

# General Terms and Conditions of Business (GTC)

## Image Instruments GmbH

Valid as of January 1st, 2024

### 1. Preamble

1.1 The following terms and conditions apply to all contractual relationships between Image Instruments GmbH (hereinafter referred to as Licensor) and its customers (hereinafter referred to as Licensee). Licensees may be natural and legal persons with legal capacity.

1.2 Conflicting general terms and conditions of the licensee shall not become part of the contract unless the licensor has expressly agreed to them in writing. However, individual agreements between the parties, e.g. software distribution agreements, always take precedence over the General Terms and Conditions.

1.3 In particular, Licensor has the exploitation rights to the OnyxCeph<sup>3</sup>™ computer programs, including optional modules and associated auxiliary and system programs. The licensee wishes to use one or more of the above software products.

1.4 The contracting parties agree that the software data after software failure, regardless of its cause, on provided by the licensor is only a technical aid in a data processing system that meets the system accordance with its intended use and medical requirements if the Licensee has made data back-ups purpose and that the licensee may never justify in accordance with the specifications provided by the diagnostic and therapeutic decisions primarily or exclusively on the base of the statements made with the aid of the software.

1.5 If the software provided by the licensor is used by the licensee as a medical product in accordance with the applicable legal situation, both contractual partners are legally obliged to distribute or use corresponding products with a declaration of conformity or certification.

### 2. Subject of the contract

2.1 The subject matter of the agreement is the provision of software products of the Licensor for use by the Licensee on its own data processing system (hereinafter referred to as "data processing system") as a single-user solution and/or as a multi-user

If the increased fee is not accepted by the Licensee, this shall entitle the Licensor to cease providing the corresponding services to the Licensee from the next due date. Amended fees shall apply for at least 12 months from the effective date of the amendment.

6.5 All fees and prices are subject to VAT at the rate applicable to the billing address specified by the licensee. Within the EU, the so-called MOSS procedure is applied.

6.6 Invoicing for all services provided by the Licensor to the Licensee under this Agreement shall be made exclusively electronically in a file format permitted by law using a transmission method permitted by law. If expressly requested and permitted by the Licensee, paper copies of invoices may be sent for an additional fee.

### 7. Liability, Insurance

7.1 The Licensor only guarantees the recoverability of data after software failure, regardless of its cause, on provided by the licensor is only a technical aid in a data processing system that meets the system accordance with its intended use and medical requirements if the Licensee has made data back-ups purpose and that the licensee may never justify in accordance with the specifications provided by the diagnostic and therapeutic decisions primarily or exclusively on the base of the statements made with the aid of the software.

7.2 In his own interest, licensee is required to back up data regularly, if possible daily, in accordance with the licensor's specifications.

7.3 The Licensor expressly points out that the Licensor's programs are intended for the purpose of administration and diagnostic measurement of two-dimensional and three-dimensional image material by professionally qualified personnel in the context of dental medical applications and that diagnostic and therapeutic statements may not be derived primarily or exclusively from the measurement results and that this medical purpose requires proper registration and activation of the software with the operator.

solution. Unless otherwise agreed, a one-time orNon-activated trial versions or software licenses that annual license fee shall be charged for this.

are not productively activated for test, training or educational purposes serve only to familiarize the user with the use of the software and not to use it in maintenance, updating and further development of

accordance with the above-mentioned purpose. the software products by the licensor as result of theNo liability or guarantee is assumed for the continuous market observation carried out by themethodological accuracy and completeness of the licensor. Unless otherwise agreed, an annual software results of subject-specific evaluations and analyses maintenance fee is charged for this. provided due to the lack of unambiguity.

2.3 In addition, services such as software7.4 The Licensor shall be liable for damages resulting development, installations, data conversions,from a culpable breach of duty by the Licensor or a technical training, consulting and support forlegal representative of the Licen-sor. Liability is technical issues relating to installation, hardwarelimited to intentional, grossly negligent or fraudulent replacement, database recovery and troubleshootingbreach of duty by the licensor or its legal may also be provided by the licensor within therepresentative and liability under product liability law. framework of a separate agreement between the parties. Unless otherwise agreed, an expense-related support fee shall be charged for these services.

