, capacities and licensures in various disciplines. Each member of the BC or ARGE shall furnish evidence of its authority/licensure for the sub-area specifically allocated to it. Thus, the BC or ARGE must have authority/be licensed in overall respects to render the goods and services and must have the requisite technical, financial and commercial capacity to do so.
2.4.3. All of the members of the ARGE to which a contract is awarded shall bear joint and several liability to properly perform and render the goods and services in line with the contract and to comply with their other duties and obligations under the contract. The ARGE shall identify a lead manager who is authorised to receive service of process to the CL, who shall be the CL's contact in all contract performance matters. Any limitations or restrictions on the scope of the ARGE's agent's power/authority shall be deemed invalid *vis-à-vis* the CL. The ARGE shall furnish immediate written notice to the CL of any and all changes as to the identity of the ARGE representative.

2.5. Documentary proof and grounds of exclusion

2.5.1. Bidders may furnish evidence of their suitability by furnishing a declaration that they meet the suitability criteria demanded by the CL and are able to furnish the stipulated documentary evidence without delay upon demand (self-certification). In any such declaration, the Bidder shall indicate the authorities/licensures which it specifically holds.
2.5.2. In addition, Bidders are entitled to furnish evidence of their suitability under public procurement law through their membership with the Austrian Catalogue of Contractors (German acronym: ANKÖ – www.ankoe.at), indicating their ANKÖ membership number, provided that the information required is available there with the requisite updates
2.5.3. Bidders must, upon separate request of the CL, be able to furnish evidence without delay that no grounds to exclude them from the procurement process exist in their case, as set forth below:

- ANKÖ membership number or extract from current Commercial Register (but not in the case of natural persons), or an equivalent certification by a court or public administrative authority in the country of origin of the Bidder which shows that the requirements under sec. 68 (1) (3) and (4) BVergG are met;
- ANKÖ membership number or most recent account statement from the competent social insurance institution (which is, at a maximum. three months old) and most recent direct debit notice from the competent tax office (which is, at a maximum, three months old) or equivalent documents from the Bidder's country of origin in order to prove that the requirements set out in sec. 68 (1) (6) BVergG are satisfied;
- by submitting its offer, the Bidder is deemed to certify in a legally binding manner that none of the grounds of exclusion under sec. 68 (1) (1, 2, 5 and 7) BVergG apply to it.

2.5.4. In addition to the foregoing, the CL shall obtain information on the Bidder from the Central Catalogue of Administrative Penalties of the Federal Ministry of Finance pursuant to sec. 28b of the Austrian Employment of Aliens Act, BGBl No. 218/1975 as amended (hereinafter referred to as "AuslBG.

2.6. Amended bids

Amended bids are not permitted and shall be discarded prior to selection of the offer to enter into a contract.

2.7. Arithmetical errors

Offers containing arithmetical errors shall not be discarded under the BVergG, but no advancement in the priority of offers based on a correction of an arithmetical error is permitted.

2.8. Options

2.8.1 The CO shall be deemed bound by portions of the contract designated as “option”, “optional” or “optional goods and services”, and in the event such options are the subject of a call-off order, the CO shall bear a duty to provide the goods and services designated as options and the like subject to the terms and conditions of the contract.

2.8.2 Option rights shall not give rise to any contract claim on the part of the CO to provide the goods and services, but rather shall constitute autonomous legal rights [*Gestaltungsrechte*] on the part of the CL. Even in the event of specific need, the CO shall not be deemed to have any legal right or entitlement to the issuance of a call-off order for an option (whether in whole or in part) and may not assert any claims whatsoever (in particular: claims for unjust enrichment or damages) in the event that no call-off order is issued.

2.8.3 The CL shall give notice of the call-off order for optional elements of goods and services in any event in so timely a fashion that sufficient advance preparation time will remain for the CO to make the necessary dispositions. The CO may only commence to render any goods and services which have been designated as an “option” or the like after a written call-offer order for them has been issued; prior to any such call-off order, the CO shall have no claims for compensation or otherwise whatsoever *vis-à-vis* the CL.

2.9. Local conditions

By submitting its offer, the Bidder is deemed to confirm that it has noted all of the local conditions at site, in particular the characteristics and conditions of the place of erection or supply, the options for vehicular access and all other facts and circumstances which are determinative for its performance of the goods and services and has taken account of them in its pricing structure as well as undertaken a detailed examination of the documents needed to prepare its offer; no subsequent claims based on any such facts and circumstances are permitted.

2.10. Ambiguities in procurement documents

In the event that, in the course of examining the procurement documents, the Bidder determines that these contain conflicts, other ambiguities or (suspected) breaches of provisions of public procurement law, it shall notify the CL thereof immediately. By submitting its offer, the Bidder is deemed to confirm that it has subjected the procurement documents to a complete review, that they are sufficient to enable it to submit its offer and that the Bidder is in a position to make a decision on submitting an offer.

2.11. Measures to prevent corruption and anti-competitive practices

2.11.1. NÖ LK-H and the Bidder hereby undertake to take all measures necessary to avoid corruption.

2.11.2. The Bidder hereby undertakes

(1) in particular to take all such precautions in organisational and human resources respects as are required for this purpose so that the Bidder and all persons working for the Bidder, in commercial relations with NÖ LK-H
   a. comply with all provisions of criminal law on combatting corruption, in particular including the provisions in secs. 168b, 153, 153a, 304 to 307b, 308 and 146 to 148a of the Austrian Criminal Code [German acronym: StGB] and secs. 10 to 12 of the Unfair Competition Act [German acronym: UWG];
   b. shall not offer, promise or grant any gratuities or other benefits to individuals working for NÖ LK-H, and shall not request, obtain a promise of or accept any gratuities or other benefits from such individuals, and shall not in any other manner attempt to exercise influence on such persons;
   c. shall not direct third parties to commit the acts described in a) and b) hereof or otherwise contribute to the commission of such acts;

(2) not to violate any competition law or other legal rules intended to protect unrestricted competition, in particular by participating in agreements or arrangements on prices or price components, by undertaking prohibited price recommendations or by participating in recommendations or agreements on the submission or non-submission of offers or bids as well as on profit participation and sharing of profits with other competitors;

(3) to impose the obligations described in (1) and (2) hereof on all of its sub-contractors and shall resile from any contract with a sub-contractor with immediate effect/shall terminate any such contract with such effect where proof has been furnished or even mere well-founded suspicions exist that the sub-contractor has committed any of the acts described in the foregoing.

2.12. Safeguarding of confidential information

2.12.1. The Bidder hereby undertakes that

(1) it shall treat as confidential the procurement documents and all other technical and commercial information and documents of which it becomes aware or may become aware otherwise in connection with the procurement, the

conclusion of the contract and performance of the contract as well as any and all business and trade secrets of NÖ LK-H (hereinafter: confidential information), irrespective of whether the information exists in oral, written, visual, electronic or other form;

(2) in the event that the Bidder uses other persons to perform its pre-contract obligations, duties and other tasks, it shall impose the duty to safeguard this confidential information on all such persons as are working for it, as well, and shall only engage such persons as have been expressly obliged in writing, in verifiable documented fashion, prior to their commencement of work that they shall preserve confidentiality;

(3) shall use the confidential information exclusively in connection with the procurement process, complying with the principles applicable under public procurement law, and shall not use them for any other purposes of its own or for third parties' purposes;

(4) shall disclose, publish, commercially exploit or forward to third parties (except for purposes of enabling sub-contractors and suppliers to prepare offers) the confidential information only following express, written consent by NÖ LK-H; press releases and other communications may likewise only be passed on to others following NÖ LK-H's express written consent.

2.12.2. The foregoing obligations shall continue to exist even after completion of the procurement process, but shall continue to apply without limitation in any respect, whether geographically, in time or otherwise even during performance and following completion of the contract; the foregoing shall also apply with respect to entities affiliated with the Bidder and to the persons referenced in 2.12.1 (2).

2.12.3. Excepted from this duty of confidentiality are documents and information as to which the Bidder furnishes evidence that they are or will be in the public domain, without this being attributable to the Bidder's fault, or that the Bidder was already familiar with them before the CL made them available to it, or that a third party has brought them to the CO's attention without violating duty of confidentiality existing *vis-à-vis* the Client.

2.12.4. All of the procurement process documentation is subject to copyright.

2.13. Contract award period

The Bidder shall remain bound by its bid for a period of five months, to run from the conclusion of the bidding period.

