

General Terms and Conditions



General Terms and Conditions of Limbus Medical Technologies GmbH

1 Subject Matter of the Service Agreement

1.1 All offers and the supply of the service that is specified in detail in the respective offer and includes the use of certain software (the “**Service**”) by Limbus Medical Technologies GmbH (“**Limbus**”) to customers (the “**Customer(s)**”) shall be solely governed by the following general terms and conditions (the “**Limbus Ts & Cs**”). Limbus hereby expressly rejects any purchase terms and conditions of Customer deviating from the Limbus Ts & Cs; this shall apply even in cases where Limbus does not expressly reject such purchasing terms and conditions.

1.2 Limbus’s offers are not binding. A contract is concluded only when Limbus has confirmed an order.

Limbus’s offer (the “**Offer**”), Customer’s order (the “**Order**”) and Limbus’s order confirmation (the “**Order Confirmation**”), together with the Limbus Ts & Cs, constitute the service agreement between Limbus and Customer (the “**Service Agreement**”).

2 Terms of Payment

All prices are exclusive of Value Added Tax (VAT), which will be invoiced separately as applicable at the time of Service. Subject to withdrawal of credit approval, invoices shall be payable without any deduction within two (2) weeks from the date of invoice. Irrespective hereof, Limbus may at any time suspend the Service until payment is tendered. Customer may only set off claims, which are undisputed or recognized by declaratory judgment, against Limbus’s claims for payment.

3 Term and Termination

3.1 The time period for which Customer subscribes to the Service is specified in the Order Confirmation (the “**Subscription Term**”). Unless terminated by either party by giving six (6) weeks written notice to the end of the first respectively any subsequent Subscription Term, the Service Agreement is automatically extended for an additional Subscription Term.

3.2 Either party is entitled to in writing terminate the Service Agreement with immediate effect upon any material breach of the Service Agreement by the other party that has not been cured within thirty (30) days after written notification thereof.

4 Use of the Service

4.1 Limbus grants Customer a non-exclusive and non-transferable right to use the Service solely for Customer’s internal operations.

4.2 Except as otherwise expressly provided for in the Service Agreement, Customer shall

- only use the Service in the manner and for the purposes specified in the Service Agreement and in accordance with the user manual available online (the “**On-line User Manual**”);
- not de-compile or de-assemble or reverse engineer any software used in connection with the Service;
- not transfer, sublicense, rent, lease or export the Service or any part thereof;
- not copy, reproduce, transmit or distribute the Service or any part thereof, or allow or facilitate a third party to do so except without Limbus’s prior written consent; and
- not use any device or software that could interfere with the proper operation of the Service or any part thereof.

The Service may include the use of third-party software. Customer’s right to use such third-party software shall be governed by the software license agreement to be executed directly between Customer and the respective third party.

5 Service Performance

5.1 The Service will operate on Limbus’s or its third-party provider’s infrastructure and Customer will access and use the Service via the Internet using an internet browser. An individual session is established when the Service is accessed from a single browser window (the “**Session**”). Opening the Service in another browser window establishes an additional Session. The communication

between Customer’s IT infrastructure and the Service is encrypted by Secure Sockets Layer (SSL).

5.2 Limbus will use reasonable commercial efforts to provide an average annual rate of availability of 99% (ninety-nine per cent) from 8 a.m. to 6 p.m. Central European Time (CET) except on weekends and German holidays (the “**Limbus Business Hours**”). Outside Limbus Business Hours, access to the Service is possible but may be interrupted for Maintenance.

5.3 Limbus will allocate computing and storage capacity for Customer as specified in the Order Confirmation.

5.4 Limbus will perform backups of Customer data at least once a day. The target time for full restoration of backup data is ten (10) Limbus Business Hours. Data entered or generated by Customer during the Subscription Term will be accessible online through the Service during the Subscription Term. Unless otherwise specified in the Order Confirmation, data older than 24 (twenty-four) months may at Limbus’s discretion be migrated to storage facilities with lower retrieval speed. Upon termination of the Service Agreement and upon Customer’s request, Limbus will provide Customer with a copy of Customer’s data in a flat-file format.