2.4 Instruction, technical instructions and the special training required for the intended use of the software are expressly not the subject of the contract. These services are provided by external providers or by qualified users of the software.

### 3. Obligations of the Licensor

3.1 The Licensor shall make the Software available to the Licensee as an installation routine. This is done by providing the option of electronic retrieval (download) via the Internet. The proper installation and configuration of the software in accordance with the documentation provided by the licensor at the intended operator is the responsibility of the licensee. This is a prerequisite for activating the scope of functions specified in the license request. Activation by provision of an activation code takes place within a maximum of 7 working days after receipt of the complete information to be provided by the licensee. Activation (commissioning) can be carried out productively or non-productively depending on the intended use.

3.2 The functional scope of the software results from the program descriptions provided by the licensor.

3.3 The Licensor shall provide documentation for instruction in the use of the Software, including work aids and manuals, in electronic form at the latest together with the purchase of the Software by the Licensee.

3.4 By purchasing the license, the licensor grants the licensee the non-exclusive and non-transferable right to use the purchased software products. This right applies to the use of the software products by the

- for expenses arising from necessary software adaptations in connection with changes in legal provisions,
- for expenses arising from necessary software adaptations in connection with updates/changes to operating systems, driver software, interfaces and hardware,
- for expenses arising from necessary adaptations/changes to the program and/or data structure of the software,
- for expenses incurred by the licensee in connection with the restoration of the operability of the software after failure, irrespective of the cause of the failure,
- for expenses incurred by the licensee in connection with the restoration of the operability of the software after failure, irrespective of the cause of the failure,

### 8. Infringements of property rights, termination of contract

8.1 In the event of infringements of third-party property rights by the functions implemented in the software, the licensor may make changes which, while safeguarding the interests of the licensee, ensure that there is no longer an infringement of property rights or acquire the rights of use required for the licensee.

8.2 Upon termination of the contract by the licensee, the licensee is obliged to return all data carriers and user documentation provided to him in fulfilment of the contract, unless the parties have agreed to a permanent transfer. In addition, in the event of

licensee on the licensee's IT systems registered for termination of the contract, the licensee undertakes this purpose in the activation code to the extent to completely delete the software provided, insofar as agreed. The rights and obligations of the licensor and this was agreed when the contract was concluded.

licensee are regulated in the end user license agreement, which the licensee must agree to before installation and activation. If the licensee is provided with a non-productive activation, only the limited range of functions specified in this respect may be used. Non-productive activation may be used exclusively for testing, for training and for familiarization with the software.

## 4. Warranty

4.1 The Licensor warrants to the Licensee that the Software for the scope of functions acquired by the Licensee has the properties listed in the program descriptions and is free of errors that cancel or reduce its value or suitability for the use of this scope of functions.

4.2 The Licensee is advised that the specified system requirements must be met for the software to function properly. In cases of doubt, the requirements shall be agreed between the parties. Compliance with the system requirements is the responsibility of the Licensee and does not entitle the Licensee to assert claims for defects in the event of non-compliance.

4.3 The parties are also aware that it is generally not possible according to the state of the art to create software in such a way that it works without errors in all application environments. The subject matter of the contract is therefore expressly only the software that is described in more detail in the program description and can be used to the extent specified.

4.4 The statutory warranty period applies from the date of purchase of the software. During this period, the licensor will correct any errors in the software that become known by providing updates.

## 9. Protection of the licensed material

9.1 The licensee undertakes to retain unchanged the protective notices contained in the license material, such as copyright notices and other legal reservations, and to incorporate them in unaltered form in all complete or partial copies made by the licensee.

9.2 The licensee undertakes to use the software in such a secure manner that manipulation or misuse of the program or the data recorded by the program, in particular personal data, by unauthorized third parties is excluded.

9.3. The licensee undertakes not to make the database instance of the activated software accessible to third parties either in the original or in the form of complete or partial copies without the express written consent of the licensor. This also applies in the event that the licensee or operator ceases to work in whole or in part. Persons in a work, employment or other employment relationship with the licensee are not considered third parties, provided that they use the software on behalf of the licensee and for the intended purpose.

9.4. The licensee undertakes to uninstall or delete the software and all data directories and other information provided by the licensor on the internal data carriers before destroying, selling or otherwise passing on the data processing hardware on which the database instance of the activated software is installed.

