

General Terms and Conditions of EBG MedAustron GmbH

Table of Contents

1.	General Rules.....	1
1.1	Definition.....	2
1.2	Applicability.....	2
1.3	Communication.....	2
1.4	Confidentiality.....	2
1.5	Data Protection.....	3
1.6	Status of the Contractor.....	3
2.	General Offer Conditions.....	3
2.1	Type of Procedure, Duty to Cooperate and Reimbursement of Costs.....	3
2.2	Offer Submission.....	3
2.3	Additional Provisions.....	4
2.4	Measures Against Corruption and Restrictions on Competition.....	5
3.	Contractual Services.....	6
3.1	Principles of Service Provision.....	6
3.2	Compliance.....	6
3.3	Responsibility of Contractor.....	6
3.4	Supply of Goods.....	7
3.5	Considerable Errors and Significant Irregularities on the Part of the Contractor.....	8
3.6	(Key) personnel of the Contractor.....	9
3.7	Subcontractors.....	9
3.8	Responsibility of MedAustron	9
3.9	Review, Rejection and Guarantee.....	10
3.10	Provisional Acceptance.....	10
3.11	Final Acceptance	10
3.12	Change Request Procedure	10
3.13	Options.....	11
4.	Contract Fulfilment and other Characteristics of the Contract.....	12
4.1	Warranty and Compensation	12
4.2	Contract Duration ..	12
4.3	Extraordinary Termination.....	13
4.4	Obligations upon Termination of the Contract.....	13
4.5	Contractual Penalties.....	13
5.	Remuneration and Payment.....	13
5.1	Remuneration.....	13
5.2	Value Preservation.....	14
5.3	Ancillary Costs.....	14
5.4	Accounting.....	14
5.5	Due Date of Invoices.....	14
6.	Property and Intellectual Property Rights.....	14
6.1	Retention of Title.....	14
6.2	Software.....	14
6.3	Elaborations.....	15
6.4	Miscellaneous.....	15
7.	Final Provision.....	15

1. General Rules

1.1 Definition

Offer	means a business proposal made by the Contractor in response to an enquiry or otherwise.
Tendering	means a public and written invitation to tender for the contractual services specified in the invitation to tender.
Tendering Documents	means all documents, listed in the cover letter 'Cover Letter', which is sent by the contractor to MedAustron in the course of a tender for the supply of goods and/or services.
Client (MedAustron)	refers to EBG MedAustron GmbH; hereinafter referred to as
Contractor	means the legal or natural person, company or group and, where applicable, its legal successors with whom MedAustron concludes a contract; hereinafter referred to as
(Service) performance	means all services to be provided by the Contractor to MedAustron under the Contract, including but not limited to consulting, reporting, planning, training, installation, maintenance, repair and/or other (service) performance.
Goods	means all goods, products and merchandise to be delivered, including all spare parts specified in the contract documents.
MedAustron Ion Therapy Centre	means the treatment and research centre for cancer therapy with ion beams established and operated by the CT in 2700 Wiener Neustadt, Marie Curie-Straße 5.
Deficiency	means the breach or deviation from a contractual provision, condition or obligation of this contract.
Branch Office of	refers to the registered office of the MedAustron in 2700
Branch Office of Contractor	designates the registered office of the Contractor and any subcontractors of the Contractor.
Key Personnel	means all persons designated by the Contractor in agreement with MedAustron to perform the contractual services; the key personnel may only be replaced under the conditions specified in the contract.
Contractual Documents	means documents containing all obligations, specifications, amendments and addenda relating to the content of the
Contractual Services	means the (services) performances and/or goods specified in the contract.
Contracting Party	means MedAustron or the Contractor; 'Contracting Parties' means MedAustron and the Contractor together.
Contractual Price	means the price including ancillary costs (excluding any applicable VAT) payable to the Contractor by MedAustron for the complete and proper fulfilment of the contractual obligations by the Contractor.

1.2 Applicability

- 1.2.1 These General Terms and Conditions (hereinafter referred to as 'GTC') shall apply to all legal transactions with MedAustron, unless they are amended or supplemented in individual cases by express written agreement. This applies both to legal transactions that are concluded within the framework of a tendering procedure and to legal transactions that are not subject to a tendering procedure, whereby MedAustron's general terms and conditions of tender (point 2) shall only apply mutatis mutandis if necessary.
- 1.2.2 The general terms and conditions of tender of MedAustron (point 2) are also an integral part of these GTC. These general terms and conditions of tender shall apply to all procurement processes of MedAustron, unless MedAustron amends or supplements them in individual cases by means of express written tender provisions (e.g. through announcements, participation or tender documents).
- 1.2.3 These GTC, including their General Terms and Conditions of Offer, shall apply in the version valid at the time of the initiation of the procurement process by MedAustron.

1.3 Communication

- 1.3.1 Unless otherwise expressly agreed, all communication must be in writing. This may be in German or English. Communication by e-mail is deemed to be written communication within the meaning of point 1.3.1.
- 1.3.2 In the event of an invitation to tender, the persons who are responsible on behalf of MedAustron and on behalf of the contractor for the fulfilment of the contract shall be named therein. All relevant communication must take place between the responsible persons.
- 1.3.3 The contracting parties are obliged to inform each other without undue delay of all changes (including contact details, company name, registered office, persons authorised to act on behalf of the contracting party, etc.) in accordance with point 1.3.1.

