

## **GENERAL TERMS AND CONDITIONS OF EBG MEDAUSTRON GMBH**

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# 1. General Rules

## 1.1 Definitions

Offer	is a proposal to do business, made by the Contractor, which is submitted either in response to a request or in another manner.
Invitation to Bid	is a public, written call for offers for the Contractual Performance stated in the Invitation to Bid
Bid Documents	are all the documents listed in the "Cover Letter", that are supplied by the Contractor to the Client in the course of a bid for the delivery of Goods and/or services
Client	is the EBG MedAustron GmbH; hereinafter "Client"
Contractor	is the legal entity or natural person, company or group and as applicable the successor of such which concludes a contract with the Client; hereinafter "Contractor"
Services	are all services that the Contractor must perform for the Client under the Contract, inter alia advice, reporting, planning work, training, fitting, maintenance, repair and/or other services.
Goods	are all Goods, products and ware to be delivered including all spare parts, that are set out in the Contract Documents
Ion Therapy Centre MedAustron	is the treatment centre set up and operated by the Client for cancer treatment with ion radiation and the research centre for clinical and non-clinical research at 2700 Wiener Neustadt, Marie Curie-Strasse 5.
Defect	is the non-compliance with a material contractual provision, condition or duty
Client Address	is the address of the Client
Contractor Address	is the address of the Contractor as well as the addresses of sub-contractors of the Contractor
Key Staff	are all persons that have been designated as such by the Client, to render the Contractual Performance; Key Staff may only be replaced subject to the conditions stated in the Contract
Contract	is the legal agreement between the Client and the Contractor regarding the delivery of Goods and/or services
Contract Documents	are the documents that contain all the duties and specifications regarding the content of the contract for the delivery of Goods and/or services between Client and Contractor; these shall also include amendments or supplements to the Contract
Contractual Performance	comprises the services and/or Goods stated in the Contract
Party to the Contract	is the Client or the Contractor; Parties to the Contract refers to the Client and the Contractor jointly

Contract Price	is the price (excluding any applicable VAT) payable to the Contractor by the Client for the complete, due and proper performance of the contractual duties by the Contractor
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## 1.2 Applicability

These General Terms and Conditions (hereinafter “GTC”) apply to all transactions with the Client insofar as they are not changed or supplemented by express written agreement in the specific case.

The Client’s General Terms and Conditions of Bid (Section 2 below) are also part of these GTC. These General Terms and Conditions of Bid apply to all procurement processes carried out by the Client, insofar as the Client has not expressly changed or supplemented them by express, written bid conditions in the specific case (eg by notices, in the participating or bidding documents).

These GTC including the General Terms and Conditions of Bid herein apply in the version valid at the time the procurement process is initiated by the Client. A procurement process shall be deemed initiated upon notice being published or, in the case of procedures without notice, upon sending of the Invitation to Bid.

## 1.3 Communication

1.3.1 Insofar as not otherwise expressly agreed, any and all communication must be in written form. This can be in German or English. Communication by email is deemed to be written communication pursuant to Section 1.3.1 hereof.

1.3.2 In the case of an Invitation to Bid, the persons who will be responsible in the name of the Client and in the name of the Contractor for keeping to the performance of the Contract are named in the Invitation to Bid and in the Bid. Any and all relevant communication must be carried out between these responsible persons.

1.3.3 The Parties to the Contract are obligated to notify to each other without undue delay any and all changes (including contact data, company name, seat of company, the persons authorised to represent the Party to the Contract, etc.) pursuant to Section 1.3.1 hereof.

## 1.4 Status of Contractor

1.4.1 The Contractor must remain independent of the Client throughout the entire term of the Contract (no conclusion of an employment contract, agency relationship, partnership or Joint Ventures between the Parties to the Contract).

1.4.2 The Contractor may use the name and emblem of the Client or indicate it is a supplier to the Client subject to approval by the Client. The Client nevertheless reserves the right to limit, change or revoke this permission for the Contractor to do this in accordance with 1.4.2 at its own sole discretion.

## 2. General Terms and Conditions of Bid

### 2.1 Type of procedure

2.1.1 Unless the Client expressly selects a different type of procedure, the procurement process is subject to the procurement law rules on direct procurement with or without prior notice as well as these General Terms and Conditions of Bid.

### 2.2 Bid submission

2.2.1 The Bidder shall draw up its Offer in compliance with the provisions of the Federal Procurement Act (*Bundesvergabegesetz*) in the version valid at the time the procurement process is initiated and on the basis of these General Terms and Conditions of Bid and any other stipulations made by the Client for the procurement process and available to the Bidder (eg in notices, participation or bidding documents).

2.2.2 The bidder shall submit its written Offer, complete and responsive to all stipulations by the Client in a closed envelope marked with the name of the procurement process as designated by the Client, within the specified time for submitting bids and to the specified submission body.

The following are mandatory components of a complete Offer:

- a completely filled out schedule of performance and prices;
- all prospectuses and product data sheets for the products offered, demonstrating the fulfilment of all minimum requirements set by the Client.

2.2.3 All software from third parties (eg Microsoft, Adobe) necessary for the due and proper functioning or for the use of the products offered that requires licences shall also form part of

the performance owed by the Contractor in the event that it is awarded the Contract and regardless of whether such is explicitly mentioned and it is furthermore included in the Bid price.

For such software, the Bidder shall submit the following information with its offer:

- exact product description (including article number) according to the product list of the manufacturer/third party offerors;
- licensing type (eg processor licenses, core licensing or server CAL-licensing).

2.2.4 In submitting a bid, the Bidder confirms that it knows all of the local circumstances material to performance (eg the conditions of the installation and delivery site, vehicle access possibilities) and other circumstances and has taken such into account in its prices. Additional charges on the basis of such circumstances are excluded.