## 5. Obligations of the Licensee

5.1 In the event of technical questions, the Licensee shall appoint a qualified employee or service provider to the Licensor who shall ensure that the relevant requirements and activities on the part of the Operator are met and who shall act as the Licensor's contact person for questions relating to processing.

5.2 The migration of the activated database, in whole or in part, to another data processing system is not permitted without the express permission of the Licensor. This does not apply to the creation of back-legally permissible copies by the licensee to the extent necessary for

## 10. Amendments / ineffective provisions

10.1 Amendments and additions to the contractual agreements between the parties must be made in writing.

10.2 If individual provisions are legally invalid, the remaining parts of the contract between the parties shall remain binding. Should a provision be invalid in

restoration in the event of failure of the data processing system. The backup copies may only be used by the Licensee if the original program can no longer be used due to damage or destruction.

## 11. Place of jurisdiction / Place of performance / Applicable law

5.3 The licensee may not pass on activated software products to third parties or make them accessible in any other form without the con-sent of the licensor.

11.1 The exclusive place of jurisdiction for disputes arising from the performance of this contract and the place of performance for deliveries and services is the registered office of the Licensor, provided that the Licensee is a registered trader, a legal entity under public law or a special fund under public law and is acting in the exercise of a commercial or independent professional activity.

5.4 A complete or partial retranslation of the software into the form of a source program is not permitted.

## 6. Fees

6.1 The remuneration for the right to use the software (license fee) shall be paid in the form of a license fee, unless otherwise agreed in writing between the contracting parties. In the case of an OSL subscription license, the license fee shall be charged annually for the activation period; in the case of an RL+ purchase license, it shall be charged once upon purchase.

11.2 The law of the Federal Republic of Germany shall apply exclusively. The contractual language is German.

## 12. Data Protection

6.2 Unless otherwise agreed in writing between the contracting parties, payment for the provision of updates shall be made against payment of a software maintenance fee. In the case of a subscription license OSL, the maintenance fee shall be charged annually together with the annual license fee, in the case of a purchase license RL+ once per calendar year. Downloading updates provided via the Internet is free of charge. If, in exceptional cases, updates are sent to the licensee on data carriers at the licensee's request, additional fees may apply.

12.1. The parties are aware that the information collected by the Licensee with the help of the Software is subject to the statutory provisions and regulations on data protection applicable in the respective country, in particular the protection of personal data, and that it is the responsibility of the Licensee to implement the associated obligations. The Licensor shall support the Licensee in this respect by providing suitable functions within the Software.

6.3 Remuneration for services pursuant to Section 2.3, which the Licensor provides at the Licensee's request in accordance with a separate agreement, shall be made against payment of the remuneration specified for this purpose.

12.2 When transferring the licensee's data to the licensor on the occasion of a contract initiation or for the purpose of contract execution, both parties are obliged to comply with the legal provisions and regulations on data protection applicable in the respective country, in particular the protection of personal data.

6.4 The fees pursuant to Sections 6.1 and 6.2 shall apply for at least 12 months from the date of purchase, irrespective of the extent of use. A refund of the fees in the event of non-use is excluded. An increase in the annual fees pursuant to Sections 6.1 and 6.2 shall only take effect if the licensee is notified at least three months before it comes into effect.

12.3 In the case of support measures commissioned by the licensee from the licensor - particularly in connection with software maintenance, troubleshooting or other desired or necessary technical support measures, the licensee must ensure that the licensor does not gain access to personal data recorded in the software or in third-party applications. The software provides suitable functions for this purpose.

If the licensee nevertheless gains access to personal data as part of support measures in exceptional situations in individual cases, this does not constitute a contractual relationship between the licensee and licensor in the sense of commissioned data processing, as there is neither an offer from the licensor nor an assignment by the licensee. Rather, in such an exceptional case, the provisions of the data protection confidentiality agreement provided

by the licensor apply.

From:

<http://www.onyxwiki.net/> - [OnyxCeph<sup>3</sup>™ Wiki]

Permanent link:

<http://www.onyxwiki.net/doku.php?id=en:sbt&rev=1713170043>

Last update: **2024/04/15 10:34**