1.4 Confidentiality

- 1.4.1 The Contractor undertakes to treat all information, documents and data received within the scope of this contractual relationship, in particular trade and business secrets as well as company and personal data (hereinafter jointly referred to as 'Information'), which become known to it within the scope of the cooperation, with particular care and confidentiality and to protect them from any disclosure to third parties. In particular, the Contractor undertakes to comply with the Federal Act on the Protection of Personal Data ('Data Protection Act' or 'DSG 2000') and the General Data Protection Regulation ('GDPR') as amended.
- 1.4.2 The information and documents may only be used for the purposes of the collaboration. This obligation shall continue to apply indefinitely even after termination of the contract. In addition to written information, including correspondence, the confidentiality agreement also includes verbal, visual and electronic information that is recorded on audio, film or data carriers or is otherwise available in material form and is to be treated as confidential.
- 1.4.3 Upon termination of the contract, the Contractor undertakes to return the information and copies expressly designated as confidential by MedAustron. The written confirmation of the destruction of all information can replace the return if the contracting parties have agreed on this prior to the destruction. For each case of breach of this confidentiality obligation, the Contractor undertakes to pay a

contractual penalty of up to 20% of the total order volume, up to a maximum of EUR 50,000.00 (in words: fifty thousand euros) per event. The assertion of this contractual penalty does not exclude the assertion of further damages.

- 1.4.4 In addition, the Contractor may not independently give any interviews or statements on the subject matter of the project or contract. Each interview and each statement must be authorised by MedAustron in writing in advance. Should the Contractor or a third party commissioned by the Contractor violate the 'interview regulation' regulated in this point, MedAustron shall be entitled to a contractual penalty of EUR 10,000.00 per event. The Contractor must prove that it is not at fault.
- 1.4.5 The Contractor undertakes to use only personnel and vicarious agents for the administration and fulfilment of its contractual obligations (cf. in particular points 3.6 and 3.7) who have been obliged in writing to comply with the secrecy and confidentiality obligations set out in this point.

1.5 Data Protection

- 1.5.1 If personal data within the meaning of the GDPR or health data within the meaning of the Health Telematics Act is provided to the bidder for the execution of the order or if such data is determined by the bidder within the scope of the order, and if there is no legal basis for independent processing by the bidder, the bidder shall be a processor within the meaning of Art 4 clause 8 GDPR in the event of an order with regard to this data.
- 1.5.2 In this case, the bidder undertakes to fulfil all data protection obligations in accordance with the provisions of the GDPR and the DSG and to comply with the provisions of the GTelG.

1.6 Status of the Contractor

- 1.6.1 The Contractor must remain independent of MedAustron for the entire term of the contract (no conclusion of an employment contract, agency relationship, partnership or joint venture between the contracting parties).
- 1.6.2 Following written approval by MedAustron, the Contractor shall be authorised to use the name and emblem of MedAustron or to indicate that it is a supplier of MedAustron. Nevertheless, MedAustron reserves the right to restrict, amend or revoke the authorisation to the Contractor pursuant to Section 1.4.2 at its discretion.

2. General Offer Conditions

2.1 Type of Procedure, Duty to Cooperate and Reimbursement of Costs

- 2.1.1 Unless MedAustron expressly chooses a different type of procedure, MedAustron's procurement process is subject to the provisions of public procurement law governing direct awards with or without prior publication and these General Terms and Conditions of Tender.
- 2.1.2 For the duration of its performance, the Contractor shall cooperate at its own expense and without additional claim to remuneration in all official proceedings relating to the object of performance, and in particular shall prepare and make available all documents relating to its performance.
- 2.1.3 The Contractor shall not be entitled to any remuneration or reimbursement of expenses for actions and expenses incurred in the course of participating in the procurement process. All costs associated with the participation in the procurement process or the submission of its offer, including the costs of the necessary preliminary work, enclosures, evidence, presentations and tests, shall be borne by the Contractor.

MedAustron shall not reimburse these costs.

2.2 Offer Submission

- 2.2.1 The bidder shall prepare its bid in compliance with the provisions of the Federal Procurement Act as amended at the time the procurement procedure is initiated, on the basis of these GTC, including the General Terms and Conditions of Bid contained therein, and all other provisions made by MedAustron for the procurement procedure and available to the bidders (e.g. in announcements, participation or bid documents).
- 2.2.2 The bidder shall submit its fully completed written bid, which complies with all of MedAustron's specifications, in a sealed envelope labelled with the name of the procurement process specified by MedAustron, to the specified submission point within the specified bid deadline. Mandatory components of a complete offer are:
- a) a fully completed bill of quantities;
 - b) all brochures and product data sheets on the products offered, from which the fulfilment of all minimum requirements set by MedAustron can be seen.
- 2.2.3 Licensable software from third-party providers (e.g. Microsoft, Adobe) required for the proper functioning or use of the products offered is part of the service owed by the contractor in the event of a contract award and is included in the tender price, even if not expressly mentioned.
- 2.2.4 For such software, the bidder must submit the following information with its bid:
- a) exact product designation (including article number) according to the product list of the manufacturer/third party provider;
 - b) Licensing type (e.g., processor licensing, core licensing or server CAL licensing).
- 2.2.5 By submitting an offer, the bidder confirms that it is aware of all local circumstances relevant to the provision of the service (e.g. the nature of the installation and delivery site, access options) and other circumstances and has taken these into account in the pricing. Additional claims due to such circumstances are excluded.
- 2.2.6 Tenders shall be submitted by post, courier, in person or, if specified by MedAustron, as part of MedAustron's electronic tendering system (e-tendering). The bidder bears the risk of timely receipt. Tenders by e-mail or fax are only permitted for direct award procedures unless expressly specified otherwise by MedAustron.
- 2.2.7 The bid must be legally signed by the bidder or, in the case of bidding consortia, by each member in the space provided. If the power of representation of a person signing is not evident from the commercial register, the bidder must prove the legal validity of the signature with its bid (e.g. by enclosing a corresponding power of attorney).
- 2.2.8 With the legally valid signing of its offer, the bidder recognises without restriction all provisions of the procurement procedure, including all contents of the specifications, the contractual requirements and these GTC. Unless otherwise specified, the language of the procedure is German. Tenders must be written in German. Enclosures and supporting documents must be enclosed in the form of copies in German or English (or a certified translation into German or English) and must also be made available in electronic form upon request. Unless expressly stipulated otherwise by MedAustron, supporting documents must not be older than six months at the end of the tender period (e.g., last valid debit note from the responsible tax office).

