

Supplementary Provisions to the General Terms and Conditions of the Company Herbert Waldmann GmbH & Co. KG (Medical Division) with regard to a DermaMate Software Licence for Medical Irradiation Units

with the following content:

1. Scope of application

(1.) The following Supplementary Provisions are only valid for merchants as defined in § 14 I of the German Civil Code (hereinafter referred to as "BGB"), legal entities governed by public law and special trusts under public law as defined in § 310 BGB. As far as the following provisions do not contain any special regulations, the General Terms and Conditions of Herbert Waldmann GmbH & Co. KG (hereinafter referred to as "Supplier") apply in addition.

(2.) The conditions set forth hereinafter shall not establish any obligation with regard to the supply of updates/upgrades, modification and further development of the software and software service. Such services require separate contractual agreements.

(3.) The conditions with regard to the software shall apply for the licence of the standard software "DermaMate" as well as for combined supplies of software and hardware as far as the software „DermaMate“ is integral part of the agreement.

(4.) With regard to the scope of application, the present Supplementary Provisions are of higher importance than the supplier's General Terms and Conditions.

2. Copyright, Subject Matter of the Agreement, Distribution of the Source Code

(1.) The software is subject to copyright according to the provisions concerning the protection of computer programs. The copyright includes in particular the program code, the documentation, the representation, the structure and organisation of the program files, the program name, the logos and other forms of representation included in the software (hereinafter referred to as "Licensed Material"). The Supplier and its licensors shall be entitled to all rights originating from copyright.

(2.) The program is given to the user on a machine-readable data carrier in form of an "object program". The user is not entitled to the source code being made available. A documentation for use belongs to the program; the user receives it as printed version or also on the machine-readable data carrier.

(3.) The user shall undertake to keep the protection notes contained in the Licensed Material, as well as copyright notices, brand names, alphanumerical identification and other legal reservations unchanged. This shall also apply to any partial or complete reproduction of the machine-readable Licensed Material made by the user.

(4.) In default of other written agreements, the supplier is only obliged to provide the software in the country of the place of delivery exempt from third party industrial property rights or third party copyrights.

3. Authorisation Level

(1.) The Supplier grants a non-exclusive right to the user – provided that the user pays the complete price agreed upon in a contract without reservation – to use the software for an unlimited period in the user's company for the user's own purposes and as described in detail in the original agreement, the present provisions and the manual.

(2.) The user is entitled to make a backup copy for the archive of the user's company. It shall be marked as such and (as far as technically feasible) provided with the copyright notice of the original data carrier. The user manual may only be copied for company-internal purposes.

(3.) The user shall only be entitled to transfer this software to a third party if the third party explicitly declares that the third party agrees on the present provisions still being valid and if the previous user stops using the software and does not retain any copies. The original copy of the data carrier and the manuals (together with all previous versions of the program) shall be given to the third party. The user shall inform the Supplier immediately in writing in case of passing on the material to third parties because of the imminent duty to notify as defined in the German legislation on medical products and for the issue of a new licence key. This notification shall include the name and address of the purchaser. Furthermore, the contractual agreements on the base of which the resale has been realised shall be disclosed. The user shall be liable for any damage resulting from the neglect of this duty.

(4.) All other types of reproduction or use of the software, in particular decompiling the granted program code into other code forms and making the different development levels of the software accessible in any other way (reverse engineering), are not permitted. Furthermore, any other type of distribution of the software (off-line or on-line) as well as leasing or conferring the software for commercial purposes is also prohibited. These restrictions shall not apply for the fields of application and in case the conditions of articles §§ 69 d and 69 e of the German Copyright Act (UrhG) are met.

(5.) The Supplier is entitled to revoke these rights of use for reasons of importance. In particular, it is considered a good reason if the user is in default of payment with a large part of the purchase price or if the user does not follow the conditions of use and if the user does not refrain from doing so even after written notice of the licensor including a warning to cancel the licence. In case of revoking the rights of use, the user shall immediately hand out the original copy of the software and all further copies as well as other Licensed Material and shall delete the saved programs. The user shall confirm the complete return and deletion in writing if requested so by the Supplier.

