Tirol Kliniken GmbH

GTC for Deliveries and Services

Table of Contents

Preliminary remarks and explanations

These General Terms and Conditions (GTC) of Tirol Kliniken GmbH (in the following referred to as Client) for Deliveries and Services are based on the ÖNORM A 2060, General Terms of Contracts to provide Services (version 05-01-2023).

Any deviations from and supplements to the ÖNORM A 2060 (hereinafter referred to as ÖN A 2060) are formulated in detail. If a provision is marked with the auxiliary „dev. from ÖN A 2060" ("dev." stands for deviating), it is only the detailed formulation provided hereunder that shall prevail over the provision laid down under ÖN A 2060. If a provision is marked with the auxiliary „suppl. to ÖN A 2060" ("suppl." stands for supplement), the detailed formulation hereunder shall be valid in addition to the provision laid down under ÖN A 2060 or, respectively, represents a provision for which there is no corresponding item in ÖN A 2060. The provisions laid down under ÖN A 2060 that shall be part of these GTC as formulated thereunder are indicated by reference "s. ÖN A 2060" ("s" stands for see).

The references to the Austrian Consumer Protection Act (Konsumentschutzgesetz) contained in the ÖN A 2060 are not included in these GTC and these deletions are not indicated separately.

Numbering has been adopted from the ÖN A 2060. In addition, the ÖN A 2060 contains chapters that are not included. The ÖN A 2060 can be obtained from the website of the Austrian Standards Institute.

For reasons of better readability, a gender-specific form is used in these General Terms and Conditions. All references to persons apply equally to all genders. This wording serves solely to simplify the language and does not imply any judgement.

Preamble

The Client attaches great importance to sustainability and assumes responsibility for future-proof healthcare in line with international sustainability goals. It complies with numerous legal requirements for the promotion of sustainable economic activities, climate neutrality, circular economy and human rights standards in the supply chain. In addition, the client actively pursues sustainable measures, as evidenced by its ISO 50001 energy management system and its membership in the Climate Alliance since 2017. It also expects its business partners to take a responsible stance and actively support the joint promotion of sustainable development.

1. Scope of application

1.1 Applicability

These „GTC for the Deliveries and Services" shall be applicable to all contracts on the supply of all goods and services with the Client, unless they have been amended or supplemented in writing in individual cases. The GTC of the contractor (hereinafter referred to as Contractor) shall not become an integral part of the contract (dev. from ÖN A 2060). These terms and conditions shall also apply to all future transactions between the parties, even if the Client fulfils obligations in the knowledge of deviating or conflicting provisions of the Contractor or, respectively, has not expressly objected to such provisions in individual cases. The Client shall only agree to the inclusion of the Contractor's General Terms and Conditions if it expressly confirms this in writing in advance (in deviation from ÖN A 2060).

1.2 Written form requirement

In order to be valid, subsidiary agreements and modifications to these provisions must be made in writing (suppl. to ÖN A 2060).

1.3 Cross-reference to safety regulations

The appendices or, respectively, forms published by the Client on the website concerning safety regulations are published on the internet and apply to all legal transactions (suppl. to ÖN A 2060).

2. Normative references

The individual contract components apply in accordance with item 5.1.3 (dev. from ÖN A 2060) in descending order as listed.

3. Definitions

(s. ÖN A 2060).

4. Procedural provisions

4.1 General

S. ÖN A 2060 with the exception that ÖN A 2050 shall not apply.

4.2 Instructions for the invitation to tender and the preparation of offers

4.2.1

(s. ÖN A 2060)

4.2.2 Indications

Item 4.2.2 of ÖN A 2060 shall not apply.

4.2.3 Separate items

Item 4.2.3. of ÖN A 2060 shall not apply.

5. Contract

5.1 Contract components

5.1.1 General

5.1.1.1 Contracts must be in writing to be legally effective. All orders in the name of and on behalf of the Client shall be made exclusively by the procurement offices authorised to do so, otherwise the legal title

for payment is missing. Likewise, modifications of the original contract require the written form and signature of both contracting parties (suppl. to ÖN A 2060).

5.1.1.2 All costs for transport, packaging, assembly, insurance, freight, customs, TÜV inspection as well as any necessary inspection costs, e.g. in accordance with the Austrian Electrical Engineering Act (Elektrotechnikgesetz) of 1992, as amended from time to time, the Austrian Construction Products Act (Bauproduktegesetz), as amended from time to time, etc., are part of the contract (suppl. to ÖN A 2060).

5.1.1.3 The Contractor shall take part in official inspections and prepare documents required for this o, respectively, fulfil any formalities (suppl. to ÖN A 2060).

5.1.1.4 All services described also include the delivery of the associated materials and products, including unloading, storage and transport/transfer to the place of delivery/installation (suppl. to ÖN A 2060).

5.1.1.5 The contracting parties are entitled to change the type, scope or quantities of agreed services by mutual agreement or, respectively, to agree on additional services by mutual agreement which are not provided for in the contract but which are necessary for the complete fulfilment of the contract, in particular with regard to proper and safe functioning (suppl. to ÖN A 2060).

5.1.1.6 If the Contractor considers change or, respectively, additional services to be necessary, he shall immediately notify the Client thereof in writing. The implementation of the services concerned may only be started after prior approval by the Client, except in case of imminent danger (suppl. to ÖN A 2060).

5.1.2 Decisive version

(s. ÖN A 2060)

5.1.3 Sequence of the contract components

(dev. from ÖN A 2060)

The contract consists of the following components in descending order:

a) order,

b) tender regulations of the Client,

c) existing GTC of the Client,

d) standards of the Client,

e) relevant guidelines of professional associations for the state of the art,

f) relevant standards (in particular EN standards, ÖNORM standards),

g) relevant statutory provisions,

h) scientific rules.

5.2 Contractual partner

5.2.1 Representation

The Contractor shall name a project manager or, respectively, his deputy when submitting the offer or respectively, immediately after awarding the contract. This person shall be obligated to participate in all contract-related meetings, any commissions and site inspections – also with the competent authorities – as well as to pay any commission fees that may be required. These persons may only be changed after written approval by the Client. The persons named shall be competent, fluent in the contractual language and available at short notice (dev. from ÖN A 2060).

5.2.2 Consortium (Arbeitsgemeinschaft, ARGE)

5.2.2.1

(s. ÖN A 2060)

5.2.2.2 A bidding consortium shall perform the contract as consortium (suppl. to ÖN A 2060).

5.2.3 Notification of material changes

(s. ÖN A 2060)

5.2.4 Contractual language

(s. ÖN A 2060)

Personal conduct of employees of the contractual partners (s. ÖN A 2060)

5.2.5 Personal behaviour of employees of the contractual partners

(s. ÖN A 2060)

5.2.6 Information rights of the contractual partner

(s. ÖN A 2060)

5.3 Applicability regarding consumer transactions

Item 5.3. of ÖN A 2060 shall not apply.

5.4 Provision of documents

5.4.1 -

5.4.2

(s. ÖN A 2060)

5.4.3 The Contractor shall be liable for all documents transmitted as a custodian in accordance with the statutory provisions (supplement to ÖN A 2060).

5.4.4 Immediately after completion or non-acceptance of an order, all documents must be returned to the Client without being requested (supplement to ÖN A 2060).

5.4.5 Special work by the contractor will not be retained (supplement to ÖN A 2060).

5.5 Use of documents

5.5.1 Item 5.5.1. of ÖN A 2060 shall not apply.

5.5.2 All documents, sketches, plans, calculations and descriptions prepared by the Contractor shall become the property of the Client upon handover to the Client (dev. from ÖN A 2060).

5.5.3 All documents provided by the Client to orders and enquiries, in particular drawings, samples, models, templates, tools, shall remain the property of the Client. The Client shall have the sole rights to all documents provided and these documents may not be made accessible to uninvolved third parties who are not involved in the performance of the contract. This shall also apply after complete fulfilment of the contract (suppl. to ÖN A 2060).