2.3 Additional Provisions

- 2.3.1 The obligations arising from Conventions No 29, 87, 94, 95, 98, 100, 105, 111, 138, 182 and 183 of the International Labour Organisation, Federal Law Gazette No 1950/228, No 1952/20, No 1954/39, No 1958/81, No 1961/86, No 1973/111, Federal Law Gazette III No 2001/200, III No 2002/41 and Federal Law Gazette III No 2004/105 must be complied with. These regulations are available for inspection by

interested bidders at the Lower Austrian Chamber of Commerce and the Lower Austrian Chamber of Labour.

- 2.3.2 The Contractor must prepare its tenders for all partial services to be provided in Austria for the tendered service, taking into account the labour and social law regulations applicable in Austria. By submitting its tender, the Contractor undertakes to comply with these regulations in the event of an order. These regulations are available for inspection by interested bidders at the local branch of the statutory organisation representing the interests of employers and employees responsible for the execution of the contract.
- 2.3.3 Change bids are inadmissible. They will be eliminated before the tender is selected for the award of the contract.
- 2.3.4 Bids containing arithmetical errors will not necessarily be eliminated. Pre-ranking or re-ranking following correction of a calculation error is permissible. The characters '-' and '/' in information provided by the contractor shall be regarded as 0 (in words: zero).
- 2.3.5 The Contractor is obliged to maintain confidentiality of all procurement documents, including information received in connection with its participation in the procurement process. The provisions of section 3.10 shall apply mutatis mutandis.
- 2.3.6 The contractor is not authorised to participate in the bid opening.
- 2.3.7 The contractor shall remain bound by its offer for a period of five months from the end of the offer period (award period).
- 2.3.8 If legal protection is provided for the procedure chosen by MedAustron in accordance with the provisions of the Federal Procurement Act as amended, the Lower Austrian Procurement Review Act as amended shall apply. The competent procurement control authority is the Provincial Administrative Court of Lower Austria (3109 St. Pölten, Rennbahnstraße 29).
- 2.3.9 MedAustron shall only be liable for damages incurred by the bidder in a procurement process in the event of a proven, sufficiently qualified breach of mandatory provisions of public procurement law.
- 2.3.10 By submitting his/her application for participation/offer, the Contractor consents to the obtaining of
 - a) information from the central administrative offence register of the Federal Minister of Finance pursuant to § 28b of the Act Governing the Employment of Foreign Nationals (AuslBG), Federal Law Gazette No. 1975/218 as amended, or §§ 7b (8), 7i or 7k of the Labour Contract Law Adjustment Act (AVRAG), Federal Law Gazette No. 459/1993 as amended;
 - b) information from the administrative penalty register of the Competence Centre for Combating Wage and Social Dumping (LSDB) pursuant to Section 7n of the Labour Contract Law Adaptation Act (AVRAG), Federal Law Gazette I No. 459/1993 as amended.

2.4 Measures Against Corruption and Restrictions on Competition

- 2.4.1 MedAustron and the Contractor undertake to take all necessary measures to avoid corruption.
- 2.4.2 In particular, the Contractor undertakes to take all necessary organisational and personnel precautions to ensure that he and all persons working for him in business dealings with MedAustron:
 - a) comply with all criminal law provisions to combat corruption, in particular all provisions of Sections 146 to 148a, 153, 153a, 168b, 304 to 307b and 308 of the German Criminal Code (StGB) and Sections 10 to 12 of the Austrian Unfair

Competition Act (UWG);

- b) not offer, promise or grant any benefits or advantages to persons working for MedAustron, not demand, accept promises of or accept any benefits or advantages from such persons and not attempt to influence such persons in any other way.

2.4.3 The Contractor also undertakes not to violate antitrust law or other regulations that serve to protect unrestricted competition. In particular, it shall not participate in

- a) agreements on prices or price components or on prohibited price recommendations;
- b) recommendations or agreements on the submission or non-submission of tenders;
- c) agreements on profit sharing or payments to other bidders, applicants or interested parties.

If it is proven or there is at least a justified suspicion that the contractor has committed an act described in this point, MedAustron is entitled to immediately withdraw from the tender of this contractor or, after awarding the contract, to immediately withdraw from the contract concluded with the contractor.

2.4.4 The Bidder undertakes to impose the obligations contained in this Section 2.5 on its subcontractors and to withdraw from its contract with the subcontractor with immediate effect or to terminate this contract with immediate effect if it is proven or there is at least reasonable suspicion that the subcontractor has committed an offence described in Section 2.5.2.

3. Contractual Services

3.1 Principles of Service Provision

3.1.1 The Contractor is aware that the MedAustron Ion Therapy Centre operated by MedAustron is a hospital within the meaning of para. 1 of the Lower Austrian Hospital Act (NÖ KAG) and that it must therefore comply with special requirements when providing services, in particular with regard to radiation protection, business and hygiene regulations.

3.1.2 The Contractor shall provide its services while the MedAustron Ion Therapy Centre is in operation. The Contractor shall provide its services without impairing these ongoing operations. An impairment of ongoing operations shall be deemed to exist in any case if the patient operation intended by MedAustron is impaired by the restriction of functionality or performance of the system or system parts of the ion therapy centre.

3.2 Compliance

3.2.1 The Contractor is obliged to comply with all applicable laws and regulations, technical specifications and standards. The Contractor shall indemnify and hold MedAustron harmless for any loss and/or damage resulting from violations pursuant to Section 3.5.1. The Contractor shall be liable to the Customer for all losses and/or damages, including legal costs, resulting from breaches pursuant to clause 3.5.1.