2.2.5 The bid shall be submitted by post, courier, personal submission or, if accordingly determined by the Client, in the framework of an electronic procurement system of the Client (eprocurement). The risk of whether it arrives in good time shall be borne by the Bidder. Offers per email or fax are only admissible in the case of direct procurement procedures in the absence of any determination to other effect by the Client.

2.2.6 The Offer must be signed by the Bidder, or in the case of a bidding consortium by each member, in the place intended therefor in a legally valid manner. If the authority to represent on the part of a person who signs the Offer is not clear from the company register, the Bidder must already provide proof of the legal validity of the signature with its Offer (eg by enclosing the relevant power of attorney).

With the legally valid signing of the Offer, the Bidder recognises without restriction all provisions of the procurement process, including all contents of the performance and prices list, the contract law specifications and these GTC.

In the absence of any determination to the contrary, the language of the process shall be German. Offers must be written in German. Enclosures and proofs must be enclosed in their up-to-date version in copy, in German or in English (or in certified translation into German or English) as well as also provided in digital form upon request. In the absence of any express determination by the Client to the contrary, proofs may not be older than six months by the end of the time for submission of bids (eg most recent debit note from the competent tax office).

## 2.3 Reimbursement of costs

For actions taken and expenses incurred in the context of participation in the procurement process or submission of the offer, no payment or reimbursement whatsoever shall be due to the Bidder. Any and all expenses associated with participation in the procurement process and/or the submission of the Offer, including the expenses of advance services, enclosures, proofs, presentations and test versions required shall be borne by the Bidder. The Client shall not compensate these expenses.

## 2.4 Supplementary provisions

2.4.1 The obligations arising from the International Labour Organisation Conventions No.s 29, 87, 94, 95, 98, 100, 105, 111, 138, 182 and 183, BGBl No 1950/228, No 1952/20, No 1954/39, No 1958/81, No 1961/86, Nr 1973/111, BGBl III No 2001/200, III No 2002/41 and BGBl III No 2004/105 must be observed. These rules are available for interested Bidders to inspect at the Economic Chamber of Lower Austria (*Wirtschaftskammer Niederösterreich*) and the Lower Austria Chamber of Workers (*NÖ Arbeiterkammer*).

The Bidders must prepare their Offers for all parts of the performance subject of the Invitation to Bid to be rendered in Austria under consideration of the labour and social law rules applicable in Austria. Every Bidder undertakes with the submission of its Offer to comply with these rules in the event it is awarded the contract. These rules are available for interested Bidders to inspect at the local branch of the legal association representing the Employer and Workers competent for the carrying out of the contract.

2.4.2 Amended Offers are inadmissible. They will be eliminated prior to the selection of the Offer for the award.

2.4.3 Offers with calculating mistakes will not necessarily be eliminated. It is admissible to move them up or down in the evaluation after correcting a mistake in the calculations. The characters - and / in the Bidder's data shall be counted as 0 (in words: zero).

2.4.4 Bidders are obligated to keep secret all procurement documents including information that they receive in connection with their participation in the procurement process. The provisions of Section 3.10 herein apply by analogy.

2.4.5 Bidders are not entitled to participate in the bid opening.

2.4.6 The Bidder remains bound to the terms of its Offer for five months after the end of the time for submitting the Offers (award adjudication period).

2.4.7 If a bid challenge procedure applies under the provisions of the Federal Procurement Act (*Bundesvergabegesetz*) as amended to the procedure selected by the Client, the Lower Austria Procurement Review Law (*NÖ Vergabe-Nachprüfungsgesetz*) as amended shall apply. The competent procurement review authority is the Lower Austria Arbitration Board for public procurement (*NÖ Schlichtungsstelle für öffentliche Aufträge*) at 3109 St. Pölten, Landhausplatz 1, and the Lower Austrian State Administrative Court (*Landesverwaltungsgericht Niederösterreich*) at 3109 St. Pölten, Rennbahnstrasse 29.

2.4.8 The Client or the contracting entity shall be liable solely in the case of a proven and sufficiently qualified breach of mandatory procurement law provisions for damage that may possibly arise to the Bidder in a procurement process.

2.4.9 Candidates/Bidders by virtue of submitting their application to participate/Offer also give their consent for the obtaining of:

- information from the central administrative penal records (*zentrale Verwaltungsstrafevidenz*) of the Federal Minister for Finance pursuant to § 28b of the Law on Employing Aliens (*Ausländerbeschäftigungsgesetz, AuslBG*), BGBl No 1975/218 as amended and §§ 7b para 8, 7i or 7k of the Act to Adapt Employment Contract Law (*Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG*), BGBl No 459/1993 as amended;
- information from the administrative penal records (*Verwaltungsstrafevidenz*) of the Competence Centre to Combat Wage and Social Dumping (*Kompetenzzentrum Lohn- und Sozialdumping Bekämpfung, LSDB*) under § 7n of the Act to Adapt Employment Contract Law (*AVRAG*), BGBl I No 459/1993 as amended.

## 2.5 Measures to combat Corruption and Barriers to Competition

2.5.1 The Client and the Bidder undertake to implement all necessary measures to avoid corruption.

2.5.2 The Bidder undertakes in particular to take all necessary organisational and human resources-based measures so that it and any and all persons acting for it in business relations with the Client:

- comply with all criminal law provisions on combatting corruption, in particular also all provisions under §§ 146 to 148a, 153, 153a, 168b, 304 to 307b, and 308 of the Austrian



Criminal Code (*Strafgesetzbuch*, StGB) as well as §§ 10 to 12 of the Act Against Unfair Competition (*Gesetz gegen unlauteren Wettbewerb*, UWG);

- offer, promise and give no gifts or advantages of any kind whatsoever to the staff acting for the Client, seek no gifts or advantages from such persons, let none such be promised to them and accept none such and likewise in no other way seek to influence such persons.