5.6 Changes

(s. ÖN A 2060)

5.7 Withdrawal from the contract

5.7.1 Grounds

5.7.1.1

(s. ÖN A 2060)

5.7.1.2 The contracting parties shall be entitled to terminate the contract immediately and prematurely in the following cases

a) serious breaches of contract of the other contractual partner (suppl. to ÖN A 2060).

b) rejection of the application to open insolvency proceedings due to lack of assets to cover costs

The contracting parties are also entitled to withdraw from the contract after setting a reasonable grace period if the other contracting party fails to perform the service at the proper time, in the proper place or in the stipulated manner (dev. from ÖN B 2110).

5.7.1.3 Form of withdrawal

(s. ÖN A 2060)

5.7.2 Consequences of withdrawal from the contract (s. ÖN A 2060)

5.8 Continuation of service in the event of disputes

(s. ÖN A 2060)

6. Service

6.1 Commencement and termination of the service

6.1.1 Commencement of provision of service

(s. ÖN A 2060)

6.1.2 Provisional deadlines

Provisional deadlines are binding (dev. from ÖN A 2060).

6.1.3 Completion of the service

(s. ÖN A 2060)

6.1.4 Premature completion of the service

(s. ÖN A 2060)

6.1.5 Deadlines

(s. ÖN A 2060)

6.2 Provision of services

6.2.1 Performance

(s. ÖN A 2060)

6.2.1.1 In the performance of the contract, consideration shall be given to the operation of the hospital. Short-term work stoppages due to organisational requirements are possible and the Contractor shall not be entitled to any claims whatsoever for such ordered short-term work stoppages (suppl. to ÖN A 2060).

6.2.1.2 Extraordinary work assignments may be required for a limited period of time (by the hour) – also as night, weekend and public holiday hours (add. to ÖN A 2060).

6.2.1.3 If services are provided outside of normal working hours, the instructions of the Client's technical journal service shall be followed (suppl. to ÖN A 2060).

6.2.2 Subcontractor (*Subunternehmer* and *Nachunternehmer*)

6.2.2.1 In the event of the intended use of subcontractors for essential parts of the contract, the Contractor must provide the necessary information about the subcontractors in question together with the tender by means of the 'Subcontractor' form available on the procurement portal or on the client's website under the link (Tenders | tirol kliniken) (supplement to ÖN A 2060) .

6.2.2.2 When transferring parts of its contract to one or more subcontractors, the Contractor guarantees that these will assume and comply with all obligations arising from the contract existing with the Client (suppl. to ÖN A 2060).

6.2.2.3 The Contractor undertakes to recognise payments made by the Client to subcontractors or suppliers as discharging its obligations if the Contractor defaults on its payment obligations to subcontractors under this contract (conditional assignment of claims) (suppl. to ÖN A 2060).

6.2.2.4 Any change of subcontractor requires the consent of the Client. The Contractor is responsible

for proving the equivalence of the subcontractor (suppl. to ÖN B 2060).

6.2.2.5 The provision of services by sub-subcontractors is only permitted with the prior written consent of the Client (suppl. to ÖN B 2060).

6.2.2.6 Any violation of these provisions entitles the Client to immediately withdraw from the contract with full compensation from the Contractor (suppl. to ÖN B 2110).

6.2.2.7 Staff leasing companies are treated as subcontractors (suppl. to ÖN A 2060).

6.2.3 Ancillary services

(s. ÖN A 2060)

6.2.4 Inspection obligation and obligation to warn

(s. ÖN A 2060)

6.2.5 Cooperation at the place of performance

6.2.5.1

(s. ÖN A 2060). Any additional expenses resulting from the coordination of various professionals are covered by the contract fee (suppl. to ÖN A 2060).

6.2.5.2

(s. ÖN A 2060)

6.2.6 Supervision

6.2.6.1 (s. ÖN A 2060). The Client shall have the right – after prior notification – to inspect the commissioned service at the premises of the Contractor or of its subcontractor(s) (suppl. to ÖN A 2060).

6.2.6.2 – 6.2.6.3

(s. ÖN A 2060)

6.2.7 Documentation

(s. ÖN A 2060)

6.2.8 Regulation of the provision of services in detail

(s. ÖN A 2060)

6.3 Remuneration

6.3.1 Fixed and variable prices

6.3.1.1 The prices offered by the Contractor are fixed prices excluding VAT within the performance period, unless otherwise specified in the Client's tender regulations. When submitting bids without using the Client's tender regulations, the prices offered are also considered fixed prices (dev. from ÖN A 2060).

6.3.1.2

(s. ÖN A 2060)

6.3.1.3 If, in the case of contracts with unit prices, the price for an item does not correspond to the product of quantity and unit price, the stated quantity and the agreed unit price shall apply (add. to ÖN A 2060).

6.3.1.4 If a lump-sum price has been agreed, it shall apply irrespective of any price breakdown given (suppl. to ÖN A 2060).

6.3.1.5 The charging of additional costs resulting from the increase in the exchange rate for services from abroad is not permitted. The exchange rate risk shall be borne by the Contractor (suppl. to ÖN A 2060).

6.3.1.6 All details contained in the contract/bill of quantity are included in the unit prices (suppl. to ÖN A 2060).

6.3.1.7 The unit prices calculated when the contract is concluded may not be exceeded until the end of the contract (suppl. to ÖN A 2060).

6.3.1.8 Price reductions, in particular with regard to purchase prices and lump-sum list price reductions, between the date of the offer and the date of performance shall be passed on to the Client on a pro rata basis (suppl. to ÖN A 2060).

6.3.1.9 Price adjustments shall apply at the earliest three months after written notification by the Contractor to the competent body of the Client (suppl. to ÖN A 2060).

6.3.2 Correction of price breakdowns

(s. ÖN A 2060)

6.4 Unpredictable additional work

(s. ÖN A 2060)

6.5 Default

6.5.1 General

(s. to ÖN A 2060)

6.5.1.1 If the Contractor is in default, it shall demonstrably notify the Client without delay. Refusal of acceptance by the Client in the event of material defects shall also be deemed to be a default (s. item 9.5.1.). (suppl. to ÖN A 2060)

6.5.1.2 After the hindrance has ceased, the performance of the service shall be resumed without delay and without being requested to do so. The Client shall be informed immediately of the resumption. (suppl. to ÖN A 2060)

6.5.1.3 If the Contractor is in default, the Client may optionally demand performance and compensation for damages due to delay or, after setting a grace period of 14 days or, respectively, a reasonable grace period, carry out (have carried out) substitute performance at the expense and risk of the Contractor, or declare withdrawal from the contract. (suppl. to ÖN A 2060)

6.5.1.4 If the Client nevertheless insists on performance in the event of default, this shall not reduce its right to claim the contractual penalty. (suppl. to ÖN A 2060)

6.5.2 Short selling

(s. ÖN A 2060)

7. Performance deviation and its consequences

7.1 General

(s. ÖN A 2060)

Any changes in the scope of services by the Client shall be carried out by the Contractor on the basis of the calculation of the main offer (suppl. to ÖN A 2060).

7.2 Allocation to the sphere of the contractual partners

7.2.1 Allocation to the sphere of the Client

(s. ÖN A 2060)

The Client may order a work interruption at any time if it deems this necessary for structural or operational reasons relating to the hospital. Short-term work interruptions ordered by the Client shall not result in any adjustment to the agreed completion date for the overall service, and the Contractor shall not be entitled to any claims whatsoever for such ordered short-term work interruptions (supplement to ÖN B 2110).

