

General Terms and Conditions for Services of Ziehm Imaging GmbH

1.0 Scope of Application

1.1 The following General Terms and Conditions for Services (hereinafter referred to as "GTC Service") apply to all contracts with entrepreneurs in accordance with s. 14 BGB (German Civil Code) involving the performance of services by Ziehm Imaging GmbH (hereinafter referred to as "Ziehm Imaging") with the exception of software maintenance services.

1.2 In case of software maintenance services, the General Terms and Conditions of Ziehm Imaging GmbH for software maintenance services apply.

1.3 Individual agreements between Ziehm Imaging and the contractor with regard to the performance of services take priority over the present GTC Service.

1.4 The GTC Service also apply to any future businesses between Ziehm Imaging and the contractor in accordance with s. 305 subs. 3 BGB without requiring explicit prior agreement.

1.5 The version of these GTC Service currently valid at the time of conclusion of the contract is applicable.

1.6 The GTC Service are exclusively applicable. Any contradicting General Terms and Conditions of the contractual partner or of any third parties are only valid if and as far as expressly agreed to by Ziehm Imaging in writing. Should the contractor not agree with this regulation, the contractor will promptly inform Ziehm Imaging in writing. In this case, Ziehm Imaging reserves the right to withdraw the offer for services without giving rise to any claims against Ziehm Imaging. Hereby Ziehm Imaging explicitly contradicts any reference to General Terms and Conditions of the contractual partner or of third parties given by form.

2.0 Scope of Delivery and Performance

2.1 Ziehm Imaging exclusively performs services on the devices precisely described in the individual contract in accordance with the scope of services and spare parts delivery agreed by this relevant contract.

2.2 Service Times:

Ziehm Imaging will perform the agreed services from Monday through Thursday between 8.00 am and 6.00 pm, as well as on Friday between 8.00 am and 4.00 pm with the exception of official holidays in Bavaria and/or the relevant federal state in which the performance of services takes place. Outside these service times, Ziehm Imaging is not obliged to perform any services.

2.3 Maintenance:

Maintenance includes the provision of specialized workforce by Ziehm Imaging, transport of the workforce as well as the recommended and prescribed scope of maintenance services in accordance with the description in the relevant instructions for use and the technical manual.

2.4 Repair:

Repair in case of malfunction or damage due to fair wear and tear by use in accordance with the relevant contract includes the error diagnosis as well as the removal of the malfunction or damage by replacement of any parts of the device having become unemployable, including work and travel time, telephone support for the customer's service personnel by our service center as well as partial acceptance, if necessary,

in accordance with the RöV (German x-ray regulations) or similar regulations after completion of the repair. Should it prove impossible for Ziehm Imaging to repair the relevant device with reasonable effort or should the repair be inappropriate due to current technical standards or regulations, Ziehm Imaging reserves the right to desist from the repair without giving rise to any claims against Ziehm Imaging. In such case, Ziehm Imaging informs the customers with a written report about the relevant device.

2.5 Remote Service:

Ziehm Imaging offers a Remote Service option for some of its devices. The Remote Service is based on a safe connection between the C-arm and the certified Remote Service staff member or service center via a web-based Cloud solution. Ziehm Imaging makes use of an ISO 27001-certified partner to provide this safe connection via a web-based Cloud solution.

The customer must ensure that the C-arm has a stable internet connection for the duration of the Remote Service sessions. At the clinic, the user activates the Remote Service function on the device for each session and retains control over how and whether Remote Service access remains in place throughout. A SSL (Secure Socket Layer) connection ensures secure communication between the C-arm and the service technician. Moreover, the C-arm technically ensures that no personal data are transferred via the Remote Service. Access to the Remote Service platform is only granted to staff trained and authorized by Ziehm Imaging. The Remote Service system documents all changes made to the device by remote access. Of course, Ziehm Imaging also undertakes not to make use of the Remote Access option to obtain access to data in any unauthorized manner. Ziehm Imaging undertakes to put in place suitable measures to keep both the C-arm and the Remote Service infrastructure malware-free. The customer is responsible for taking appropriate steps to keep his own network malware-free.