2.14. Legal remedy, public procurement oversight authorities

2.14.1. To the extent any legal remedy under the terms of the Austrian Federal Public Procurement Act 2006, as amended, is envisaged with respect to the proceedings chosen by the CL, the NÖ Public Procurement Award Audit Act, LGBl 7200, as amended, shall apply.

2.14.2. In such case, the competent procurement oversight authorities are the NÖ Office of Mediation for Public Contracts (A-3109 St. Pölten, Landhausplatz 1) and the *Land* Administrative Court for Niederösterreich. The *Land* Administrative Court for Niederösterreich has its seat in St. Pölten (A-3109 St. Pölten, Rennbahnstrasse 29).

2.15. Damages

The NÖ LK-H/the awarding body shall only be liable for any losses or damages which may be incurred by the Bidder during the procurement process where the Bidder furnishes evidence of sufficiently aggravated breaches of the rules of public procurement law.

3. General Terms and Conditions for Medical Technology

3.1. Goods and services – execution of contract

3.1.1 ***Principles***

3.1.1.1 The CO is aware that the CL in this case is a hospital operator within whose business environment it is necessary to comply with certain legal requirements, in particular in respect of radiation, business and hygiene rules.

3.1.1.2 In performing the contract, in particular within buildings which are already in operation or in the immediate vicinity thereof, the CO shall be considerate of clinic operations. In particular, the goods and services shall be furnished in a manner that does not impede or impair clinic operations.

3.1.1.3 The CO hereby undertakes to perform the works assigned to it, using expert and commercial care, to the best of its knowledge; the CO shall be deemed an 'expert' as defined in sec. 1299 Austrian Civil Code. The CO shall impose a duty to comply with all legal and regulatory provisions which have been indicated to the CO itself on any and all sub-contractors and suppliers, and the CO shall be responsible to the CL for their compliance therewith. The CO shall render its goods and services such that they comport with the general and special norms and standards applicable within Austria and are in line with the state-of-the-art, as it evolves from time to time. Furthermore, the rules on conveyance of hazardouss materials and on hazardous waste, and the special rules on storage and operations shall be complied with; to such extent, the CO shall likewise bear a duty of care and information.

3.1.1.4 The CO shall alert the CL in a timely fashion with respect to risks which are discernible to the provider of goods and services with appropriate specialist knowledge; any notification which may arise from its contractual duties must, in particular, be made where actions by the CO or demands by the CL in any individual case are manifestly uneconomical, erroneous, incomplete, ambiguous or are objectively incapable of being executed or only at disproportionately high expense.

3.1.1.5 The CO's offer shall, in addition to the delivery of a functional, fixed and mounted (medical) product ready for operation, include the connection of that (medical) product to existing equipment and systems, through to fixed-location power and media supply and disposal or other medical products, together with accessories and assembly materials as are required for operations (e.g. rails, stands, assembly plates, plugs, control devices, wall fixtures, floor-mounting plates, ceiling anchoring rings etc.) and the relocation of such parts and components and the provision of consumables (but not consumables going beyond an initial supply) and support of the CL in obtaining all such permits/official acceptances by public authorities as are required and furnishing of any documentation needed (evidentiary documents, certificates etc.) and attendance at any potential test operations, through to final handing over and acceptance, together with the training sessions required for this purpose, to the users and medical technologists' proper handling and operations at site.

3.1.1.6 Goods and services not expressly referred to in the contract and rights of use shall be deemed the subject-matter of the contract provided that they are necessary in order to facilitate proper performance of the contract and functional suitability of the contract product on the terms and conditions as set forth in the contract; with respect to such goods and services, the CO may not assert any separate or additional charge for remuneration where the CO has not complied with its obligation under sec. 3.1.1.4 prior to the award of a contract. Where the CO deems that modifications to agreed goods and services/the circumstances in which the goods and services are rendered or additional goods and services may be favourable from the CL's perspective, it shall verifiably disclose this to the CL, as well as indicate the necessary time for executing or rendering such goods and services at the earliest point in time.

3.1.2 ***General duties of Contractor***

3.1.2.1 At the time of supplying the agreed products, the CO is deemed to warrant

a. that these products comport with the requirements of the relevant legal acts (in particular: the MPG), Regulations (in particular the MPBV) and technical directives and guidelines (such as ÖNORMs) and health and safety rules as well as the relevant EU Directives and the CL's quality demands in respect of the goods and services;
b. that the contract products meet any and all specifications in line with the product descriptions of the manufacturer;
c. that, unless the parties have otherwise agreed in the individual case – only brand-new products shall be supplied;
d. that the surfaces of products which are intended for re-use and/or for recycling are capable of being treated with disinfectants contained in a list of disinfectants available at the NÖ *Land* clinic (Appendix ./3) for the clinic in question or, in the event that Appendix ./3 was not provided to the Bidder – are listed in the expert report list of Österreichische Gesellschaft für Hygiene, Mikrobiologie und Präventivmedizin (ÖGHMP) or are listed in the list of disinfectants of the Association of Applied Hygiene (German acronym: VAH;
e. that the products in combination with medical gases, comport with the ÖNORMEN EN 1089 and EN 850 and M 7377 and M 7390 standards and
f. the connection points for removable potential connection lines correspond to the type of connecting bolts as per ÖNORM/DIN 42801, pursuant to ÖVE/ÖNORM E 8007;

g. that, to the extent envisaged by statutory or generally accepted standards, it is envisaged that all of the contract products shall have an ÖVE testing symbol, CE conformity symbol or safety symbol equivalent to the foregoing and recognised by the European Union.

3.1.2.2 In performing the contract, the CO shall furthermore comply with official notices, other regulatory requirements and directions, in particular technical guidelines, the provisions of labour, employee remuneration and social law and all relevant national and international norms and standards, regulations, rules and directives and other requirements under EU law.

3.1.2.3 The CO shall appoint a safety officer pursuant to sec. 78 Austrian Medical Products Act [German acronym: MPG].

3.1.2.4 The CO must ensure that the lead buyer of the CL with substantive responsibility for dealing with such matters is regularly informed regarding innovations in respect of the products supplied (e.g. developments to products, upgrades, etc.) and is kept informed of all events of significance to the safe supply of the products offered, in particular including disruptions to operations and breakdowns as well as events which might pose a risk to the health of the CL's staff or patients.

3.1.2.5 Upon separate request, the CO shall produce the relevant spare parts lists and accessories lists to the CL, together with prices and terms of supply.

3.1.3 ***Packaging***

3.1.3.1 The CO shall, at its own cost and expense, ensure the provision of adequate and proper packaging.

3.1.3.2 In the event that the CO participates in a nationwide system of recovery of packaging within Austria (such as the ARA = Altstoff Recycling Austria AG), the CO shall include already at the time of preparing its offer, as well as in every consignment note and every invoice the following legally binding declaration: "The packaging for all of the goods listed is exempt via licence number [.....]". Where the CO does not provide a declaration of exemption of this kind, it must collect the packaging material upon first demand of the CL and must itself arrange for disposal thereof; where the CO fails to discharge this duty, the CL shall be entitled to cause the packaging to be disposed of by third parties at the CO's risk and expense. The CL shall not honour any additional fees or costs such as deposit money or charges for disposal.

3.2 Change requests

3.2.1 ***CL's entitlement to request changes/additional goods and services***

3.2.1.1 Except in the case of demonstration devices, the CL shall be entitled to modify the scope of goods and services agreed, provided that such changes are not already part of the subject-matter of the parties' contract under 3.1.1.5 and provided that they are reasonable to the CO.

3.2.1.2 Where the changes entail modifications to quality criteria or supply volumes which are material to the parties' contract and as a result give rise to additional costs or lower costs or scheduled changes, the CO shall inform the CL without delay. The CL shall immediately decide whether, despite such circumstances, it wishes to proceed with the changes.

3.2.1.3 Modifications which are necessitated by a change to the scope of goods and services (change to scope of goods and services or disruption to the provision of the goods and services) (e.g. as regards the delivery period or remuneration owing) shall be effected as soon as possible during any live project.

3.2.2 ***Successor products***

3.2.2.1 Where, during an intact contract relationship the CO deems itself no longer capable of supplying the products contracted for, it must offer to supply successor products. The delivery of successor products shall require the CL's prior consent. In such case, successor products must comport at least with the defined scope of goods and services and quality criteria, and may not, as a fundamental rule, give rise to any increase in costs and must furthermore be compatible with such components as the CO has delivered to the CL.

3.2.2.2 Where the delivery of successor products entails changes to quality criteria respecting the overall goods and services which are material to the parties' contract and thus give rise to additional costs/reduction of costs or scheduled changes, the CO shall inform the CL without delay. The CL shall decide immediately whether, despite these circumstances, it wishes to accept the supply of these successor products or does not accept a change in respect of them.