The Bidder undertakes furthermore not to breach any competition law or other rules that serve to promote free competition. In particular it will not participate in:

- arrangements regarding prices or pricing components and/or forbidden price recommendations;
- recommendations or arrangements regarding the submission or non-submission of Offers;
- arrangements regarding profit-sharing and/or contributions to other Bidders, candidates or interested parties.

If it is proven or there is at least well-founded suspicion that the Bidder (Contractor) has committed one of the actions described in this section, the Client is entitled to immediately eliminate the Offer submitted by this Bidder and/or after awarding the contract to withdraw immediately from the Contract concluded with the Contractor.

2.5.3 The Bidder undertakes also to bind its sub-contractors to the duties set out in this Section 2.5 and to withdraw with immediate effect from its contract with the subcontractor or to terminate the relevant contract with immediate effect if it is proven or there is at least well-founded suspicion that the sub-contractor has committed one of the actions described in Section 2.5.2.

## 3. Contractual Performance

### 3.1 Principles of performance

3.1.1 The Contractor is aware that the Ion Therapy Centre MedAustron operated by the Client is a hospital in terms of the § 1 Lower Austria Hospital Act (NÖ KAG) and thus it must observe special requirements in performance, in particular also in relation to provisions on radiation protection, business provisions and hygiene provisions.

3.1.2 The performance shall be rendered by the Contractor during the ongoing operation of the Ion Therapy Centre MedAustron. The Contractor shall render performance without infringing on this ongoing operation. It shall in every case be deemed infringement of the ongoing operations if the patient treatments intended by the Client are impaired due to limitation of the functionality or capacity of the facility or parts of the facility of the Ion Therapy Centre.

## 3.2 Delivery

3.2.1 The delivery of the Goods should only be at the time(s), date(s) and/or place(s) set out in the Contract. Prior, written approval by the Client is required in any other case.

3.2.2 The Contractor shall complete all formalities that are necessary for the delivery of Goods DAP at the stated place of delivery pursuant to Incoterms 2010. In the case of non-compliance, the Contractor shall be liable for any and all costs and/or delays. Departures from the delivery conditions pursuant to Section 3.2.2 must be agreed expressly beforehand.

3.2.3 The place of delivery is the point at which the Goods shall be loaded out of the transport vehicle in the Client's location, eg DAP 2700 Wiener Neustadt pursuant to Incoterms 2010. If the Goods are collected by the Client, the place of delivery shall be the point where the Goods are loaded onto the Client's transport vehicle (FCA at the stated place of delivery pursuant to Incoterms 2010).

3.2.4 The Client shall ensure at its own expense and responsibility that the packaging is technically appropriate. The packaging must ensure the secure transport, processing and storage of the delivery as well as display a clear reference of the Client. Insofar as not otherwise agreed between the Parties to the Contract, deliveries may not exceed a gross weight of 1900kg per package and must be designed for unloading by forklift. If the gross weight of 1900kg per package is exceeded, the Contractor must send a dispatch notification to the Client with all relevant cargo and delivery details at least one week before the agreed delivery date.

3.2.5 Every confirmation of receipt issued by the Client merely proves the number of delivered, separate packages and their outer packaging. It does not attest that a particular number of Goods has arrived or that the Goods are in a proper condition or function properly or that the Goods in any other way comply with the conditions of the Contract.

3.2.6 The Client may refuse delivery of the Goods if there is a wrong number of packages, damaged packages and/or obviously damaged Goods or formalities in the delivery.

3.2.7 The Client may refuse the delivery of Goods and/or terminate the Contract in full or in part with immediate effect if:

- the Client is informed by the Contractor that the Contractor is not able to deliver the Goods in conformity with the contractual conditions;
- the delivery date is not in conformity with the contractual conditions, insofar as the delivery of the Goods loses its purpose for the Client as a result.

3.2.8 If the Contractor participates in an all-round packaging disposal system in Austria (eg ARA – Altstoff Recycling Austria AG), then it shall include in its Offer as well as in every delivery slip and every invoice the following legally binding declaration and indicating its licence number: *“The packaging of all listed Goods is released via the licence number [...]”*. Otherwise the Contractor shall collect the packaging material upon first request of the Client within three working days and dispose of it itself. If the Contractor does not meet this obligation in good time, the Client is entitled to have it disposed of by third parties at the expense and risk of the Contractor.

No additional compensation or fee whatsoever shall be due to the Contractor in connection with the packaging (eg recycling deposit or costs of disposal).

### 3.3 Contractor’s responsibility

3.3.1 The Contractor shall perform the contractual duties with the required professional competence, care and diligence as well as in accordance with the Contract Documents and professional standards.

3.3.2 The Contractor guarantees that the Goods delivered correspond to the newest state of the art at the time of the delivery and also represent 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 Client. The approval of design and component selection by the Client does not release the Contractor from its duties in this respect.

3.3.4 The Contractor is responsible for the accuracy of any and all drawings, documentation and information that are given to the Client in connection with the Goods delivery. The Contractor must pay the Client any and all extra costs that arise as a result of any discrepancies, mistakes and/or omissions.

3.3.5 The Contractor must always deliver new materials, equipment and components insofar as nothing else is set out in the Contract Documents. The Contractor must make sure that Goods delivered are completely compatible with the Client's equipment to the extent laid out in the Contract.

3.3.6 The Contractor is responsible for the safe storage of any and all materials, Goods, parts, equipment and/or devices of the Client with which it has been entrusted in the course of performing the Contract. If the Contractor acquires materials, Goods, parts, equipment and/or devices for and in the name of the Client, it must take all necessary measures, in particular the keeping of all necessary documents, so that the Client's title to property is documented.

