

General Terms and Conditions for Software

1. Scope

- 1.1 These General Terms and Conditions (hereinafter referred to as "**GTC**") shall apply to all Licence Agreements between Nihon Kohden company (hereinafter referred to as "**NK**") and the contracting party (hereinafter referred to as the "**Customer**"). NK and the Customer are collectively referred to as the "Parties". These GTC shall apply to the provision of Software that is operated by the Customer or their end Customers on their own IT infrastructure under the On-Premises Model.
- 1.2 The Customer's terms and conditions shall not apply, even if NK does not expressly object to their validity in individual cases. The Customer's terms and conditions shall only apply if NK expressly accepts them on a case-by-case basis.
- 1.3 The contract between the Parties consists of the following documents, which, in the event of any conflict, shall take precedence in the following order:
 - Licence Agreement;
 - Annexes to the Licence Agreement;
 - these General Terms and Conditions.

2. Definitions

- 2.1 **Software** refers to all programs in machine-readable form. The term "Software" does not include content or data that is processed by the Software.
- 2.2 **Licence Agreement** refers to the contractual agreement between NK and the Customer regarding the specific obligations and rights of both parties. The Licence Agreement shall be concluded by way of offer and acceptance.
- 2.3 **Distributor** refers to a natural or legal person who acquires Software from NK and resells it to end Customers in their own name and for their own account, without being the Manufacturer of the Software.
- 2.4 **End Customer** refers to the legal or natural person who acquires the Licence from the Distributor.
- 2.5 **Manufacturer** refers to the legal person who developed the Software.
- 2.6 **Licence** refers to the purchaser's right to use the Software. A Licence can be granted as a Lifetime Licence or a Subscription Licence. In this context:
 - Lifetime Licence refers to the granting of a permanent, i.e. unlimited, right to the Customer to use the Software in the contractually agreed version, in accordance with the terms of the Licence purchase.
 - Subscription Licence refers to the granting of a temporary right to the Customer, i.e. limited to the term of the Licence Agreement, to use the Software in the contractually agreed version, in accordance with the terms of the lease.
 - If one of the above-defined licences is granted to a Distributor, the Distributor is entitled to make the Software available to their end Customers for use in the contractually agreed version, in accordance with the terms of the Licence purchase.

- 2.7 **On-Premises Model** refers to a licencing model in which the Customer operates the Software independently of NK on their own IT infrastructure.
- 2.8 **Software Update** refers to Updates to the Software, which may include security Updates, Patches, Bug Fixes or Upgrades.
- 2.9 **Patch or Bug Fix** refers to Software updates designed to correct defects in the Software.
- 2.10 **Upgrade** refers to Software Updates that include new features, improved usability or enhanced integration options. They go beyond Patches and Bug Fixes and may include, for example, additional modules, new interfaces, optimised workflows or improvements to the user interface.
- 2.11 **Object code** refers to the machine-readable, executable form of the Software that has been generated from the source code through compilation and can be executed directly by a computer.
- 2.12 **Source code** refers to the human-readable form of Software written in a programming language, which serves as the basis for creating the object code.
- 2.13 **IT infrastructure** refers to the entire technical infrastructure provided and operated by the Customer, including hardware (servers, storage systems, network components, etc.), operating systems, databases and other system components on which the Software is installed and operated.
- 2.14 **Intended use** (of the Software) refers to the use of the Software exclusively for the purpose described in the User Manual and in the manner specified in the documentation, in compliance with the technical requirements and contractual agreements.
- 2.15 **Confidential information** means any information that (1) is expressly marked or designated by a party as confidential or secret, or labelled as confidential in some other way; (2) is clearly to be treated as confidential under the circumstances; or (3) is protected by statutory confidentiality provisions.