3.2.2 In the event of violations of applicable laws and regulations, technical specifications and standards, the Customer shall have the right to withdraw from the contract in whole or in part with immediate effect.

3.3 Responsibility of Contractor

3.3.1 The Contractor shall fulfil the contractual obligations with due skill, care and diligence and in accordance with the provisions of the contractual documents and professional standards.

3.3.2 The Contractor guarantees that the delivered goods are state of the art at the time of delivery and represent proven technologies.

- 3.3.3 The Contractor shall be responsible for the proper execution of all goods supplied, regardless of whether these were selected by the Contractor or proposed by MedAustron. The approval of design and component selection by MedAustron shall not release the Contractor from its obligations in this respect.
- 3.3.4 The Contractor shall be responsible for the correctness of all drawings, documentation and information provided to the Customer in connection with the delivery of goods. The Contractor shall pay MedAustron all additional costs incurred as a result of any discrepancies, errors and/or omissions.
- 3.3.5 The Contractor shall always supply new materials, equipment and components, unless otherwise specified in the Contract Documents. The Contractor shall ensure that delivered goods are fully compatible with MedAustron's equipment to the extent specified in the Contract.
- 3.3.6 The Contractor shall be responsible for the safekeeping of all materials, goods, parts, equipment and/or devices of MedAustron which are entrusted to the Contractor in the course of the performance of the contract. If the Contractor procures materials, goods, parts, equipment and/or devices for and on behalf of MedAustron, it shall take all necessary measures, in particular the safekeeping of all necessary documents, so that the Customer's ownership can be proven at any time.
- 3.3.7 The Contractor shall provide its services in compliance with all relevant regulations on the transport of dangerous goods and hazardous waste as well as any special storage and operating regulations. Its contractual duties to provide information shall also extend to these topics.
- 3.3.8 If a contract is terminated for any reason whatsoever, the Contractor shall immediately return to MedAustron all property of MedAustron. Property in this sense includes all copies of documentation as well as any confidential information and intellectual property of MedAustron. This applies to property obtained and/or produced in the course of the provision of services.
- 3.3.9 Upon termination of the contractual relationship, for whatever reason, the Contractor shall support and co-operate with MedAustron in order to ensure a proper transfer of the contractual relationship to a replacement contractor and/or the completion of work already commenced.
- 3.3.10 If the Contractor realises after conclusion of the contract that it has misinterpreted a requirement and/or specification, this shall not be accepted as a reason for impediment. MedAustron shall insist that the Contractor provides the contractual service in accordance with the original requirement and/or specification at no additional cost.
- 3.3.11 The Contractor shall inform MedAustron in writing without delay, at the latest within three days, of any circumstances that impair or threaten to impair the fulfilment of its contractual obligations. If the Contractor fails to do so, it shall under no circumstances be entitled to claim compensation for costs, an extension of the deadline and/or other claims for compensation in this regard. The Contractor shall take measures that are necessary to mitigate the consequences of adverse circumstances for the contractual relationship.
- 3.3.12 The Contractor shall take reasonable steps to ensure that the fulfilment of its contractual obligations does not disrupt and/or impair MedAustron's operations.

3.4 Supply of Goods

- 3.4.1 The goods shall only be delivered at the time(s), date(s) and/or place(s) specified in the contract. Otherwise, prior written authorisation by MedAustron shall be required.
- 3.4.2 The Contractor shall complete all formalities necessary for the delivery of the goods

DAP at the named place of delivery in accordance with Incoterms 2020. In the event of non-compliance, the Contractor shall be liable for any costs and/or delays. Deviations from the delivery conditions in accordance with point 3.2.2 must have been expressly agreed in advance.

- 3.4.3 The place of delivery refers to the point at which the goods are unloaded from the transport vehicle at the Customer's premises, e.g. DAP 2700 Wiener Neustadt in accordance with Incoterms 2020. If the goods are collected by the Customer, the place of delivery refers to the point at which the goods are loaded onto the Customer's transport vehicle (FCA at the named place of delivery in accordance with Incoterms 2020).
- 3.4.4 The Contractor shall ensure proper and professional packaging at its own expense and responsibility. The packaging must ensure safe transportation, handling and storage of the delivery and must bear a clear reference to MedAustron. Unless otherwise agreed between the contracting parties, deliveries must not exceed a gross weight of 1900 kg per package and must be suitable for unloading with forklift trucks. If the gross weight of 1900 kg per package is exceeded, the Contractor must send a delivery notification with all relevant cargo and delivery details to the Customer at least one week before the agreed delivery date
- 3.4.5 Any acknowledgement of receipt issued by MedAustron shall only constitute proof of the number of separate packages delivered and their outer packaging. It does not certify that a certain number of goods has been received and/or that the goods have been received in proper condition or with proper functionality and/or that the goods are otherwise in accordance with the terms of the contract.
- 3.4.6 MedAustron may refuse delivery of goods if an incorrect number of packages, damaged packages and/or obviously damaged goods or formalities are delivered.
- 3.4.7 MedAustron may refuse delivery of goods and/or terminate the contract in whole or in part with immediate effect if
 - a) MedAustron becomes aware that the Contractor is unable to deliver the goods in accordance with the terms of the Contract;
 - b) the delivery date is not in accordance with the terms of the contract, insofar as the delivery of the goods loses its purpose for MedAustron due to the non-conformity.
- 3.4.8 If the Contractor participates in a nationwide packaging disposal system in Austria, it must include the following legally binding declaration in its offer and in each delivery note and invoice, stating its licence number: 'The packaging of all goods listed is disposed of via the licence number [...]'. Otherwise, the Contractor shall collect and dispose of packaging material itself within three working days at MedAustron's first request. If the Contractor fails to fulfil this obligation in due time, MedAustron shall be entitled to have the disposal carried out by third parties at the risk and expense of the Contractor.
- 3.4.9 The Contractor shall not be charged any additional costs or fees in connection with packaging (e.g. deposits or disposal costs).

