

General Terms and Conditions

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A. General Provisions

1. Scope of application

1.1 The following general terms and conditions (referred to hereinafter as "GTC") shall apply to all deliveries to and services of eyefactive GmbH (referred to hereinafter as „eyefactive“) performed for a customer (referred to hereinafter as "customer").

1.2 Any terms and conditions of the customer deviating from or supplementing these general terms and conditions shall be invalid.

1.3 These GTC shall exclusively apply to companies within the meaning of § 14 BGB [German Civil Code].

1.4 The general terms and condition are divided into the following sections:

General rules

Specific provisions for software purchase

Specific provisions for hardware purchase

Specific provisions for software leasing

Specific provisions for hardware leasing

Specific provisions for software development

Specific provisions for installation work

Specific provisions for additional services

The general rules laid down in A. are valid for all services. Additionally, the service-specific provisions laid down in B. to H shall apply.

2. Conclusion of contract

A contract shall be deemed concluded only, if the customer has signed eyefactive's offer in writing and if eyefactive has received the offer signed by the customer, or eyefactive and the customer have entered into a written contract, or the customer has placed a written order and eyefactive thereupon delivers the ordered goods.

3. Scope of service

3.1 The scope of service is subject to the specific contract between eyefactive and the customer as well as these GTC. In the event of inconsistencies, the provisions laid down in the contract shall take precedence over those in the GTC.

3.2 Trial runs, the installation of hardware and software, its care and maintenance as well as introduction and training activities only constitute a part of eyefactive's contractual obligations, if expressly agreed upon with the customer in written form.

4. Prices and terms of payment

4.1 All prices given by eyefactive are net prices to which the current legal value added tax (VAT) is to be added and paid. The prices apply ex works. Costs for transport, packaging, insurance, taxes and custom duties are on the customer.

4.2 Unless not otherwise agreed upon in writing between eyefactive and the customer invoices shall be due and payable within 10 business days after date of issue without any deduction. The payment is deemed to be made on time when eyefactive can definitely and finally dispose of the amount.

5. Offsetting, rights of retention

5.1 The customer shall only be entitled to offset or retain a payment against claims that are uncontested or subject of a binding decision in court.

5.2 The customer shall only have a right of retention because of undisputed or legally binding claims which arise from the same contractual relationship.

6. Delivery and transfer of risk

6.1 Unless otherwise stated in the contract, delivery is deemed to be "ex works" (EXW, Incoterms 2000), that is the head office of eyefactive.

6.2 Costs for the shipping of the goods are on the customer and delivery is made – insofar no other instructions are given – to the customer's address stated in the contract. Upon request eyefactive shall insure the goods against theft, breakage, damage in transit, fire and water damage and other insurable risks in the customer's name and at the customer's expense. eyefactive does not guarantee the cheapest and/or fastest delivery.

6.3 The risk of accidental loss and the accidental deterioration of the goods shall pass to the customer upon the surrender, in case of the purchase to destination upon the delivery of the goods to the forwarding agent, the carrier, or any other person or institution charged with the execution of the shipment. The risk transfer is also the same, if the customer delays approval.

6.4 Partial delivery shall be permissible insofar as reasonable for the customer.

7. Delivery deadlines, Shipping delays, force majeure

7.1 Performance dates shall be only binding, if they have been confirmed by eyefactive in writing or by email. The agreement of a fixed performance date is subject to eyefactive receiving the services and goods from its sub-contractors in time and in accordance to contracts.

7.2 Should eyefactive be obstructed from fulfilling its obligations due to unforeseen, extraordinary events, which eyefactive was unable to avert despite exercising reasonable care, e.g. operational failure, official interferences, power supply problems, strike or lockout, whether these events arise in the sphere of eyefactive or in the sphere of their suppliers, the delivery date shall be extended in a reasonable measure, if the delivery or service has not become impossible. If due to above mentioned events the delivery or service has become impossible, eyefactive shall be freed of its performance obligations. The customer shall not perform any compensatory measures.