7.2.2 Allocation to the sphere of the Contractor

(s. ÖN A 2060)

7.3 Obligations to notify

(s. ÖN A 2060)

7.4 Adjustment of the service period and/or the remuneration

7.4.1 Claim

(s. ÖN A 2060)

7.4.2 Calculation

(s. ÖN A 2060)

7.4.3 Forfeiture of claims

(s. ÖN A 2060)

7.4.4 Compensation for disadvantages

7.4.4.1 The quantities stated in the contract are indicative quantities and may be exceeded or fallen short of by 10 % within the term of the contract (dev. from ÖN A 2060).

7.4.4.2 The prices or, respectively, price calculation(s) shall remain unaffected, in particular the Contractor shall not be entitled to change its pricing for individual deliveries (dev. from ÖN A 2060).

7.5 Services rendered outside of the scope of services

7.5.1 Services performed by the Contractor without a contract or in unauthorised deviation from the contract shall only be remunerated if they are subsequently approved in writing by the Client. If this is not the case, these services shall be remedied within a reasonable period of time, otherwise this may be done at the Contractor's expense. The Contractor shall compensate the Client in this respect (dev. from ÖN A 2060).

7.5.2 If such services were necessary for the fulfilment of the contract and the Client's consent could not be obtained in time due to imminent danger, the Client shall be notified thereof without delay (dev. from ÖN A 2060).

8. Billing, payment, securities

8.1 Billing bases

(s. ÖN A 2060)

8.2 Quantity calculation

(s. ÖN A 2060)

8.3 Billing

8.3.1 General

8.3.1.1 Unless otherwise agreed, invoices must be sent to the Client in digital form. For clear allocation, the order number (SAP number) must be stated on the invoice (suppl. tp ÖN B 2110).

8.3.1.2 The invoice shall state the order number/date of order, reference and contact person of the Client, contact person of the Contractor, delivery note number(s), date of delivery and date of contract. This also applies to reminders (suppl. to ÖN A 2060).

8.3.1.3

(s. ÖN A 2060)

8.3.1.4 The billing shall be comprehensible. Designations are to be explained/stated in a customary manner, abbreviations are to be avoided (suppl. to ÖN A 2060).

8.3.1.5 Agreed partial invoices can be issued according to the agreed step-by-step plan or, respectively, according to services rendered. Decisions on the rates and quantities of the final invoice are not anticipated by this (suppl. to ÖN A 2060).

8.3.1.6 Partial and final invoices are cumulated, i.e. prepared as the sum of the previous services (quantities, unit prices and values) (suppl. to ÖN A 2060).

8.3.1.7 For the dispatch of Community goods, i.e. goods produced in an EU country or imported into the EU and already cleared for free circulation, the following information is absolutely necessary on the in-

voice to be sent in one copy for value-added tax purposes and for the preparation of the trade statistics report (INTRASTAT):

the company address and order number of the Client, the designation of the goods and quantity, the VAT ID of the Contractor, the VAT ID (ATU 52020209) of the Client, the note “tax-free intra-community delivery”, the goods number according to European TARIC code, the net mass in kg for each individual item, the total gross mass of the delivery (suppl. to ÖN A 2060).

8.3.1.8 In the case of delivery of goods from non-EU countries (third countries), the goods must be presented to the customs authorities and import duties must be paid. The following documents shall be provided by the Contractor:

delivery note/dispatch note, invoice, documents for customs concessions (e.g. EU EEA), authorisation or other evidence of any customs restrictions (e.g. tariff quotas) (suppl. to ÖN A 2060).

8.3.1.9 Each invoice shall be submitted in one copy and shall contain the following information:

company address and order number of the Client, designation of the goods, quantity and unit of quantity, individual prices of all parts of a dispatch until border crossing, net mass in kg for each individual item, total gross mass of the delivery (suppl. to ÖN A 2060).

8.3.1.10 In the case of partial deliveries, the consecutive numbering of the invoice within the total delivery must be ensured (suppl. to ÖN A 2060).

8.3.1.11 In the case of deliveries free of charge (e.g. for reasons of guarantee or good will), a pro-forma invoice with a statement of value must always be issued for the purpose of determining the customs value limit for the calculation of turnover tax on imports. Invoices for repairs that are carried out under customs supervision must be drawn up in such a way that the labour and material costs can be seen separately (suppl. to ÖN A 2060).

8.3.1.12 It shall be noted that in case of repairs of low-value goods, the Client, for reasons of cost, does not go down the route of customs declaration but the clearance “for free sale”, and then on the invoice, in addition to the repair costs, the current value (limit value) of the goods must also be stated, which was also used by the Client as a basis for the determination of the turnover tax on imports on delivery to it (suppl. to ÖN A 2060).

8.3.2 Payments on account, down payment invoices, payment plan

(s. ÖN A 2060)

8.3.3 Invoices for unpredictable additional work

(s. ÖN A 2060)

8.3.4 Final invoice

(s ÖN A 2060)

8.3.5 Partial final invoices

(s. ÖN A 2060)

8.3.6 Submission of invoices

(s. ÖN A 2060)

8.3.7 Inadequate billing

(s. ÖN A 2060)

8.3.8 Default in billing

(s. ÖN A 2060)

8.4 Payment

8.4.1 Due dates

8.4.1.1 The payment period for down payment invoices and invoices for unpredictable additional work shall be 60 days. It shall commence from the date of receipt of the invoice by the Client, but at the earliest after the defect-free and complete acceptance of all contractually agreed services by authorised personnel of the Client (dev. from ÖN A 2060).

8.4.1.2 The payment period for final and partial final invoices shall be 60 days after receipt of the invoice by the Client, but at the earliest after the defect-free and complete acceptance. If a final or partial final invoice is received prior to a takeover in accordance with item 9.2, the payment period shall not commence until the acceptance has taken place (dev. from ÖN A 2060).

8.4.1.3 – 8.4.1.5

(s. ÖN A 2060)

8.4.1.6 S. ÖN A 2060 with the exception that in the event that payment is not made on time for reasons for which the Client is responsible, interest shall be charged by the Client on the outstanding amount starting with the end of the payment period at a rate of 5.0 % above the applicable base interest rate.

8.4.1.7 Discounts given without a payment periods shall be deemed to be unconditional discounts (suppl. to ÖN A 2060).

8.4.1.8 All payments shall be deemed to have been made on time if they are transferred on the last day of the payment period (supplement to ÖN A 2060).

8.4.1.9. Partial payments shall be granted – if agreed – only in accordance with the value of the service performed and after proper acceptance (suppl. to ÖN A 2060).

8.4.1.10 Advance payments and down payments shall not be made (suppl. to ÖN A 2060).

8.4.1.11 The Client is entitled to offset claims against the Contractor with claims from other orders (suppl. to ÖN A 2060).

8.4.2 Acceptance of payment, reservation

The acceptance of final payment excludes subsequent claims for the services rendered in accordance with the contract, unless a reservation is included in the invoice or is made within 6 weeks of the invoice being issued. The reservation must be justified in writing (dev. from ÖN A 2060).

8.4.3 Assertion of additional claims and overpayments

Overpayments can be reclaimed by the Client 5 years from the date of knowledge (dev. from ÖN A 2060).

8.4.4 Assignment of claims

Liabilities may be set off against claims of the Contractor's (pre)supplier (assignment of claims). The offset shall be deemed to be payment and shall be effected by registered letter to the address last notified (suppl. to ÖN A 2060).

8.5 Security

8.5.1 Deposit

A deposit in the amount of 10 % of the total order (gross) can be agreed as security for certain obligations specified in the contract. It shall be paid in cash or by means of a bank guarantee within 14 days after the order has been placed. The guarantor must be in agreement with the Client or, respectively, the Client shall have a right of refusal in this respect. The deposit shall be returned 4 weeks after complete, defect-free fulfilment of the contract (dev. from ÖN A 2060).