3. **Provision and use of the Software; copyright and usage rights**

- 3.1 NK shall provide the Customer with the Software in object code, in the scope and version agreed upon in the Licence Agreement, for use by the Customer for their own internal business purposes for a fee. The specific features, functionality and Intended purpose of the Software are set forth in the User Manual.
- 3.2 NK reserves the right to engage third parties to provide their services.
- 3.3 Software updates are not automatically included in the Lifetime Licence; they can be contractually agreed upon separately by the Customer if desired.
- 3.4 The Software is subject to the Manufacturer's copyright. All rights to the Software, documentation and other materials provided by NK shall remain exclusively with NK or their licensors. The Customer shall only be granted the rights of use expressly set out in the Licence Agreement and these GTC. The Customer shall not acquire any rights whatsoever to the Software's source code. All rights not expressly granted shall remain with NK.
- 3.5 The Software may only be used for the Intended purpose described in the User Manual. Any use of the Software beyond this scope is not covered by the license. The Customer is not authorised to use the Software for any purposes or in any manner other than those specified in the User Manual.
- 3.6 Upon installation of the Software, and subject to full payment of the agreed fee, NK shall grant the Customer a non-exclusive, non-transferable, and non-sublicensable right to use the Software for the contractually agreed scope in accordance with these GTC. This does not apply if the Customer is a Distributor.

- 3.7 The Software may only be used by the Customer in their capacity as the contracting party. The Customer is not authorised to allow the Software to be used by affiliated companies, pursuant to Article 3(3) of EU Commission Recommendation 2003/361/EC, partner companies or other third parties, unless otherwise expressly agreed in the Licence Agreement. The same shall apply to the granting of a Licence to a Distributor. In this case, NK shall grant the Distributor a non-exclusive right to provide the Software to their end Customers for Intended use to the extent contractually agreed and in accordance with the applicable terms and conditions. The Distributor is not permitted to use the Software for its own purposes or for any other purpose.
- 3.8 The Customer's rights of use shall be limited exclusively to:
- the installation of the Software on an IT infrastructure operated by the Customer or their end Customer;
 - the execution of the Software for the purposes described in the User Manual;
 - the creation of backup copies of the Software, to the extent necessary for its Intended use and for data backup;
 - the duplication and modification of the Software within the Customer's IT infrastructure, to the extent that this is strictly necessary for the Intended use of the Software, including error correction.
- 3.9 Furthermore, the Customer is not authorised to:
- reproduce the Software in whole or in part;
 - translate, edit, arrange or otherwise modify the Software;
 - decompile or reverse engineer the Software, unless this is permitted by mandatory law;
 - distribute, publicly reproduce or make publicly available, unless NK has given prior written consent in each individual case.
- 3.10 The quantitative scope of the Licence is set forth in the Licence Agreement.
- 3.11 The documentation relating to the Software provided by NK to the Customer is set forth in the Licence Agreement. Unless otherwise agreed in the Licence Agreement, the following shall apply:
- the User Manual with a description of the Software's functions and the Intended use of the Software;
 - other technical documentation required for the correct configuration and use of the Software.
- 3.12 The documentation shall be provided in English. NK is entitled to provide the documentation in electronic form (e.g. PDF). The Customer is not authorised to reproduce, distribute or make the documentation available to third parties, unless this is necessary for the contractual use of the Software.

4. Installation

- 4.1 The provisions of this section 4, Installation, shall apply exclusively to Customers who are not distributors. Distributors shall be subject to the special provisions of section 5, Installation Provisions for Distributors.
- 4.2 NK shall install and perform the initial configuration of the Software on the Customer's IT infrastructure in accordance with the terms of the Licence Agreement. Unless otherwise agreed in the Licence Agreement, the installation and initial configuration of the Software by NK shall include:
- the technical integration of the Software into the Customer's IT infrastructure, to the extent necessary for the Intended use of the Software; and
 - the configuration of the Software according to the parameters agreed in the Licence Agreement.

4.3 Proper installation and initial configuration of the Software by NK requires that the Customer fully and timely fulfil their obligations to cooperate. In particular, the Customer is obliged to:

- provide NK with all necessary information and documentation in full no later than 14 calendar days before the agreed installation and initial configuration date.
- grant NK access to the IT infrastructure on which the Software is to be installed on the agreed date;
- ensure that the IT infrastructure meets the minimum requirements specified in the technical documentation;
- carry out a complete and proper data backup of the relevant IT systems and the data processed therein prior to the installation and initial configuration of the Software;
- provide qualified contact persons with decision-making authority during the installation and initial configuration of the Software.

4.4 System test after installation.

4.4.1 Once the installation and initial configuration of the Software have been completed, a system test is carried out to check that the Software is working properly. The system test shall be carried out in accordance with a jointly agreed test plan and forms part of the agreed scope of services.

4.4.2 The Customer is hereby obliged to:

- provide all necessary cooperation for conducting the system test, in particular to provide test data and make qualified contact persons available for the conduct of the system test;
- actively participate in the system test and document any discrepancies or defects in writing without delay and forward them to NK.