7.3 Adherence to the agreed performance and delivery dates by eyefactive is based on the customer's adherence to all obligations as laid out in A.10.1 to A.10.2 of these GTC. If these obligations are not fulfilled by the customer in time, the performance and delivery dates shall be extended in a reasonable measure. This shall not be valid, if the delay is attributable to eyefactive.

8. Retention of title

8.1 The items delivered by eyefactive (hereinafter referred to as "reserved goods") remain the sole property of eyefactive until complete payment of the agreed remuneration by the customer.

8.2 The customer is obliged to treat the reserved goods with great care. Furthermore, the customer shall inform eyefactive immediately of any seizure of the goods by any third party e.g. in the event of an attachment. The same applies to any possible damage or destruction as well as the change of ownership of the reserved goods. Where the customer fails to perform these obligations, it shall bear liability for the losses or damages incurred as a result.

9. Limitation of liability

9.1 In the event of an insignificant negligent violation of minor contractual obligations, eyefactive shall not be held liable. In the event of the insignificant negligent violation of an essential contractual obligation, eyefactive's liability shall be limited to the contractually typical damage, which is foreseeable according to the

type of goods and services. Essential contractual obligations are such obligations, whose fulfilment makes the due performance of the contract possible in the first place and the observance of which the customer regularly trusts and is entitled to expect.

9.2 The limitations of liability do not affect the customer's claims arising from product liability. Furthermore, the limitations of liability shall not apply in the event of health or bodily injury, or the loss of life attributable to eyefactive or damages arising due to the absence of a guaranteed feature or other nonfulfillment of a guarantee.

9.3 The above-mentioned limitations of liability apply to all claims for damage irrespective of their legal reason, especially also to the liability arising from precontractual, collateral contractual and extracontractual claims.

9.4 The liability for data loss shall be limited to the typical recovery efforts, which would have arisen from backups made by the customer at regularly scheduled intervals in accordance with the risk involved.

9.5 Insofar the liability of eyefactive is excluded or limited, this shall also apply to its staff, other employees and agents.

10. Cooperation, provision of data and information, data backups

10.1 The customer shall inform eyefactive about the customer's technical and functional requirements for the software or hardware, provide eyefactive with the necessary documents, data and information in time and assist eyefactive in clarifying open points.

10.2 The customer shall name eyefactive an employee, who can provide the information necessary for the execution of the contract and has the authority to take or delegate the requisite decisions.

10.3 The customer shall make data backups in regularly scheduled intervals in accordance with the risk involved.

11. Secrecy, data protection

11.1 The customer shall undertake to keep all information about eyefactive which have been received within the framework of a cooperation strictly confidential without any time limit. This shall apply apart from the operational organizational processes especially to all information which can be classified as confidential or clearly is considered a business or trade secret.

11.2 Exempt from the obligation of secrecy shall be information which at the time of its provision by eyefactive is already in the possession of the customer, is common knowledge or has been obtained legally from third parties. In the event of the customer invoking such an exception, the burden of proving such an exception is on the customer.

11.3 eyefactive and the customer oblige themselves to adhere to the legal regulations of privacy protection, in particular the Tele Media Act and the Federal Data Protection Act.

12. Transfer of rights and obligations to third parties

12.1 eyefactive is entitled to hire subcontractors to fulfill the contractual performances owed to the customer. eyefactive's overall responsibility for the fulfillment of the owed, contractual performances towards the customer shall hereby not be affected.

12.2 The customer shall transfer rights and obligations arising from contracts with eyefactive to a third party only after prior consent of eyefactive.

13. Using the customer's name as reference

The customer grants eyefactive the right to use the customer's company and company logo on eyefactive's website, advertising material, product presentations and trade fairs for personal promotional purposes.