2.6 The scope of delivery and performance does not include any services belonging to the customer's area of responsibility due to individual contractual regulations, these GTC Service or any other reason, like e.g. the customer's duty of regular care and maintenance as stipulated in the relevant instructions for use and technical manual.

3.0 Non-contractual Services Against Separate Remuneration

3.1 Any services not included in the agreed scope of delivery and performance may be performed in addition by Ziehm Imaging after separate written consent; such services will be invoiced separately in accordance with the currently valid price list. For such services, the present GTC Service as well as the GTC Software Maintenance Services are applicable as well.

3.2 The services invoiced separately include but are not limited to:

3.2.1 Removal of malfunctions caused by inappropriate operation, improper use, improper maintenance / repair by third parties, unsuitable accessories or other impact.

3.2.2 Services for enhancement, modification or modernization of the relevant device

3.2.3 Any services performed outside the Ziehm Imaging service times on request of the customer.

3.2.4 Repeated assignments and waiting time not caused by Ziehm Imaging.

4.0 Spare Parts and Special Parts

4.1 Ziehm Imaging delivers spare parts and special parts ex works Nürnberg site (Incoterms 2010).

4.2 Within warranty period Ziehm Imaging is entitled to use new or refurbished spare parts or special parts to perform the services. Customer covenants to send back all defective spare parts or special parts on Ziehm Imaging's costs to their premises.

4.3 As from country to country different Ziehm Imaging may offer to customer after warranty period to obtain cost-efficient refurbished spare parts. Shipment of refurbished spare parts can only take place restricted to available spare parts and is possible for determined groups of materials such as generators, image memories / working stations, FD flat-panel detectors, CCD cameras, virtual collimators / asymmetric collimators and monitors (except touchscreens). Ziehm Imaging reserves the right to change these determinations at any time. Ziehm Imaging grants a discount up to 30% on the regular cost of a new spare part for every supplied refurbished spare part. Customer covenants to send back the defective spare part on Ziehm Imaging's costs to their premises within 30 days after receipt of invoice without any request by Ziehm Imaging. Transportation costs will be born by Ziehm Imaging. In case of no return or delayed return of defective spare parts Ziehm Imaging reserves the right to invoice the differential amount between the invoiced refurbished spare parts and the price of new spare parts.

4.4 In case any spare part or special part is unavailable at short notice because the relevant supplier fails to perform his duty to deliver the part to Ziehm Imaging without Ziehm Imaging being responsible for such failure, Ziehm Imaging is entitled to withdraw from the performance of service or to postpone the performance without giving rise to any claim for damages. In this case, Ziehm Imaging will immediately inform the customer and refund any payments already received from the customer for the relevant service having become impossible to perform.

5.0 Return shipment of faultless spare and special parts

5.1 In accordance with the following conditions and without acceptance of any legal obligation whatsoever, Ziehm Imaging offers its customers even to return properly delivered and faultless spare parts and special parts. For such goods returned in a proper and undamaged condition Ziehm Imaging will reimburse the customer the purchase price less the following processing costs.

5.2 The customer shall inform Ziehm Imaging in advance of the required return shipment. If Ziehm Imaging agrees to the return shipment, the customer will receive a RMA identification number. This must be affixed clearly visible on the return of goods packaging. Return of goods missing RMA identification numbers shall not be accepted by Ziehm Imaging.

5.3 For returned goods that are received in their original condition and with an intact seal, Ziehm Imaging charges processing costs (esp. storage costs) amounting to 5% of the value of the goods, but at least 20 € and at maximum 200 €.