4.4.3 The system test shall be deemed to have been successfully completed if the Software essentially fulfils the functions described in the User Manual and no significant defects are present.

4.5 Staff training

4.5.1 Once the system test has been successfully completed, training will be provided for the Customer's employees who will be using the Software. This training does not constitute comprehensive instruction and does not replace the Customer's own responsibility to familiarise themselves with the Software using the documentation.

4.5.2 The scope and format of the training can be either on-site or remote.

4.5.3 The Customer is hereby obliged to:

- provide the employees to be trained on the agreed date and time;
- provide suitable rooms and technical equipment (for on-site training) or functioning IT systems with internet access (for remote training).
- After successful completion of the system test and training, the Customer is obliged to accept the installation and initial configuration services provided within 30 calendar days.

4.6 Acceptance

4.6.1 Acceptance shall be deemed granted (deemed acceptance) if:

- the Customer uses the Software a live environment; or
- the Customer does not refuse acceptance in writing by the given acceptance deadline, specifying significant defects.

- 4.6.2 Minor defects do not entitle the Customer to refuse acceptance. Such defects must be documented separately and shall be remedied under the warranty or by the support team, which must be commissioned separately.
- 4.6.3 Upon acceptance, the installation and initial configuration services shall be deemed contractually fulfilled. Any defects that were recognisable to the Customer at the time of acceptance upon proper inspection may no longer be asserted after acceptance, unless NK has fraudulently concealed them.

5. Installation provisions for Distributors

- 5.1 The Distributor shall ensure that the end Customer's IT infrastructure meets the technical requirements set out in the User Manual.
- 5.2 The Distributor shall carry out the installation and initial configuration of the Software on the end Customer's IT infrastructure in accordance with the terms of the Licence Agreement.
- 5.3 NK shall provide the Distributor with the installation files; the Distributor shall carry out the installation at the end Customer's premises in accordance with NK's instructions.

6. Software Updates, Upgrades

- 6.1 NK shall provide the Customer with Upgrades to the extent that this service has been expressly agreed upon in the Licence Agreement or otherwise.
- 6.2 NK shall provide the Customer with the available agreed Software Updates or Upgrades as follows:
- NK shall notify the Customer about the availability of Software Updates or Upgrades;
 - NK shall provide available Software Updates or Upgrades to the Customer. Software Updates or Upgrades shall be installed by NK.
 - If necessary for the installation or Intended use of a Software Update or Upgrade by the Customer, NK shall provide Update documentation describing the changes, new features and instructions for installing the Software Update or Upgrade. This does not apply if the Customer is a Distributor.
- 6.3 NK shall notify the Customer of any necessary Software Updates or Upgrades. NK shall carry out the installation at the Customer's request. The Customer's obligations to cooperate shall apply accordingly. In particular, the Customer is obliged to:
- perform a complete and proper data backup before installing a Software Update or Upgrade;
 - check the IT infrastructure in which the Software is operated for compatibility with the Software Update or Upgrade;
 - follow the instructions in the update documentation;
 - check immediately that the Software is functioning correctly following the installation of a Software Update or Upgrade.
- 6.4 Where Software Updates or Upgrades are installed by NK, the installation provisions set forth in these GTC shall apply accordingly.
- 6.5 Upon installation of a Software Update or Upgrade, the Customer hereby acquires the same rights of use to the Software Update or Upgrade as to the original Software.