3.5 Considerable Errors and Significant Irregularities on the Part of the Contractor

- 3.5.1 Should it become apparent after the conclusion of the contract that the award procedure for the contract and/or the execution of the contract is/are afflicted with considerable errors, significant irregularities and/or even fraud on the part of the Contractor, MedAustron may refuse to make payments, collect amounts already paid and/or terminate the contract. This shall be proportionate to the seriousness of the errors, irregularities and/or fraud.
- 3.5.2 MedAustron reserves the right to assert its claims in court in the event of irregularities

being detected in accordance with point 3.4.1 and/or to file criminal charges against the Contractor if necessary.

3.6 (Key) personnel of the Contractor

- 3.6.1 The Contractor shall bear sole responsibility or assume liability for the personnel it deploys.
- 3.6.2 The Contractor shall ensure that access authorisations to MedAustron's branches are used by the Contractor's personnel exclusively for the fulfilment of contractual obligations and that any confidentiality obligations assumed by the Contractor are transferred to the personnel accordingly and verifiably.
- 3.6.3 MedAustron may refuse access to its branches to any personnel deployed by the Contractor if they do not comply with applicable laws and/or provisions of MedAustron. Furthermore, access may be denied to any personnel deployed by the Contractor whose presence is deemed undesirable.
- 3.6.4 In the event of a refusal of access, the Contractor shall be liable for the proper and contractual fulfilment of its contractual obligations.
- 3.6.5 When employing foreign labour, the Contractor shall comply with all applicable regulations (in particular the Foreign Nationals Employment Act as amended). Upon request, the Contractor shall immediately submit to MedAustron all necessary documents and evidence (in particular passport or other valid proof of nationality, work permit, employment permit or exemption certificate and social security registration) for each individual foreign worker used for the fulfilment of the contract. The Contractor shall impose the same obligations on any subcontractors and other assistants engaged by it and shall regularly and closely monitor compliance with these regulations.
- 3.6.6 In the event of violation of this provision
 - a) the Contractor shall be liable for any resulting disadvantages, including consequential damages and financial losses of MedAustron and its representatives;
 - b) MedAustron shall also be entitled to claim a contractual penalty in accordance with Section 4.5.

3.7 Subcontractors

- 3.7.1 The Contractor shall only be authorised to use subcontractors expressly approved in writing by MedAustron. The replacement of subcontractors is only permitted with the prior written consent of MedAustron. MedAustron shall refuse this consent in particular if the suitability of the subcontractor for the respective part of the service taken over is not proven beyond doubt and the provision of the service in accordance with the contract and on time is not guaranteed beyond doubt.
- 3.7.2 Should MedAustron have justified concerns about a subcontractor commissioned, it may immediately demand that it be replaced by another suitable subcontractor. In this case, the Contractor shall commission a replacement within two weeks. An extension of the performance deadlines is excluded in this case.
- 3.7.3 In the event of violation of this provision
 - a) the Contractor shall be liable for any resulting disadvantages, including consequential damages and financial losses of MedAustron and its representatives;
 - b) MedAustron is also entitled to claim a contractual penalty in accordance with point 4.5.

3.8 Responsibility of MedAustron

- 3.8.1 MedAustron shall be responsible for the specification and performance of materials, goods, parts, equipment and/or devices provided by MedAustron. Furthermore,

MedAustron shall be responsible for system parameters that are controlled by MedAustron's subsystems.

- 3.8.2 In the event of the exercise of rights of inspection and/or control, MedAustron undertakes, in its own name and in the name of representatives acting on behalf of MedAustron, to observe business secrets as usual. Furthermore, MedAustron shall endeavour to minimise any inconvenience that may arise for the Contractor in the course of exercising rights of inspection and/or control.

3.9 Review, Rejection and Guarantee

During the term of the contract, both MedAustron and legally appointed representatives of MedAustron shall have free access to the Contractor's branches during normal business hours. The Contractor shall be informed in advance in the event of an inspection by MedAustron or legally appointed representatives of MedAustron.

3.10 Provisional Acceptance

- 3.10.1 Provisional acceptance takes place after all goods have been delivered or all services owed have been provided, these comply with the specified contractual conditions and the contractor has fulfilled all the contractual obligations required for this purpose.
- 3.10.2 The delivery shall be deemed to have been accepted by MedAustron from the time,
- a) on which a certificate of provisional acceptance is issued, or
 - b) on which the total price is paid by MedAustron.
- 3.10.3 Ownership of and risk for the goods shall pass at the time of provisional acceptance or at the time agreed separately in writing between MedAustron and the Contractor. The warranty period shall also commence at that time.
- 3.10.4 If provisional acceptance does not take place within three (3) months of the date on which the Contractor notifies MedAustron of the fulfilment of its contractual obligations, MedAustron shall fulfil its payment obligation and acquire ownership of the goods if this is requested by the Contractor. The warranty period shall then also begin to run.

3.11 Final Acceptance

- 3.11.1 Final acceptance, in the form of a final acceptance certificate, shall be granted after expiry of the warranty period, provided that the Contractor has fulfilled all its contractual obligations.
- 3.11.2 Upon written request for final acceptance by the Contractor, MedAustron shall respond within thirty (30) days.
- 3.11.3 If a part of the delivered goods or services is rejected by MedAustron, the final acceptance shall be made for all goods not rejected, provided that they can be used independently of the rejected partial quantity.
- 3.11.4 If it is necessary during the warranty period to replace parts of the delivered goods due to excessive wear and tear or defective functionality, an extension of the warranty period with regard to such parts shall not affect the final acceptance of the goods / services not affected by this.