3.3.7 The Contractor shall render performance in compliance with all relevant rules on the transport of dangerous Goods and hazardous waste as well as any existing special rules on storage and operation. Its contractual duties to provide information also extend to these issues.

3.3.8 If a Contract is terminated for any reason whatsoever, the Contractor shall return to the Client without delay any and all property of the Client. Property in this sense includes all copies of documentation as well as any and all confidential information and intellectual property of the Client. This applies to property that arises or is produced during the course of performance.

3.3.9 When the contractual relationship is terminated, for whatsoever reason, the Contractor should support the Client and cooperate in order to secure due and proper transfer of the contractual relationship to a replacement contractor and/or the completion of works already begun.

3.3.10 If the Contractor finds, after conclusion of the Contract, that it misinterpreted a requirement and/or specification, this shall not be accepted as an obstacle. The Client will insist that the Contractor performs according to the original requirement and/or specification without additional costs.

3.3.11 The Contractor shall inform the Client immediately in writing regarding any circumstance that impairs the fulfilment of its contractual duties or threatens to impair such. Insofar as the Contractor fails to do so, it shall under no circumstances be entitled to any cost compensation, extension of time, and/or to enforce other substitute claims in this respect. The Contractor should take measures which are necessary in order to mitigate the consequences of detrimental circumstances for the contractual relationship.

3.3.12 The Contractor shall ensure in an appropriate manner that the fulfilment of its contractual duties do not disturb and/or impair the Client's operations.

### 3.4 Material mistakes, irregularities and fraud by the Contractor

3.4.1 If it should be revealed after the conclusion of the Contract that the procurement procedure for the Contract and/or execution of the Contract was marked on the part of the Contractor by material mistakes, irregularities and/or fraud, the Client shall be entitled to refuse payments, recall amounts already paid and/or terminate the Contract. This should be in reasonable proportion to the severity of the mistake, irregularities and/or fraud.

### 3.5 Legal conformity

3.5.1 The Contractor shall comply with all applicable laws and provisions, technical specifications and norms. The Contractor shall hold the Client free and harmless in respect of any and all losses and/or damage that may arise due to breaches pursuant to Section 3.5.1. The Contractor bears a duty to compensate the Client for any and all losses and/or damage including legal expenses that arise from breaches pursuant to 3.5.1.

3.5.2 If there are breaches of applicable laws, provisions, technical specifications and norms, the Client shall have the right to withdraw from the Contract in full or in part.

### 3.6 Key Staff

3.6.1 The Key Staff deployed by the Contractor must remain in the sole responsibility and competence of the Contractor.

3.6.2 The Contractor must ensure that the access rights to locations of the Client are used by the Key Staff solely for the performance of contractual duties.

3.6.3 The Client can refuse access to its locations for any of the Key Staff deployed by the Contractor if such do not comply with applicable laws and/or provisions by the Client. Furthermore, the access may be refused for any of the Key Staff used by the Contractor if the presence of such staff is considered undesirable.

3.6.4 In the case of access being denied, the Contractor shall be liable for any and all impact on the fulfilment of its contractual duties.

3.6.5 If foreign workers are used, the Contractor shall comply with all applicable rules in this respect (in particular the Employment of Aliens Act - *Ausländerbeschäftigungsgesetz*). Upon any request at any time by the Client, it must immediately show to the Client all required documents

and proofs in respect of any individual foreign worker deployed at the instalment site (in particular passport or other valid proof of nationality, working permit, employment visa or exemption certificate (*Befreiungsschein*) and social security registration). The Contractor shall place any subcontractors it uses or any other auxiliaries under the same obligations and check compliance with these rules regularly and precisely.

In the event of breach of this provision:

- the Contractor shall be liable for all harm ensuing to the Client and its representatives including all consequential damage and economic harm;
- the Client shall furthermore be entitled to impose a contractual penalty in the amount of € 5,000 per breach.

### 3.7 Administrative processes with the relevant authorities

3.7.1 The Contractor shall also participate in all processes with the authorities involving the object of performance for the duration of its performance at its own expense and without additional fee entitlements, in particular also preparing and making available any and all documents relating to its performance.

### 3.8 Client's responsibility

3.8.1 The Client takes responsibility for the specifications and performance of materials Goods, parts, equipment and/or devices which are made available by the Client. Furthermore, the Client is responsible for system parameters which are steered by the subsystems of the Client.

3.8.2 If it exercises inspection and/or control rights, the Client undertakes in its name and in the name of its representatives acting for it, to comply with the rules on business secrets as usual. Furthermore, the Client will strive to reduce to a minimum any inconvenience to the Contractor that might arise in the course of the exercise of inspection and/or control rights.

### 3.9 Quality assurance

3.9.1 The Contractor is obliged to render technically perfect performance at the highest level of knowledge and experience, in which context it shall be deemed an expert under § 1299 of the Austrian Civil Code (ABGB). The Contractor shall have regard to the best possible economy for the Client in rendering performance, in order to achieve an optimal result in respect of costs, quality and scheduling.

3.9.2 The Contractor shall inform the Client without delay of any and all risks that are discernible to an expert service provider in its field. The Contractor shall render all performance so that it corresponds to the current state of the art at the time. The Contractor shall render performance in compliance with a recognized and appropriate quality assurance standard.

3.9.3 The Contractor has informed itself about any and all circumstances relevant to the realization of the project and the attainment of the project goals. It hereby declares that the project is feasible in terms of the Performance it is engaged to provide with the prospective means assigned and within the intended time. Its solution is inexpensive and promises a successful result for the Client.