3.2.3 ***Remuneration for changes***

3.2.3.1 The CO shall submit a written, electronic or facsimile offer in respect of changes requested by the CL and the CL shall issue an order for such changes in writing, electronically or by facsimile. Additional goods and services may only be the subject of invoice charges where the CL has issued an order for them in writing, electronically or by facsimile. Changes which are necessitated due to defects in the work product from any phase of the project which has

already been completed shall be performed by the CO free-of-charge if the CO likewise performed that phase of the project, and shall otherwise be payable by the CL.
3.2.3.2 The CO shall make electronic records with respect to all change requests discussed, which shall, in particular, reflect the serial number of the change request, the way in which the change request was handled as well as the impacts of the change request in terms of schedule and finance (in particular: relevance for purposes of maintenance).

3.3 Details in respect of the provision of goods and services

3.3.1 ***Deadlines***

3.3.1.1 The goods and services shall be furnished in line with the agreed schedule. Schedule changes are only permitted with the CL's consent.
3.3.1.2 All goods and services of the CO shall be provided in so timely a manner that the final acceptance and utilisation of the goods and services supplied may begin in real-time operations, following remediation of any defects, as at the agreed completion date.
3.3.1.3 In the event of an imminent risk of default, the CO shall inform the CL/the CL office submitting the specific request of the imminent default without delay and by verifiable written notification, by facsimile or electronically, indicating the grounds of the potential default and the tentative duration thereof and of the remediation measures proposed.

3.3.2 ***Place of delivery and place of performance***

3.3.2.1 The CO shall effect its delivery of the contract goods and services in line with the agreed schedule to the technical department of the respective *Land* clinic.
3.3.2.2 The CO is not permitted to effect direct delivery of the goods and services to the relevant medical department (place of set-up and installation) absent prior consent by the technical department.
3.3.2.3 The place of set-up and installation, as more precisely defined by the CL, at which the CO shall specifically render the goods and services in order to properly perform the contract, shall also be deemed the place of performance.
3.3.2.4 Shipment/delivery, including unloading, shall in all cases be undertaken by the CO free of all fees, charges and duties, at the place of performance, at the CO's cost and risk. The CO shall arrange for all necessary property and transport insurance.

3.3.3 **Labelling and documentation**

3.3.3.1 The CE labelling and accompanying paperwork (declaration of conformity) must reflect the conformity of the product with the EU directives and guidelines applicable to such product. Where any deviations are present from the specifications applicable to such product, the CO shall indicate these deviations and the remediation measures to be undertaken in order to achieve the same level of safety (where necessary, by means of a risk analysis).
3.3.3.2 The delivery and ongoing updating of the entirety of the documentation necessary and/or expedient for purposes of using the contract goods and services for the duration of the medical product guarantee and any maintenance agreement shall be deemed to form a part of the contract goods and services.
3.3.3.3 The user documentation and documentation for installation and administration of the products shall describe all of the work steps needed for day-to-day work in such a manner that they are comprehensible to a person to whom training has been given.
3.3.3.4 The CO shall forward the user documentation to the end-user and the technical department of the respective *Land* clinic for archiving in the device's files.
3.3.3.5 The technical documentation must conform to the usual standards in effect at the time of installation of the contract goods and services and must be structured in such a way that it is comprehensible and capable of being used by a technical specialist who has familiarity with similar products. The CO shall deliver data storage media and documentation on the licences which are being supplied at the same time to the CL.
3.3.3.6 In the case of medical products intended for multiple use and/or for processing prior to use, the CO or the entity placing these medical products on to the market must furnish evidence of their suitability for an effective and appropriate recycling process (pre-treatment, purification, disinfection, maintenance, packaging, sterilisation etc.) and describe the same in the user information in a manner which is in line with the relevant norms and standards (EN ISO 17664, RKI Directive, ...).
3.3.3.7 Where any individual licence [e.g. Systembuilder (SB), OEM (acquired together with hardware) or individual retail product (FPP)] was acquired, this must be rendered visible on the product subject to licence (by mean of an OEM sticker) and made easily accessible for further inventory recording.

3.3.4 **Connection to ICT network**

3.3.4.1 Direct connection

For the duration of the use of the product, the CO shall supply critical security updates and (where the contract product is based on a Microsoft computer operating system) with anti-virus software which will proactively protect the product against susceptibility to viruses for the product's operating system to enable direct connection of the products to the CL's ICT network. Where there is no longer any security update available for the version of the operating system being used, the CO must carry out an upgrade to a more recent version upon request of the CL. Following completed formal acceptance of the product, the CO shall de-activate data interfaces which were freely accessible (e.g. USBs) and bulk memory (e.g. CD/DELIVERED-drives) which are not required for daily routine operations.

3.3.4.2 *Connection via safeguard mechanism*

Where connection of the products to the CL's ICT network is requested but the products do not meet the ICT-security requirements as defined in sec. 3.3.4.1, they may not be directly connected to the CL's ICT network, but rather only via the safeguard mechanism specified below.
The contract products must be placed within a network segment of their own, e.g. a separate VLAN which is walled-off from the rest of the CL's local network.
The CO may utilise the CL's existing network infrastructure. The connection (connection of the walled-off VLAN to the rest of the LAN) to the CL's local network shall be structured via a separate network gateway, which must meet the following criteria:

- The realisation of the network gateway must be by means of a firewall operating at least at OSI layer 3 and 4 (Open Systems Interconnection Reference Model), must support "stateful packet inspection" and must support data throughput of at least 1 Gbit/s. Any other operation or use of the firewall apart from the realisation of the network gateway specified herein is prohibited.
- Only the communications pathways which are absolutely necessary to enable proper functioning of the contract products, e.g. for interfaces to other systems, and as specified by the CL may be open via the network gateway. Any communications pathways which may be used must be specified by indicating the source IP-address, the destination IP-address, the protocol (icmp, udp, tcp etc.) and the destination port. For purposes of planning the bodies of rules governing the network gateway, only the communications pathways described in this section shall be permitted.
- The ultimate, final realisation of the network pathway (topology plan, device configuration etc.) shall be documented and the CO shall deliver it to the CL at the time of final acceptance.
- The CO shall record any and all subsequent changes to the configuration and alert the CL to them immediately.
- The CL reserves the right to review and verify, both on an initial basis and during ongoing operations, the CO's realisation of the safeguard mechanism with respect to the criteria specified herein. The CO undertakes to facilitate and support such verification and review by the CL. Any costs incurred by the CO in respect of such review and verification are deemed covered by the price quoted in the offer.

3.3.4.3 User administration and authentication in respect of connections to the ICT network

To the extent that a connection to the CL's ICT pursuant to sec. 3.3.4.1 or 3.3.4.2 is established and user administration for more than 5 users is required, user administration and user authentication must be carried out within the CL's central file server.
'User authentication' shall mean identification of a user by means of user name and password. The user name and password entered by the user is thus verified against the active directory of the CL's file server. Where the user name and password are in agreement, the user is deemed to be unambiguously authenticated. No time-controlled importation of user data is permitted. The CL uses "Active Directory" from Microsoft, version "Windows Server 2008 R2" for its file server.

3.3.5 ***System builder within the meaning of EN 60.601***

3.3.5.1 In cases of inter-connection of multiple devices/systems to create one (medical electronic) system, a system builder within the meaning of EN 60.601 must be appointed. Inter-connection of the devices/systems to be supplied with the CL's existing devices/systems is carried out in consultation with the CO upon separate instructions by the CL.
3.3.5.2 In connection with the issuance of such instructions, the instructions shall also stipulate the nomination of the system builder within the meaning of EN 60.601. Where no separate instructions are issued for inter-connection or where no system builder is nominated, the CO shall bear liability for proper inter-connection and shall be deemed the system builder within the meaning of EN 60.601. The system builder shall, at the time of effecting delivery, furnish an overview plan (block diagram) of the connections and indicate the requisite additional measures under EN 60.601 (e.g. separating devices, additional PE conductors, ground-free power supply).

3.3.6 **Formal acceptance and passage of risk**

3.3.6.1 The date of formal acceptance shall be the business day following successful final acceptance testing (*see* section 3.4.4).