4. Safety Instructions, German Medical Devices Distributors (MDD) Ordinance

(1.) The software "DermaMate" is a system for medical devices classified as II a and may only be used for controlling Waldmann therapy systems with MDD classification up to II a or for devices with MDD classification up to II a that are used with a Waldmann control. Any use for controlling devices of any other type is explicitly prohibited and is done at the user's own risk. The regulations with regard to safety

of the German Medical Devices Distributors Ordinance (MPBetreibV) and in particular the articles §§ 2, 5, 6, 9 and 11 were explicitly pointed out to the user (see www.gesetze-im-internet.de/).

(2.) The first use of the complete medical product system may only be realised by the Supplier itself or by personnel explicitly authorised by the Supplier. The stipulations of the German Medical Devices Distributors Ordinance (MPBetreibV) were explicitly pointed out to the user in this regard (see www.gesetze-im-internet.de/).

(3.) The user shall be granted a personalised licence when first using the software. It must be made sure that the personal access codes assigned together with the user management cannot be used by third parties. It is recommended to change the access codes immediately after the first use and from time to time.

(4.) Furthermore, the Supplier points out that the sample therapies provided with the software are only proposals. The respective treatments, in particular the treatment intervals and the dosage, are different for each patient and have to be determined individually in every case by the treating doctor. The user shall make sure that the entry and modification of the individual treatment data of the different patients, in particular the limit values for irradiation, are only realised by professional and authorised personnel.

(5.) The safety instructions contained in the operating instructions shall apply in addition and have to be complied with strictly.

5. Warranty

(1.) a) Any defects of the delivered software (material defects and deficiencies in title), including such in the manuals and other documentation, shall be eliminated by the Supplier within a warranty period of one year starting with the moment of installation after having received a notice of defects by the user. It shall be done at the Supplier's choice by eliminating the defect (rectification) or by delivering a software without defects (replacement).

b) The user is obliged to provide all information necessary for analysis and rectification of the defect to the Supplier. This includes providing sufficiently qualified operating personnel as well as granting access to the software and to the system on which it is installed. Any notice of defects shall contain information about the kind of error, the type of application during which the error occurred, as well as information about the kind of measures carried out in order to eliminate the error. The error shall be described in a way that it is reproducible.

c) Any notice of defects shall be made in writing.

(2.) In case the defect cannot be eliminated during an appropriate period or the rectification or replacement is deemed to have failed for any other reason, the user is entitled to lower the purchase price, to rescind the contract or to claim damages or replacement for any expenditures in vain. The two last claims are subject to fig. 7 of this agreement. The rescission of the contract shall not exclude the right for indemnification.

(3.) The rectification or replacement delivery shall only be deemed to have failed if two attempts of the Supplier have shown no success or if a replacement delivery has been made without the due success, if the rectification or replacement have been impossible, if they have been denied or unacceptably delayed by the Supplier, if there are good reasons for doubting on the success of fulfilment or if there is any other unacceptability for any other reason.

(4.) The warranty shall not include

- those defects being caused by applying other conditions of use than those intended for the program and indicated in the description of the features;
- insignificant deviations of the agreed quality or insignificant impairment of the usability;
- damages resulting from improper use/handling of the software or careless treatment of the data carrier;
- damages caused by special external influences that are not assumed in the present agreement;
- any modification of the software or hardware made by the ordering party or a third party and the consequences hereof unless the user is able to prove that these modifications have not caused the reported defect.
- any software that has been extended by the ordering party or a third party beyond the interface intended by the Supplier;
- the fact that the licensed software is compatible with the environment used by the ordering party;
- defects of the hardware, the operating system or the software by other producers.

(5.) Any specifications in brochures, advertisements, documentation and similar documents are just a general description of the software and do not imply any warranty with regard to the nature of the product. Any warranty of properties or acceptance of warranties requires an explicit agreement in writing.