3.12 Change Request Procedure

- 3.12.1 Changes to services, in particular due to changes in MedAustron's requirements, especially in the case of software also relating to release capability, maintainability and performance, are subject to the following formalised process (hereinafter: change request procedure). The aim of the change request procedure is to make decisions as quickly as possible and to ensure controlled decision-making and processing of change requests.

- 3.12.2 Each change request must be submitted by MedAustron to the Contractor in writing. The Change Request shall be described as precisely as possible and provided with sufficient background information so that it can be evaluated by the Contractor directly on the basis of this submission. The Contractor's evaluation must include an 'impact assessment' that describes in detail the influence of the planned change request on dependent system parts and, in particular, allows an assessment of whether and what undesirable effects the planned change request has or could have on these system parts.
- 3.12.3 After receiving this evaluation, MedAustron will first carry out a preliminary review (or have it carried out by other project participants or third parties by mutual agreement). The aim of this preliminary review is to determine whether the Change Request in question requires prioritised treatment and whether sufficient background material is available for its immediate treatment. MedAustron shall then transfer the pre-checked Change Request to the Contractor, who shall evaluate the effects of implementing the Change Request in terms of time, costs, quality, functionality, availability and operational safety within five working days (feasibility analysis).
- 3.12.4 The Contractor shall attach the results of the feasibility analysis to the Change Request in writing. This feasibility analysis shall also contain a precise proposal for the technical implementation of the Change Request as well as the financial framework conditions and effects in implementation, commissioning and operation (including maintenance and repair). At MedAustron's request, the Contractor shall involve MedAustron's contributors in this feasibility analysis.
- 3.12.5 On this basis, the contracting parties shall conduct negotiations to finalise the change request. The Contractor shall prepare a description of the Change Request on the results of these negotiations with at least the following content:
- a) type and scope of the service owed by the Contractor with the Change Request (Change Request Service);
 - b) feasibility analysis (updated if necessary);
 - c) number and qualification of the labour required to perform the change request service;
 - d) type and cost of equipment required to provide the change request service;
 - e) criteria for the acceptance of the change request service;
 - f) the fee due to the Contractor for the Change Request Service (hereinafter: Change Fee). The calculation basis for this change fee shall be the calculation basis of the original offer. The fee regulation of a Change Request must also include an invoicing and payment schedule for the payment of the Change Fee.
- 3.12.6 Once the description of the change request is available, MedAustron shall decide on the implementation of the change request. Depending on the complexity of the change request, the contracting parties shall agree an implementation period, i.e. the period within which the Contractor must provide and complete the relevant services. Upon transmission of the acceptance of the Change Request by MedAustron to the Contractor, the latter shall be deemed to have been commissioned with the implementation of the Change Request.
- 3.12.7 The implementation of an accepted and commissioned change request must be carried out in accordance with the specified schedule or within the agreed implementation time. The progress of the implementation must be monitored and checked until the change request has been finally processed. Periodic reports to MedAustron must be provided for longer lasting changes. The validation and acceptance of a completed change request shall be based on the test procedure and the acceptance criteria that the contracting parties have defined for the acceptance

of the change request. The successful acceptance of a change request must be confirmed in writing by MedAustron within six working days at the request of the Contractor.

3.13 Options

- 3.13.1 MedAustron shall be entitled, but not obliged, to call off services designated as options by MedAustron in the procurement process. The call-off shall be deemed to have been made in good time if the written call-off declaration of MedAustron is sent to the Contractor within 24 months or another expressly agreed call-off period from the date of the award of the contract.
- 3.13.2 For the fulfilment of optional services, the Contractor shall be entitled to the lump-sum fee offered in the respective item of the offer. For optional services for which the Contractor has not offered a fee, the contracting parties shall determine this fee by mutual agreement after the declaration of call-off by MedAustron, applying the provisions of Section 3.12 mutatis mutandis. For such services, the call-off of the optional service shall be subject to the condition precedent of the mutually agreed determination of a lump-sum fee for these services.
- 3.13.3 Unless the contracting parties agree otherwise in individual cases, the Contractor shall only be entitled to invoice the lump sum agreed for the provision of the optional service after acceptance of the optional service.

4. Contract Fulfilment and other Characteristics of the Contract

4.1 Warranty and Compensation

- 4.1.1 The Contractor guarantees that it will provide the services in accordance with the contract and in compliance with the regulations and standards applicable in Austria. The Contractor shall be responsible for providing evidence of proper fulfilment. The warranty period for each contractual service begins with its acceptance in accordance with the provisions of Section 3.10 and ends 24 months in each case or, in the case of immovable goods, 36 months thereafter. The presumption of defects shall apply during the entire warranty period.
- 4.1.2 The Contractor shall be liable within the scope of the statutory provisions for the full interest in all personal injury, damage to property and other disadvantages caused directly or indirectly by it, including the personnel employed by it or third parties commissioned by it. The obligation to pay compensation therefore also includes any damage caused by the defectiveness as well as consequential damage and all financial losses.
- 4.1.3 The Contractor shall bear sole responsibility under civil, criminal and administrative law for its area of performance during the provision of the service. The Contractor shall be liable for all disadvantages arising from delays or inability to perform, the cause of which lies with the Contractor, its vicarious agents and/or subcontractors (cf. § 1313a ABGB). The Contractor shall be liable for all claims that may arise from non-compliance with regulations and shall indemnify and hold MedAustron harmless from all claims in this connection. In addition, the Contractor shall be liable for direct and indirect damage caused by business interruption or delay in remedying defects as well as for the risk of consequential damage. The Contractor shall fully indemnify and hold MedAustron harmless with regard to all such claims, in particular against third parties.
- 4.1.4 In the event of damage, the Contractor shall provide all documents and information necessary to clarify the facts of the case.
- 4.1.5 Authorisations or approvals by MedAustron and coordination with MedAustron and

other project participants do not release the Contractor from its solidary contractual responsibility.