3.3.6.2 The CL may refuse formal acceptance where the goods and services manifest defects which are not merely *de minimis*, where regulatory approval cannot be obtained or where the documentation or licences pertaining to the goods and services, which must be handed over at this point in time under the parties' contract (e.g. medical technology data sheet of CL, safety testing protocol pursuant to ÖVE/ÖNORM EN 62353, software licences, product descriptions, brochures and data sheets, plans, drawings, other written deliverables and the like) have not been provided to the CL.
3.3.6.3 Where manpower and/or devices or other auxiliaries are required to perform final acceptance/handing over, the CO shall furnish these free-of-charge.
3.3.6.4 The risk shall only deem to pass to the CL when the CL's final acceptance of the handover of the goods and services pursuant to 3.3.6.1 has taken place. If, prior to this point in time, any damage of whatever kind has arisen, the CO shall remediate the same at its own cost and expense.

3.4 Final acceptance testing

3.4.1 The final acceptance process shall be governed by the CL's definition of requirements (CL's specifications of goods and services/CO's offer) on the basis of which the subject-matter and criteria of the final acceptance is shown/defined. For purposes of final acceptance, the form used is "NÖLKH-MT-Abnahmeprotokoll" (Appendix ./2) and, in the case of demonstration devices, "NÖLKH-MT-Vorführgerätevereinbarung" (Appendix ./5).
3.4.2 The CL shall appoint a responsible contact on its side. The CL's responsible contact shall coordinate the various sector-specific and technical specialists on the side of the CL, who shall conduct the receiving inspection together with the technical safety officer for Department BD4 Environmental Technology/Department of Safety Technology at the Health Services Office of the *Land* Government of Lower Austria [German acronym: NÖ]. In addition, he shall coordinate on the procedures for granting regulatory approvals with the competent regulatory representatives as regards deadlines, shall consolidate the results thereof and shall likewise provide signatures on behalf of the CL for final release pursuant to "NÖLKH-MT-Abnahmeprotokoll".
3.4.3 The CO shall give notice to the technical department of the respective *Land* clinic to conduct final acceptance (feature complete) and shall agree a date for final acceptance testing.
3.4.4 Together with its notification of readiness for final acceptance testing, the CO shall submit to the CL, without any special demand to do so, the form "NÖLKH-MT-Abnahmeprotokoll" which it has pre-completed for all of the goods and services to be included within final acceptance and, in particular, containing a detailed listing of all of the safety tests, maintenance action, calibrations and meterage/measurement controls to be carried out and to be carried out on a repeated basis, as well as all software licences for all programmes needed for operations and documentation for purposes of verifying the matters in sec. 3.1.2.1 d (completed Appendix ./3 or other verification).
3.4.5 Unless otherwise agreed by the parties, final acceptance testing shall then take place within 30 business days from the completion of the supply of the contract products in line with the parties' contract and notification of readiness for final acceptance testing (*see* sec. 3.4.3) in line with the "NÖLKH-MT-Abnahmeprotokoll" and shall be deemed completed at such time as all of the chapters (e.g. training sessions etc.) referenced in that document have been completed and signed-off. Final acceptance testing shall likewise include receiving inspections pursuant to the Ordinance on Operation of Medical Devices [German acronym: MPBV].

3.5 Medical products guarantee

3.5.1 Unless otherwise agreed in an individual case, a medical products guarantee is provided instead of the warranty in sec. 3.11, which shall also cover defects arising following final acceptance.
3.5.2 The CO warrants that the goods and services furnished by it and its sub-contractors/suppliers shall have such qualities and characteristics as the parties have expressly contracted and as are commonly required and shall be in line with the current state of the art. The qualities and characteristics agreed, specifically pursuant to the procurement documentation and the CO's offer are deemed express warranties and the CO is required to satisfy them.
3.5.3 In respect of all defects arising in connection with its goods/services, the CO shall bear the burden of proof for showing the non-existence of defects, of showing the existence of defects which are merely *de minimis*, and of showing that the origin of a defect lies in the sphere of responsibility of the CL or of a third party. The parties furthermore agree that secs. 377 and 378 of the Austrian Entrepreneurial Code (Duty to object within a reasonable time) shall not apply in respect of the CL.
3.5.4 Where the contract product/replacement products manifest defects, the CO shall bear a duty to the CL (unless otherwise agreed) to do the following within the maintenance times stipulated in sec. 3.8.1 and in line with the specified reaction times (*see* sec. 3.8.3) and restoration times (*see* sec. 3.8.5)

- fully remediate and repair the defects (where necessary by swapping/replacing the defective portions of the contract products) or

- deliver to the CL another product in each case which is at least of equal quality to the defective contract product and which is completely free of any defects whatsoever and to remove of the contract products which suffered from such defects from the location at which they are set up at the CL and from the premises of the CL, or
- provided that the CL consents to this, to add additional parts or system components

3.5.5 The right to elect the means of curing defects shall be vested in the CO. The CO shall bear any costs/additional costs which may arise for this.

3.5.6 Where the CO is unable to repair/remediate a defect within a reasonable time, where the rectification/remediation of the defect entails substantial inconvenience to the CL or where a defect is present which is not capable of rectification/remediation, the CL may, at its option, either demand an abatement of the purchase price or, where the defect in question is not merely *de minimis*, may resile from the contract. The CL's right to assert claims for damages shall, in any event, remain unaffected hereby.

3.5.7 The medical products guarantee obligations shall, furthermore, include the full scope of maintenance services pursuant to secs. 3.7.2 and 3.7.3.

3.5.8 Excepted from the scope of goods and services are only the supply of pure consumables (e.g.; printer paper, CDs/DVD-ROMs and the like), remediation/rectification of faults and defects to the contract products which are documented to be attributable to improper use or defective/incorrect care by individuals belonging to the sphere of the CL/the *Land* clinic and damage arising through *force majeure*.

3.5.9 As a general principle, the goods and services shall be rendered at the respective *Land* clinic. Where this is not possible or where an outage of the contract product of greater than 36 hours duration occurs, then (with the exception of fixed large MET devices) upon the CL's request the CO must furnish a replacement device free-of-charge for the time until operations of the subject product are restored.

3.5.10 The medical product guarantee shall begin to run from the date of acceptance of handover of the contract product in question(*see* sec. 3.3.6.1) and shall run for a period of 24 months without any restriction or limitation in respect of the frequency of use/continuous operations. Where a defect or deficiency is rectified or remediated by delivering a replacement component or swapping out the entire contract product during the medical products guarantee period, the guarantee period shall begin to run anew with respect to the replacement component/device.

3.6 Guarantee with respect to replacements, wear parts and consumables

3.6.1 The CO guarantees that, within a ten-year period from the date of acceptance of handover (*see* sec. 3.3.6.1), it will be able to supply (or subsequently supply) all replacement and wear parts and product-specific operating materials and consumables for operational condition of the product supplied.

3.6.2 One year prior to expiry of this period, the CO shall inform the CL regarding the duration of provision of further replacement, wear parts and consumables beyond the foregoing period and shall provide the CL with a period of at least twelve months prior to the cessation of availability in order to enable it to make corresponding dispositions.

3.7 Maintenance services

Where an order is issued to do so, the CO shall perform the following maintenance services pursuant to "NÖLKH-MT-Wartungsvertrag" (Appendix ./4):

3.7.1 ***Operational maintenance***

3.7.1.1 Operational maintenance is deemed a separate service which shall be contracted for following the end of the medical products guarantee upon separate order in exchange for a fixed annual maintenance fee, for an unlimited term.

3.7.1.2 In compliance with the current relevant legal requirements, including, in particular, the MPG and the MPBV, the scope of services of the CO shall include, in particular, the following services within the maintenance periods stipulated in sec. 3.8.1:

Maintenance work	Calibration and gauging	all services and wear parts required for operational maintenance
metrological testing	safety testing	performance of the measures required for operations as described by the manufacturer
optimisation of condition	software updates	supply of cleaning, lubrication material, replacing batteries and other product-specific resources
maintenance and inspection	cleaning of the subject product	mileage, accommodation, travel expenses
installation of firmware updates (updates)		

3.7.1.3 The scope of operational maintenance furthermore includes operations maintenance of accessories and assembly materials.

3.7.1.4 In connection with operational maintenance, the CO shall verifiably test and release for operations the safety updates or programme updates of anti-virus software classified as critical by the computer operating system

manufacturer for the products connected directly to the CL's ICT network pursuant to 3.3.4.1 within 8 weeks of availability. The CL shall upload the updates to the contract product. The CO shall upload current virus signatures within three days from their publication to the contract product. This may be done automatically by means of the updating function of the virus scanner via the CL's Internet connection or may be done manually. In the context of connections via a safeguard mechanism (indirect connection), the CO shall bear the cost arising for modifications, new applications and deletion of communications pathways initiated by the CO.
3.7.1.5 The dates for such regularly recurring operational maintenance services shall be notified to the clinic in question no later than one month in advance and shall be carried out following joint agreement as to time.
3.7.1.6 The services shall be rendered at the *Land* clinic in question.