3.9.4 The Contractor shall comply in the context of rendering performance with all Austrian laws and ordinances, decisions by official authorities (*Bescheide*), and other official conditions imposed and orders by official bodies, in particular the respective applicable professional as well as labour law and social law rules. In particular, it shall comply with the obligations arising from the International Labour Organisation Conventions Nos. 29, 87, 94, 95, 98, 100, 105, 111 and 138, BGBl 1950/228, 1952/20, 1954/39, 1958/81, 1961/86, 1973/111, BGBl III 2001/200, BGBl III 2002/41 and BGBl III 2004/105 as well as the Austrian Workers' Protection Act (ASchG) and the health and safety at work regulations (AM-VO). All workers deployed to render performance (thus, also such as are used by auxiliaries etc) must be entitled to do so in respect of their presence in Austria and specific professional and commercial activities in Austria.

3.9.5 Insofar as the Contractor does not prove the opposite, it shall be presumed that any damage that arises to the Client in connection with the activity of the Contractor has been caused by the Contractor and that such is guilty in this context of wrongfulness and fault.

3.9.6 The Contractor shall be liable to the same extent and in the same way and manner also for persons that act for it as performance agents or auxiliaries or in any other manner are attributable to the Contractor's sphere (eg subcontractors).

3.9.7 The Contractor hereby confirms and warrants that it has a current professional or business liability insurance policy with an insurance sum of at least EUR 1 million for personal injury as well as EUR 1 million for damage to property for at least once insurance incident with at least 6 months run-off cover for the entire term of the contract (and a liability fund surviving this) for the performance subject of the contract. The Contractor undertakes to show a corresponding confirmation of insurance cover upon request by the Client within 14 days.

The Contractor shall release its insurers from their non-disclosure obligations in relation to the Client and all third parties named to it by the Client that are bound by statutory professional confidentiality.

### 3.10 Confidentiality

3.10.1 The Contractor undertakes to treat all information, documents and data, in particular business and trade secrets as well as company related or personal data (hereinafter altogether: information) that it receives in connection with this contractual relationship and has become known to it in the course of this cooperation with special care and confidentiality and to protect such against becoming known in any way to third parties. The Contractor undertakes in particular to comply with the Federal Act on the Protection of Personal Data (*Datenschutzgesetz* – DSG 2000) as well as the General Data Protection Regulation (GDPR), as amended.

3.10.2 The information and documents may be used solely for the purposes of the cooperation. This obligation shall survive without time limitation after the termination of the Contract. The confidentiality agreement shall cover besides the information set out in writing, including correspondence, also oral, optical and digital information, that is recorded on audio, film or data storage devices or in any other material form and is to be treated as confidential.

3.10.3 Upon termination of the Contract, the Contractor undertakes to return the information and reproductions expressly designated as confidential by the Client. The written confirmation of destruction of all information may substitute return provided the Parties to the Contract have reached agreement to this effect prior to such destruction. If the Contractor or a third party engaged by such has violated the confidentiality agreement set out in this provision, the Client shall be entitled to impose a contractual penalty of EUR 100,000 per violation.

3.10.4 Furthermore, the Contractor may not independently give (out) any interviews or statements regarding the project and subject of the Contract. Any interview or statement must be approved in advance by the Client. If the Contractor or a third party engaged by it violate this “interview rule” set out in this provision, the Client shall be entitled to a contractual penalty of EUR 10,000 per violation even in the case of slight fault. The Contractor has the burden of proof that there is no fault on its part.

3.10.5 The Contractor undertakes to use solely such personnel and auxiliaries to administer and perform its contractual duties that have been bound in writing to comply with the confidentiality and secrecy duties set out in this provision 3.10.



### 3.11 Inspection, rejection and guarantee

3.11.1 During the term of the Contract, both the Client and also lawfully appointed representatives of the Client shall have free access to the premises of the Contractor during the usual business hours. The Contractor shall be informed in advance in the event of any inspection by the Client or lawfully appointed representative of the Client.

### 3.12 Provisional acceptance of deliveries

3.12.1 There shall be a provisional acceptance when all Goods have been delivered, such comply with the specified contractual conditions and the Contractor has met all contractual duties necessary to this end.

3.12.2 The delivery is deemed to have been accepted by the Client,

- either from the time that a certificate documenting provisional acceptance has been issued;
- or from the time when the Client has paid the entire price.

3.12.3 The title to and risk for the Goods shall pass to the Client at the time of the provisional acceptance or at some other time that has been determined by the Client and the Contractor and this shall be without prejudice to any and all other rights of the Client or legal remedies open to the Client.

3.12.4 If the provisional acceptance is not given within three (3) months after the point in time when the Contractor has informed the Client that it has fulfilled all contractual duties, the Client should meet its payment obligation and acquire title to the Goods insofar as the Contractor seeks this. At the same time the Client retains any and all warranty rights.

### 3.13 Final acceptance

3.13.1 Final acceptance in the form of a final certificate of acceptance should be granted after the warranty period expires, insofar as the Contractor has performed all of its contractual duties.

3.13.2 Upon written request of the Contractor for a final acceptance, the Client should respond within sixty (60) days.

3.13.3 In the event that some of the Goods delivered are rejected by the Client, the final acceptance should be for all Goods not rejected insofar as such can be used independently of those Goods that were rejected.

3.13.4 If it is necessary during the warranty period that some of the Goods delivered must be replaced due to excessive use, wear and tear, or defective functionality, any extension of the warranty period for such part of the Goods shall not preclude the Client from issuing a partial acceptance.

### 3.14 Subcontractors

3.14.1 The Contractor is solely entitled to use subcontractors that have been approved expressly in writing by the Client. The replacement of subcontractors shall be admissible only subject to prior written consent by the Client. The Client shall in particular refuse its consent if the suitability of the (new) subcontractor has not been proven beyond doubt in respect of that part of performance it would take on and the guarantee that the performance will be rendered in accordance with the contract and in good time is not preserved (eg because the Client has already had negative experiences with the subcontractor which would be newly engaged or gained knowledge of such experiences on the part of another client).