14. Place of fulfillment + jurisdiction and governing law

14.1 Place of fulfillment for all of eyefactive's performances is eyefactive's registered office.

14.2 To merchants, legal persons under public law and public law special funds Hamburg shall be the sole place of jurisdiction.

14.3 Exclusively German law shall apply. The provisions of the UN convention on contracts for the international sale of goods (CISG) shall not be applicable.

14.4 Should any term of these GTC be or become invalid, this shall not affect the validity of the remaining terms.

B. Specific provisions for the delivery of standard software (software purchase)

1. Contractual object

1.1 The condition of the software as well as the environment for which it was released shall be as described in the product description and additionally in the electronic user manual, unless otherwise agreed.

1.2 The software shall be supplied -according to the arrangement- on a data carrier or be provided as download.

2. Concession of rights of use, scope of use

2.1 After complete remuneration of the purchase price eyefactive grants the customer the right to use the stipulated computer program including the electronic user manual (hereinafter jointly referred to as "software") in the scope as laid down in the contract. If the scope has not been defined more specifically in the contract, the customer acquires a basic, non-exclusive, time limited right of use. This entitles the customer solely to the use of the software on one computer and one display connected to it. The customer is not permitted the use of the software on a server or a virtual server.

2.2 Any use of the software shall only be allowed in object code. The customer is not granted any rights over the source code of the software or any program libraries related to it, unless explicitly agreed upon in writing. The source code will only be supplied, if expressly agreed between the parties in writing.

2.3 The customer shall not rent, lend and/or sub-licence the software, neither in whole nor in parts, and/or make it available to third parties.

2.4 The customer may make a copy for backup purposes at its own expense. Insofar the originals are marked with a copyright notice, the customer shall also add these to the copies.

2.5 Unless explicitly permitted according to copyright, the software supplied by eyefactive shall not be reverse engineered, decompiled or disassembled.

2.6 Copyright notices, serial numbers as well as other features that serve program identification must not be removed or changed. The same applies to the suppression of such features on the screen.

2.7 The customer may transfer the right of use for the software to other users, if the customer waives the use of the software. In the event of a transfer the customer must hand over all copies of the software (including all older versions), the electronic manual and all related documents to the purchaser and delete all copies of the software which are in the customer's possession.

3. Warranty for defects

3.1 The customer shall only make claims for defects, if, and to the extent to which, the defects thus reported can be reproduced or demonstrated on the basis of machine-generated records.

The customer must provide eyefactive with a complete, immediate and sufficiently precise error report, including suitable data and protocols for error analysis.

3.2 If the product delivered by eyefactive is defective and the notice of a defect is received in due time and orderly, the customer's claims shall be limited to supplementary performance first of all. In the event of a supplementary performance eyefactive shall be granted the decision between the rectification of defects and replacement.

3.3 If the rectification of defects fails, the customer may generally at its discretion demand a lowering of the fee (reduction) or the termination of the contract (withdrawal). However, in the event of only minor breaches of contract, in particular of only minor defects, the customer shall hold no right of withdrawal. The rectification of defects is deemed failed at the second failed attempt, unless adequate rectifications are made necessary and are acceptable to the customer on the strength of the contract. The statutory provisions on the dispensability of setting deadlines remain unaffected.

3.4 The claims for defects - with the exception of claims for compensation - are subject to a limitation period of 12 months. For claims of compensation A.9. in these GTC shall apply.

3.5 If the customer has altered the delivered product, claims for defects shall only exist, if the customer can prove the defect has not been caused by that alteration.

3.6 eyefactive makes no guarantee of any type, unless such a guarantee is explicitly agreed upon between eyefactive and the customer in writing, using the term "guarantee".

C. Specific provisions for the purchase of hardware

1. Contractual object

eyefactive sells the specified hardware stated in the contract to the customer. eyefactive shall pass over the ownership of the hardware specified in the contract, conditionally upon the remuneration of the fee specified in the contract.