6 Maintenance and Nonconformance Correction

6.1 During the Subscription Term, Limbus will provide maintenance for the Service, which includes bug fixes and updates without new functionalities or new functional modules (the “**Maintenance**”) as necessary and appropriate.

6.2 While Limbus will schedule regular Maintenance so that the impact on the Service is kept to a minimum, unscheduled Maintenance may have to be performed. Limbus will notify Customer of any regular Maintenance by e-mail at least one (1) week prior to the commencement of the Maintenance work and of any unscheduled Maintenance as early as possible.

6.3 In case the Service does not conform to the agreed specification (the “**Nonconformance**”), Customer shall immediately notify Limbus by e-mail and provide a detailed description of the Nonconformance. Limbus will respond to such notification within ten (10) Limbus Business Hours. Limbus will maintain an internal system to track notifications from all customers and systematically evaluate all notifications based on their impact on the Service. Limbus will inform Customer of the result of its evaluation and provide Customer with the scheduled time for correcting the Nonconformance reported by Customer.

6.4 Customer’s claims for Nonconformance are excluded:

- for insignificant divergences from the Service Agreement;
- for insignificant impairment of usability of the Service;
- for Nonconformance, which cannot be reproduced; and
- for Nonconformance caused by use of the Service, which is not in compliance with the Service Agreement or the Instructions for Use.

6.5 Customer has to always first provide Limbus the opportunity to correct the Nonconformance within a reasonable period of time.

6.6 If Limbus fails to correct the reported Nonconformance even within an additional period of time of reasonable length to be granted by Customer, Customer shall, notwithstanding its claims under Sec. 11, if any, be entitled to terminate the Service Agreement or to claim a price reduction.

6.7 If the analysis of an alleged Nonconformance of the Service shows that it is not covered by this Sec. 6, Limbus may charge for the failure analysis and for correcting the Nonconformance, if any, at Limbus’s then applicable rates.

6.8 For purposes of billing, ongoing improvement of its services and compliance with data protection law requirements, Limbus will continuously collect and monitor information about the performance of the Service. This information does not include data entered or generated by Customer.

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- 6.9 Limbus will schedule regular reviews to determine quality and improvement potential of the Service. Limbus may to that end conduct interviews with or provide questionnaires to Customer to collect information about the quality of the Service.
- 6.10 Data sets provided by Customer to Limbus for the surveillance of the quality, performance and safety of the Service shall be collected, recorded and analyzed for the purposes set forth in Article 78 IVDR.

7 Support

- 7.1 Customer's employees and contractors who are authorized by Customer to use the Service (the "Authorized User(s)") for and on Customer's behalf will have access to the On-line User Manual and may address requests for support regarding the use of the Service to Limbus's Help Desk by e-mail. Support requests will be responded to by e-mail during Limbus Business Hours.
- 7.2 Limbus's support only applies to the Service and does not include support with regards to Customer's IT infrastructure or means of internet access or other communication.
- 7.3 Limbus does not provide on-site support. Any activities, which are to be performed at the Customer's site, are subject to a separate written agreement between the parties.

8 Access Management

The management of Authorized Users' secure access to the Service and Authorized Users' credentials is Customer's sole responsibility. Customer will apply best practice password policies to ensure that the Service is not exposed to unauthorized third parties. Customer will notify Limbus immediately of any breach of security, e. g. disclosure of user credentials to unauthorized persons, unauthorized access of any of Customer's systems that are linked to the Service or any other breach of security of Customer's IT infrastructure that may impact the Service. Customer will accordingly instruct and obligate all Authorized Users.