(6.) In case of deficiencies of title, the supplementary performance means that the Supplier makes sure that the user can use the software in a legally correct way. The Supplier is entitled to substitute the concerned software by a similar one that corresponds to the contractual provisions as far as this is acceptable for the user. In case third parties are claiming any copyright from the user, the user shall notify the Supplier immediately in writing. The Supplier shall reject or settle the claim at the Supplier's own choice. The user is not entitled to admitting any third party's claim. The Supplier shall reject any third party's claim at the Supplier's own expenses and indemnify the user from all expenses and damages connected with the rejection of the claims as long as they are not caused by the user's behaviour contrary to duty.

6. Duty of Inspection and Notification

(1.) The user shall be obliged to inspect the delivered software for obvious defects that can be detected by the average user without problems. Obvious defects include missing manuals as well as significant, easily visible damage of the data carrier. Furthermore, this includes cases in which another product or a short quantity have been delivered. Such obvious defects shall be notified to the Supplier in writing within four weeks after delivery and installation.

(2.) Any defect that becomes obvious at a later date shall be reported to the Supplier by the user within four weeks after noticing it but at the latest by the end of the 12-month warranty period.

(3.) In case of violation of the duty of inspection and notification, the goods are considered accepted in spite of any detected defect.

7. Supplier's Liability

(1.) The Supplier shall be liable to unlimited extent for damages due to the lack of guaranteed features and for any claims based on the Product Liability Law. The same shall apply for damages arising from a risk to life, of injury or to health caused by the Supplier's negligent breach of duty or malicious or negligent breach of duty by one of the Supplier's legal representatives or vicarious agents.

(2.) For the rest, the Supplier – and his legal representatives or managers – shall only be liable for malicious intent or gross negligence. These limitations shall not apply in case of violation of any duty whose fulfilment is of particular importance for the achievement of the contractual purpose, i.e. material obligation.

The Supplier shall only be liable to the extent of the violation of material obligations for faults of other vicarious agents.

(3.) In case of violation of a material obligation, the Supplier shall also be liable for simple negligence. However, the Supplier's liability – as far as malicious intent and gross negligence can be excluded – is limited to the amount of such damage that has to be faced typically with an agreement of the present type.

(4.) Furthermore, the liability with regard to data loss shall be limited to the typical expenses for recovery that would have been caused in case of regular execution of data backups while taking into account the risks.

(5.) The Supplier cannot be held liable for such defects that are caused by other parts than those hardware and software components having an effect on the functionality of the software.

(6.) In case of a timely restricted licensing of the software, the Supplier's strict liability for defects already existing at the time of concluding the contract according to § 536 a I BGB shall be excluded.

(7.) The preceding provisions shall not imply any modification of the burden of proof at the user's disadvantage.

8. Period of Limitation

(1.) Any warranty rights of the user based on fig. 5 of these Supplementary Provisions shall fall under the statute of limitation one year after the moment of passing the risk. If the deficiency of title is due to a third party's property right because of which the return of the software can be requested, the legal periods of limitation shall apply.

(2.) For any other claims by the user based on this contract or on a contractual obligation pursuant to article § 311 II BGB, there shall be a limitation period of one year from the start of the legal limitation period. Any claims shall fall under the statute of limitation at the latest after the legally defined maximum periods have expired (see also § 199 III, IV BGB).

(3.) The legal limitation periods shall apply in case of personal injury (including deprivation of liberty) as well as in case of malicious intent and gross negligence. The same shall apply for the scope of application of the German Product Liability Law.

9. Final Provisions

(1.) Should a provision of these supplementary provisions be or become ineffective, or should it have an unintentional loophole, this shall not affect the validity of the provision for the rest. The contracting parties agree upon replacing the ineffective original provision by a legally permissible clause, which comes as close as possible to the intended effect of the ineffective provision. The same shall apply in case of filling unintentional contractual loopholes.

(2.) Any and all legal relations originating from the contractual relationship shall be governed by the Law of the Federal Republic of Germany while excluding the United Nations Convention on Contracts for the International Sale of Goods.

(3.) The legal venue for all claims arising from or due to these Supplementary Provisions or any agreements based upon them shall be the court of Villingen-Schwenningen, insofar as the user is a merchant under the German Commercial Law, a legal entity governed by public law or a special trust under public law or if the user does not have a general legal venue in Germany.

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