7. Customers' obligations and duty to cooperate

- 7.1 The provisions of this section 7, Customers' Obligations and Duty to Cooperate, shall apply exclusively to Customers who are not Distributors. Distributors shall be subject to the special provisions of section 12, Distributors' Obligations and Duty to Cooperate.
- 7.2 The Customer shall make the necessary IT infrastructure available to NK in accordance with the agreed technical specifications. The Customer shall be responsible for ensuring that their IT infrastructure meets the minimum requirements specified in the technical documentation. The Customer shall bear sole responsibility for the provision, operation, maintenance and security of their IT infrastructure. NK assumes no liability for damages resulting from inadequate IT infrastructure or insufficient IT security measures.
- 7.3 The Customer must provide NK with secure, data protection-compliant remote access to their IT infrastructure to the extent necessary for NK's contractual services.
- 7.4 The Customer shall be responsible for performing regular and appropriate data backups, especially prior to performing a Software Update or Upgrade or before requesting additional services. The Customer shall be solely responsible for backing up and restoring their data.
- 7.5 The Customer shall provide NK with all information, data and documents necessary for the performance of all services in a timely, complete, and accurate manner. NK is under no obligation to investigate or verify this information. NK is entitled to rely on the accuracy and completeness of the information, data and documents provided by the Customer. NK shall not be liable for defects, delays or impossibility of performance that are attributable to incomplete, incorrect, or late information, data or documents provided by the Customer.
- 7.6 NK is entitled to only accept statements, instructions or notifications from the Customer's designated authorised contact persons. The Customer shall therefore designate contact persons to NK who are authorised to:
- issue instructions and make decisions relating to the provision of services;
 - report defects or malfunctions;
 - declare acceptance of services.
- 7.7 The Customer is obliged to inform NK immediately of any significant developments that may affect the provision of services, in particular:
- significant changes to the IT infrastructure on which the Software is run;
 - security incidents affecting the Software or the IT infrastructure;
 - planned changes that could affect the use of the Software;
 - changes to the authorised contact persons.
- 7.8 The Customer shall fulfil their cooperation obligations in their own interest and may not claim any compensation for doing so. If the Customer fails to fulfil their obligations to cooperate, or fails to do so in a timely or proper manner, the Customer shall be in default of their obligations to cooperate, even without a reminder from NK. The following legal consequences shall apply if the Customer is in default of their cooperation obligations:
- Agreed dates and deadlines for NK's contractual services shall be postponed to correspond with the duration of the delay.
 - After a reasonable grace period has elapsed and following unsuccessful requests by NK to the Customer to fulfil their obligations to cooperate, NK reserves the right to temporarily suspend services until the Customer has fully complied with their outstanding cooperation obligations.

- NK shall not be liable for delays, impossibility of performance or defects that are attributable to the Customer's breach of their cooperation obligations.
- Other claims and rights of NK, in particular claims for damages and the right to extraordinary termination in the event of material breaches of contract, remain unaffected.

7.9 If it has been agreed that services shall be provided on-site at the Customer's premises, the Customer shall grant NK's employees access to the premises and IT infrastructure on the agreed dates, to the extent necessary for the provision of the contractual services.

8. Warranty

- 8.1 NK warrants that, upon delivery, the Software shall conform to the agreed specifications and be suitable for its Intended use. NK further warrants that no third-party rights shall be infringed in connection with the provision of the contractual services. The specifications set out in the User Manual shall be the sole basis for the characteristics of the Software.
- 8.2 Public statements, promotional claims or advertisements by NK do not constitute a guarantee of any specifications, unless they have been expressly agreed upon in writing.
- 8.3 The Customer is obliged to inspect the Software for defects immediately after it goes live. The Customer must notify NK of any defects discovered without delay, but no later than within 30 calendar days, providing a detailed description of the defect. For defects that are not readily apparent, notification must be made without delay upon discovery, but no later than within 5 calendar days thereafter.
- 8.4 Before reporting a defect, the Customer must first check within their area of responsibility to determine the cause of the defect. In particular, this includes:
- Checking whether the end Customer's IT infrastructure meets the minimum technical requirements;
 - Checking whether the defect was caused by modifications made by the Customer or end Customer themselves, or by third-party systems;
 - Checking whether the Software is being used in accordance with its Intended purpose.
- 8.5 Notifications of defects must be submitted in writing and should include the following information:
- A detailed description of the defect and the functionality affected;
 - Description of the circumstances under which the defect occurred;
 - Description of the impact of the defect on the use of the Software;
 - If available: error messages, screenshots, log files or other evidence (demonstrating how the defect can be reproduced);
 - Name and contact details of the authorised contact person submitting the report;
 - Confirmation that the Customer has checked their area of responsibility.
- 8.6 The Customer shall bear the costs incurred by NK in connection with measures to investigate defects if no defect actually exists and the Customer was aware of this or failed to be aware of it due to gross negligence.
- 8.7 In the event of a defect, NK has the right and the obligation to remedy the defect or re-provide the affected contractual service, at its discretion, within a reasonable period during NK's normal business hours. The remedy method (repair or replacement) selected is at NK's sole discretion.