3.7.2 ***Full maintenance services***
3.7.2.1 Full maintenance is deemed a separate service which shall be contracted for following the end of the medical products guarantee upon separate order in exchange for a fixed annual maintenance fee, for an unlimited term.
3.7.2.2 In compliance with the current relevant legal requirements, including, in particular, the MPG and the MPBV, the scope of services of the CO shall include, in particular, the following services within the maintenance periods and in line with the stipulated reaction times (sec. 3.8.3) and restoration times (sec. 3.8.5) stipulated in sec. 3.8.1

Maintenance work	Calibration and gauging	all services and wear parts required for operational maintenance
metrological testing	safety testing	performance of the measures required for operations as described by the manufacturer
optimisation of condition	software updates	supply of cleaning, lubrication material, replacing batteries and other product-specific resources
maintenance and inspection	cleaning of the subject product	mileage, accommodation, travel expenses
installation of firmware updates (updates)		

and

(renewed) repair of subject product together with all associated testing	spare parts	all services and wear parts required for full maintenance
	final acceptance and partial final acceptance testing	

3.7.2.3 The scope of full maintenance furthermore includes operations maintenance of accessories and assembly materials.
3.7.2.4 In connection with full maintenance, the CO shall verifiably test and release for operations the safety updates or programme updates of anti-virus software classified as critical by the computer operating system manufacturer for the products connected directly to the CL's ICT network pursuant to 3.3.4.1 within 8 weeks of availability. The CL shall upload the updates to the contract product. The CO shall upload current virus signatures within three days from their publication to the contract product. This may be done automatically by means of the updating function of the virus scanner via the CL's Internet connection or may be done manually. In the context of connections via a safeguard mechanism (indirect connection), the CO shall bear the cost arising for modifications, new applications and deletion of communications pathways initiated by the CO.
3.7.2.5 The dates for such regularly recurring full maintenance services pursuant to sec. 3.7.2.1shall be notified to the clinic in question no later than one month in advance and shall be carried out following joint agreement as to time.
3.7.2.6 As a general principle, the goods and services shall be rendered at the respective *Land* clinic. Where this is not possible or where an outage of the contract product of greater than 36 hours duration occurs, then (with the exception of fixed large MET devices) upon the CL's request the CO must furnish a replacement device free-of-charge (but see sec. **Fehler! Verweisquelle konnte nicht gefunden werden.**) for the time until operations of the subject product are restored.
3.7.2.7 Excepted from the scope of goods and services are only the supply of pure consumables (e.g.; printer paper, CDs/DVD-ROMs and the like), remediation/rectification of faults and defects to the contract products which are documented to be attributable to improper use or defective/incorrect care by individuals belonging to the sphere of the CL/the *Land* clinic and damage arising through *force majeure*.

3.7.3 ***Documentation and proof in connection with maintenance services***
3.7.3.1 The CO shall electronically forward to the CL unbidden immediately after completion of the (maintenance or repair) measure and with respect to safety and functional testing carried out a written record bearing the signature of the staff member at the clinic responsible for maintenance, repair or safety and functional testing, care of the staff member in charge at the Department of Medical Technology (user notification).
3.7.3.2 The written record shall contain a listing of all of the checks and controls carried out during the maintenance

and safety testing as well as all deficiencies and defects to the subject product which were ascertained. The document must also contain a record of all measures of rectification and remediation of defects including replacement of spare parts. Where the maintenance/remediation/rectification/spare part use and the like yields new information regarding future operations of the subject product, the maintenance record shall likewise contain an express written notation thereof.

3.7.3.3 No later than the 7th calendar week of the following calendar year and no later than three weeks from the end of the contract, the CO shall forward an electronic documentation for the previous year containing at least the following information fields:

- date of work (commencement and end)
- type of work (e.g. maintenance, repair, repeat testing and testing following repair of medical electronic devices etc,
- description of works carried out per subject product
- record of spare parts used per subject product
- record of meter reading per subject product (e.g. operational hours, application/batch numbers etc.)

The transmission of the data shall be carried out in consultation with the medical technology department in charge, and may also be done in electronically importable form such as MS Excel or CSV or directly to the Facility Management System used at site, in accordance with the MPBV. For safety and metrology checks and similar, relevant procedures, the data must be forwarded immediately after its completion.

3.7.3.4 The CO shall support the CL in discharging its reporting obligations (e.g. secs. 70 ff MPG) in respect of maintaining the device file and the inventory log.

3.8 Maintenance on-call times, reaction times and restoration times

3.8.1 The **maintenance on-call time** of the CO is **Mondays to Fridays between 8.00 h and 16.00 h**.

3.8.2 The CO shall commence with troubleshooting or correcting problems or activities aimed at immediate elimination of problems as quickly as possible during the maintenance on-call periods, but in any event no later than by the end of the reaction time referenced in sec. 3.8.3. Where the incident (the fault) cannot be cleared during the maintenance reaction time, the CO shall (if requested by the CL) continue working beyond the agreed maintenance reaction time until it has eliminated the problem in exchange for a separate fee.

3.8.3 The **reaction time** of the CO for troubleshooting at site (unless otherwise agreed) is a maximum of **6 hours**.

3.8.4 The **reaction time** is the period from the CL's notification of the CO until the technician arrives at the defective contract product to commence with the repair works or another activity which is aimed at immediately eliminating the fault in the interests of the CL.

This shall, for example, mean in the case of agreed maintenance on-call time from Mon-Fri, 08.00 h to 16.00 h: Fault reported on Friday at 9.30 h: The 6-hour reaction time shall end at 15.30 h. On this day, the elimination of the fault is commenced no later than 15.30 h and shall continue even after 16.00 h at the request of the CL, in exchange for a separate fee.

3.8.5 The **restoration time** shall be a maximum of **24 hours in the context of the maintenance on-call time**.

3.8.6 The '**restoration time**' is deemed to encompass the time from the receipt of the fault report by the CO until the fault is eliminated through final rectification of the fault or problem.

3.8.7 The CO warrants troubleshooting/correction or elimination of faults within the restoration times referenced in sec. 3.8.5.

This shall, for example, mean in the case of agreed maintenance on-call time from Mon-Fri, 08.00 h to 16.00 h: Fault reported on Friday at 9.30 h: Assuming a 24-hour restoration period, final elimination of the fault must be completed no later than Wednesday, 09.30 h, unless a separate order has been issued to continue troubleshooting after expiry of the maintenance on-call period.

3.8.8 Where final elimination of a fault is not possible within the defined restoration time (e.g. defective replacement module), the CO undertakes in application of the medical products guarantee or any full maintenance agreement the parties may make (with the exception of fixed large MET devices) to provide a replacement device which comports with the MPG and which is of an equivalent device type/model/software version at site within **36 hours (within the scope of the maintenance on-call time**) from the time of its receipt of the fault report, such that the user does not experience any adverse impacts on quality or functionality.

Assuming agreed maintenance on-call time from Mon-Fri, 08.00 h and 16.00 h and a 24-hour restoration time, this means, for example: fault reported on Friday, 09.30 h: provision of replacement device no later than Thursday, 13.30 h.

3.9 Default, contractual cover

3.9.1 The CO is deemed in default wherever any goods or services are not provided at the proper time, at the proper location or in the manner contracted for.

3.9.2 Where the CO is in default, it must verifiably notify the CL without delay. The CL's refusal to accept handover due to the existence of material defects shall likewise be deemed default on the part of the CO.
3.9.3 Where the contract goods and services/of any portion of the contract goods and services fail to be rendered or where the contract goods and services/portion of contract goods and services are not provided in line with the contract, the CL shall be entitled, at its option

- to insist on proper performance and to demand a contractual penalty, at its option, in line with sec. **Fehler! Verweisquelle konnte nicht gefunden werden.** or
- to set a reasonable grace period and then to resile from the contract and/or to cause contractual cover to be procured, at the CO's cost and risk. In such case, the contractual penalty shall only be payable until the declaration of rescission becomes effective or until contractual cover has been procured.