- 4.1.6 MedAustron shall be liable to the Contractor for gross negligence. Excluded from this limitation of liability are mandatory statutory provisions on personal injury. To the extent permitted by law, the Contractor shall waive compensation for damages vis-à-vis MedAustron unless such damages are covered by insurance.

4.2 Contract Duration

- 4.2.1 The contractual relationship shall enter into force upon signature, whereby the chronologically last signature shall be decisive.
- 4.2.2 Insofar as the contractual relationship does not end with the provision of the service (target debt relationship), it shall run for an indefinite period. The contracting parties are entitled to terminate the contract with due notice:
- a) MedAustron with a notice period of four weeks to the last day of a calendar month;
 - b) the Contractor subject to a notice period of six months to the end of a calendar year.

4.3 Extraordinary Termination

- 4.3.1 In addition to the important reasons under general civil law, MedAustron shall be entitled to extraordinary termination of this contract without notice if the Contractor or one of its subcontractors and/or other assistants:
- a) breaches the material obligations incumbent upon it under this contract and continues or repeats this breach despite written warning by MedAustron and/or does not immediately remedy the detrimental consequences of this breach. Material obligations under this contract are in particular all obligations that serve the timely provision of services (including partial services) by the Contractor;
 - b) breaches confidentiality obligations despite written warning to the contractor;
 - c) has committed serious misconduct in the course of his professional activity (in particular against provisions of labour, social or environmental law), which has been demonstrably established by MedAustron within the meaning of § 68 para. 1 no. 5 BVergG.
- 4.3.2 The Contractor shall reimburse all additional costs of MedAustron directly or indirectly associated with the extraordinary cancellation for a reason within its sphere of responsibility.
- 4.3.3 In the event of extraordinary cancellation, the contractor is obliged to cease work immediately.

4.4 Obligations upon Termination of the Contract

- 4.4.1 Should it prove to be expedient for MedAustron, in particular to minimise damages, the Contractor shall fulfil the contractual performance profile in accordance with MedAustron's specifications or provide the necessary support services until MedAustron has found a successor for the Contractor and this successor has successfully taken over the services to be provided, unless MedAustron is responsible for an undue delay in the search for a new Contractor.
- 4.4.2 Furthermore, the Contractor undertakes to provide MedAustron, at the latter's request, with all information and documents required for the continuation of the services in question (by third parties or with its own personnel) as quickly as possible and in a suitable form. The costs for this shall be borne by the Contractor. This obligation shall apply irrespective of the reason for termination in the event of any type of termination of this contractual relationship.

4.5 Contractual Penalties

- 4.5.1 In the event of a breach of a provision contained in these GTC, MedAustron shall be entitled to impose a contractual penalty on the Contractor of up to 20% of the total order volume, up to a maximum of EUR 50,000.00 (in words: fifty thousand euros) per occasion.
- 4.5.2 All contractual penalties arising from the contractual relationship are independent of fault. The right to assert a claim for damages or other claims exceeding the respective contractual penalty shall remain unaffected by the right to assert the respective contractual penalty. MedAustron may also assert contractual penalties repeatedly in the event of repeated violations. MedAustron shall be entitled to deduct and retain the contractual penalties incurred up to the time of payment from each of the Contractor's invoices.
- 4.5.3 Proof of specific damage is not required to assert contractual penalties.

5. Remuneration and Payment

5.1 Remuneration

All prices are net, fixed prices and include all costs incurred for the fulfilment of the contractual obligations by the Contractor. The contractually agreed prices may not be changed unless this is expressly stipulated in the tender documents. If applicable, the Contractor shall add the applicable value added tax to the contract price.

5.2 Value Preservation

All prices agreed in this contract are agreed as fixed prices for a period of one year after conclusion of the contract. For parts of the service provided after expiry of this fixed price, the price shall be adjusted in accordance with the following value adjustment: The consumer price index published by Statistics Austria or the index replacing it shall be used to calculate the value adjustment. The starting point for the value adjustment is the index figure published for the month following the conclusion of the contract. The fee changes in the amount of the index increase, whereby fluctuations up to and including three per cent compared to the respective starting basis are not taken into account.

5.3 Ancillary Costs

- 5.3.1 All fees in this contract are inclusive of all ancillary costs, taxes and duties, unless this contract expressly stipulates otherwise. This also applies to all travelling expenses, duplication of documents for authorities and other third parties, executing companies including subcontractors as well as specialists. The expressly agreed remuneration shall therefore finally and fully cover all main and ancillary services of the Contractor under this contract, unless this contract expressly stipulates otherwise or unless the contracting parties have expressly agreed otherwise in writing prior to the provision of the specific main or ancillary service, including the additional remuneration specified in figures.
- 5.3.2 MedAustron shall bear travel, flight and accommodation costs for trips abroad expressly ordered by MedAustron in writing (actual economy class flight costs or, in the event of travelling from a location no further than 500 km from the destination, the costs of a 2nd class train ticket and actual accommodation costs of a mid-range hotel).

5.4 Accounting

- 5.4.1 All invoices must be numbered consecutively and must comply with the requirements of § 11 UStG and the specifications of MedAustron. They must be sent in the original

with a copy enclosed to the following invoice address:

EBG MedAustron GmbH
Marie Curie-Straße 5
2700 Wiener Neustadt
AUSTRIA.

- 5.4.2 The Contractor shall enclose with its invoices all information and evidence required by MedAustron for a thorough invoice verification. Invoices that contradict these provisions shall not trigger any legal obligations of MedAustron, due dates and deadlines.