8.8 NK may remedy defects at its own discretion by:

- Providing Patches, Bug Fixes or an updated version of the Software that corrects the defect;
- Providing a defect-free version of the Software; or
- Providing a non-identical but equivalent solution that does not restrict, or only insignificantly restricts, the contractually agreed use of the Software by the Customer, insofar as this is reasonable for the Customer.

8.9 If the Software infringes the rights of third parties and third parties assert their rights, thereby preventing the Customer from using the Software for its Intended purpose or restricting such use, NK shall, within a reasonable period of time and at its own discretion, take appropriate measures to remedy the defect of title:

8.10 Before commencing any remedy, the Customer shall be responsible for carrying out a complete and proper data backup. NK shall inform the Customer of the date and time the remedy will be carried out in a timely manner. In the event of data loss for which NK is responsible, NK shall only be liable for the costs demonstrably incurred as a result of having to restore the lost data from a proper data backup, provided that the data loss is not due to wilful misconduct or gross negligence on the part of NK.

8.11 The Customer is obliged to grant NK the time and opportunity necessary for remedying defects and to provide the necessary cooperation. The place of performance for NK's remedy obligations is the place of performance for the contractual services.

8.12 In the event of defects, NK has the right to two attempts at remedying a defect before the remedy is deemed to have failed. The remedy shall only be deemed to have definitively failed if:

- NK seriously and definitively refuses to remedy the defect;
- the remedy is unreasonable for the Customer;
- the remedy would entail disproportionate costs for NK.

8.13 In the event that the final attempt at remedying the defect fails, the Customer is entitled to the following warranty rights:

- Reduction of the fee; or
- Withdrawal from the contract, provided the defect is not minor.

8.14 The Customer shall have no warranty claims in the following cases:

- Software malfunctions resulting from improper use, modifications to the Software by the Customer, end Customer or third parties, inadequate IT infrastructure or failure to follow the documentation provided;
- Software malfunctions resulting from unauthorised system changes made by the Customer;
- Incompatibilities of the Software with hardware or Software not listed as compatible in the technical documentation.

8.15 The Customer's warranty claims shall expire 12 months after acceptance of the installation or provision of Software updates. The limitation period does not start anew if subsequent performance is made or repairs are carried out as part of a remedy.

8.16 Notwithstanding the foregoing, the Customer's warranty claims shall expire within two (2) years from the statutory commencement of the limitation period, or for claims for damages based on wilful misconduct or gross negligence, injury to life, limb or health, or liability under mandatory product liability regulations pursuant to Directive (EU) 2024/2853, or in cases of fraudulent misrepresentation.

8.17 The foregoing provisions shall apply mutatis mutandis to any Software Updates or Upgrades.

9. Liability

- 9.1 Any claims for damages and reimbursement of expenses brought by the Customer against NK (hereinafter “claims for damages”), regardless of their legal basis – in particular those arising from breaches of obligations under the contractual relationship, tort, culpa in contrahendo, default or impossibility – are excluded.
- 9.2 The foregoing limitation of liability shall not apply in the event of:
- 9.2.1 claims for reimbursement of expenses in connection with subsequent performance;
 - 9.2.2 liability claims under mandatory product liability regulations pursuant to Directive (EU) 2024/2853;
 - 9.2.3 wilful misconduct or gross negligence on the part of NK, their legal representatives or vicarious agents;
 - 9.2.4 culpable injury to life, limb or health; or
 - 9.2.5 a culpable breach of an essential contractual obligation (cardinal obligation), i.e. a obligation whose fulfilment is essential for the proper performance of the contract and on whose compliance the Customer regularly relies and is entitled to rely.
- 9.3 NK's liability for breach of an essential contractual obligation shall be limited to compensation for foreseeable damages typical of this type of contract, unless the breach was due to wilful misconduct or gross negligence, or where liability arises from injury to life, limb or health, or where liability arises under mandatory product liability regulations pursuant to Directive (EU) 2024/2853.
- 9.4 Except in cases of wilful misconduct or gross negligence on the part of NK, and in cases of damages resulting from injury to life, limb or health, NK shall not be liable for lost profits, indirect or consequential damages, in particular production losses and business interruptions, and damages that could have been avoided by the Customer performing complete and proper data backups.
- 9.5 NK shall not be liable if the basis for liability is attributable to a breach of duty by the Customer. The Customer is obliged to take reasonable steps to avoid and mitigate damages.
- 9.6 Where NK's liability is excluded or limited, this shall also apply to the personal liability of NK's employees, agents, legal representatives and vicarious agents.
- 9.7 If third parties assert claims against NK for infringement of their rights caused by a breach of duty by the Customer, their employees, legal representatives, executive bodies or vicarious agents, or third parties commissioned by the Customer, the Customer shall indemnify NK against all such claims. This indemnification shall also cover NK's legal defence costs, including reasonable attorneys' fees and court costs. This shall not apply if the Customer proves that they are not responsible for the breach of duty.
- 9.8 Claims for damages by the Customer shall become time-barred 12 months from the commencement of the statutory limitation period; however, the foregoing shall not apply in the cases set out in sections 9.2.2, 9.2.3 and 9.2.4 of these GTC.
- 9.9 Any further claims by the Customer are excluded, unless otherwise stipulated in the contract.