8.5.2 Retention of invoice on account (Deckungsrücklass)

If a retention of invoice on account has been agreed in the contract, it shall be retained in the amount of 7 % of the invoice amount, unless it has been replaced by the Contractor by means of a guarantee. The retention of invoice on account shall be replaced by the retention to secure warranty claims (Haftungsrücklass) when the final or, respectively,partial final invoice is due (dev. from ÖN A 2060).

8.5.3 Retention to secure warranty claims (Haftungsrücklass)

8.5.3.1 If a retention to secure warranty claims has been agreed in the contract, it shall be retained in the amount of 3 % of the invoice amount, unless it has been replaced by the Contractor by means of a guarantee (dev. from ÖN A 2060).

8.5.3.2 – 8.5.3.3

(s. ÖN A 2060)

8.5.3.4 The retention to secure warranty claims (Haftungsrücklass) also secures claims for damages by the Client, including in the event of withdrawal from the contract in accordance with sec. 21 par. 2 of the Austrian Insolvency Act (Insolvenzordnung) as amended from time to time (suppl. to ÖN A 2060).

8.5.4 Means of security (s. ÖN A 2060)

8.5.5 Rejection of securities
(s. ÖN A 2060)

8.5.6 Term (s. ÖN A 2060)

8.5.7 Forms

For agreed securities, the printed forms made available by the Client shall be used (suppl. to ÖN A 2060).

9. Acceptance

9.1 Types of acceptance

9.1.1

(s. ÖN A 2060)

9.1.2 A formal acceptance shall be carried out unless otherwise agreed in the contract (dev. from ÖN A 2060).

9.1.3 Prior to the acceptance of technical systems/devices, the Contractor shall obtain the timely approval of the Client's Technical Safety Officer (Technischer Sicherheitsbeauftragter; TSB) in accordance with the Tyrolean Hospitals Act (Tiroler Krankenanstaltengesetz), as amended from time to time. Delays shall be borne by the Contractor (suppl. to ÖN A 2060).

9.2 Formal acceptance

9.2.1 The Contractor shall immediately notify the Client in writing of the completion of the service and request authorised personnel of the Client for the acceptance. If necessary, the Contractor shall determine the authority by enquiring with the respective requesting body of the Client (dev. from ÖN A 2060).

9.2.2 The mere acceptance/receipt of the subject-matter of the contract or, respectively, its use and commissioning without acceptance and preparation of an acceptance report shall not be deemed to be acceptance (dev. from ÖN A 2060).

9.2.3 – 9.2.4

(s. ÖN A 2060)

9.3 Informal acceptance

9.3.1

(s. ÖN A 2060)

9.3.2 Item 9.3.2. of ÖN A 2060 shall not apply.

9.4 Retention due to defects

9.4.1 Additionally to Item 9.4 of ÖN A 2060 the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch; ABGB) as amended from time to time shall apply. The absence of service features, in particular of training/instruction documents (item 11.8), the written documentation (item 11.12), the requested spare parts list (item 11.16), aids such as service software and the like, shall suspend the due date for payment of the conract remuneration to the corresponding extent if a reasonable period of grace is not observed. The contractual penalty provision remains unaffected by this (dev. from / suppl. to ÖN A 2060).

9.5 Rejection of acceptance

Item 9.5. of ÖN A 2060 shall not apply. The Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch; ABGB) shall apply.

9.6 Legal consequences of acceptance

9.6.1 The use and risk shall pass to the Client upon recorded acceptance. This shall also apply if the service is provided as part of an assembly or if the transport is carried out or organised and managed by the Client (dev. from ÖN A 2060).

9.6.2 If the Client accepts the performance despite defects, this shall not constitute a waiver of its warranty claims (dev. from ÖN A 2060).

9.6.3 With the acceptance of the work, the right of use shall be deemed to have been transferred to the Client in perpetuity (suppl. to ÖN A 2060).

9.6.4 In the case of works commissioned individually by the Client (e.g. individual software), the Client shall be deemed to be the author. In this case, the right to use the work with regard to all types of exploitation pursuant to sec. 24 of the Austrian Copyright Act (Urheberrechtsgesetz), as amended from time to time, shall lie exclusively with the Client (suppl. to ÖN A 2060).

9.7 Acceptance of partial services

If the project is divided in sub-phases according to the contract, an acceptance is provided for each sub-phase (dev. from ÖN A 2060).

10. Liability provisions

10.1 Transfer of risk

10.1.1 S. ÖN A 2060 with the exception that lit b shall not apply.

10.2 Warranty

10.2.1 Scope

(s. ÖN A 2060)

10.2.2 Restriction

(s. ÖN A 2060)

Assertion of defects

10.2.2.1

(s. ÖN A 2060)

10.2.2.2

(s. ÖN A 2060)

10.2.2.3 (s. ÖN A 2060)The burden of proof for the non-existence of defects and all related costs shall in any case be borne by the Contractor (dev. from ÖN A 2060).

10.2.2.4

(s. ÖN A 2060)

10.2.3 Rights under the warranty

10.2.4.1 – 10.2.4.2

(s. ÖN A 2060)

10.2.4.3 Defects notified within the warranty period which existed at the time of handover, which also include the absence of warranted characteristics, shall be remedied by the Contractor within 14 days or, respectively, a reasonable period of grace (improvement or replacement). The right to compensation for the damage caused by the delay in remedying the defects shall remain unaffected (dev. from ÖN A 2060).

10.2.4.4 If the Contractor refuses to improve or replace the defective parts or if the Contractor fails to do so in due time, the Client may remedy the notified defects or have them remedied at the expense and risk of the Contractor (substitute performance). If both the improvement and the replacement are impossible or involve a disproportionately high effort for the Contractor, the Client shall only have the right to a price reduction or, if the defect is not minor, the right to cancel the contract (conversion) (dev. from ÖN A 2060).

10.2.4.5

(s. ÖN A 2060)

10.2.4.6 All costs incurred in connection with the rectification of defects shall be borne by the Contractor in the event of fault, including slight negligence (suppl. to ÖN A 2060).

10.2.4 Interruption and suspension of the warranty period

10.2.5.1 If material defects are remedied, the original warranty period for the entire subject-matter of the contract shall start anew, unless the subject-matter of the contract is divisible (dev. from ÖN A 2060).

10.2.5.2 If minor defects are remedied, the original warranty period for this part of the subject-matter of the contract shall start anew (dev. from ÖN A 2060).

10.2.5 End of warranty

(s. ÖN A 2060)

10.3 Damages in general and contractual penalty

10.3.1 General

The Contractor shall be liable for defects and shall pay damages in the event of fault; in the event of intent or gross negligence, the Contractor shall be liable for the reimbursement of damages for actual damage and loss of profit; in the event of slight negligence, the Contractor shall be liable for the reimbursement of damages for actual damage, but not for loss and profit. Damages can be claimed not only in case of defectiveness of the service itself, but also in case of consequential damage (dev. from ÖN A 2060).

10.3.2 Contractual penalty

(s. ÖN A 2060)

10.3.2.1 Entitlement to payment of the contractual penalty (dev. to ÖN A 2060)

10.3.2.1.1 In the event of non-compliance with the agreed deadlines (provisional and final deadlines), the Contractor shall be liable to pay a contractual penalty of 1 % of the order value (net) per calendar day of the delayed performance, however, up to a maximum of 20 % of the order value (net). In the event of non-compliance with an agreed deadline, the Contractor must prove that it is not at fault.

10.3.2.1.2 Any fault of the Client shall exclude the assertion of a contractual penalty.

10.3.2.1.3 The contractual penalty may be claimed in addition to performance and is not dependent on the occurrence of damage.

10.3.2.1.4 The contractual penalty shall be understood as a minimum amount. Any damage exceeding this amount shall be reimbursed by the Contractor in accordance with the provisions on damages in item 10.3.1.

10.3.2.1.5 In the event of a mutually agreed extension of the performance period, the contractual penalties for the agreed new deadlines replacing the old deadlines shall remain in force. The new penalised deadlines shall be expressly recorded as such.