5.4 Returned goods received with broken seals, processing costs (in particular inspection and qualification costs) of up

to 675 € will be incurred in addition to the costs mentioned in 5.3. The exact amount can be requested by the customer of Ziehm Imaging at notification of customer's return request.

5.5 If the seal was broken in exceptionally authorization of Ziehm Imaging in advance, e. g. to carry out certain tests with the goods, Ziehm Imaging bears the additional processing costs of Section 5.4.

5.6 For goods returned damaged, the refund of the purchase price is excluded. Nevertheless, the customer remains obligated to pay the processing fee according to sections 5.3 and 5.4. This shall not apply if Ziehm Imaging is obliged a warranty in accordance with section 11 of these Terms and Conditions Service.

6.0 Acceptance of Services

6.1 The customer obliges to accept the services performed as far as such acceptance is required by law, unless an acceptance is excluded due to the quality of the services. Refusal of acceptance due to minor defects is excluded. During the acceptance procedure, the customer has to check the proper and contractual performance of the services as far as possible and has to provide written confirmation of the acceptance.

6.2 Operation of the maintained device without reservation equals an acceptance. Services are also deemed accepted if the customer does not report any substantial defects to Ziehm Imaging within 30 workdays after delivery of the services by Ziehm Imaging.

7.0 Terms of Payment

7.1 The remuneration for the services and spare part deliveries is based on the regulations of the relevant individual contract.

7.2 All prices are to be understood plus currently valid statutory sales tax. Any working hours not covered by a valid Ziehm Imaging standard maintenance contract concluded between the parties will be invoiced on a half-hourly basis.

7.3 Any sums invoiced are payable without deduction within 14 days after receipt of the invoice, or 20 days from the date of invoice at the latest.

7.4 If the customer comes into arrears, Ziehm Imaging is entitled to additionally invoice interest on arrears with an interest rate of 9 percentage points above the relevant base rate announced by Deutsche Bundesbank in the Bundesanzeiger (Federal Gazette) per annum. Ziehm Imaging reserves to provide evidence for a higher amount of loss.

7.5 In case of a customer coming into arrears repeatedly, Ziehm Imaging reserves the right to provide further services only on advance payment.

7.6 In case of a customer coming into arrears or on any other basis proving to be unworthy of credit, any further outstanding accounts of this customer towards Ziehm Imaging will become due immediately.

7.7 The customer does only have offset rights with regard to claims unchallenged by Ziehm Imaging or legally recognized against Ziehm Imaging. The customer is only entitled to exercise a right of retention as far as his counterclaim is based on the same contractual relationship.

8.0 Documentation of Services

Ziehm Imaging documents any controls and checks of maintenance and repair services as well as device inspections performed by Ziehm Imaging with inspection protocols.

9.0 Duties to Cooperate of the Customer

9.1 The devices to be maintained on the basis of the relevant agreement have to be made available for maintenance at the agreed date for the duration of the performance of the contractual services.

9.2 The customer has to provide Ziehm Imaging access to the device and has to make available sufficient sources of light and power.

9.3 During the performance of the contractual services, the customer provides his internal operative constancy test devices and completely submits the protocols of the constancy tests to be performed monthly by the customer in accordance with RöV or similar regulations.

9.4 For the performance of constancy tests by means of direct radiography, the customer compulsively ensures that the processing machine is perfectly functioning and that the constancy test values for the film processing (haze, contrast, sensitivity) are within the admissible tolerance range.

9.5 The customer obliges to provide for proper safety and work conditions during the performance of maintenance services and particularly ensures that, prior to the beginning of the maintenance or repair services, the devices are completely clean and free of potentially virulent material and biological liquids. Any Ziehm Imaging personnel or service partners assigned by Ziehm Imaging are entitled to terminate their work and completely stop the performance of contractual services at the devices without giving rise to any claims for damages in case this personnel assesses the work conditions or the functionality and cleanliness of the devices to bear a not completely devious health or safety risk. In such case, the Ziehm Imaging personnel or service partners assigned by Ziehm Imaging concerned will inform the customer.

