

**GENERAL TERMS AND CONDITIONS
OF MEDAUSTRON INTERNATIONAL GMBH**



List of Contents

- 1. General rules..... 3
 - 1.1. Definitions..... 3
 - 1.2. Applicability 4
 - 1.3. Activity of the Employer 4
 - 1.4. Communication 4
 - 1.5. Status of the Contractor 5
- 2. Contractor’s Offer 5
 - 2.1. In general 5
 - 2.2. Cost reimbursement..... 6
- 3. Contractual Performance..... 6
 - 3.1. Principles for performance of Contract..... 6
 - 3.2. Delivery 6
 - 3.3. Responsibility of the Contractor 10
 - 3.4. Legal conformity 11
 - 3.5. Personnel of the Contractor 12
 - 3.6. Administrative proceedings..... 13
 - 3.7. Responsibility of the Employer 13
 - 3.8. Quality assurance 14
 - 3.9. Confidentiality 15
 - 3.10. Inspection 16
 - 3.11. Papers and documentation 16
 - 3.12. Subcontractors..... 17
 - 3.13. Change Request Procedure 18
 - 3.14. Options 20
- 4. Fees and payment..... 20
 - 4.1. Fees..... 20
 - 4.2. Value retention..... 20
 - 4.3. Ancillary costs 21
 - 4.4. Invoicing..... 21
 - 4.5. Due dates of invoices..... 21
- 5. Performance of the contract 22
 - 5.1. Warranty and compensation of damage..... 22
 - 5.2. Duration of Contract..... 23
 - 5.3. Termination for cause..... 24
 - 5.4. Duties in case of Contract termination 24
 - 5.5. Contractual penalties..... 25
- 6. Property and intellectual property rights 25
 - 6.1. Retention of title..... 25
 - 6.2. Software..... 25
 - 6.3. Drafts 26
 - 6.4. Miscellaneous 27
- 7. Concluding provisions 27

1. General rules

1.1. Definitions

Offer	designates a proposal to do business by the Contractor, which is submitted on the basis of an inquiry or in another way
Employer	refers to MedAustron International GmbH
Contractor	designates the legal entity or natural person, company or group and as appropriate the legal successor to such with which or whom the Employer concludes the Contract
Operator	designates that legal entity or natural person that operates (will operate) the Ion Therapy Center to be set up within the framework of the Project
Services	designates any and all services that must be rendered pursuant to the Contract by the Contractor to the Employer, including among others consulting, reporting, planning work, training, assembly, maintenance, reparation and/or other services.
Goods	designates any and all goods, products and wares to be delivered including all spare parts that are set out in the contract documents
Ion Therapy Center MedAustron	designates the treatment center for cancer therapy with ion radiation and research center for clinical and non-clinical research set up and operated by EBG MedAustron GmbH at 2700 Wiener Neustadt, Marie Curie-Straße 5.
Client	designates the contractual partner of the Employer for whom such renders the services under Section 1.3.2
Place of Delivery	designates the address of the Employer
Defect	designates the infringement of a contractual provision, condition or duty
Place of Assembly	designates that place in the target country where the project is to be realised
Location Employer	designates the address of the Employer
Location Contractor	designates the address of the Contractor as well as addresses of subcontractors of the Contractor
Project	designates a project of a Client for which the Employer renders Services under Section 1.3.2
Contract	designates the legal agreement between the Employer and the Contractor on the delivery of Goods and/or rendering of Services
Contract Documents	designates Documents that contain any and all duties and specifications regarding the contents of the Contract for the delivery of Goods and/or rendering of Services between Employer and Contractor; such also include amendments and additions to the Contract
Contractual Performance	designates the Services and/or Goods listed in the Contract

Party to the Contract	designates the Employer or the Contractor; Parties to the Contract shall mean the Employer and Contractor together
Contract Price	designates the price (excluding any applicable VAT) payable to the Contractor by the Employer for the complete and due and proper fulfilment of the contractual duties by the Contractor
Target Country	designates that state in which the project will be realised and in which the Employer exports the Goods. The Target Country will be communicated to the Contractor by the Employer in the course of the Contract formation process.

1.2. Applicability

These General Terms and Conditions (hereinafter referred to as "GTC") shall apply to all legal transactions with the Employer, unless they are amended or supplemented in individual cases by express written agreement.

These General Terms and Conditions shall apply to all purchases and other procurements of the Employer, unless amended or supplemented by the Parties to the Contract in individual cases by express written agreement. They shall apply in the version valid at the time the order is placed by the Employer.

1.3. Activity of the Employer

1.3.1 The Employer is a company with limited liability. The sole shareholder is EBG MedAustron GmbH, which set up and operates the Ion Therapy Center.

1.3.2 In international projects, the Employer supports clients which desire to set up and/or operate ion therapy centers comparable with the Ion Therapy Center Medastron. This support is provided - depending on the project - in the form of consulting, development, planning, delivery, assembly, installation, testing, commissioning, integration, maintenance and other services required for the construction and operation of such facilities.

1.4. Communication

1.4.1 Insofar as not otherwise expressly agreed, all communication must be in writing. This may be in German or English. Communication per email is deemed to be written communication in the sense of Section 1.4.1.

1.4.2 The Parties to the Contract are obliged to notify each other mutually without any undue delay of any and all changes (including contact details, company name, company seat, persons authorised to act for the Party to the Contract, etc).