3.9.4 No grace period is required to be set in the case of fixed-term transactions under sec. 919 Austrian Civil Code.

3.10 Contractual penalty

3.10.1 The CL shall be entitled to demand a contractual penalty in addition to performance of the contract. The CL shall be entitled to claim the contractual penalty irrespective of whether losses have arisen or whether the CO bears fault or whether the conditions precedent to termination of the contract for good cause have been met or not, or whether the CO has discharged its obligation under sec. 3.3.1.3.
3.10.2 The CO shall pay compensation for any actual losses going beyond the amount of the contractual penalty where the existence of fault on its part is shown.
3.10.3 At the CL's option, a contractual penalty may be claimed

a) where the agreed deadlines are not adhered to (except for deadlines pursuant to sec. **Fehler! Verweisquelle konnte nicht gefunden werden.**): in the amount of EUR 110.00 or 0.01% of the value of the overall goods and services (purchase price, net of VAT but not including maintenance costs) per calendar day or part thereof for the period of delay in furnishing the goods and services; in the case of rescission of the contract, the contractual penalty shall be calculated for the period up to the date on which the declaration of rescission is delivered or on the date contractual cover is procured;
b) in cases in which the restoration time in connection with troubleshooting is exceeded in the case of fixed large MET devices: EUR 110.00 or 0.01% of the value of the overall goods and services (purchase price, net of VAT, without maintenance costs) per hour of default or part thereof;
c) where the time for providing replacement devices is exceeded in the case of other MET devices: EUR 110.00 or 0.01% of the value of the overall goods and services (purchase price, net of VAT, without maintenance costs) per hour of default or part thereof;
d) in the event of a breach of the obligations in connection with sec. 2.3: EUR 5,000.00 (five thousand);
e) in the event of a breach of secs. 3.19 or 3.20: EUR 10,000 (ten thousand) per breach

3.10.4 Save in cases involving contractual penalties under 3.10.3 (e), each contractual penalty shall be limited to **five per cent** of the net contract price of the actual supply agreement made.
3.10.5 Where the CO is prevented from timely performing the contract by circumstances lying within the sphere of the CL's responsibility or by *force majeure*, its obligation to pay the contractual penalty shall not apply to the period of any such obstacle, provided that the CO gives notice thereof to the CL without delay, furnishing appropriate evidence thereof.

3.11 Statutory warranty

3.11.1 The CO fully warrants its due performance of the contract. The warranty period shall be two years. Where the CO offers any longer warranty period, that such longer warranty period shall apply.
3.11.2 In the case of concealed (latent) defects and in respect of defects of title, the warranty period shall begin to run from the date the CL learns of the defect or from the date (which the CL must prove) on which a prudent CL would have necessarily become aware of the defect. In the case of concealed (latent) defects, the warranty period shall begin no later than two years from completed acceptance by the CL of handover of the goods and services. In respect of contract products which customarily remain in their original packaging until such time as they are used or re-sold, defects which only become visible when the product is removed from packaging shall be deemed latent defects.
3.11.3 It shall remain at the discretion of the CL whether it shall initially demand remediation, replacement of the item, an abatement of the price or (except in the case of defects which are merely *de minimis*) rescission.
3.11.4 Where the CL demands remediation/replacement, the CO shall remediate/replace the defects occurring during the warranty period within a reasonable time, at its risk and cost.
3.11.5 In cases of urgency, the CL shall also be entitled to remediate defects itself, without setting any grace period, at the cost of the CO after having notified the CO, or having a third party do so without this impairing its claims for such defects; where there is a risk of imminent danger, the CL may proceed in this way even without notifying the CO. The CO shall bear the costs of any expert engaged by the CL to oversee remediation of defects.

3.11.6 The CO shall bear the burden of proof that no defects are present or for the mere *de minimis* nature of a defect.
3.11.7 In all further and other respects, the statutory warranty rules shall apply. However, the CL waives the defence of a belated notice of complaint for a defect. A complaint for a defect will in any event be deemed timely if made within the warranty period.

3.12 Compensatory damages and product liability
3.12.1 The CL shall, as a fundamental principle, be entitled to assert claims for compensatory damages and claims for recourse, including all claims under the Austrian Rules Governing Product Liability without any limitation as to amount.
3.12.2 To cover any claims asserted by the CL, the CO must have in place a sufficient policy of liability insurance, relating to the work and products it has undertaken by contract to furnish, which shall cover damage to property, personal injury and pecuniary losses, and shall furnish evidence to the CL of the existence thereof upon request. The costs of such insurance are deemed covered by the agreed contract price.
3.12.3 The CO shall bear liability in line with the statutory rules on liability for all personal injury and damage to property occasioned by performance of the works by the CO or any of its vicarious agents. The same shall apply in the case of any failure to act or in any case of non-proper performance of works envisaged by the contract and/or other breaches of the contract, wherever the CL has incurred a loss therefrom. Compensatory damages may be claimed not only for the defectiveness of the products and services themselves, but also in respect of consequential losses due to such defects.
3.12.4 The CO's liability for pecuniary losses shall, however, be limited overall per contract to the amount of the contract price (or, in the case of goods and services which are furnished on a recurring basis, to a maximum of the compensation received for a 12-month period). This limitation on liability shall not apply in respect of intentional acts or omissions, gross negligence, injuries to life, limb or health or wherever the Austrian Product Liability Act applies.
3.12.5 The members of an ARGE shall bear joint and several liability to the CL.

3.13 Termination
3.13.1 The CL is entitled to terminate contractual relations even with respect to only individual (partial) goods and services.
3.13.2 Either party to the contract may terminate any contract made for an unlimited term upon six months' prior notice. For the period of one year from the date the unlimited term contract takes effect, both parties waive the exercise of their right of termination.
3.13.3 Where the contract (framework agreement, maintenance agreement, lease and the like) creates a long-term contract of obligation, the CL may also terminate the contract during the initial year of the contract and thereafter for good cause, in particular on the grounds referenced in sec. 3.14.3, with immediate effect. In the event of the sale or permanent shut-down of any contract product covered by a maintenance agreement pursuant to sec. 3.7.1 or 3.7.2, the maintenance agreement in respect of such device shall be deemed to terminate automatically. The CL shall give the CO advance notice of any decommissioning of such device 14 days in advance.

3.14 Rescission of contract
3.14.1 The parties may rescind the contract with immediate effect in whole or in part for good cause. In such case, the CO shall only be entitled to the fees allocable to such works and services as it has already rendered and to such works and services which are currently being rendered at the time of the rescission, including materials used or already procured; the CO shall have no further or other claims beyond this. Any claims for compensatory damages or contractual penalties shall remain unaffected hereby. The right of use to software and licences already purchased (including the most recent version in effect at the time of termination) shall nevertheless continue in force.
3.14.2 Where, by contrast, the CL resiles from the contract for good cause lying within the sphere of the CO's responsibility, in whole or in part, prior to the commencement of the works and services, the CO shall, in the first-referenced case, be entitled to no remuneration whatsoever, and in the latter case merely to *pro-rated* remuneration (*see* sec. 3.14.1). Where third parties assert claims against the CL on such basis, the CO shall indemnify and hold the CL harmless therefor.
3.14.3 Good cause lying within the sphere of the CO's responsibility shall, in particular, be deemed present where
(1) the opening of insolvency proceedings over the CO's assets is dismissed due to a lack of assets covering costs or any such insolvency proceedings have been set aside due to a lack of assets covering costs or
(2) insolvency proceedings have been opened over the assets of the CO and the statutory rules do not prohibit the CL from resiling from the contract
(3) circumstances are present which manifestly make it impossible for the contract to be properly performed, provided that the CO bears responsibility for this or
(4) the CO has breached its obligations under sec. 3.19 and/or sec. 3.20.

3.15 Title and intellectual property rights

3.15.1 ***Reservation of title***

The drawings, sketches, tools, aids, samples, models and the like provided by the CL to perform the contract shall remain/shall become its property, and may not be made available to third parties or used for other purposes and may not be used for advertising purposes. The CO shall immediately return them to the CL following completion of the works and services/in the event of rescission of or termination of the contract.

3.15.2 ***Software***

3.15.2.1 The CO hereby undertakes to grant the CL a non-exclusive right of use, which is not limited in geographic or temporal scope nor subject to any such limitation, and which is not system-oriented, to all of the software defined in the procurement documents and other contract documents. Use of the software is, in this context, defined as complete or partial utilisation of all of the functions of the software product and any and all use of the CL's data sets, utilising the functionalities of the product; this right of use shall not distinguish whether the use is made or can be made by way of a visualised or non-visualised interface, in parallel or following a time delay. The right of use shall also encompass the provision of the CO's work product by network connection to the number of users stipulated in the procurement documents and other contract documents (read- and right-use).

3.15.2.2 The CL shall acquire rights of use to third-party manufacturer software pursuant to the licence rules of that manufacturer, wherever the CL has not made any separate agreements with the latter. Where the CO avails itself of third-party manufacturers' software, it shall deliver the terms of such licences by way of information to the CL unbidden and shall in any event furnish a written description to the CL, prior to conclusion of the contract, of any and all departures from the CL's specifications. In the course of doing so, the CO shall also furnish evidence that the described deviations are the subject of legally-binding agreements with the third-party manufacturer.