9.6 For the performance of contractual services on site, the customer presents a formal prevention plan about possible risks, including protective measures ensuring safety and good hygienic conditions for the Ziehm Imaging personnel or the service partners assigned by Ziehm Imaging.

9.7 The customer documents any modifications of the configuration and the environment of the software and informs Ziehm Imaging in writing in good time prior to such modifications. Should any such modifications result in an extension of the contractual services provided by Ziehm Imaging, Ziehm Imaging is entitled to separately invoice such additional effort.

9.8 Ziehm Imaging receives written information about the system manager appointed by the customer as well as his substitute who are entitled to request the contractual services. The system manager and his substitute must be employees with sufficient technical knowledge who will receive intensive training with regard to the handling of the relevant software.

9.9 With regard to the devices to be maintained by Ziehm Imaging, the customer obliges to comply with the relevant statutory regulations and the corresponding instructions for use. The customer particularly has to

- a) maintain the operational premises as well as the corresponding environmental conditions (including temperature and humidity controls, quality of power supply, fire control system) suitable for the operation of the devices;
- b) ensure that the devices are operated in accordance with any applicable regulations;
- c) comply with the operational manuals when making any operational adaptations;
- d) ensure that the personnel entitled to operate the devices has been trained with regard to the proper handling of the devices;
- e) maintain the devices to an ordinary extent and execute regular maintenance in accordance with the maintenance plan.

9.10 In case of a substantial violation of duty by the customer, Ziehm Imaging is entitled, without giving rise to any claims for damages, to desist from the performance or partial performance of services and to claim damages.

10. Retention of Title

10.1 The spare parts and special parts delivered remain the property of Ziehm Imaging until receipt of full payment.

10.2 Any access of third parties to the products subject to the retention of title has to be reported to Ziehm Imaging by the customer as soon as the customer gains knowledge of such access. The customer is liable for any costs in connection with the removal of such access, particularly by means of filing a third-party counterclaim action or making use of a similar legal remedy, as far as the relevant third party cannot be made liable for such costs.

11. Warranty

11.1 Ziehm Imaging warrants a defect-free delivery and performance for the agreed use.

11.2 In the event of defective delivery and performance, Ziehm Imaging undertakes to provide subsequent performance; in this case, Ziehm Imaging may freely choose either to deliver a defect-free product, produce new work or remove the defect.

11.3 The customer is not entitled to remove the defects and claim compensation for the corresponding expenses.

11.4 In case of failure of subsequent performance or in case of Ziehm Imaging refusing to provide subsequent performance due to unacceptability or unreasonably high costs, the customer is entitled to withdraw from the contract or to claim reduction.

11.5 The customer obliges to immediately inform Ziehm Imaging in writing about any obvious defects, however, after two weeks at the latest. Any hidden defects have to be reported to Ziehm Imaging immediately after the customer has gained knowledge of such defects.

11.6 Generally, Ziehm Imaging does not provide any guarantees and does not guarantee any properties. Should, in individual cases, any exceptions hereof be agreed on, such exceptions have to be stipulated explicitly in writing.

11.7 Ziehm Imaging does not provide warranty in case of defects

- a) caused by Force Majeur or other extraneous impact outside the range of influence of Ziehm Imaging

- b) caused by improper use of the devices, particularly due to ignoring of warnings, non-compliance with the documentation of the device or violation of the intended use
- c) caused by inadmissible or uncoordinated interventions by the customer or by unauthorized third parties
- d) caused by any reasons Ziehm Imaging cannot be made reliable for

11.8 The customer obliges to provide the operators of the devices with instructions and training on the specific handling of the devices.