2. Properties of the hardware

eyefactive delivers the hardware specified in the contract with a written documentation consisting of the technical specifications and a user manual in electronic format.

3. Rights of use

Insofar the hardware specified in the contract contains system-related software, without which the hardware is not operational, the regulations from B. 2.1. to B.2.7 in these GTC shall apply respectively.

4. Disposal of hardware

The customer shall dispose of the hardware at its own expense as soon as it has become redundant.

5. Guarantee

The regulations from B.3.1 to B.3.6 in these GTC shall apply.

D. Specific provisions for the renting of software

1. Contractual object

1.1 The software including the electronic manual (hereinafter collectively referred to as "software") is supplied to the customer for the use specified in the rental contract. Software updates if necessary are provided solely upon a separate agreement in writing.

1.2 The customer receives the software in object code, ready for installation on a data carrier or by download.

2. Delivery, installation, consulting

2.1 eyefactive delivers the software to the address stated by the customer. The delivery date is subject to the rental contract.

2.2 The customer itself shall install the software, unless otherwise agreed between the parties.

2.3 eyefactive is only liable to exercise consulting services, insofar explicitly agreed upon in writing. Where applicable the customer shall remunerate consulting services performed by eyefactive at appropriate and normal market terms.

3. Rent

The amount and maturity of the rent are subject to the rental contract closed between the parties.

4. Concession of right of use, scope of use

4.1 eyefactive entitles the customer to the use of the computer program including the electronic manual (hereinafter collectively referred to as "software") according to the conditions laid down in the rental contract. If the scope of use is not stipulated in the rental contract, a basic, non-exclusive right of use for the duration of the rental contract shall apply. This right of use entitles the customer solely to the use of the software on one computer and one display connected to it. The customer is not permitted the use of the software on a server or a virtual server.

4.2 The regulations from B. 2.2. to B.2.7 in these GTC shall apply accordingly.

5. The customer's report and custody obligations

5.1. The customer must inform eyefactive of any defects of the software immediately. The customer shall observe within the scope of what is reasonable all instructions for the problem analysis provided by eyefactive and forward all available information for the elimination of the defect to eyefactive.

5.2 The customer shall take suitable precautions to protect the software from the unauthorized access by third parties. The customer shall store the original data carrier including all contractual copies in a safe place.

6. The customer's rights in the event of defects

6.1 The customer must inform eyefactive about any defects, malfunctions or damages immediately.

6.2 eyefactive is obliged to rectify any defects of the software supplied.

6.3 The rectification of defects shall be conducted at eyefactive's own discretion free of charge either by rectification of defects or replacement.

7. Contract term

The duration of the rental agreement is subject to the rental contract closed between eyefactive and the customer.

8. Return

8.1 The customer must return the software on the original data carrier to eyefactive upon the termination of the contract. Where applicable the customer shall destruct all copies of the software supplied by eyefactive completely and definitely.

8.2 eyefactive reserves the right to insist on a destruction instead of the return of the software.

8.3 Any use of the software after the termination of the rental contract is prohibited.

E. Specific provisions for the renting of hardware

1. Contractual object

1.1 eyefactive is leasing the hardware and operating system software specified in the rental contract stipulated with the customer (hereinafter referred to as "rental contract") to the customer for the duration specified in the rental contract. The customer receives a manual for the hardware delivered as well as for the operating system software in electronic format respectively. The hardware and operating system software specified in sentence 1 are

leased as a coherent system, which hereinafter is referred to as **“rental object”**.

1.2 The rental object is subject to the contractual use as laid down in the rental contract.

1.3 eyefactive shall only provide the application software against separate remuneration and upon a corresponding written agreement.

2. Delivery, activation of the technical operability

2.1 eyefactive delivers the rental object specified in the rental contract to the installation site specified in the rental contract. The costs for the delivery shall be on the customer. The delivery date is subject to the rental contract.