3.14.2 If the Client has well-founded concerns about a subcontractor engaged, it can require that such be immediately replaced by another suitable subcontractor. The Contractor must engage a replacement in this case with two weeks. Any extension of the deadline for performance of the Contract is hereby excluded.

### 3.15 Change Request procedure

3.15.1 Changes to performance, in particular due to changes in the Client's requirements, are subject to the following formalised process (hereinafter: Change Request Procedure). The aim of the Change Request procedure is to make decision-making as quick as possible and secure controlled decision-making and processing of Change Requests.

3.15.2 Every Change Request must be sent in writing by the Client to the Contractor. The Change Request must be described so precisely and furnished with sufficient background information so that it is possible for the Contractor to evaluate it directly on the basis of this submission. The evaluation by the Contractor must mandatorily include an "Impact Assessment", which describes the impact of the planned Change Request on dependent system parts in detail and in particular allows estimation of whether and what undesirable effects the planned Change Request will have or could have on these system parts.

After receipt of this evaluation, the Client will first carry out a preliminary check (and /or have such carried out in mutual agreement by other project participants or third parties). The aim of this preliminary check is to determine whether the respective Change Request requires priority processing and whether there is sufficient background material regarding its immediate processing. The Client shall then transfer the thus checked Change Request to the Contractor, which shall evaluate within five working days the impact of the implementation of the Change Request in connection with time, costs, quality, functionality, availability and operational security (feasibility analysis).

The results of the feasibility analysis shall be attached by the Contractor to the Change Request in writing. This feasibility analysis must also contain an exact proposal for the technical implementation of the Change Request as well as regarding the financial circumstances and effects on realisation, starting up and operation (including maintenance and upkeep). As desired by the Client, the Contractor shall involve persons working with the Client in this feasibility analysis.

3.15.3 On this basis the Parties to the Contract shall conduct negotiations regarding the conclusion of the Change Request. The Contractor shall draw up a description of the Change Request pursuant to the results of these negotiations including at least the following contents:

- type and extent of the performance owed by the Contractor on the basis of the Change Request (Change Request performance);
- (updated as necessary) feasibility analysis;
- number and qualifications of the staff necessary for realisation of the Change Request performance;
- type and costs of devices that will be necessary to render the Change Request performance;
- criteria for the Client acceptance of the Change Request performance;
- the fee due to the Contractor for the Change Request performance (hereinafter: Change-Fee). The basis of calculation for this Change-Fee is the bases of calculations for the original offer. The fee arrangement for a Change Request must mandatorily include also a billing and payment plan for the payment of the Change-Fee.

Once the description of the Change Request is ready, the Client decides on implementation. The Contract partners agree an implementation time, depending on the complexity of the Change

Request, ie the deadline within which the Contractor must render and conclude the relevant performance. By means of the Client conveying its acceptance of the Change Request to the Contractor, the latter shall be deemed instructed to implement the Change Request.

3.15.4 The implementation of an accepted Change Request, which the Contractor has been instructed to carry out, shall be in accordance with the specified time plan and/or within the agreed implementation time. The progress on implementation must be monitored and checked until the Change Request has been finally completed. In respect of changes that take a longer time, periodical reports to the Client shall be made. The validation and acceptance of a completed Change Request shall ensue upon that test procedure and based on those acceptance criteria that the Parties to the Contract specified for the Client's acceptance of the implementation of the Change Request. The successful acceptance of the implementation of the Change Request by the Client must be confirmed by such in writing within six working days if requested by the Contractor.

### 3.16 Options

3.16.1 The Client is entitled but not obliged to call up the performance designated by it as options in the procurement process. The call up shall be timely provided the written declaration of call up by the Client is sent to the Contractor within 24 months or within another expressly agreed deadline for call ups, starting from the day the contract is awarded.

3.16.2 The Contractor shall be entitled to the flat fee offered specifically for the optional performance in the respective section of the Offer in return for providing the optional performance. In respect of optional performance for which the Contractor has not made a price offer, the Parties to the Contract shall determine by mutual agreement the relevant fee after the declaration of call up by the Client in analogous application of the provisions in Section 3.15. In respect of such performance, the call up of the optional performance shall be subject to the condition precedent that a lump sum fee is mutually agreed for this performance.

3.16.3 Insofar as the Parties to the Contract do not in the individual case agree otherwise, the Contractor is only entitled to invoice for the lump sum fee agreed for rendering the optional performance subsequent to the Client's acceptance of the implementation of such.

## 4. Fee and payment

### 4.1 Fee

4.1.1 All prices shall be deemed net, fixed prices that cover any and all costs for the Contractor's fulfilment of its contractual duties. The contractually determined prices may not be changed unless this is expressly provided for in the Bid Documents. As applicable, the Contractor shall state and charge the respectively applicable VAT on the Contract Price.

### 4.2 Indexing

4.2.1 Any and all of the prices agreed in this Contract shall apply for the period of one year after conclusion of the Contract. In respect of any parts of performance rendered after this period during which the prices are fixed, the price shall be adjusted pursuant to the following indexing:

The Consumer Price Index issued by Statistik Austria shall be used to calculate the indexing, or the index replacing such will be used, as appropriate. The starting point for the indexing shall be the index published the month following the conclusion of the Contract. The fee changes in proportion to the index increase, whereby fluctuations of up to three percent in relation to the respective starting point shall be disregarded.

### 4.3 Ancillary costs

4.3.1 All fees under this Contract include any and all ancillary costs, taxes and levies, insofar as this Contract does not expressly stipulate otherwise. This also applies to any and all travel expenses, reproductions of documents for authorities, Client and other third parties, companies carrying out performance and special experts, etc. The expressly agreed fees thus cover all main and ancillary performance by the Contractor based on this Contract finally and completely, insofar as not otherwise provided in this Contract and/or unless the Parties to the Contract have not made an express agreement in writing departing from this and specifying a specific additional fee prior to the corresponding main or ancillary performance being rendered.