5.5 Due Date of Invoices

- 5.5.1 Invoices shall be due for payment within fourteen (14) calendar days less a two (2)% discount or thirty (30) days after proper presentation. MedAustron shall be entitled to settle these invoices by offsetting its own claims against the Contractor. In particular, MedAustron shall be entitled to deduct from the respective invoice amount all contractual penalties that have accrued up to the actual payment of this invoice.
- 5.5.2 Payment of invoices shall not constitute recognition or acceptance of the invoiced or other goods and services of the Contractor. In particular, it does not constitute a waiver of any claims to which the Contractor is entitled (e.g. from default, warranty or damages).
- 5.5.3 Partial payments should be made if this is stipulated in the contract and/or tender documents.

6. Property and Intellectual Property Rights

6.1 Retention of Title

Drawings, sketches, tools, aids, samples, models, test setups, etc., provided to the Contractor by MedAustron or financed by MedAustron for the fulfillment of the contract, remain or become the property of MedAustron. The Contractor may neither make them accessible to third parties nor use them for purposes other than fulfilling the contract (especially not for advertising purposes). The Contractor must return them to MedAustron within five working days after the first request by MedAustron, either after the service has been provided or after the termination of the contract.

6.2 Software

- 6.2.1 The Contractor grants MedAustron a non-exclusive, unlimited, unrestricted, and non-system-bound right to use all software defined in the procurement documents and other contract documents, or required for the contractual fulfillment or functionality of the performance object. This right of use includes the full and partial utilization of all functions of the software product, as well as any utilization of MedAustron's data using the product functionalities, whether the use occurs via visualized or non-visualized interfaces, simultaneously or with a time delay. The granting of rights also includes making the work result available via network connection to the number of users specified in the procurement documents or other contract documents, for both reading and editing use.
- 6.2.2 For software from third-party manufacturers, MedAustron acquires usage rights according to the manufacturer's license terms. If the Contractor uses third-party software to provide the service, they must submit the license terms to MedAustron unsolicited along with the offer and inform MedAustron in writing of any deviations from MedAustron's specifications.
- 6.2.3 MedAustron also acquires the right to make the necessary copies for backup and

archiving purposes.

- 6.2.4 The Contractor is liable to MedAustron for ensuring that the provision of their services and the intended use of the software do not infringe on any patents, industrial property rights, or usage rights of third parties.
- 6.2.5 If third parties claim an infringement of intellectual property rights due to the use of the software by MedAustron, MedAustron will inform the Contractor immediately. The Contractor is obligated to defend against the claim and to fully secure the legal rights for MedAustron.

6.3 Elaborations

- 6.3.1 MedAustron acquires all known and future intellectual property rights worldwide to all concepts, elaborations, manuals, reports, training materials, and other documents delivered as part of the service provision by the Contractor, its employees, subcontractors, and cooperation partners. The Contractor will demonstrably oblige its employees, subcontractors, and cooperation partners to grant these usage rights to MedAustron.
- 6.3.2 All rights to ideas and concepts introduced by MedAustron, as well as to elaborations and other documents provided by MedAustron, remain exclusively with MedAustron.

6.4 Miscellaneous

- 6.4.1 No separate remuneration is due to the Contractor for the granting of the usage rights described in point 6.
- 6.4.2 In the event of the opening of insolvency proceedings over the assets of the Contractor (or the rejection of such an application due to insufficient assets), all rights to the contractual services to which the Contractor is entitled shall at least be transferred to MedAustron as non-exclusive rights, insofar as MedAustron has not already acquired more extensive rights.
- 6.4.3 The Contractor will reimburse MedAustron for all costs and compensation payments incurred due to proven culpable infringement of third-party intellectual property rights by the Contractor's services. This obligation also includes all payments negotiated by MedAustron in coordination with the Contractor, all costs of the working time spent to rectify the legal situation at MedAustron (or its users), including the costs of legal representation.

7. Final Provision

- 7.1 General Terms and Conditions, delivery and payment conditions, or other general regulations of the Contractor are not applicable to this contractual relationship, the question of its existence and continuation, its interpretation, implementation, and processing, as well as any legal questions regarding claims arising from it.
- 7.2 The Contractor is not entitled to assign or pledge claims arising from this contract to third parties without the prior written consent of MedAustron. If an assignment or pledge is nevertheless made, MedAustron is entitled to deduct a processing fee of 2% of the assigned or pledged claim. Set-offs by the Contractor with claims against MedAustron are not permitted (prohibition of set-off).
- 7.3 If, at the time of the conclusion of the contract, there are any oral side agreements related to the contract, they lose their legal binding effect upon the conclusion of the contract. Amendments or additions to the contract require written form to be legally effective. This also applies to deviations from the requirement of written form.
- 7.4 Written form within the meaning of this contract also includes the transmission of a declaration by email. In this case, the burden of proof for the receipt of the email by the recipient lies with the declarant. Declarations sent by the Contractor to

MedAustron via email are legally binding for the Contractor, regardless of any disclaimers attached to the declaration.

- 7.5** If parts of these General Terms and Conditions or the contract concluded between MedAustron and the Contractor are or become legally ineffective, the remaining contractual components shall remain in effect. The invalid or ineffective contractual components shall be replaced by those that most closely correspond to the economic content of the intended regulatory content of the parties. All appendices to a contract concluded with MedAustron are part of the contract.
- 7.6** The Contractor waives the right to challenge this contract for error.
- 7.7** This contractual relationship is subject to Austrian law, excluding material referral standards (IPR) and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 7.8** The place of performance and exclusive place of jurisdiction is 2700 Wiener Neustadt.
- 7.9** Disagreements about the performance and/or its remuneration do not entitle the Contractor to suspend their services under this contract or any specifically commissioned partial services based on this contract. The same applies in the event of payment default by MedAustron.
- 7.10** The Contractor confirms by accepting this contract that they possess the necessary authorizations and powers to provide the services specified in this contract.
- 7.11** If the start of a period is linked to a declaration and this contract does not explicitly state otherwise, the actual receipt of this declaration by the recipient triggers the period.