11.9 Any claims for defects against Ziehm Imaging become statute-barred one year after transfer of risk.

12. Liability for Damages

12.1 Ziehm Imaging will be liable as far as being proved to have acted with intent or gross negligence. In case of ordinary negligence, Ziehm Imaging is only liable in case of violation of a duty which is substantial for the fulfillment of the contract and on the performance of which the customer may regularly rely (cardinal duty). Apart from that, liability for damages of any kind, irrespective of the basis for the claim, including liability in culpa in contrahendo, is excluded.

12.2 As far as Ziehm Imaging is liable for ordinary negligence in accordance with 11.1, such liability is limited to defects typically to be expected by Ziehm Imaging under the circumstances at the time of entering into the contract.

12.3 The foregoing exclusions and limitations of liability do not apply in case of Ziehm Imaging providing a guarantee or in case of defects replaceable in accordance with the product liability law or in case of injury to life, body or health or in case of legally compulsory claims.

12.4 The foregoing exclusions and limitations of liability are also valid to the benefit of the employees, agents and other third parties employed by Ziehm Imaging for the fulfillment of the contract.

12.5 Ziehm Imaging is liable without limitation in case of fraudulent concealment of a defect during the statutory limitation period.

12.6 Other statutory eligibility requirements remain unaffected by this clause.

13. Secrecy

13.1 The parties oblige to handle any information subject to secrecy disclosed in the context of the business relationship as confidential. Such information may not be disclosed to any third party. Information subject to secrecy includes, but is not limited to, special product specifications, technical information, documentations as well as any information marked as subject to secrecy.

13.2 This obligation of secrecy does not apply to any information disclosed in the framework of this agreement, provided the party receiving the information is able to prove that

- a) the relevant information had already been disclosed to the receiving party in advance, or
- b) the relevant information would have been disclosed to the public in the future without any misconduct or negligence of the receiving party; or
- c) a third party has legitimately received the relevant information and decided to disclose it; or

- d) the relevant information was independently developed by the receiving party.

13.3 The customer undertakes to inform his employees about this secrecy obligation and to oblige them to preserve secrecy.

13.4 On request of Ziehm Imaging, the customer is obliged to submit or provably destroy any material including or constituting information requiring secrecy within a reasonable period.

14. Data Protection

14.1 Ziehm Imaging collects and stores data of the customer required for business purposes. For the processing of personal data, Ziehm Imaging adheres to the relevant statutory regulations.

14.2 Ziehm Imaging obliges to comply with the data protection regulations, particularly in connection with employees being granted access to the premises, the hardware and software of the customer. Ziehm Imaging ensures that any of her agents will comply with the data protection regulations and binds her agents to data secrecy prior to the beginning of their activities.

14.3 Ziehm Imaging does not aim at the processing or use of personal data on behalf of the customer. If, in exceptional cases, Ziehm Imaging receives personal data, Ziehm Imaging undertakes to handle such data in accordance with the data protection regulations.

15. Cancellation

15.1 Cancellation is subject to legal conditions and shall always be given in writing.

15.2 Apart from the legal conditions governing cancellation for just cause, the customer shall have the right to cancel the contract if the device subject to such conditions can be shown no longer to be in the customer's long-term possession or when it can be shown to have been decommissioned by the customer in the long term.

15.3 The above shall not affect the legal conditions governing cancellation.

16. Export Regulations

16.1 Should the export of any subjects to the contract and/or documents be subject to any permission and/or registration regulations, the customer is solely responsible for the compliance with such regulations.

16.2 The customer obliges to inform Ziehm Imaging about such permission and registration regulations and about the compliance with such regulations.

17. Applicable Law / Place of Jurisdiction

17.1 German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG), is applicable to these GTC Service and the entire legal relationship between Ziehm Imaging and the customer.

17.2 Nürnberg is the place of performance and the place of jurisdiction as far as the customer is a business person or does not have a general place of jurisdiction in Germany or if the customer is a corporate body under public law. Ziehm Imaging is entitled to file suit also at any other place of jurisdiction provided by law.