1.5. Status of the Contractor

1.5.1 During the entire term of the Contract, the Contractor shall remain independent from the Employer (no conclusion of an employment contract, agency relationship, partnership or joint venture between the Parties to the Contract).

1.5.2 Subsequent to approval by the Employer, the Contractor may use the name and emblem of the Employer or indicate that it is a supplier to the Employer. The Employer reserves the right to limit, alter or revoke this permission to the Contractor at its own sole discretion.

2. Contractor's Offer

2.1. In general

2.1.1 Mandatory components of a complete Offer include:

- fully completed Specifications Sheet;
- all prospectuses and product data sheets regarding the products offered which demonstrate the fulfilment of all minimum requirements set by the Employer.

2.1.2 The necessary third-party software subject to licences (eg Microsoft, Adobe) that is necessary for the due and proper function and use of the products offered is also part of the performance owed by the Contractor if awarded the Contract and included in the Offer Price even without being mentioned explicitly.

For such software, the Bidder must submit the following information with its Offer:

- exact product designation (including article number) according to the product list of the manufacturer/third party provider;
- type of licence (eg processor licence, core licence or server CAL licence).

2.1.3 By submitting the Offer, the Offeror confirms that it knows all local conditions material to the rendering of the Services (eg the condition of the places of installation and

delivery, access possibilities) and other circumstances material in this respect and has taken such into account in calculating the price. Any additional claims afterwards for such circumstances are hereby precluded.

2.1.4 By legally valid signature of its Offer the Offeror acknowledges without limitation all provisions of the procurement process including all contents of the Specifications, the contract law stipulations and these GTC.

2.1.5 The Offeror remains bound by its Offer for the duration of five months after its Offer has been received by the Employer.

2.2. Cost reimbursement

The Contractor shall not have any right to remuneration or reimbursement of expenses for actions and expenditure arising in the course of the Contract formation process and submitting the Offer. Any and all costs associated with the participation in the procurement process and/or the submission of its Offer, including costs for necessary preliminary work, enclosures, proofs, presentations and test versions shall be borne by the Offeror. The Employer shall not reimburse these costs.

3. Contractual Performance

3.1. Principles for performance of Contract

3.1.1 The Contractor is aware that its performance will be used for the setting up and operation of a highly technical facility in a hospital. It must when rendering its Services have regard to special requirements in particular also to medical device certification, radiation protection and hygiene rules.

3.1.2 The Contractor is aware that the Employer exports Goods to other (non-European) locations of respective projects. The Contractor will provide the Employer with all information and documents required to this end, even if they are not expressly listed in these GTC or other foundations of the Contract.

3.2. Delivery

3.2.1 The Goods shall only be delivered at the time(s), on the date(s) and to the place(s) laid out in the Contract. In any other case prior written approval from the Employer must be obtained.

If the Parties to the Contract do not agree any other place of delivery in the writing, the location of the Employer shall be deemed the place of delivery.

3.2.2 The Contractor shall organise the transport to the place of delivery at its own expense and responsibility. Insofar as not otherwise agreed in writing, the delivery shall be DPP under the INCOTERMS 2010.

3.2.3 The transfer of title and risk in respect of the Goods to the Employer shall take place upon conclusion of the unloading process at the place of delivery.

In the case of additional deliveries or deliveries which arrive at the Employers prior to the contractually agreed delivery time, title and risk shall only transfer after express, written acceptance of such deliveries by the Employer.

3.2.4 The Contractor shall at its own expense and responsibility take all precautions, provide all documents, permits and declarations and complete all other formalities which the Employer needs for the export of the Goods out of Austria and to import them into the Target Country (hereinafter referred to jointly as: **Export Documentation**). This obligation shall include in particular also the enclosure of the relevant customs tariff numbers and certificates of origin.

3.2.5 The Contractor shall deliver all Goods packed and sealed so as to ensure they can be safely stored at the Employer and securely transported further on by ship and truck to the Place of Assembly.

The packaging must secure the safe transport, delivery process and storage of the Goods as well as have an unambiguous reference to the Employer. Insofar as not otherwise agreed between the Parties to the Contract, deliveries may not exceed a gross weight of 1600kg per package and must be suitable for unloading via forklift. If the gross weight of 1600kg per package is exceeded, the Contractor must send a shipping notification with all relevant cargo and delivery details at least one month before the agreed delivery date to the Employer.

The packaging must in any case provide the following information:

- Order number (PO number);
- Delivery slip;
- Packing list
- MedAustron article number;
- MedAustron plant number (if applicable);
- Article name;
- Gross and net weight of the freight.

The Contractor shall inform the Employer in writing about the type of transport as well as all transport conditions which must be complied with in order to guarantee a safe transport of the goods to the Place of Assembly with no damage to them.

3.2.6 Delivery confirmations issued by the Employer shall solely establish the proof that:

- the piece of freight expressly designated in the respective delivery confirmation was delivered;
- insofar as the delivery confirmation contains information of this nature, also the outward condition of the packaging of the expressly designated piece of freight.

On the other hand, delivery confirmations do not in particular serve to prove anything about the content of the piece of freight designated (eg the type and amount of contents), whether this conforms to the Contract or is free from defect.

The deliveries shall be accepted at the place of delivery at the express desire of the Employer. The Contractor is obliged to participate in such an acceptance within seven days after receipt of a corresponding written notification.