3.15.2.3 The CL shall in any event be deemed to acquire the right to create the necessary number of duplicates for purposes of back-ups and archiving.

3.15.3 ***Embodiments***

3.15.3.1 The CL shall be deemed to acquire worldwide rights of use, which shall not be exclusive under intellectual property law, to all embodiments, concepts, handbooks, training documentation, performance specifications, reports and other documents now known or to become known in future, created in the course of collaboration by the CO, its staff, sub-contractors and associate entities in the course of rendering the contract goods and services, and the CO furthermore undertakes to verifiably impose the foregoing obligations on its sub-contractors and cooperation associates to grant these rights of use to the CL.

3.15.3.2 All rights to embodiments created by/provided to the CL shall remain exclusively vested in the CL. Similarly, all rights to ideas and concepts contributed by the CL shall remain vested exclusively in the CL.

3.15.4 ***Miscellaneous***

3.15.4.1 The CO shall bear liability to the CL for ensuring that its performance of the goods and services and the CL's use of the software shall not violate any patents or intellectual property rights of third parties.

3.15.4.2 In the event of the commencement of insolvency proceedings over the CO's assets or of the dismissal of an application for the opening of insolvency proceedings due to a lack of assets covering costs, all rights to the contract goods and services to which the CO is entitled shall be deemed to pass on a non-exclusive basis to the CL, provided that the CL has not already acquired rights beyond the foregoing thereto.

3.15.4.3 Where the CL or any user of the software is subjected to a claim based on its use of even only a portion of the contract goods and services for violation of third-party intellectual property rights, or such claims are threatened to be asserted, the CL shall notify the CO thereof without delay. The CL shall afford the CO the opportunity to defend the claim/to fully pursue its rights.

3.15.4.4 The CO shall reimburse the CL for all costs and compensatory damage payments incurred by the CL based on verifiable, culpable breach of intellectual property rights of third parties by the CO's goods and services and shall, where necessary, join in the litigation as an intervenor. This provision is deemed to include all settlement payments made which the CL negotiates in consultation with the CO, as well as the costs of working time the CL/the user has incurred to settle the matter, including the costs of its legal representation.

3.16 Prices and discounts (except for maintenance prices)

3.16.1 Prices shall be determined by a price-based competitive bidding process. The CL requires standard prices in EUR, which shall include all fees, taxes and shall be on the terms 'Delivered, Duty Paid' (Incoterms 2010 –"DDP"). All price details must be furnished in such a way that they include all ancillary costs (in particular: travel per diems throughout Niederösterreich, overnight accommodation costs, costs for travel time, travel expenses, kilometre fees, costs of preparatory time and follow-up time, costs of shipment and materials, licence fees for any and all applications

which are part of the subject-matter of the offer, disposal costs etc.); no further costs may be charged beyond the prices offered by the CO. The prices stated in the offer are 'fixed prices' within the meaning of BVergG and the CO guarantees them as fixed prices for the first year of the contract.

3.16.2 Following the end of the fixed-price period, the parties are deemed to have agreed to indexing of the price. The standard to be used for calculating the indexing shall be the Consumer Price Index 2010 published on a monthly basis by *Statistik Austria* (2010 Basis = 100) or such official index as replaces it. As the reference value for adjustments, the index figure indicated for the month in which the indexing takes effect shall be deemed to apply. Upwards or downwards fluctuations of up to 5% in the index figure shall not be taken into account. All adjustment rates shall be calculated to one rounded decimal point. The CO shall furnish evidence of increases as a result of indexing. Neither party may make any claims in connection with index adjustments from the past.

3.16.3 In the case of extraordinary market developments which are not foreseeable with respect to individual elements of costs for the products supplied (materials or wages) the CO may take account of price adjustments during the contract term for which it furnishes evidence with respect to the cost elements in question. The parties shall reach a decision thereon by mutual agreement.

3.16.4 Discounts agreed for one element of goods and services shall also apply to multiple goods and services. Where cash discounts are offered without any indication of a payment deadline, they shall be deemed to constitute discounts.

3.17 Special rule for maintenance prices

3.17.1 Prices shall be determined by a price-based competitive bidding process. The CL requires standard prices in EUR, which shall include all fees, taxes and shall be on the terms 'Delivered, Duty Paid' (Incoterms 2010 –"DDP"). All price details must be furnished in such a way that they include all ancillary costs (in particular: travel per diems throughout Niederösterreich, overnight accommodation costs, costs for travel time, travel expenses, kilometre fees, costs of preparatory time and follow-up time, costs of shipment and materials, licence fees for any and all applications which are part of the subject-matter of the offer, disposal costs etc.); no further costs may be charged beyond the prices offered by the CO. The prices stated in the offer are 'fixed prices' within the meaning of BVergG and the CO guarantees them as fixed prices for the first year of the contract.

3.17.2 Following the end of the fixed-price period, the parties are deemed to have agreed to indexing of the price. The standard to be used for calculating the indexing shall be the Consumer Price Index 2010 published on a monthly basis by *Statistik Austria* (2010 Basis = 100) or such official index as replaces it unless the parties have agreed to another index.

3.17.3 Prices shall be adjusted at the beginning of each calendar year in accordance with the published index figure for October for the previous calendar year. As the reference value for adjustments, the index figure indicated for the month in which the indexing takes effect shall be deemed to apply and thereafter the index figure published for the month of the most recent price adjustment. All adjustment rates shall be calculated to one rounded decimal point. Any increase of prices shall furthermore be subject to the condition precedent that the CO has given notice thereof by no later than the end of November of calendar year where the increase is supposed to take effect during the following calendar year. Neither party may make any claims in connection with index adjustments from the past

3.17.4 In the case of extraordinary market developments which are not foreseeable with respect to individual elements of costs for the products supplied (materials or wages) the CO may take account of price adjustments during the contract term for which it furnishes evidence with respect to the cost elements in question. The parties shall reach a decision thereon by mutual agreement.

3.17.5 The annual fixed maintenance fee agreed as per secs. 3.7.1 or 3.7.2 shall be invoiced on a *pro rata* basis in arrears at the beginning of the calendar quarter following the quarter in which the work is done.

3.17.6 Where individual maintenance products (referenced in a maintenance contract) or portions thereof are taken out of operation on a temporary basis, the duty to perform maintenance and to pay the maintenance charge shall be suspended to a corresponding extent

3.18 Invoicing and terms and conditions of payment

3.18.1 The CO shall prepare invoices in a form enabling the addressee of the invoice to scrutinise the invoice with reasonable efforts, and shall append all such documents as are required to scrutinise the invoice to the invoice and shall forward them to the invoice address indicated by the CL (3.18.1). The addressee of the invoices is the *Land* Niederösterreich care of the NÖ *Land* clinic benefiting from the contract goods and services. Contract goods and services of which the Landeskliniken-Holding Zentrale is the beneficiary should be charged to NÖ Landeskliniken-Holding c/o 3100 St. Pölten, Stattersdorfer Hauptstrasse 6/C.

3.18.2 The invoice shall comply with the requirements of law (in particular: sec. 11 of the Austrian VAT Act 1994) and shall, additionally, contain the following points:

(1) name (corporate name) and address of CO, name and address of office to which the invoice is being submitted;

(2) date of provision of goods or services or period over which the performance of the contract continued,
(3) description of the goods and services rendered (where appropriate: in bullet-point form) using the wording and the sequence of the items as set out in the order document (in cases of call-off orders, using the items as per the call-off order), indicating the item number and enclosing all such documents as are required to scrutinise the invoice.
(4) net invoice amount (remuneration within the meaning of the Austrian VAT Act 1994) and applicable tax rate, in the case of an exemption from tax, a note to such effect or a note regarding any transfer of the tax obligation,
(5) the amount of VAT applicable to the remuneration,
(6) gross invoice amount,
(7) date of issuance,
(8) sequential invoice number,
(9) VAT ID number of the CO and, on invoices for more than EUR 10,000, that of the CL,
(10) number and date of order document, in the case of call-off orders, additionally to include the framework agreement number and the wording per the framework agreement,
(11) IBAN and BIC code for CO's bank account,
(12) proof of individual licences (e.g. Systembuilder (SB), OEM (acquired together with hardware) or retail product (FPP)] or, in the case of volume-based licences (e.g. Select or Open contracts), the licence programme (e.g. Open), the contract number (License / Enrolment / Customer Number) and the type of contract (e.g. Standard, Academic or Government),
(13) where applicable, the CL's internal order number, if any, (SAP number).