10.3.2.1.6 The court's right to reduce or abate (richterliches Mäßigungsrecht) is excluded (dev. from ÖN A 2060).

10.3.2.2 Calculation of the contractual penalty

10.3.2.2.1

(s. ÖN A 2060)

10.3.2.2.2 The total price reduced by the contractual penalty shall form the assessment basis for the value-added tax (suppl. to ÖN A 2060).

10.3.2.3 Partial default

(s. ÖN A 2060)

10.3.2.4 Damages going beyond the contractual penalty

(s. ÖN A 2060)

The contractual penalty is understood to be a minimum amount. Any damage exceeding this amount shall also be compensated by the Contractor in cases of slight negligence (suppl. to ÖN A 2060).

10.4 Liability for infringement of property rights

10.4.1 Liability of the Client

ÖN A 2060 shall not apply.

10.4.2 Shared liability

ÖN A 2060 shall not apply.

10.4.3 Liability of the Contractor

10.4.3.1 The Contractor shall be liable to the Client for ensuring that all services are free of industrial (property) rights of third parties, such as design, trademark and patent rights. The Contractor undertakes to fully indemnify and hold the Client harmless in this respect (dev. from ÖN A 2060).

10.4.3.2 The Contractor shall provide the Client with the rights of disposal and use to the full contractual extent (suppl. to ÖN A 2060).

10.5 Disclaimer regarding disclosure obligations under the Freedom of Information Act (IFG; Informationsfreiheitsgesetz)

The Client accepts no liability for damages of any kind arising from the fact that information must be published or made accessible due to statutory disclosure obligations, in particular in accordance with the Freedom of Information Act (IFG) as amended or comparable regulations. Liability shall only apply in the event of intentional or grossly negligent conduct on the part of the Client.

10.6 Guarantee

The Contractor shall grant a guarantee for defects which occur within 3 years in the case of immovable property and within 1 year in the case of movable property from the time of acceptance. Within the scope of this guarantee, the Contractor shall either repair or, respectively, remedy the defect occurred at no cost to the Client or replace the goods with an equivalent product at no cost to the Client. This does not apply to parts subject to normal wear and tear (suppl. to ÖN A 2060).

11. Supplementary provisions

(suppl. to ÖN A 2060)

11.1 Code of conduct for business partners

The Code of Conduct for Business Partners published on the Client's website applies.

11.2 Contracts, Scope

11.2.1 Systems/devices are to be offered fully installed and ready for operation.

11.2.2 If devices do not bear any safety or conformity marks, the Contractor shall be obligated to have these devices subjected to a routine test by an accredited testing institute at its own expense. A negative test result shall entitle the Client to withdraw from the contract. The testing costs shall be borne by the Contractor. Special questions shall be clarified with the Client's safety expert.

11.2.3 If, due to legal provisions, standards or requirements and the like, specific test certificates, approvals, equipment-related function and quality tests or, respectively, inspections by authorities are required, these shall be arranged and carried out in good time by the Contractor in accordance with the applicable regulations. The test certificates shall be presented upon acceptance.

11.3 Place of performance

11.3.1 The place of performance shall be Innsbruck or the place specified by the Client in the order. If a place of performance cannot be clearly determined, the Contractor shall consult with the Client or, respectively, the requesting body prior to the performance of services and have the exact place of performance confirmed in writing.

11.3.2 The place of delivery/installation shall be the place specified in more detail at the place of performance at which the service is to be specifically provided e.g. place of performance: Anichstraße 35, Innsbruck; place of delivery: installation site: Administrative building, room no. 456).

11.4 Fees and public charges

Fees and public charges in connection with the performance of the contract, including increases thereof, shall be borne by the Contractor.

11.5 Delivery

11.5.1 The delivery date and place of delivery shall be agreed in advance with the Client or the respective requesting body (and, if applicable, with the local construction supervisory authority and/or technical construction supervisory authority), otherwise they shall be rejected or stored at the Contractor's expense and risk.

11.5.2 The Contractor shall ensure that the subject-matter of the contract can be delivered directly to the Client's authorised recipients or to its own employees who must be present at the place of delivery at the time of delivery. When delivering goods, the operating hours of the Client or, respectively, the respective requesting body shall be taken into account. Goods left in front of a locked door shall be deemed not to have been accepted, the delivery shall therefore be deemed not to have been made in accordance with the contract. This information shall also be passed on by the Contractor to the carrier (forwarding agent) commissioned by him.

11.5.3 Early delivery shall require the prior written consent of the Client.

11.5.4 Each delivery must include a delivery note with the Client's order number as well as the name of the requesting body. The delivery note must be clearly visible on the outside of the package. The serial number and/or the batch or, respectively, lot number of each delivered item must be indicated on all delivery notes.

11.5.5 Mixed packages and mixed palettes must be marked.

11.5.6 Deliveries shall in principle be made free domicile, duty and tax paid as well as including packaging costs. The Contractor shall bear all risks of loss of or damage to the goods from the time they are available for delivery to the Client.

11.5.7 Shortage surcharges of the Contractor shall not be recognised.

11.5.8 The Contractor shall declare on the basis of which legal provisions it places its product on the market (e.g. Austrian Medical Devices Act (Medizinproduktegesetz) as amended from time to time.

11.5.9 The Contractor shall submit a declaration of origin of the products with manufacturer's name, address and number.

11.5.10 If the Contractor's products are marked with a barcode (e.g. GTIN) or 2d code (e.g. QR code or data matrix), they shall be provided in digital form.

11.6 Shipment

11.6.1 The transport of the subject-matter of the contract shall be at the expense and risk of the Contractor. The Client's shipping address and the specification of the place of receipt shall be strictly observed.

11.6.2 The Contractor shall be responsible for compliance with any special statutory shipping regulations.

11.6.3 If shipping documents are missing, the subject-matter of the contract shall be stored at the expense and risk of the Contractor until the documents have been received in full.

11.6.4 A certificate of origin must always be enclosed with the goods so that the Client can benefit from any existing preferential tariff rates. Generally, this is done with: movement certificate EUR1, movement certificate EUR2 (up to the respective value limit), declaration of origin on the invoice for approved exporters in EEA countries and Switzerland.

11.6.5 The application is governed by the respective agreement between the EU and the sender country.

11.6.6 If additional costs are incurred by the Client as a result of non-compliance with shipping and payment instructions set out in these GTC, these will be deducted from the settlement of the invoice.

11.7 Appendices, Forms

Any appendices or, respectively, forms issued by the Client shall be used in the version applicable at the time of the conclusion of the contract.

11.8 Supplementary offers

11.8.1 All supplementary offers, supplies or, respectively, services shall be subject to the terms and conditions of the main offer and shall be made at the time of and on the basis of the main offer.

11.8.2 The prices quoted in the supplementary offers shall be based on the calculation of the main offer and shall be verified upon request.

11.8.3 The positioning shall be in accordance with the main offer, omitted items of the main offer shall be included in the supplementary offers and thrown out as lower prices.

11.9 Training/Briefing

11.9.1 Prior to acceptance, the Contractor shall be obliged to instruct the Client's qualified personnel on site in the operation of the subject-matter of the contract, both theoretically and practically, in such a way that they have mastered all functions and are subsequently also able to train/instruct further users of the Client. Qualified personnel shall be introduced to innovations in the operation – in particular with regard to any software – in such a way that they continue to master all functions necessary for use in accordance with the contract.

11.9.2 The minimum content of the training/briefing for medical products shall be governed by sec. 83 of the Austrian Medical Products Act (Medizinproduktegesetz), as amended from time to time. Corresponding documentation shall be provided by the Contractor. If necessary, recurring training courses shall be carried out, in particular in the event of functional or, respectively, service changes after software updates or, respectively, upgrades, changes in the area of application or use of a product.