4.3.2 The Client shall bear travel, flight and accommodation costs for trips abroad that it expressly orders in writing (actual flight costs for 2<sup>nd</sup> class or, if the travel is to a place not more than 500km far away from the point of departure, the costs of a 2<sup>nd</sup> class train ticket as well as the actual accommodation costs for a mid-price hotel).

## 4.4 Invoicing

4.4.1 All invoices must be numbered consecutively and must comply with the provisions of § 11 Austrian VAT Act (UStG) and the Client's specifications. They must be sent to the following billing address in original with a copy enclosed:

EBG MedAustron GmbH,  
Marie Curie Strasse 5  
A-2700 Wiener Neustadt  
Austria.

4.4.2 The Contractor must attach to its invoices all information and proofs that the Client will need to verify the invoice.

Invoices in conflict with these provisions shall not trigger any legal duties for the Client, or any deadlines for payment or make such fall due.

## 4.5 Payment due on invoices

4.5.1 Invoices shall be due for payment within fourteen (14) calendar days minus two (2) percent discount for prompt payment or thirty (30) days after due and proper invoicing. The Client is entitled to settle these invoices by also setting off its own claims against the Contractor. The Client is in particular entitled to retain from the respective invoiced amount all contractual penalties that have accrued by the time of actual payment of the invoice.

4.5.2 Payment of the invoices shall not be deemed in any way to constitute recognition or acceptance of the invoiced performance or other delivery or performance by the Contractor. In particular it shall thus not be deemed to constitute any waiver of rights (eg arising out of default, warranty or of compensation).

4.5.3 Payments by instalment shall be made if this is stipulated in the Contract and/or Bid Documents.

## 5. Performance of the Contract

### 5.1 Warranty and compensation for damage

5.1.1 The Contractor warrants to perform the contract without Defect and in accordance with all rules and standards applicable in Austria and with the Contract. The Contractor shall bear the burden of proving due and proper performance of the Contract. The warranty period for each

Contractual Performance begins when such has been accepted by the Client and ends 24 months later respectively. During the entire term of the warranty, presumption of defect (presumption that such existed at time of delivery unless such presumption is incompatible with the nature of the Goods or the Defect) applies.

5.1.2 The Contractor shall be liable within the framework of the applicable legal provisions for the full interest damaged in case of all personal injuries, damage to property and other harm that is directly or indirectly caused by it, including that caused by personnel it engages or third parties it engages. The obligation to compensate thus includes also any damage consisting in defectiveness as well as damage consequential to defects and all economic harm.

5.1.3 The Contractor carries sole civil law, criminal law and administrative law responsibility for its area of performance during its rendering of performance. The Contractor is liable for all harm that arises due to delays or impossibility of performance for which the cause lies with it or its auxiliaries. The Contractor is liable for all claims that may arise from non-compliance with rules and shall keep the Client free and harmless from all claims in this respect. Furthermore, the Contractor is liable for direct and indirect harm from interruption of operations or delay in remedying defects as well as for the risk deriving from consequential damage. The Contractor shall indemnify and hold the Client completely free and harmless with respect to all these claims, in particular in relation to third parties.

5.1.4 In case of damage, the Contractor shall make available any and all documents and information that serve to clarify the facts in this relation.

5.1.5 Approvals or consents by the Client and agreements with the Client as well as other participants in the project shall not release the Contractor from its undivided contractual responsibility.

5.1.6 The Client is liable to the Contractor for gross fault. Mandatory statutory provisions regarding personal injury are excluded from this limitation on liability. Within the framework of the legal possibilities in this respect, the Contractor waives the right to compensation from the Client insofar as this damage is not covered by insurance.

## 5.2 Term of the Contract

5.2.1 The contractual relationship comes into effect upon being signed.

5.2.2 Insofar as the contractual relationship does not end due to performance (contract for a specific performance) the term shall be indefinite. The Parties to the Contract shall be entitled under the following circumstances to terminate the Contract:

- the Client may terminate the Contract subject to a notice period of four weeks with effect on the last day of a calendar month;
- the Contractor may terminate the Contract subject to a notice period of six months with effect on the last day of a calendar year.

## 5.3 Termination for cause

5.3.1 The Client shall be entitled to terminate this Contract for cause with immediate effect not only based on cause as provided for under general civil law but also if the Contractor or one of its subcontractors and/or other auxiliaries:

- breach the material duties it owes based on the Contract and despite written demand by the Client continues or repeats this breach and/or does not remove the detrimental consequences of this breach without delay. Material duties deriving from this Contract are in particular all duties that serve the aim of performance by the Contractor in good time (also partial performance);
- breach duties of secrecy despite written demand made to the Contractor;
- has committed serious misconduct in the context of its professional activity (in particular violating provisions of labour, social or environmental law), that have been demonstrably identified by the Client in line with § 68 para 1 no. 5 of the Federal Act on Procurement (BVergG).

5.3.2 The Contractor shall reimburse all increased costs incurred by the Client that are directly or indirectly connected with the termination for cause if such is based on something within the Contractor' sphere.

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



## 5.4 Duties upon termination of Contract

5.4.1 If this should serve the interests of the Client, in particular for the purpose of mitigating damage, the Contractor shall continue to fulfil its scope of performance according to the Client's stipulations or to provide supportive performance necessary until the Client has found a successor for the Contractor and such has successfully taken over the performance to be rendered, insofar as the Client is not responsible for any undue delay in the search for a new Contractor.

5.4.2 The Contractor further undertakes to provide to the Client at the request of such all of the information and documents necessary for the continuance of the performance subject of the Contract (by third parties or with the Client's own staff) as quickly as possible and in an appropriate form. The Contractor shall bear the costs arising in this respect. This obligation applies regardless of the ground for the termination of the Contract and in respect of every way the contractual relationship was ended.