10. Fees, payment

- 10.1 Unless expressly agreed otherwise, the prices quoted by NK are exclusive of all applicable taxes, duties, customs duties, fees and other government levies (with the exception of income tax payable by NK).

- 10.2 The Customer shall bear all taxes, duties, customs duties, fees and other levies imposed by any government agency that may arise:
- in connection with the sale or transfer of the products to the Customer; or
 - as a result of the Customer's possession, use, resale or other utilisation of the products.
- 10.3 Where NK is legally obliged to pay such amounts, the Customer shall reimburse NK for such payments in addition to the agreed purchase price.
- 10.4 Payments to NK may only be made by the Customer themselves and from a bank account held in the Customer's name at a financial institution in the country where the Customer's registered office is situated. Payments by third parties, in particular parent or subsidiary companies as well as other business partners, are only permitted with the prior written consent of NK.

11. Term and termination of a Subscription Licence

- 11.1 The duration of the contract is specified in the Licence Agreement. If no term is specified in the Licence Agreement, the Licence Agreement shall be deemed to be concluded for an indefinite period. If a fixed term has been agreed upon in the Licence Agreement, the Licence Agreement shall automatically renew for a further twelve (12) months upon expiry of the term, unless the Licence Agreement is validly terminated by either party prior to the expiry date.
- 11.2 The License Agreement may be terminated by either party by giving three (3) months' notice to the end of the month or, if a fixed term has been agreed upon, at the end of the respective term.
- 11.3 The Customer may purchase additional Licences at any time during the term of the contract. These Licences will be integrated into the existing term, with the first year billed on a pro-rata basis depending on the date the additional license was purchased.
- 11.4 The statutory right of both parties to terminate the agreement for good cause remains unaffected. NK is entitled to extraordinary termination without notice, particularly in the following cases:
- If the Customer is in default of payment of the fee or a substantial part thereof for more than thirty (30) calendar days and payment has not been received despite a reminder and being given a deadline of at least fourteen (14) calendar days;
 - if the Customer uses the Software beyond the scope of the contractually agreed Licence and fails to cease such use despite being requested to do so and being given a deadline of at least fourteen (14) calendar days;
 - if the Customer transfers, sublicenses or otherwise makes the Software available to third parties without this having been expressly agreed in the contract;
 - if the Customer uses the Software in a manner that violates legal regulations, in particular export control regulations, data protection regulations or the rights of third parties, and fails to cease such use despite being requested to do so and being given a deadline of at least fourteen (14) calendar days;
 - if insolvency proceedings are initiated against the Customer's assets, or if such proceedings are dismissed due to lack of assets, or if the Customer declares the cessation of their business operations;
- 11.5 Termination notices must be issued in writing to be deemed valid. Termination takes effect upon receipt by the addressee.
- 11.6 Upon termination of the Licence Agreement, for whatever reason, all rights of use granted to the Customer with respect to the Software shall expire. Once the termination takes effect, the Customer is

obliged to completely uninstall the Software from their IT infrastructure and to destroy all copies of the Software in their possession or under their control, including backup copies; return all documentation and other materials provided by NK to NK upon request or, if return is not possible, to irrevocably destroy them; and to confirm in writing to NK, upon request, that the Software has been completely uninstalled and destroyed within seven (7) calendar days of NK's request.

- 11.7 The termination of the Licence Agreement does not affect the validity of those provisions which, by their nature, are intended to continue beyond the termination of the agreement. This applies in particular to the provisions relating to confidentiality, liability, obligations to return and destroy materials, and any payment obligations of the Customer.