11.9.3 The training/briefing of the Client's system administration/technicians shall be agreed either as a customer technician course (special technicians of the Client) or as a company technician course (special technicians of the Contractor).

11.9.4 The date of the training/briefing shall be mutually agreed.

11.9.5 The Contractor shall be obliged to provide appropriate training documents for the agreed training. Training/briefing documents must be provided in German at the latest upon acceptance.

11.10 Functional test, trial operation

11.10.1 After complete performance, before accepting the subject-matter of the contract at the place of performance or, respectively, delivery, the execution of

a) a functional test

b) a trial operation of at least 14 days shall be provided.

11.10.2 Requirements for the functional test/the start of the trial operation is the submission of the complete documentation according to item 11.12.

11.10.3 If defects occur during the functional test/trial operation, they shall be remedied by the Contractor without delay. If the Contractor does not immediately comply with the request to remedy the defects, the Client may remedy the defects or have them remedied at the expense and risk of the Contractor.

11.10.4 After the rectification of defects, a complete functional test shall be carried out again/the trial operation shall be continued. In case of insignificant defects, the trial operation shall be extended upon request. After the elimination of material defects, the trial operation shall be restarted.

11.10.5 The successful completion of the functional test/trial operation is a prerequisite for the acceptance.

11.10.6 Functional test/trial operation shall be documented by the Contractor in a protocol as part of the documentation (item 11.12).

11.11 Software

Software shall be computer programs distributed as standard or developed and adapted individually within the meaning of sec. 40a of the Austrian Copyright Act (Urherberrechtsgesetz), as amended from time to time, for use on, for the operation or for the control of electrotechnical or, respectively, electronic equipment and systems including documents provided for this purpose, in particular on performance features, special functions, hardware and software requirements, installation requirements, conditions of use, operation (manual).

11.12 Software – quality requirements

The Contractor undertakes,

a) to deliver a contractual object which is user-friendly as well as robust against operating and hardware errors, i.e. in particular does not permit any loss of data in such a case and, in the event of a total failure of the system, picks up where it left off when it restarts,

b) to ensure early fault detection by means of service diagnosis software and special test procedures,

c) to use data transmission equipment for rapid remote maintenance which is equipped with appropriate access protection mechanisms. The necessary components on the part of the Client shall be provided by the Client.

d) to carry out software changes with the aid of the software development tool used for the original development or, respectivekly, to have such changes carried out,

e) to coordinate the installation of new software versions with the Client,

f) to test new versions of the software or, respectively, to have them tested not only for functionality but also for behavior in edge cases (significantly larger number of simultaneous transactions, larger data volumes than those described in the bill of quantities),

g) to provide new versions of the software with the same interfaces to other programs and to the hardware.

11.13 Documentation

11.13.1 In the case of fixed medical technology, building services or electrical engineering, the Contractor shall hand over a complete, written and planned documentation at the time when the order is placed, but at the latest upon acceptance. The corresponding documentation shall be kept ready and up-to-date by the Contractor for the respective contractual services and shall be made available at the respective place of installation or, respectively, delivery.

11.13.2 The documentation shall comply with the usual standards for performance descriptions at the time of installation of the subject-matter of the contract and shall describe all typical and foreseeable error and defect situations and their remedies.

11.13.3 The documentation shall be designed in such a way that it is comprehensible and usable for a specialist familiar with similar services. In particular, it shall describe all processes necessary for the current work in such a way that they are comprehensible for qualified personnel of the Client trained in accordance with item 11.8.

11.13.4 In the event of changes/additions to the subject-matter of the contract after handover, the documentation shall be updated accordingly.

11.13.5 In the event of changes to the subject-matter of the contract in the course of maintenance (servicing, repair and inspection), the documentation shall be updated accordingly.

11.13.6 The Contractor shall be liable for deviations of the documentation from the subject-matter of the contract.

11.13.7 The Contractor shall be obliged to keep documentation records for at least 10 years from the date of acceptance, which enable the unequivocal allocation of companies, persons, addresses and production lots, and shall impose this obligation on any subsuppliers in the same way.

11.13.8 The Client shall be entitled to have the documentation checked by a court-certified expert. If this inspection is negative, the Contractor shall be obliged to improve the documentation within 3 months and to bear the costs of the first and all further inspections for this reason.

11.13.9 The complete documentation is part of the contract.

11.13.10 The complete documentation shall be handed over in one copy on paper and digitally as a pdf file at the latest at the time of acceptance according to item 9.

11.13.11 The documentation and thus the scope of delivery of technical systems/devices include the following documents per site:

a) German instructions for use (operating instructions) as well as required additional deliveries,

b) (technical) manuals as well as all contractual components (e.g. maintenance contract) in the German language as well as the necessary additional deliveries in the event of changes,

c) a complete technical documentation and description in German, as well as in the case of changes, the necessary additional deliveries, containing:

d) circuit diagrams and drawings incl. description; service, maintenance, repair and inspection instructions; spare parts list pursuant to item 11.19; adjustment instructions; maintenance instructions; description of functional principles including additional deliveries; test certificate/individual test; for each independently usable system/device, the master data recording sheet of the Client shall be handed over completely filled out upon acceptance; functional test/trial operation log; instructions for the replacement of components; description and instructions for environmental conditions during transport and storage; program description; further documents required for operation.

e) service and maintenance software licence during the agreed period of use; if no period of use has been agreed, the period of use customary in the market, but at least a period of 10 years after expiry of the warranty period or, respectively, in the case of (later) hardware/software changes (new

versions of the software or, respectively, updates/upgrades) shall be deemed to have been agreed; the licence period shall in any case end when the subject-matter of the contract is taken out of service,

f) a documentation of the existing IT component operating system, hardware configuration and software status incl. the necessary software backup copies

g) CE marking and declarations of conformity

h) ÖVE certificates or other applicable certificates (hygiene certificates, ISO 9000 certificates and the like)

i) proof of compliance with all specifications

j) log of the measured values (first measured values) of the final quality control in the factory with the indication of the used testing and measuring devices,

k) evidence of briefings and trainings to the agreed extent,

l) equipment lists (measuring instruments, test equipment, tools, aids and the like) including additional deliveries,

m) hazard warnings, insofar as they have been checked by the Contractor for their relevance and have proved to be applicable, at the respective current time,

n) inspection card including inspection regulations (measured values, maintenance intervals, etc.).

11.13.12 Construction documentation (execution plans, room book, etc.) shall be handed over in digital form in accordance with the standards of the Client (in particular CAD guidelines).

11.14 Inventory documents

11.14.1 At the latest at the time of acceptance, documents ready for inventory shall be submitted which, on the basis of lists and plans, enable the individual items of the bill of quantities to be allocated to the individual locations for all equipment and installations supplied.

11.14.2 A list of the equipment series, IT data sockets (if used) and room numbers (installation location) shall be drawn up.

11.15 Actuality guarantee

11.15.1 The Contractor shall deliver products of the latest technology (state-of-the-art) at the respective time of delivery.

11.15.2 If a model is no longer available or, respectively, if the technical performance features deviate significantly from the general market development, the Contractor shall offer a model of equal or higher quality upon request.

11.15.3 The Contractor shall be obliged to notify the Client in writing of any changes to the model occurring between the placing of the order and the performance of the service in good time prior to the performance of the service. In the event of non-fulfilment of the obligation to notify, the Client reserves the right to withdraw from the contract or, respectively, to amend the contract as a result of the model change.

11.16 Spare parts guarantee

11.16.1 The Contractor guarantees that it can deliver all spare parts (or parts of equivalent or better suitability) within a period of 10 years or, respectively, within the agreed longer period of use of the subject-matter of the contract. The aforementioned period of time shall also apply to parts no longer in production.

11.16.2 If no period of use has been agreed, the period of use customary on the market, but at least a period of 10 years, shall be deemed to have been agreed.