3.2.7 The Employer shall be entitled to refuse to accept deliveries:

- in the case that they do not conform to the Contract in terms of the number of pieces of freight (in particular according to the Specifications or other Contract Documents);
- in the case of damage to the packaging;
- in the case that there are circumstances which indicate a likelihood of damage or defectiveness of the packaged Goods;

- if the delivery does not contain the certificates on the contents of the pieces of freight or such are incomplete or inaccurate as to content;
- if the delivery does not enclose all the documentation it is supposed to, in particular
 - product descriptions for all Goods part of the delivery;
 - certificates of origin for all Goods in the delivery;
 - manufacturer's documents (in particular specification sheets) including manufacturer's certificates for all Goods in the delivery;
 - Packing lists;
 (cf in particular Section 3.11);
- if the Contractor in making the delivery has failed to comply with other stipulations (eg because the delivery does not enclose the export documentation for the further transport to the Target Country or not completely);
- in the event of any and all other circumstances that do not lie within the responsibility of the Employer and which endanger or render impossible the secure further transport of the piece of freight to the Place of Assembly in the Target Country.

3.2.8 The Employer is entitled at its option to refuse to accept deliveries or to withdraw in full or in part from the Contract:

- if the Contractor informs it that such will not be able to deliver the Goods at the contractually agreed times and in the contractually agreed condition and quantities;
- if the delivery does not take place at the contractually agreed time;

always provided that the delivery has as a result of this circumstance lost its intended purpose for the Employer.

3.2.9 If the Contractor participates in a comprehensive system for disposal of packaging in Austria (such as ARA – Altstoff Recycling Austria AG), then it shall include in its Offer as well as every delivery slip and every invoice the following legally binding declaration and indicating its licence number: *“The packaging of all listed Goods is exempt under the licence number [...]”*. Otherwise the Contractor shall collect the packaging within three business days of first request by the Employer and itself dispose of it. If the Contractor does not meet this obligation in good time, the Employer shall be entitled to have the packaging disposed of by third parties at the risk and expense of the Contractor.

The Contractor is not entitled to any additional remuneration of costs or fees (eg deposits or disposal costs) in connection with the packaging.

3.3. Responsibility of the Contractor

3.3.1 The Contractor shall perform the contractual duties with the necessary expertise, care and diligence as well as in line with the provisions of the Contract Documents and professional standards.

3.3.2 The Contractor guarantees that the Goods delivered represent at the time of delivery the most recent state of the art of technology as well as tried-and-tested technologies.

3.3.3 The Contractor is responsible for the due and proper execution of all delivered Goods, regardless of whether these were selected by the Contractor or proposed by the Employer. The approval of the design and choice of components by the Employer does not release the Contractor in this respect from its duties.

3.3.4 The Contractor is responsible for the accuracy of any and all drawings, documentation and information that ensue in connection with the delivery of Goods to the Employer. The Contractor shall pay the Employer any and all additional costs that arise through any inaccuracies, mistakes and/or omissions.

3.3.5 The Contractor shall always deliver brand new goods in their original packaging, unless otherwise specified in the Contract Documents. The Contractor shall ensure that the delivered Goods are fully compatible with the Employer's equipment to the extent laid out in the Contract.

3.3.6 The Contractor is responsible for the storage of any and all materials, goods, parts, equipment and/or devices that the Employer entrusts to the Contractor in the course of performance of Contract. If the Contractor obtains materials, goods, parts, equipment and/or devices for and in the name of the Employer, it shall take all measures necessary so that the Employer's ownership is proven, in particular safekeeping of all necessary documents.

3.3.7 The Contractor shall render performance in compliance with all relevant provisions on the transport of dangerous goods and hazardous waste as well as any existing special

storage and operating regulations. Its contractual duties to inform shall also extend to these issues.

3.3.8 If for any reason whatsoever a Contract is terminated, the Contractor shall return to the Employer any and all property of the Employer immediately. Property includes in this context any and all copies of documentation as well as all confidential information and intellectual property of the Employer. This applies both to property that is obtained in the course of performance and/or was produced.

3.3.9 If the contractual relationship is ended for whatsoever reasons the Contractor shall support the Employer and cooperate with such to ensure a due and proper transition of contractual relationship to a replacement contractor and/or the completion of work already begun.

3.3.10 If after concluding the Contract the Contractor ascertains that it misinterpreted a requirement and/or specification, this shall not be accepted as a reason for hindrance. The Employer shall insist that the Contractor renders the contractual performance pursuant to the original requirement and/or specification without additional costs.

3.3.11 The Contractor shall inform the Employer without delay in writing about any circumstances that threaten to impair or impair the fulfilment of its contractual duties. Insofar as it fails to do so, it is in no way entitled to seek compensation for costs, an extension of the deadline and/or other claims for compensation in this respect. The Contractor shall take the measures that are necessary in order to mitigate the consequences of circumstances that impair performance for the contractual relationship.

3.3.12 The Contractor shall make sure in an appropriate manner that the fulfilment of its contractual duties do not disturb and/or impair the operations of the Employer.

3.4. Legal conformity

3.4.1 The Contractor is obliged to comply with all laws, ordinances and Austrian Standards (ÖNORMEN) and/or European Standards relating to the performance of the Contract.