2.2 The customer shall take the setting up of the rental object and ensure the technical operability, unless otherwise agreed upon between the parties in writing.

2.3 The customer shall provide the spatial and technical conditions necessary for the setting up and the technical operability of the rental object as advised by eyefactive in good time prior to the delivery of the rental object.

2.4 Any consulting services performed by eyefactive on demand of the customer which exceed the spatial and technical conditions in E.2.3. of these GTC shall be remunerated separately at adequate and customary market conditions.

3. Rent

3.1 The amount and maturity of the rent are subject to the rental contract closed between the parties

3.2 The rent comprises remuneration for the handover of the rental object as well as its maintenance and repair.

3.3 Any modifications and/or changes of the rental object, if requested by the customer shall be remunerated separately, unless they are essential for the maintenance or repair of the rental object or are ensuring the contractual use.

4. Use of the rental object, transfer of use to third parties

4.1. The hand-over of the rental object shall happen solely for the customer's exclusive use. The rental object shall only be used for the purposes specified in the rental contract.

4.2 The customer is not entitled to transfer the use of the rental object including the software supplied to a third party, or in particular to lease it or to lend it, unless otherwise contractually stipulated in writing.

5. Use of Software

5.1 eyefactive grants the customer the right to use the hardware including the leased operating system software and electronic manual (hereinafter collectively referred to as **“software”**) in the scope as laid out in the rental contract. If the scope of use is not specified in the rental contract, it shall be a basic, non-exclusive right of use for the period of the duration of the rental contract. This entitles the customer only to the use of the software on one computer connected to one display. The customer shall not be permitted the use of the software on a server or virtual server.

5.2 The regulations from B. 2.2. to B.2.7 in these GTC shall apply accordingly.

6. Custodial duties of the customer

6.1 The customer is liable to take good care of the rental object and prevent it from damage. The customer shall ensure the proper use and appropriate operation of the rental object by sufficiently qualified personnel.

6.2 The customer shall make all reasonable efforts to follow eyefactive's instructions for maintenance, care and use, in particular

the instructions in the user manual supplied in electronic format. Markings on the rental object, particularly signs, labels and numbers must not be removed, altered or disguised.

7. Changes to the rental object; change of the set-up location

7.1 Changes and extensions to the rental object performed by the customer require eyefactive's consent in advance. This above all shall apply to extensions or installations as well as connecting the rental object to other devices, computer systems or networks.

7.2 The setting up of the rental object in a set-up location different to the location specified in the rental contract require eyefactive's prior consent. eyefactive shall only refuse to grant its consent for important reasons, which render an implementation unreasonable for eyefactive. eyefactive may insist the transport and reinstallation to be performed by qualified experts. Any expenses and subsequent costs due to a change of location are on the customer.

8. Warranty to defects

8.1 The customer shall notify eyefactive immediately of any defects, malfunctions or damage.

8.2. The elimination of defects shall be performed by rectification or repair of the rental object free of charge. eyefactive shall be granted an adequate period of time for the execution. By the customer's approval eyefactive may replace the rental object or single components for purposes of the elimination of defects. The customer shall not unreasonably refuse to grant its consent to this.

9. Contract term

The duration of the rental period is subject to the rental contract between eyefactive and the customer.

10. Return

10.1 Upon termination of the contractual relationship the customer must return the rental object in proper condition to eyefactive. The obligation to return comprises also the software supplied on original data carriers, including the electronic manual and documentation respectively. Where applicable all copies of the supplied software by eyefactive must be destructed completely and definitively.

10.2 Upon the return of the rental object a protocol shall be drawn up, in which possible damages and defects are to be recorded. The costs for the rectification of damages and defects attributable to the customer shall be on the customer.

10.3 Unless otherwise agreed upon in the rental contract, the costs for the dismantling, packaging and return transport of the rental object are on the customer. The lessee shall bear the risk of loss and deterioration of the rental object for the return transport.