11.16.3 The spare parts guarantee ends in any case with the decommissioning of the subject-matter of the contract.

11.17 Spare parts list

11.17.1 Prior to each acceptance, the Contractor shall, upon request, hand over a complete spare parts list per type of equipment.

11.17.2 An exploded view drawing with all spare parts lists shall be handed over upon request.

11.18 Discontinued models, model changes

11.18.1 The Contractor shall indicate in the offer, at the latest when placing the order, within which period of time innovations of the IT systems (hardware, software) or, respectively, technical systems/devices are to be expected.

11.18.2 Discontinued models or, respectively, sales must be marked with the note “discontinued model”.

11.19 Labour and social law provisions

In the performance of the contract, the labour and social law provisions applicable in Austria shall be complied with.

11.20 Mandatory labelling of environmentally hazardous substances

Services with ingredients that are hazardous to persons and the environment must be labelled separately. If, for lack of alternatives, products made of PVC (or PVC-like material) are supplied, these must be labelled.

11.21 Provisions on confidentiality and data protection

11.21.1 Confidentiality duty

The Contractor is obliged to treat all information and data that becomes known to it in connection with the fulfilment of the contract as strictly confidential. This includes, in particular, all business, operational and technical information as well as the content and subject matter of the contract. This obligation applies to third parties and must also be transferred to subcontractors. If there is any doubt as to whether certain information is to be classified as confidential or as a trade secret of the Client, the Contractor is obliged to consult with the Client in advance.

11.21.2 Obligation to maintain secrecy

The Contractor undertakes to maintain secrecy regarding all personal data that becomes known to it or is processed in the course of fulfilling the contract. This applies in particular to information about customers, their relatives, employees and staff of the Client (e.g. personal, health or economic circumstances). The obligation covers all data within the meaning of Art. 4(1) GDPR.

11.21.3 Data protection

If personal data is processed or stored in electronic or physical form within the scope of order fulfilment, the Contractor undertakes to comply with appropriate technical and organisational measures in accordance with Art. 32 GDPR. These measures must in particular ensure that unauthorised access, loss or unauthorised disclosure is prevented. Upon request, the Contractor shall provide the Client with suitable evidence of the protective measures taken.

11.21.4 Publication or disclosure of data

The publication or disclosure of data of any kind is only permitted with the prior, express and written consent of the Client. This also applies to anonymised or pseudonymised data, provided that conclusions about the persons concerned are possible.

11.21.5 Obligation of employees and subcontractors

Before commencing their work, the Contractor shall require its employees and subcontractors to sign a written undertaking to maintain confidentiality at all times and to comply with the applicable data protection regulations, in particular Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR) as well as the Data Protection Act (DSG; Datenschutzgesetz) as amended from time to time.

11.21.6 Continuation of contractual obligation

The obligation to confidentiality and data protection shall apply beyond the end of the contractual cooperation.

11.21.7 Statutory exceptions

The obligation to maintain confidentiality shall only cease to apply to the extent that the Contractor is obliged to disclose information due to statutory provisions or official or court orders. In such a case, the Contractor shall inform the Client immediately, provided this is legally permissible.

11.21.8 Commissioned processing

If personal data is processed on behalf of the Client within the meaning of Art. 28 GDPR, the contracting parties shall conclude a Commissioned Processing Agreement (CPA). In this case, the version of the Commissioned processing Agreement ("Data Protection Contract – Agreement on Commissioned Processing") published on the Client's website and valid at the time of conclusion of the contract, including any annexes, shall apply. Upon conclusion of the contract, the Contractor confirms that it has taken note of the currently valid version.

11.21.9 Data return and deletion

Upon completion of the order or at the request of the Client, the Contractor shall immediately return all personal data or delete it in accordance with data protection regulations, provided that there is no legal obligation to retain it. Upon request, the Client shall be provided with written confirmation of the deletion.

11.21.10 Data protection violations

The Contractor undertakes to inform the Client immediately – if possible within 24 hours – of any violation of the protection of personal data within the meaning of Art. 4 (12) GDPR that is related to the execution of the order.

11.22 Business liability and transport insurance

11.22.1 During the entire term of the contract (at least until acceptance), the Contractor shall take out and maintain business liability and transport insurance in an appropriate amount.

11.22.2 In the absence of a stipulation, the sum insured shall be at least ten times the total offer price (net).

11.22.3 The insurance policy or, respectively, a suitable insurance certificate shall be presented upon request. Proof of the unchanged current status of the insurance cover must be provided annually upon request.

11.23 Waste disposal

11.23.1 Discharge of packaging materials in accordance with the Austrian Packaging Ordinance (Verpackungsverordnung)

11.22.1.1 The Contractor shall release the Client from the obligations arising from the Austrian Packaging Ordinance (Verpackungsverordnung) of 2014 as amended from time to time by means of a discharge and licence agreement (Entpflichtungs- und

Lizenzvereinbarung; ELV) with approved collection and recycling systems for households and the licensing (i.e. reporting and payment) of their packaging placed on the market in Austria. Contracting parties based in an EU country who deliver packaged goods or packaging to Austria within the scope of contract fulfilment must provide evidence of a supplementary agreement for foreign licence partners.

11.23.1.2 Contractors are obliged to participate in a collection and recycling system for households approved in Austria. Proof of participation must be provided to the Client upon conclusion of the contract by submitting the 'Pre-licensing confirmation' form as a legally binding declaration. Changes in membership of the collection and recycling system must be reported to the client immediately and proven by means of an updated legally binding declaration.

11.23.1.3 Responsibility for the complete licensing of household and commercial packaging as well as disposable tableware therefore lies with the Contractor.

11.23.1.4 If no corresponding evidence is provided in accordance with items 12.20.1.1 or 12.20.1.2, the Contractor shall bear all resulting costs, including any penalties or fees incurred by the Client. The Contractor undertakes to indemnify and hold the Client harmless in this regard.

11.23.2 Disposal of waste in connection with the performance of the contract

11.22.2.1 The Contractor shall dispose of packaging and waste of any kind arising in connection with the performance of the contract, e.g. dismantling and residual materials, used materials in all aggregate states, construction waste and the like, in accordance with the statutory provisions on the day of performance. The provisions of the Austrian Waste Management Act (Abfallwirtschaftsgesetz; AWG) as amended from time to time and the Austrian Recycling Construction Materials Ordinance (Recycling-Baustoffverordnung) as amended from time to time with regard to the separation and shipment of waste shall be complied with. In particular, the Contractor shall be obliged to recycle or dispose of the waste in an environmentally sound manner in accordance the Austrian Waste Management Act (Abfallwirtschaftsgesetz; AWG).

11.22.2.2 Corresponding evidence shall be provided and shall suspend payment of the final invoice until it has been provided in full.

11.22.2.3 In the event of non-compliance with a reasonable grace period, substitute performance at the expense of the Contractor shall be possible. The setting of a grace period shall not apply in urgent cases, e.g. obstruction of the workflow or, respectively, patient care, considerable odor nuisance, health hazard, etc.

11.22.2.4 Temporary storage on the premises of the Client shall require the prior consent of the Client and shall comply with the relevant statutory provisions, in particular the rules of fire protection, the Austrian Workplace Ordinance (Arbeitsstättenverordnung), as amended from time to time, and the Austrian Ordinance on Protection of Construction Workers (Bauarbeiterschutzverordnung), as amended from time to time.

11.22.2.5 Any fee increases in the waste disposal and landfill sector during the performance of the contract shall be borne by the Contractor.

11.24 Term of contract, termination

11.24.1 The duration of the contract shall be based on the (framework) schedule specified by the Client.

11.24.2 The contracting parties are entitled to terminate continuing obligations with three months' notice to the end of each quarter.

11.24.3 In the event that the business activities of one or both contracting parties are impeded by force majeure (e.g. strike, lockouts), the other contracting party shall be granted the right to cancel the contract in whole or in part or to postpone deliveries to a later date. This shall not give rise to any claims on the part of the Contractor.