## 5.5 Contractual penalties

5.5.1 All contractual penalties arising from the contractual relationship are non-fault-based and excluded from the judicial right to reduce such. The right to claim for compensation of any damage exceeding the respective contractual penalty or other claim shall not be affected by the right to impose the respective contractual penalty. The Client may also repeatedly impose contractual penalties if there are repeated violations. The Client is entitled to deduct and retain any contractual penalties that have fallen due up to the time it pays an invoice from the Contractor from such invoice.

5.5.2 Proof of specific damage is not necessary in order to impose contractual penalties.

## 6. Property and intellectual property rights

### 6.1 Retention of title

Any and all drawings, sketches, tools, aids, patterns, models, test versions etc made available to the Contractor by the Client or financed by such for the performance of the Contract shall remain or become the property of the Client. The Contractor may neither make them available to third parties nor use them for any purposes other than performing the Contract (in particular not for marketing purposes either). The Contractor shall return them to the Client within five working

days upon first request by such after performance has been rendered or the Contract terminated.

## 6.2 Software

6.2.1 The Contractor grants the Client the non-exclusive, non-limited as to time and territory, non-limitable and non-system-oriented right of use for any and all software defined in the procurement documents and other Contract Documents or such as is necessary for the Contractual Performance and/or functionality of the subject of the Contract. This right to use includes the full and also merely partial recourse to any and all functions of the software product as well as every utilisation of the databases of the Client using the product functionalities, whether this utilisation is by visualised or non-visualised interface, same-time or time-delayed. The right granted shall also include making available the working results via network connection to the number of users stipulated in the procurement documents or other Contract Documents by means of reading and processing access.

6.2.2 The Client shall acquire rights of use to software from third party manufacturers pursuant to the licence provisions of such manufacturers. If the Contractor uses software by third parties to render performance, it must submit the licence provisions to the Client without being asked, together with the Offer submission and inform the Client in writing of any departures from the stipulations of the Client.

6.2.3 Furthermore, the Client acquires in every case the right to make the necessary copies for backup and archiving purposes.

6.2.4 The Contractor shall be liable to the Client to the effect that no patents, industrial property rights or rights of use belonging to third parties are violated by its performance and the use of the software in line with this provision.

6.2.5 If third parties claim there has been a violation of intellectual property rights by the use of the software by the Client, such shall inform the Contractor thereof without delay. The Contractor is obliged to defend against the claim and to acquire full rights for the Client.

## 6.3 Plans, drafts etc

6.3.1 The Client shall acquire all intellectual property non-exclusive rights of use known or that in future become known, worldwide to all concepts, plans, handbooks, reports, training documents and other documents prepared by the Contractor, its staff, subcontractors or

cooperation partners delivered in the context of performance. The Contractor will place its staff, subcontractors and cooperation partners under obligation to grant these rights of use to the Client.

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

## 6.4 Miscellaneous

6.4.1 No separate fee shall be due to the Contractor for granting the rights of use described here in Section 6.

6.4.2 In the case that an insolvency procedure is initiated against the assets of the Contractor (or if such application is rejected for lack of assets to cover the expense), all rights of the Contractor to the performance subject of the Contract shall pass to the Client at least as non-exclusive rights, insofar as the Client has not already acquired further-reaching rights to such.

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

## 7. Concluding provisions

7.1.1 General Terms and Conditions for business, delivery or payments or other general rules of the Contractor are not applicable to this contractual relationship, or to the question of whether this relationship exists, its interpretation, realisation and performance as well as any and all legal questions regarding claims based on such.

7.1.2 The Contractor is not entitled to assign or pledge claims from this Contract to third parties. If there is nonetheless an assignment or pledge, the Client is entitled to deduct a processing charge in the amount of 2% of the assigned or pledged claim. It is inadmissible for the Contractor to set off claims against the Client (exclusion of set-off balancing).

7.1.3 If at the time of the conclusion of the Contract there are relevant, ancillary oral agreements, such shall no longer be legally binding once the Contract is concluded. Amendments or supplements to the Contract require the written form to be valid. This shall also apply to any agreement to depart from the requirement that such be in writing.

7.1.4 Declarations per email shall also be deemed to be in writing for the purposes of this Contract. In such case, the party sending its declaration by email bears the burden of proof that the email arrived to its addressee. Declarations by the Contractor sent to the Client by emails are legally binding upon the former regardless of any limitations in this respect deriving from disclaimers attached to the declaration.

7.1.5 If parts of these GTC or the Contract concluded between the Client and the Contractor are or become legally ineffective, the remaining parts of the Contract shall continue to apply. The invalid or ineffective contractual provisions shall be replaced by such as best correspond to the economic aim of the rule intended by the Parties to the Contract. Any and all attachments to the Contract concluded with the Client are part of such Contract.

7.1.6 The Contractor waives its right to challenge this Contract on grounds of mistake.

7.1.7 This contractual relationship shall be governed by Austria law, excluding its conflicts of law rules (IPR) and the UN CISG.

7.1.8 The place of performance and exclusive place of jurisdiction is 2700 Wiener Neustadt.

7.1.9 Conflicts of opinion regarding the performance and/or the remuneration for such shall not entitle the Contractor to suspend its performance under this Contract or specific partial performance ordered on the basis of this Contract. The same applies in the case of default on payment by the Client.

7.1.10 The Contractor hereby confirms by accepting this Contract that it disposes over all the rights and authorisations necessary to render performance as set out in this Contract.

7.1.11 If the time for a deadline is linked to a declaration and this Contract does not expressly provide otherwise, the actual arrival of this declaration with the recipient shall trigger the beginning of the period for the deadline.