3.4.2 The Contractor shall indemnify and hold the Employer free and harmless from any losses and/or damage (including pecuniary damage and costs of legal representation) that arise due to violations of Section 3.4.1.

3.4.3 If violations of applicable laws and provisions, technical specifications and Standards occur, the Employer shall be entitled to withdraw from the Contract in full or in part with immediate effect.

3.5. Personnel of the Contractor

3.5.1 The personnel used by the Contractor must remain at all times under the sole responsibility and competence of the Contractor.

3.5.2 The Contractor shall ensure that rights to access the locations of the Employer are used by Contractor personnel solely for the performance of contractual duties.

3.5.3 The Employer may refuse access to its locations for any and all of the personnel used by the Contractor, if such does not comply with applicable laws and/or stipulations by the Employer. Further, entry may be denied to any and all of the personnel used by the Contractor whose presence is considered undesirable.

3.5.4 In the event that access is refused, the Contractor shall be liable for all effects on the performance of its contractual duties.

3.5.5 All workforce used for performance in Austria (thus also workforce of agents of performance) must be entitled to reside in Austria and exercise the specific professional and commercial activity in Austria.

The Contractor shall itself take responsibility to comply with all legal provisions applicable to the use of its workforce in Austria.

In particular the Contractor shall if it employs foreign workers comply with all provisions applicable in this case (in particular the Employment of Foreigners Act - *Ausländerbeschäftigungsgesetz*). Upon request at any time by the Employer the Contractor shall immediately submit to Employer for each and every foreign worker engaged at the Place of Assembly all required documents and proofs (in particular passport or other valid proof of nationality, work permit, employment permit or exemption certificate and social

security registration). The Contractor shall place the subcontractors and other auxiliaries it engages under the same obligations and monitor the compliance with these provisions regularly and precisely.

3.5.6 All workforce used to render performance in the Target Country (thus also those of performance agents etc) must be entitled to reside and exercise the specific professional and commercial activity in the Target Country.

The Contractor shall take responsibility itself to comply with all legal provisions applicable in the Target Country to the deployment of its workforce. In particular the Contractor shall take responsibility when employing foreign workers to obtain and maintain the validity of all permits required in this respect.

3.5.7 In the event of violation against the provisions of Section 3.5.6 and/or 3.5.6:

- the Contractor shall be liable for all resulting harm including consequential damage and pecuniary damage of the Employer and its representatives;
- moreover, the Employer shall also be entitled to assert a contractual penalty in the amount of € 5000 per violation.

3.6. Administrative proceedings

The Contractor shall cooperate for the duration of performing the Contract on all administrative proceedings with the regulatory authorities related to the object of the performance at its own costs and without any additional entitlement to remuneration, in particular also to prepare and make available all documents concerning its performance.

3.7. Responsibility of the Employer

3.7.1 The Employer takes the responsibility for the specification and performance of materials, goods, parts, equipment and/or devices that are provided by the Employer. Further, the Employer is responsible for system parameters which are steered by subsystems of the Employer.

3.7.2 In the event that it exercises inspection and/or supervision rights, the Employer undertakes in its own name and in the name of the representatives acting for the Employer to the usual observance of business secrets. Further, the Employer shall strive to keep

inconveniences which may arise in the course of exercising inspection and/or supervision rights for the Contractor to a minimum

3.8. Quality assurance

3.8.1 The Contractor owes technically faultless performance at the highest level of knowledge and experience, in which context Contractor is deemed to be an expert professional under § 1299 Austrian Civil Code (ABGB). The Contractor shall have regard in rendering performance to the greatest possible economy for the Employer, in order to achieve an optimal result for such in terms of costs, quality and time.

3.8.2 The Contractor shall point out to Employer without delay any and all risks that are recognisable to an expert professional rendering the services in its area. The Contractor shall render all of its performance so that at time of performance they comply with the current state of the art in technology. The Contractor shall render all contractual performance according to a recognised and suitable quality standard.

3.8.3 The Contractor has informed itself of all relevant circumstances for the realisation of the Project and achievement of the Project goals. It hereby declares that with respect to the contractual services it is to perform the Project is feasible with the prospective means in the intended time period. Its solution is economic as to costs and promises good results for the Employer.

3.8.4 In the context of rendering performance the Contractor shall comply with all Austrian laws and ordinances, official decisions by authorities (*Bescheide*) and other requirements imposed and orders issued by authorities.

3.8.5 As long as the Contractor has not proven otherwise, it shall be assumed that any damage that ensues to the Employer in connection with the Contractor's activity was caused by the Contractor and that such acted unlawfully and was at fault in this respect.

3.8.6 The Contractor is liable to the same extent and in the same manner also for persons that act for it as performance agents or auxiliaries or are in some other way attributable to its sphere (eg subcontractors).

3.8.7 The Contractor confirms and warrants for the entire duration of the Contract (and as liability fund going beyond this) that it has for the performance of this contract a valid professional or business liability insurance with an insured sum of at least EUR 1 million for personal injury as well as EUR 1 million for property damage for at least one insurance case with at least six months follow-up liability insurance. The Contractor undertakes to submit a corresponding confirmation of insurance within fourteen days upon request by the Employer.

The Contractor releases its insurer from its confidentiality duties with respect to the Employer and all third parties named to it by the Employer who are legally bound to professional secrecy.