11.25 Jurisdiction, Law

11.25.1 The exclusive place of jurisdiction shall be the competent court with subject-matter jurisdiction in Innsbruck.

11.25.2 Austrian law shall apply exclusively, unless EU law is to be applied directly by the contracting parties in the performance of the contractual obligations or the exercise of the contractual rights. The application of the uniform UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (UNCITRAL) and of the international conflict of law rules of the International Private Law is excluded.

11.26 Other provisions

11.26.1 The assignment of contractual rights and claims by the Contractor shall require the prior written consent of the Client.

11.26.2 All costs, charges/fees and taxes incurred in connection with the construction or, respectively, conclusion of the contract shall be borne by the Contractor.

11.26.3 All rights and obligations under the contract shall pass to any legal successors, including individual legal successors. In the event of legal succession, the new Contractor shall provide the Client with

a current KSV[1] statement. The Client has the right to terminate the contract if the KSV statement shows a rating above 399.

11.26.4 The Contractor waives the right to contest the order/contract on the grounds of error or to raise any defence under this title.

11.26.5 The Contractor waives the right to challenge the order/contract pursuant to sec. 934 of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch; ABGB) due to a reduction by more than half of the true value.

11.26.6 Should individual provisions of the contract or these GTC be invalid, the validity of the remaining provisions shall not be affected thereby. An invalid provision shall be replaced by a valid provision that comes closest to the intended objective of the original provision from an economic point of view. In case of doubt, the invalid provision shall be deemed to be replaced by such a valid provision.

11.26.7 Amendments to these GTC shall enter into force for continuing obligations 30 days after publication. Amendments shall be deemed to have been approved if the Contractor does not terminate the continuing obligation within 30 days of publication on the Internet. In all other respects, these GTC shall apply in the version in force at the time of conclusion of the contract or, respectively, in the case of previous invitations to tender, at the time of publication of the relevant invitation to tender.

11.26.8 For the duration of the performance of the services, there shall be an absolute ban on smoking and alcohol in all buildings as well as premises belonging to the Client as well as on the premises. The Contractor shall demonstrably instruct its employees and subcontractors to comply with this ban.

12. Provisions for IT security for networked systems (MT, HT, IT)

(suppl. to ÖN A 2060)

12.1 General

The Contractor undertakes to guarantee the IT security of the systems supplied and/or manufactured by it which can be connected to an IT data network. This obligation shall apply for the entire period of use of the product by the Client.

In the event that an IT operating system is a component of the product delivered by the Contractor, the obligation shall also include this component. This shall apply both to those cases in which the operating system is supplied by the Contractor and to those cases in which the operating system is provided by the Client.

Specifically, the obligation to ensure IT security includes the following:

a) The Contractor shall have a comprehensive duty to observe the market, within the scope of which - also taking into account the operating system used - it shall be determined on an ongoing basis whether the safety and effectiveness of its products is sufficiently guaranteed on the basis of information that has become known and whether the risk/benefit-ratio continues to be justifiable. The evaluation of newly known information in this respect, e.g. about security gaps in the operating system used, as well as the initiation of any measures, shall be the sole responsibility of the Contractor.

b) Based on the duty to observe the market, the Contractor shall have a comprehensive duty to provide information, within the scope of which it must actively and directly provide the Client with concrete recommendations for action in the event of an identified security vulnerability, so that the product can continue to be operated securely on the IT data network.

c) If a security vulnerability classified as critical by the Contractor can be remedied by an update provided by the IT operating system manufacturer, this shall be installed, tested and released for operation by the Contractor free of charge and in a timely manner in coordination with the Client after successful in-house testing. Proof of implementation shall be sent to the Client.

d) IT security must be guaranteed for all types of service activities. This applies not only to service activities on site at the Client (e.g. via technician laptops, USB sticks, etc.) but also to service activities via remote access.

Already in the context of the submission of the offer to the Client, the Contractor shall specify all measures that will be used to ensure IT security.

12.2 NIS security requirements

The NIS security requirements published on the Client's website apply (where applicable).

13. Special provisions for medical products

(suppl. to ÖN A 2060)

13.1 Obligations of the Contractor

13.1.1 Upon request by the Client, the Contractor shall, in accordance with the provisions of the Austrian Medical Devices Operator Ordinance (Medizinproduktebetreiberverordnung; MPBV) as amended from time to time,

[1] Translator's note: *KSV* is the abbreviation of *Kreditschutzverband*; an association for the protection of creditor interests.

a) carry out an initial inspection at the place of operation for all medical devices listed in Annex 1 of the Austrian Medical Devices Operator Ordinance (MPBV) as well as for all medical devices additionally listed by the Technical Safety Officer pursuant to the Tyrolean Hospitals Act (Tiroler Krankenhausgesetz) as amended from time to time in justified cases before they are used for the first time. The scope of the initial inspection shall be based on that of the recurring safety inspection pursuant to the Austrian Medical Devices Operator Ordinance (MPBV). Measurement reports supplied by the Contractor must not be older than 3 months.

b) carry out a technical safety inspection of all active medical devices listed in the Austrian Medical Devices Operator Ordinance (MPBV) and comply with all logging and storage obligations specified in the Ordinance. This shall also apply to non-active medical devices if the manufacturer so requires. The Client must be informed of all measures in good time.

c) If the manufacturer does not provide any information, the Contractor shall, upon request, carry out a technical safety test or quality assurance measures if the safety of the patients or, respectively, users so requires.

d) A copy of the protocol for initial inspections, recurring technical safety inspections or metrological controls shall be sent to the Client as a pdf file. The protocol must be kept by the Contractor for at least 5 years.

13.1.2 All products must comply with the version of the Austrian Medical Devices Act (Medizinproduktegesetz), as amended from time to time, in force at the time of delivery.

13.1.3 The Contractor shall provide CE markings and declarations of conformity in accordance with the Austrian Medical Devices Act (Medizinproduktegesetz) or, respectively, EU declarations of conformity in accordance with the legal provisions of the EU (e.g. Regulation 2017/746 on medical devices, or Regulation 2017/745 on in-vitro diagnostic medical devices), incl. indication of the classification with connection of the instructions for use in the German language, technical accompanying documents, service manuals and, if required, EU certificates on the assessment of the technical documentation, EU type examination certificates, EU quality management certificates, EU quality assurance certificates and EU product test certificates as pdf file.

13.2 Powers, evidence of suitability

Any powers or, respectively, proof of suitability required in accordance with Annex 3 or 4 of the Austrian Medical Devices Operator Ordinance (MPBV) to carry out the tests or, respectively, inspections mentioned in point 13.1 must be submitted to the Client upon request.

13.3 Systems/devices – failure

In the event of failure of the system/device, the Contractor guarantees either to carry out the immediate repair and recommissioning or to provide an equivalent system/device (including the necessary test certificates, checklists and equipment logs) free of charge for the downtime.

13.4 Loaners

Prior to a loan of mobile medical technology or medical technology devices which are required for the use of other products (e.g. programming devices), the standard loan agreement of the Client in the respective valid version must be signed.

13.5 Installation and maintenance of radiological equipment

13.5.1 The basis for the manufacture, installation and operation of X-ray systems are the provisions, requirements and regulations of the Austrian Radiation Protection Ordinance (Strahlenschutzverordnung) as amended from time to time.

13.5.2 Logs on the acceptance tests must be handed over at the time of takeover.

13.5.3 If repair, replacement or readjustments of equipment components may have an impact on radiation protection or on the applied medical-radiological procedures, partial acceptance tests pursuant to the Austrian Medical Radiation Protection Ordinance (Medizinische Strahlenschutzverordnung; MedStrSchV), as amended from time to time, shall be included in the scope of services. The corresponding records are to be handed over to the Client as a pdf file