3.18.3 The payment period shall be **30 (thirty) days** from the date the invoice is received by the invoice addressee's financial accounting department, but shall not be any earlier than the date of final acceptance (*see* sec. 3.3.6.1).

3.18.4 Invoices which are not properly generated, in particular invoices which are improperly addressed or invoices containing substantive or mathematical defects or errors shall not cause any amounts to fall due until such time as they are corrected by agreement, and the CL or the *Land* NÖ may return them at any time to the CO. The payment period shall only begin to run at such time as the new invoice is received/the error is corrected.

3.18.5 Payments by the CL/the *Land* NÖ shall not be deemed acknowledgement of proper performance of the contract by the CO; in particular, payment shall not entail any waiver of claims based on total breach or poor contract performance.

3.18.6 No advance payments or down payments shall be made, except where separate agreement to such effect is made.

3.18.7 To the extent agreed, partial payments shall only be made for the value of goods and services which have already been rendered and only after due and proper final acceptance of the portion of the goods and services in question.

3.18.8 The payment of hire charges shall be made in each case monthly in advance. The payment period for the first hire charge shall begin to run on the first date of the calendar month following the date of final acceptance. The first hire charge beyond this (as a further condition precedent to commencement of the payment period) shall be the subject of an invoice; for all further hire charges, the payment period shall only begin to run with respect to that calendar month on the first day of each following calendar month.

3.18.9 In cases of payment within 14 (fourteen) days, calculated from the commencement of the payment period, the parties hereby agree that a cash discount of 3% (three per cent) shall apply; invoices are payable on a 30-day net basis unless otherwise agreed in the individual case. In the event that the cash discount period is exceeded on individual partial payments, the cash discount shall not be deemed to automatically fail with respect to all other payments.

3.19 Fiduciary relationship

3.19.1 Based on the fiduciary relationship existing between them, NÖ LKH and the CO are obliged to comprehensively take account of the interests of their counterparty in substantive, commercial, legal and scheduling respects. The CO's duties under secs. 2.11 and **Fehler! Verweisquelle konnte nicht gefunden werden.** hereof shall also be discharged by it during any ongoing contract and *mutatis mutandis* thereafter.

3.20 Service provider agreement within the meaning of the Austrian Data Protection Act 2000 (German acronym: DSG 2000)

3.20.1 Where, for purposes of performing a contract, personal data within the meaning of the DSG 2000 or health data within the meaning of the Austrian Federal Act on Data Security Measures When Using Electronic Health Data [German acronym: GTelG 2012] are provided to the CO or where such data is collected in connection with the contract, the CO shall be deemed a 'service provider' within the meaning of the DSG 2000 and the contract made between the parties shall constitute a service agreement within the meaning of DSG 2000.

3.20.2 The CO hereby undertakes to use data and work product exclusively in performing the CL's contracts and shall return the same exclusively to the CL or shall forward the same only upon the CL's written directions. Similarly, any use of the data provided to the CO for the CO's own purposes shall require written instructions to such effect.
3.20.3 The CO hereby expressly warrants to the CL that, in particular, it shall comply with the principles of data security pursuant to sec. 3 ff GTEIG 2012, and has put sufficient security measures in place within the meaning of sec. 14 DSG 2000 to prevent improper use of the data or disclosure thereof to unauthorised third parties; in the event of its failure to do so, it shall be liable to provide full indemnification to the CL and hold it fully harmless against any losses.
3.20.4 The CO may only engage another business entity to perform data processing or data collection where the CL has granted its prior written consent to this. In such case, the condition precedent thereto shall be the conclusion of a contract with the other business entities. That contract shall stipulate that such other business entity shall assume the dame duties and obligations as the CO bears based on its contract with the CL.
3.20.5 The CO shall take care with respect to the technical and organisational prerequisites that the CL is able at all times to discharge and comply with the requirements in sec. 26 (Right of information) and sec. 27 (Right to correction or deletion) of the DSG 2000 with respect to the affected party within the statutory periods and shall provide all such information to the CL as is necessary for this purpose. In addition, the CO shall notify the CL without delay where data within the meaning of sec. 24 (2a) DSG 2000 are improperly used in a systematic and serious fashion. Following conclusion of the contract, the CO shall deliver to the CL all of the work product and all documents containing data or shall verifiably destroy the same at the CL's directions.
3.20.6 The CO hereby furthermore confirms in a legally binding manner that it has imposed an obligation on all individuals engaged to perform data processing to preserve data secrecy within the meaning of sec. 15 DSG 2000 prior to their commencement of work. In particular, the duty of confidentiality of persons entrusted with data transmission shall remain in effect even after conclusion of their work and their departure from the service provider.
3.20.7 Any breach of this agreement shall entitle the CL to terminate this agreement for good cause, without this entailing any limitation on the CL's further legal claims, in particular on its claims for compensatory damages.

3.21 Right of set-off

3.21.1 The CO may only exercise a right of set-off against claims of the CL or of *Land* NÖ with claims which have been ascertained by court decision or which the CL has acknowledged.
3.21.2 The CO hereby confirms that it agrees to set off on the part of the CL/*Land* NÖ claims of all kinds by the latter.

3.22 Jurisdiction and venue, applicable law

3.22.1 Exclusive jurisdiction and venue for all disputes arising out of this agreement shall be vested with the courts of St. Pölten. However, at its option the CL shall be entitled to proceed against the CO in any court with geographical and subject-matter jurisdiction pursuant to the provisions of law governing within the country of the CO's registered office.
3.22.2 Austrian law shall govern, but excluding application of (i) the United Nations Convention on the International Sale of Goods (UNCITRAL), (ii) international choice-of-law rules and (iii) the provisions of the Austrian IPR Act.

3.23 Right of retention, duty to make payment and interest

3.23.1 Disputes regarding the provision of the goods and services shall not entitle the parties to discontinue the contract performance/payments to which they are obliged. The provisions in sec. 3.14 hereof shall remain unaffected hereby. In the event of disputes, the CO shall not be entitled to withhold its goods and services under the contract or indeed to discontinue them.
3.23.2 Refundable sums shall be refunded without delay, together with 2 per cent interest thereon over the twelve-month Euribor rate, calculated from the date the sums were received.

3.24 General provisions

3.24.1 The CL shall be at all times entitled to delegate and transfer all rights and obligations under this contract to commercial entities and organisations affiliated with the CL, with discharging effect and without any need for the CO's consent, and shall likewise be so entitled to transfer or delegate them to such entities as are controlled indirectly or directly by the CL or the *Land* NÖ or which directly or indirectly control the CL, and to any entities controlled by the latter. This contract shall be deemed to pass by operation of law to the legal successors of both parties.
3.24.2 The conclusion, amendment and creation of addenda to any contract and all declarations made in the course of contract performance shall not be valid unless made in written form/or by facsimile or electronic transmission.
3.24.3 All taxes, fees, duties, copyright royalties, contributions for waste disposal and the like arising out of any contract subject to these General Terms and Conditions or any activity of the CO relating thereto shall be borne by the CO, with the exception of VAT. Where the CL or the *Land* NÖ receive claims for any such taxes or charges, the CO shall indemnify the CL/the *Land* NÖ and hold them harmless. In particular, the CL shall be entitled to withhold such amounts from remuneration payable to the CO.

3.24.4 In the event of invalidity of any term of any contract, the parties hereby agree to replace such term by a term which is valid and comes the closest to the invalid provision in substantive respects. In the event that any contract term is shown to be ineffective, invalid or unenforceable, the parties hereby agree that they shall immediately replace such term by a valid/enforceable term largely comporting with or coming the closest to the conceptual and commercial content of such term. The invalidity of any individual term shall not affect other components of this contract.
3.24.5 Reservations of title and assignment of receivables on the part of the CO shall only be permitted with the CL's prior written consent. No reservations of title by sub-contractors shall be honoured.
3.24.6 The CO hereby waives any right to challenge the order/contract for mistake or for *laesio enormis* or defences based thereon.
3.24.7 The German version of this agreement shall be the original, the English version serves as translation.

List of ANNEXES:

Annex ./1 NÖLKH-MT Data Sheet (see separate document)
Annex ./2 NÖLKH-MT Final Acceptance Log (see separate document)
Annex ./3 NÖLKH-MT List of Disinfectants (see separate document)
Annex ./4 NÖLKH-MT Maintenance Contract (see separate document)
Annex ./5 NÖLKH-MT Demonstration Device Agreement (see separate document)