3.9. Confidentiality

3.9.1 The Contractor undertakes to treat with especial care and confidentiality all information, documents and data, in particular business and trade secrets as well as data related to the company and personal data (hereinafter altogether Information) it receives in the context of this contractual relationship that become known to it during the cooperation and to protect such against becoming known to third parties in any way. The Contractor undertakes in particular to comply with the General Data Protection Regulation (GDPR) as well as the Data Protection Act (*Datenschutzgesetz, DSG*).

3.9.2 The Information and documents may only be used exclusively for purposes of the cooperation. This obligation shall continue to apply without limit in time after the termination of the Contract. Besides the information recorded in writing, including correspondence, the confidentiality agreement shall also cover oral, optical and electronic information that is stored on audio, film or data storage mediums or exist in some other material form and are to be treated as confidential.

3.9.3 Upon termination of the Contract the Contractor expressly undertakes to return the Information and reproductions expressly designated as confidential by the Employer. The written confirmation of destruction of all Information can replace its return if the Parties to the Contract have agreed on this prior to the destruction. If the Contractor or a third party engaged by such violate the confidentiality agreement under this Section, the Employer shall be entitled to a contractual penalty of EUR 100,000 per violation.

3.9.4 Moreover, the Contractor may not independently give any interviews or statements about the Project and subject of the Contract. Each interview as well as any statement must be approved by the Employer in advance. If the Contractor or a third party engaged by such should violate this “interview rule” under this Section, the Employer shall even in the case of slight fault be entitled to a contractual penalty of EUR 10,000 per violation. The Contractor shall bear the burden of proving it was not at fault.

3.9.5 The Contractor undertakes to use for the administration and carrying out of its contractual duties exclusively personnel and agents that have been bound in writing to comply with the confidentiality and secrecy duties laid out here in Section 3.9.

3.10. Inspection

During the term of the Contract, both the Employer and lawfully appointed representatives of the Employer should have free access during the customary hours of business to the premises of the Contractor. In the event of an inspection by the Employer or lawfully appointed representatives of the Employer, the Contractor shall be informed thereof in advance.

3.11. Papers and documentation

3.11.1 The Contractor shall obtain and/or request all documents necessary for its performance in good time. Documents from the Employer shall be sent by such upon request and at own expense to the Contractor.

3.11.2 If additional documents are required for the performance, which can only be provided by the Employer, these shall be requested in writing without delay by the Contractor from the Employer at the time it becomes recognisable that they are needed and shall be obtained by the Employer and handed over to the Contractor without delay. The Contractor may only use the documents provided to it by the Employer exclusively for the purposes of the performance under the Contract. Any other use requires the prior written consent of the Employer on a case by case basis.

3.11.3 The Contractor is obliged to inspect all documents, enclosures and instructions provided to it by the Employer as well as any (preliminary) performance by third parties before using such or realising such, thus in particular in respect of accuracy, completeness,

plausibility and suitability for the intended purpose. The Contractor shall inform the Employer without delay in writing of any defect recognisable to it.

3.11.4 The Contractor is obligated to draw up in particular the following project documentation in English:

- Product description;
- Certificates of origin for all Goods;
- Manufacturer's certificates for all Goods;
- Packing lists;
- Assembly documentation and as-built plans (in the case of assembly services);
- Operating instructions and maintenance handbooks, instructions for cleaning and care;
- Training documents (insofar as relevant);
- Acceptance records, test results and certificates.

3.11.5 Moreover, the Contractor shall provide to the Employer without delay and without any additional claim for remuneration all further documents and declarations that are required with respect to its performance for the certification of the project or particular facilities, devices or components thereof as medical devices, for the operating permit for the Project or for any other permit in order to take up patient operations in the Project.

3.12. Subcontractors

3.12.1 The Contractor is only entitled to use subcontractors that are expressly agreed to by the Employer in writing. A change of subcontractor is only admissible with the prior written consent of the Employer. The Employer will refuse this consent in particular if the suitability of the (new) subcontractor for the respective part of performance it would take on has not been proven free of doubt and the performance in accordance with the Contract and in good time is no longer guaranteed beyond doubt (eg because the Employer has already had bad experiences with the new subcontractor or has gained knowledge of such experiences with other employers).

3.12.2 If the Employer has justified concerns about a subcontractor that has been engaged, it may demand that such be replaced without delay by another, suitable subcontractor. The

Contractor shall engage a replacement in such case within two weeks. Any extension of the deadlines for performance is not possible.

3.13. Change Request Procedure

3.13.1 Changes to the performance, in particular due to changed requirements by the Employer are subject to the following formalised process (hereinafter: **Change Request Procedure**). The goal of the Change Request Procedure is to make decisions as quickly as possible and to ensure a controlled decision-making and processing of Change Requests.

3.13.2 Each Change Request must be conveyed in writing to the Contractor. The Change Request must be described as precisely as possible and with sufficient background information provided so that it can be evaluated by the Contractor directly on this basis of this submission.

The Contractor's evaluation must mandatorily include an "Impact Assessment" that describes the influence of the planned Change Request on dependant system parts in detail and in particular allows an estimate of whether and which undesired effects the planned Change Request would have or could have on these system parts.

3.13.3 After receiving this evaluation the Employer will first do a preliminary examination (or by mutual agreement have such carried out by other project participants or third parties). The aim of this preliminary examination is to determine whether the respective Change Request requires priority treatment and whether there is sufficient background material for its immediate treatment.