9 Communication between Customer and Limbus

All communication between Limbus and Customer with regards to the Service Agreement, including but not limited to notifications and information to be provided as per Sec. 3.2, 6.2, 6.3 and 8, will be between the Customer's and Limbus's points of contact, whose email and phone numbers (the "Contact Data") will be provided in the Offer and Order respectively. Either party may at any time change its point of contact by in writing providing the other party with the new Contact Data.

10 Intellectual Property Rights

- 10.1 If a third party brings a legitimate claim against Customer because the use of the Service in accordance with the Service Agreement in a country, which is a signatory to the European Patent Convention, constitutes infringement of an intellectual property right (e. g. a patent, copyright, or trademark), Limbus shall be liable to Customer as follows:
- Limbus shall at its expense and discretion either procure for Customer the right to continue to use the Service or replace or modify the Service so that there is no longer an infringement. If this is not possible with reasonable means, Customer shall be entitled to the statutory rights to rescind the Service Agreement or reduce the price. Customer cannot demand reimbursement for expenses incurred in vain.
 - The liability for damages is in accordance with Sec. 11.
 - Limbus's above obligations exist only to the extent that Customer has promptly and in writing informed Limbus of the claims asserted by the third party and has not recognized an infringement of the third party's rights, and as far as the entire defense and the settlement negotiations are reserved for Limbus. If Customer discontinues the use of Service for damage reduction or other important reasons, Customer is obligated to point out to the third party that the discontinuation of use does not constitute an acknowledgement of an infringement of intellectual property rights.

- 10.2 Customer's claims are excluded as far as Customer is responsible for the infringement of the intellectual property rights.
- 10.3 In addition, Customer's claims are excluded for infringing acts after Customer has been warned or has otherwise become aware of a possible infringement, unless Limbus has in writing agreed to further infringements.
- 10.4 All claims against Limbus and its agents because of a defect in title, which go beyond or differ from those in this Sec. 10, are excluded.

11 Limitation of Liability

- 11.1 Limbus is only liable for damages caused by slight negligence if such are due to the breach of a material contractual obligation (cardinal duty) in a manner endangering the purpose of the contract.
- 11.2 In cases of Sec. 11.1, the liability is limited to the damage, which is typical for such contracts and which could have been foreseen.
- 11.3 Limbus's liability is also limited to the damage, which is typical for such contracts and which could have been foreseen for damages caused by the gross negligence of an agent or an employee of Limbus, who is not an officer or executive of Limbus.
- 11.4 In cases of Sec. 11.1 and 11.3, Limbus's liability is limited to a maximum amount of € 500.000 (five hundred thousand Euro) and € 100.000 (one hundred thousand Euro) for financial losses, respectively.
- 11.5 With the exception of liability under the Product Liability Law, for defects after having given a guarantee, for fraudulently concealed defects and for personal injury, the above limitations of liability shall apply to all claims, irrespective of their legal basis, in particular to all claims based on breach of contract or tort.
- 11.6 The above limitations of liability also apply in case of Customer's claims for damages against Limbus's employees or agents.

12 Miscellaneous

- 12.1 There are no separate oral agreements; any supplementary agreements or modifications hereto must be made in writing. This also applies to any waiver of this requirement of written form.
- 12.2 Limbus not exercising any of its rights does not constitute a waiver of its right to exercise such right in the future.
- 12.3 Any assignment of rights and claims with the exception of claims for payment is subject to the other party's prior written approval, which shall not unreasonably be withheld or delayed.
- 12.4 If any provision in these terms and conditions or part of any provision shall be or become invalid, the other provisions as well as the other part of the provision shall remain valid.
- 12.5 German law applies with the exception of its conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- 12.6 The courts of Rostock, Germany, shall have exclusive jurisdiction. Limbus may, however, sue Customer at its place of business.

13 Decisive Version

The above is a convenience translation of the German version of the Limbus Ts & Cs. The contractual relationship between Limbus and the Customer shall be governed by and interpreted in accordance with the German version.

Revision February 2022

Subject to Change