F. Specific provisions for the development of software

1. Contractual object

1.1 eyefactive develops software for the customer in accordance with the performance specifications laid out in the contract. The performance specification is based on the customer's professional and functional requirements obtained from the customer. The performance specification shall conclusively represent the owed quality and characteristics of the software.

1.2 The software shall be supplied including a manual in electronic format.

1.3 eyefactive shall perform consulting and training services as well as the integration/installation of the developed software on a hardware system in possession of the customer solely on the basis of an expressed agreement in writing.

1.4 The copy of the software to be supplied to the customer by eyefactive shall only contain the object code.

1.5 The delivery or the creation of an additional documentation other than the electronic user manual requires a separate agreement in writing.

2. Rights of use

2.1 eyefactive grants the customer the right to use the contractually specified computer program including the electronic user manual (hereinafter collectively referred to as "software") as specified in the contract. If the scope of use is not specified in the contract, it shall be a basic, non-exclusive right of use of a limited time period. This entitles the customer to the use on only one computer connected to only one display. The customer is not permitted the use of the software on a server or virtual server.

2.2 The regulations from B. 2.2. to B.2.7 in these GTC shall apply accordingly.

3. Customer's requests for subsequent changes

3.1 customer's requests for changes- and/or modifications after the order placement or acceptance shall be reviewed by eyefactive as to whether and to which conditions they may be implemented. During the review eyefactive's performance and delivery obligations shall be suspended. If the change request requires a comprehensive review, eyefactive may bill the customer for the costs incurred by the review.

3.2 eyefactive shall notify the customer immediately of its approval or rejection upon the completion of the review. However, subsequent changes or modifications and also expressly the additional remuneration and the extension of the initial performance and delivery deadlines between eyefactive and the customer, shall only be considered contractually stipulated, if an agreement in writing is rendered.

4. Acceptance

4.1 The customer is obliged to accept the software in the form of a written acceptance protocol immediately upon eyefactive's notification of completion.

4.2. If the customer does not accept the performance within 10 working days after eyefactive's notification of completion and if no defects are being reported within this period, the performance shall be deemed contractually recognized and accepted. The same shall apply, if the customer uses the software in a productive and meaningful manner prior to the issue of a written acceptance confirmation.

5. Warranty

The regulations from B.3.1 to B.3.6 in these GTC shall apply accordingly.

G. Specific provisions for installation work

1. Contractual object

1.1 eyefactive performs for the customer the installation as laid out in the relevant contract. The installation comprises neither the activation nor a trial operation. Nevertheless, eyefactive is willing to perform the activation or a trial operation at appropriate and customary market conditions upon separate assignment in writing.

1.2 If a trial operation has been expressly stipulated in writing, it shall be performed after the installation. The trial operation is considered successful, if the services performed by eyefactive lead to an essentially defect-free operation for the agreed period of time. If the period for the trial operation has not been expressly stipulated in the contract, a period of eight hours shall be considered agreed.

2. Prerequisites for an installation

The prerequisite for an installation on time is the customer providing or having retained the agreed environment for the installation. Any changes must be reported to eyefactive

immediately and punctual prior to the beginning of the installation.

3. The customer's requests for subsequent changes
The regulations from F.3.1 to F.3.2 in these GTC shall apply accordingly.

4. Acceptance of the installation

4.1 The customer is liable to accept the installation service in the form of a written acceptance protocol immediately after eyefactive has reported the installation to be completed.

4.2 If the customer does not accept the service within 10 working days after eyefactive's notification of the completion and if no defects are being reported within this period, the performance shall be deemed contractually recognized and accepted.

H. Specific provisions for additional services

1. Contractual object

eyefactive executes additional services e.g. consulting services and training for the customer upon expressed stipulation in writing between eyefactive and the customer.

2. Remuneration

Unless otherwise stipulated between the parties in writing, additional services shall be remunerated by the customer at appropriate and customary market conditions.