The Employer shall transfer the Change Request after this preliminary examination to the Contractor which within five workdays shall evaluate the effects of the implementation of the Change Request in connection with time, costs, quality, functionality, availability and operational security (feasibility analysis).

3.13.4 The Contractor shall attach the results of the feasibility analysis to the Change Request. This feasibility analysis shall also include an exact proposal for the technical implementation of the Change Request as well as the financial conditions and effects in implementation, commissioning and operation (including maintenance and repair). At the

request of the Employer the Contractor shall involve parties participating with the Employer in this feasibility analysis.

3.13.5 On this basis the Parties to the Contract shall negotiate on the conclusion of the Change Requests. The Contractor shall write a description of the Change Request based on the results of these negotiations with at least the following contents:

- Type and extent of the performance owed by the Contractor due to the Change Request (Change Request Performance);
- (as appropriate updated) feasibility analysis;
- Number and qualification of the staff required to carry out performance of the Change Request;
- Type and costs of devices, which are required to render the Change Request Performance;
- Criteria for the Acceptance of the Change Request Performance;
- The fee due to the Contractor for the Change Request Performance (hereinafter: **Change-Fee**). The bases of calculations for this Change-Fee are the bases for calculation of the original Offer. The fee rule for a Change Request must mandatorily also include an invoicing and payment plan for the payment of the Change Fee.

When the Change Request Description is available the Employer shall decide about whether to have the Change Request carried out. The Parties to the Contract shall agree regardless of the complexity of the Change Request on a time for execution, ie the deadline within which the Contractor shall render and complete the respective performance. By the Employer conveying the Acceptance of the Change Request to the Contractor, the latter shall be deemed to have been instructed to carry out the Change Request.

3.13.6 The implementation of an accepted and ordered Change Request shall be carried out compliance with the agreed time plan and/or within the execution time. The progress of the implementation must be monitored and supervised until the Change Request has been fully completed. For changes which take a longer time, periodical reports must be sent to the Employer. The validation and acceptance of a completed Change Request shall be based on the test procedure and those acceptance criteria that the Parties to the Contract have established for the Acceptance of the Change Request. The Employer must upon request by

the Contractor confirm in writing successful Acceptance of a Change Request within six business days.

3.14. Options

3.14.1 The Employer is entitled but not obligated to call up the performance designated as option in the procurement process by the Employer. The call up is in good time if the written notification of call up by the Employer is sent to the Contractor within 24 months and/or another expressly agreed call up deadline from the day of award of contract.

3.14.2 The Contractor is entitled for the rendering of optional performance to the flat fee set out in the relevant item in the Offer for the optional performance. In respect of optional performance for which the Contractor has not offered any fee, the Parties to the Contract shall determine this fee after the notification of call up by the Employer by mutual agreement with analogous application of the provisions of Section 3.13. For such performance the call up of the optional performance shall be subject to the condition precedent that a flat fee for these services be fixed by mutual agreement.

3.14.3 Insofar as the Parties to the Contract have not agreed otherwise in the particular case, the Contractor shall only be entitled to lay the invoice after acceptance of the optional performance for the flat fee agreed for the rendering of such optional performance.

4. Fees and payment

4.1. Fees

All prices are net, fixed prices and include all costs that accrue for the fulfilment of the contractual duties by the Contractor. The contractually fixed prices may not be altered insofar as this is not expressly determined in the Contract Documents. If applicable, the Contractor shall list the respective, applicable VAT in addition to the Contract Price.

4.2. Value retention

Any and all prices fixed in this Contract shall be agreed as fixed prices for the period of one year after conclusion of the Contract. For parts of performance rendered after the expiry of this fixed price commitment, the price will be adjusted according to the following value retention:

The value retention shall be calculated based on the Consumer Price Index 2015 published by Statistik Austria or the index taking its place. The starting point for the value retention is the index figure published for the month following the conclusion of the Contract. The fee shall change in line with the amount of the index increase, whereby fluctuations of up to and including three percent from the respective starting point are not taken into account.

4.3. Ancillary costs

All fees under this Contract shall include any and all ancillary costs, taxes and duties insofar as not expressly determined otherwise in the Contract. This also applies to any and all travel costs, reproductions of documents for authorities, Employer and other third parties, executing companies and special experts etc. Thus, the expressly agreed fees cover all main and ancillary performance of the Contractor under the Contract conclusively and in full, insofar as not otherwise expressly agreed in the Contract and/or insofar as the Parties to the Contract do not expressly enter into a written agreement departing from this containing a definite, quantified additional fee prior to the rendering of the specific main or ancillary performance.

4.4. Invoicing

4.4.1 All invoices shall be numbered consecutively and must comply with the rules of § 11 VAT Act (UStG) as well as the requirements of the Employer. They shall be sent in the original and enclosing a copy to the following billing address:

MedAustron International GmbH,
Marie Curie Straße 5
A-2700 Wiener Neustadt
Austria.

4.4.2 The Contractor shall enclose with its invoices all information and proofs that the Employer needs for in-depth verification of the invoices.

Invoices that conflict with these provisions shall not trigger any legal duties on the part of the Employer or due dates or deadlines.

4.5. Due dates of invoices

4.5.1 Invoices shall be due for payment within fourteen (14) calendar days with deduction of two (2)% discount for early payment or thirty (30) days after due and proper invoicing. The Employer is entitled to settle these invoices by setting off against its own claims against the Contractor.