12. Distributors' obligations and duty to cooperate

- 12.1 The Distributor shall handle communication between NK and the end Customer, as necessary. NK shall not be liable for any delays on the part of the Distributor.
- 12.2 The Distributor may not make the Software available to its end Customers until it has provided them with the relevant end-user licences. When reselling or leasing the Software to their end Customers, the Distributor shall notify NK of the name and address of each end Customer, as well as any subsequent changes.
- 12.3 The Distributor shall ensure that any use of the Software by their end Customers is always in accordance with these GTC. The Distributor shall be liable for the actions and omissions of their end Customers in relation to the Software to the same extent as for their own conduct.
- 12.4 The Distributor shall be responsible for providing appropriate and ongoing training, at their own expense, to all of their employees who distribute the Software, provide related services or carry out other activities in connection with the Software. The training must ensure that the employees concerned have sufficient knowledge of the Software to be able to present, sell and provide support for it competently. The Distributor shall ensure that such training is regularly updated, especially in the event of updates, new features or changes to the Software.
- 12.5 The Distributor is obliged to provide its end Customers with instructions for the correct operation and proper use of the Software. This includes, in particular, clear guidance regarding the end Customer's IT infrastructure in which the Software is operated, its application and any security-related or functional requirements.
- 12.6 The Distributor shall provide users of the Software within their sales territory with appropriate Customer service, including installation assistance, troubleshooting, provision of updates or Patches, and other support services necessary for the proper use of the Software, regardless of whether the Software was purchased through the Distributor or not.
- 12.7 The Distributor shall provide NK with the information, data and documents necessary for the performance of all services in a timely, complete, and accurate manner. NK is under no obligation to investigate or verify this information. NK is entitled to rely on the accuracy and completeness of the information, data and documents provided by the Distributor. NK shall not be liable for defects, delays or impossibility of performance that are attributable to incomplete, incorrect, or late information, data or documents provided by the Distributor or their end Customers.
- 12.8 The Distributor shall designate contact persons to NK who are authorised to:
- issue instructions and make decisions relating to the provision of services;
 - report defects or malfunctions;

- The Distributor is obliged to inform NK immediately of any significant developments that may affect the provision of services.
- 12.9 The Distributor shall fulfil their cooperation obligations in their own interest and may not claim any fee for doing so. If the Distributor fails to fulfil their obligations to cooperate, or fails to do so in a timely or proper manner, the Distributor shall be in default of their obligations to cooperate, even without a reminder from NK.
- 12.10 Where it has been agreed that services shall be provided on-site at the end Customer's premises, the Distributor shall ensure that the end Customer grants NK's employees access to the premises and IT infrastructure on the agreed dates, to the extent necessary for the provision of the contractual services.
- 12.11 Special provisions for medical devices
- 12.11.1 The following requirements (including those of the MDR and the German Medical Devices Enforcement Act) have been fulfilled by NK before market launch and must be verified by the Distributor:
- Issuance of the EU Declaration of Conformity for the Software;
 - CE marking of the Software;
 - Availability of all relevant information that must be provided with the Software;
 - In the case of imported Software, fulfillment of the importer's corresponding requirements;
 - The allocation of a Unique Device Identifier by the Manufacturer, if applicable.
 - When verifying the above requirements, the Distributor may use a sampling procedure that is representative of the products.
- 12.12 The Distributor is obliged to keep a written record of
- the name and address of each Customer to whom the Distributor has sold Software, as well as the model, serial or batch numbers and delivery dates;
 - all service and maintenance work carried out by the Distributor on all medical devices, referring to the model and serial numbers, including the date of repair and the fault rectified;
 - all Customer complaints relating to the medical devices, which contain information about incidents or potential incidents involving the misuse or repeated misuse of medical devices by users.
- 12.13 At the request of NK and upon the expiration or termination of this undertaking—if and to the extent required for post-market surveillance purposes—the DISTRIBUTOR shall provide copies of the records listed above. This provision shall remain in effect even after the termination or expiry of this undertaking.
- 12.14 In the event that a recall or corrective action, including a Field Safety Corrective Action (FSCA), for Software (collectively referred to as a "Recall") is reported to the relevant regulatory authorities, the Parties shall cooperate in connection with the Recall. As a general rule, NK shall carry out the Recall and modify the Software.
- 12.15 Upon request by the relevant authority, the Distributor shall provide such authority with all information and documentation available to it that is necessary to demonstrate the conformity of the product in question. The Distributor shall be deemed to have complied with this obligation if they provides NK or NK's authorised representative for the product in question with the necessary information. Upon request

by the relevant authority, the Distributor shall provide samples of the product in question free of charge or, if this is not possible, grant access to the product. NK shall reimburse the Distributor for the necessary Software and/or expenses incurred in this regard.