The Employer is in particular entitled to retain from the respective invoice sum all contractual penalties that have accrued until the actual payment of this invoice.

4.5.2 The payment of invoices shall not mean any recognition and/or acceptance of the Delivery or Service Performance by the Contractor, subject of the invoice or otherwise. Thus, in particular it does not represent any waiver of any claims (eg for default, warranty or damages).

4.5.3 The Contractor shall be entitled to issue the invoices after rendering all of its performance. Part payments shall only be made insofar as such is expressly set out in writing in the Contract Documents.

5. Performance of the contract

5.1. Warranty and compensation of damage

5.1.1 The Contractor warrants it will render performance free of fault and complying with the provisions and Standards applicable in Austria and with the Contract. The burden of proof that there was due and proper performance lies with the Contractor. The warranty period for each contractual performance begins with the time of the due and proper rendering of the last contractual performance and ends in each case 24 months later. During the entire duration of the warranty the presumption of defect (presumption that if a defect manifests this was already present when the risk passed) shall apply.

5.1.2 The Contractor is liable within the framework of the legal provisions for the full interest in case of all personal injury, damage to property and other harm that is caused directly or indirectly by it, including by personnel it employs or third parties it engages. The obligation to compensate thus includes all damage consisting in the defectiveness as well as damage as a consequence to defects and all pecuniary damage.

5.1.3 The Contractor shall bear during the rendering of performance the sole civil law, criminal law and administrative law responsibility for its area of performance. The Contractor is liable for all harm that arises due to delays and/or impossibility of performance if the cause lies with it or its performance agents. The Contractor is liable for all claims that can arise from non-observance of rules and shall keep the Employer free from all claims in this respect. Moreover, the Contractor is liable for direct and indirect damage due to interruption of operations or delay in remedying defect as well as the risk of consequential damage. The Contractor shall indemnify and hold the Employer completely free and harmless from all such claims in particular in respect of third parties.

5.1.4 In the event of damage the Contractor shall make available all documents and information that serve to clarify the facts.

5.1.5 Approvals or consents given by the Employer and agreements or consultations with the Employer and other participants in the Project shall not release the Contractor from its undivided contractual responsibility.

5.1.6 The Employer is liable to the Contractor for gross fault. Mandatory legal provisions on personal injury are excluded from this limitation on liability. Within the framework of the legally admissible the Contractor waives its rights to compensation from the Employer insofar as no insurance covers the damage.

5.2. Duration of Contract

5.2.1 The contractual relationship commences with the (electronic) signature of the Contract.

5.2.2 Insofar as the contractual relationship does not end by performance of the Contract (target obligation) it shall run for an indefinite time. The Parties to the Contract shall be entitled to ordinary termination of the Contract as follows:

- the Employer subject to a notice period of four weeks effective on the last day of a calendar month;
- the Contractor subject to a notice period of six months effective at the end of a calendar year.

5.3. Termination for cause

5.3.1 Besides the good causes for termination as provided under general civil law, the Employer shall be entitled to terminate this Contract for cause without giving notice if the Contractor or one of its subcontractors and/or other auxiliaries:

- violates the material duties imposed upon such by this Contract and despite written warning by the Employer continues or repeats such violation and/or does not without delay eliminate the harmful consequences of this violation. Material duties under this Contract include in particular all duties that serve rendering of performance (including part performances) in good time by the Contractor;
- violates secrecy duties despite written warning to the Contractor.

5.3.2 The Contractor shall compensate all additional costs to the Employer associated directly or indirectly with the termination for cause for any reason lying within the Contractor's sphere of responsibility

5.3.3 The Contractor is obliged in case of termination for cause to suspend its works immediately.

5.4. Duties in case of Contract termination

5.4.1 If it makes sense for the Employer, in particular in order to mitigate damage, the Contractor shall fulfil its contractual service profile according to the specifications of the Employer and/or provide necessary support performance until the Employer has found a successor to the Contractor and such has successfully taken over the performance to be rendered, insofar as the Employer is not accountable for an undue delay in searching for a new contractor.

5.4.2 The Contractor furthermore undertakes to make available to the Employer upon request by such all necessary information and documents for the continuation of the performance subject of the Contract (by third parties or with own staff) as quickly as possible and in a suitable form. The costs for this shall be borne by the Contractor. This obligation applies regardless of the reason for the end in the case of any kind of termination of the contractual relationship.

5.5. Contractual penalties

5.5.1 All contractual penalties arising under this contractual relationship are independent of fault and not subject to judicial mitigation. The right to claim for damage exceeding any respective contractual penalty or other claims shall remain unprejudiced by the right to impose the respective contractual penalty. The Employer may also enforce contractual penalties repeatedly in the case of repeated violations. The Employer is entitled to deduct and retain from any invoice by the Contractor any contractual penalties that have accrued until payment of the invoice.

5.5.2 It is not necessary to prove any specific damage in order to enforce contractual penalties.

6. Property and intellectual property rights

6.1. Retention of title

Drawings, sketches, tools, aids, patterns, models, test versions etc made available by the Employer to the Contractor for the performance of the Contract or financed by the Employer shall remain or become the property of the Employer. The Contractor shall neither make them accessible to third parties nor use them for any other purpose than to perform the Contract (in particular also not for advertising purposes). The Contractor shall return them after rendering of performance and/or after termination of the Contract within five business days from first time request of the Employer.