13. Confidentiality, data protection

- 13.1 If no separate confidentiality agreement has been concluded between the Parties, they shall nevertheless maintain strict confidentiality regarding all confidential information that comes to their knowledge in the course of their business relationship, in particular trade or business secrets.
- 13.2 The Parties are obliged to keep secret all confidential information, in particular:
- not to pass on or disclose confidential information to third parties;
 - not to use or exploit confidential information for any purpose other than those contractually agreed upon;
 - not to duplicate, copy or reproduce confidential information; or
 - not to reverse-engineer, decompile or otherwise analyse confidential information, unless this is necessary in a specific case for the performance of the contract; and
 - to implement appropriate technical and organisational measures to protect confidential information against unauthorised access, loss, destruction or disclosure.
- 13.3 Disclosure of confidential information is only permitted to the extent necessary for the fulfilment of the agreement (need-to-know principle). In cases of doubt, the Parties shall, prior to disclosing any information to third parties, seek guidance from the other party as to whether such information is to be considered confidential. The Parties shall only grant access to confidential information to employees or representatives who are bound by professional secrecy or who have previously been subject to confidentiality obligations consistent with those set forth in these GTC, which also oblige them to maintain confidentiality to the extent legally permissible under labour law, even after their departure from the company.
- 13.4 The following confidential information is exempt from these obligations:
- information that was demonstrably already known to the recipient at the time of conclusion of the Licence Agreement or subsequently becomes known to the recipient from a third party without violating any confidentiality agreement, statutory provisions or governmental regulations;
 - information that is publicly known at the time of conclusion of the Licence Agreement or subsequently becomes publicly known, provided this is not due to a breach of these GTC; or
 - information that must be disclosed due to legal obligations or by order of a court or authority. In such cases, the recipient obliged to disclose information shall notify the other party in advance, to the extent permissible and possible, and give them the opportunity to take action against the disclosure.
- 13.5 Both Parties shall comply with all applicable legal data protection requirements relating to the processing of personal data in connection with the fulfilment of this agreement.

14. Governing law, jurisdiction

- 14.1 The law of the country where NK is headquartered shall apply, to the exclusion of the the UN Convention on Contracts for the International Sale of Goods.

- 14.2 The sole place of jurisdiction for all disputes arising from the contractual relationship between NK and the Customer, including international disputes, shall be the court with jurisdiction over NK's registered office. This agreement on the place of jurisdiction applies only if the Customer is a merchant, a legal entity under public law or a special fund under public law. However, NK is also entitled to bring legal action against the Customer at the place of fulfilment or at the Customer's general place of jurisdiction.

15. Final provisions

- 15.1 The place of fulfilment for all contractual services provided by NK is NK's registered office, unless otherwise expressly agreed.
- 15.2 Any transfer of contractual rights or obligations by the Customer requires the prior written consent of NK to be deemed valid. If the Customer assigns their claim against NK without NK's consent, the assignment shall nevertheless be effective. In this case, NK may, at its own discretion, make payment to either to the Customer or to the third party to discharge their obligations.
- 15.3 The Customer is only entitled to set off claims if their counterclaim has been legally established, is undisputed, or has been acknowledged in writing by NK.
- 15.4 The Customer is only entitled to exercise a right of retention if their counterclaim is based on the same contractual relationship and has been legally established, is undisputed, or has been acknowledged in writing by NK.
- 15.5 Amendments or supplements to the Licence Agreement must be made in electronic form to be deemed valid, unless they constitute individual agreements. Individual agreements take precedence over these GTC. This also applies to the amendment or cancellation of this form requirement itself.
- 15.6 Unless otherwise stipulated in the Licence Agreement or these GTC, contractual notices and declarations must be made in writing.
- 15.7 Should any provision of these GTC be or become void, invalid or unenforceable for any legal reason, this shall not affect the validity of the remaining provisions. The Parties shall replace the void, invalid or unenforceable provision with a valid provision that comes closest to the economic purpose of the original provision.