6.2. Software

6.2.1 The Contractor grants to the Employer for any and all software defined in the Offer, the description of performance and other Contract Documents and/or necessary for the performance conforming to the Contract or for the functionality of the subject of the Contract the non-exclusive right to use without restriction as to time and place and not tied to the system. This right to use covers the complete and also just partial utilisation of all functions of the software product as well as any and all utilisation of the data bases of the Employer by using the product functionalities, whether the use involves visualised or non-visualised interfaces, simultaneously or time-shifted.

The granting of this right also includes making available the result of work by means of network connection to the number of users set out in the Contract Documents in the form of read and edit usage.

6.2.2 The Employer shall obtain use rights to software from third party manufacturers in accordance with the manufacturer's licence provisions. If the Contractor uses software from third party providers to render performance, it shall hand over the licence provisions to the Employer without being requested together with the Offer submission and must refer the Employer in writing to any and all deviations from the stipulations of the Employer.

6.2.3 Furthermore, the Employer shall in any case acquire the right to make necessary reproductions for backup and archiving purposes.

6.2.4 The Contractor is liable to the Employer to ensure that its rendering of performance and the use of the Software in line with the provisions do not violate any patents, industrial property rights or rights of use belonging to third parties.

6.2.5 If third parties claim there was a violation of intellectual property rights due to the Employer's use of the Software such will inform the Contractor of this without delay. The Contractor is obliged to defend against the claim as well as to obtain full rights for the Employer.

6.2.6 The Contractor grants the Employer the right to sublicense, ie to transfer all rights designated in this Section 6.2 to the Client and the Operator.

6.3. Drafts

6.3.1 The Employer acquires worldwide all known intellectual property non-exclusive rights to use and any becoming known in the future with the right to sublicense to the Client and Operator for all concepts, drafts, handbooks, reports, training documents and other documents prepared by the Contractor, its staff, subcontractors and cooperation partners within the framework of rendering performance. The Contractor will demonstrably obligate its staff, subcontractors and cooperation partners to grant these rights of use to the Employer.

6.3.2 All rights to ideas and concepts contributed by the Employer as well as to drafts and other documents made available by the Employer shall remain exclusively with the Employer.

6.4. Miscellaneous

6.4.1 The Contractor shall not be entitled to any separate fee for granting these rights of use described in Section 6.

6.4.2 In the case that an insolvency proceeding is initiated regarding the assets of the Contractor (or petition for such is refused due to lack of assets to cover the costs), all rights the Contractor is endowed with to the performance under this Contract shall be transferred at least as non-exclusive rights to the Employer, insofar as the Employer has not already acquired further-reaching rights thereto.

6.4.3 The Contractor shall reimburse the Employer for all costs and compensation payments that such sustains due to proven culpable violation of the intellectual property rights of third parties by the Contractor's performance. This obligation also includes all payments that the Employer negotiates in agreement with the Contractor, all costs incurred for working time used to rectify the legal situation at the Employers (or its users) including the costs of legal representation.

7. Concluding provisions

7.1 General Terms and Conditions, conditions of delivery and payment or other general rules of the Contractor do not apply to this contractual relationship, the question of whether it exists or continues to exist, its interpretation, realisation and processing as well as all legal questions regarding claims arising herefrom.

7.2 The Contractor is not entitled to cede claims from this Contract to third parties or to pledge such. If nonetheless there is cession or pledging, the Employer shall be entitled to deduct a processing fee in the amount of 2% of the ceded or pledged claim. Any setting off of Contractor's claims against the Employer shall be inadmissible (ban on compensation by offsetting).

7.3 If there are oral agreements relating to this Contract at the time of its conclusion, these shall lose their legally binding nature upon the conclusion of this Contract. Any changes or additions to this Contract require the written form in order to be legally effective. This shall also apply for any departure from the requirement that such be in writing.

7.4 The written form in the sense of this Contract is also satisfied by sending a declaration by email. In such case the party making the declaration bears the burden of proof that the email arrived to the addressee. Email declarations sent by the Contractor to the Employer shall be legally binding for the Contractor regardless of any limitations contained in disclaimers attached to the declaration.

7.5 If any parts of these GTC or the Contract concluded between the Employer and the Contractor should be or become legally ineffective, then all other parts of the Contract shall remain in effect. The invalid or ineffective parts of the Contract shall be replaced by such as come closest to the economic content of the rule intended by the Parties. Any and all annexes to a Contract concluded with the Employer are components thereof.

7.6 The Contractor waives its right to contest the Contract concluded on the basis of these GTC for mistake.

7.7 The contractual relationship at issue shall be governed by Austrian law. This excludes substantive referral norms (private international law) and the UN CISG.

7.8 Place of Performance and exclusive place of jurisdiction is 2700 Wiener Neustadt.

7.9 Differences of opinion regarding the performance and/or the remuneration for it shall not entitle the Contractor to cease its performance under this Contract or partial performances specifically ordered on the basis of this Contract. The same shall apply to the case of default on payment by the Employer.

7.10 By accepting this Contract the Contractor confirms that it disposes over the entitlements and authorisations required to render the performance as set out in this Contract.

7.11 If the beginning of a deadline period is attached to a declaration and unless otherwise expressly provided in this Contract, the actual arrival of the declaration to the recipient of such shall trigger the period.