

General terms and conditions of CogniMed GmbH (non-binding translation of German original)

§ 1 Scope

(1) These Terms and conditions of commercial sale (the "Terms and Conditions") apply to and form an integral part of all quotations and offers (hereinafter both referred to as "Offer") and any agreements for the supply of goods between any Buyer and CogniMed (hereinafter "Agreement"). These Terms and Conditions shall also apply to all future business relations between CogniMed and the Buyer even if not agreed to expressly by the Buyer. Any other terms and conditions set forth in any document issued by the Buyer either before or after the issuance of any communication by CogniMed being subject to these Terms and Conditions are hereby expressly rejected and disregarded by CogniMed, and any such document shall be wholly inapplicable to any sale by CogniMed and purchase by the Buyer of any goods and/or services (hereinafter "Products"), including whenever CogniMed shall not have explicitly rejected such other terms and conditions. No Offer, confirmation or Agreement for a sale by CogniMed and purchase by the Buyer of any Products constitutes an acceptance by CogniMed of any other terms and conditions, even where CogniMed shall have accepted and carried out an order for goods in the knowledge of other terms and conditions relied upon by the buyer, and even where CogniMed shall not have rejected such conflicting terms and conditions.

(2) CogniMed shall only enter into an Agreement on the basis of the Terms and Conditions herein stipulated and otherwise subject to the provisions of German law. All agreements between the Buyer and CogniMed shall be made in writing.

(3) These Terms and Conditions only apply to commercial enterprises. For the purposes of these Terms and Conditions "commercial enterprise" means any natural person, legal person or partnerships that is capable of holding rights and that enters into business relations with CogniMed in a commercial or self-employed capacity.

§ 2 Offer, Confirmation and Agreement

(1) CogniMed may accept any Buyer's orders that it may consider to constitute a valid Offer and shall be entitled to confirm its acceptance of such Offer either by sending an order confirmation or by sending the ordered Product, within fourteen (14) days from the date of the order.

(2) Offers made by CogniMed shall be deemed to be an invitation to treat and are non-binding and subject to confirmation unless CogniMed specifies otherwise in writing.

(3) CogniMed reserves property-, copy- and any other industrial property rights concerning illustrations, calculations, drawings or other documents. The Buyer may only pass these on to third parties with the written consent of CogniMed, irrespective of whether they were marked as "confidential" or not.

(4) CogniMed reserves the right to make at any time Product and/or production changes. In such event CogniMed represents that said changes shall not negatively affect form, fit or function of the Products and their performance characteristics.

(5) Goods delivered for trial or test purposes may be used by Buyer only according to terms agreed with CogniMed for that purpose. Buyer must handle the goods delivered for trial or test purposes well and shall be duty bound to return the goods on demand. Buyer commits himself not to deactivate or circumvent any constraints or restrictions applied to the test or trial goods.

§ 3 Performance and Time of Delivery

(1) Delivery dates communicated or acknowledged by CogniMed are not binding, unless explicitly agreed to otherwise. A period of time acknowledged by CogniMed for delivery within such period of time shall commence only once all technical queries shall have been resolved. Likewise, the Buyer shall fulfill all his obligations duly and without delay.

(2) In the event of an agreement stipulating fixed term delivery as a principle obligation, in terms of section 286 paragraph 2 No. 4 of the German Civil Code or section 376 of the German Commercial Code, CogniMed's liability shall not exceed the liability stipulated by statutory norms. The same limitation of liability shall apply whenever the Buyer should be entitled to claim that his interest in due performance has been frustrated as a result of any late delivery for which CogniMed is to be held responsible. In such instances, the liability of CogniMed shall be limited to those damages that could be typically expected to occur, without prejudice to those instances where the late delivery by CogniMed is the result of a deliberate and intentional breach of contract by CogniMed which shall include any fault of their agents or vicarious agents.

(3) CogniMed shall also be liable to the extent stipulated by statutory norms, generally in the event of late delivery resulting from a grossly negligent or intentional breach of contract by CogniMed which shall include any fault of their agents or vicarious agents. The liability of CogniMed shall be limited to those damages that could be typically expected to occur, without prejudice to those instances where the delay in performance by CogniMed is the result of a deliberate and intentional breach of contract by CogniMed.

(4) Whenever any late delivery is the result of a breach of an essential contractual obligation, for which CogniMed is found to be at fault, which shall include any fault of their agents or vicarious agents, including the Company shall be liable as stipulated by the relevant statutory norms, provided that such liability shall be limited to those damages that could be typically expected to occur.

(5) Any other Buyer's claims for damages based on late delivery shall be excluded, without prejudice to those further statutory claims, other than claims for damages, that a Buyer may be entitled to pursue in the event of late delivery for which the Company is found to be at fault.

(6) CogniMed shall not be liable for late delivery, whenever a late delivery has been occasioned by Force Majeure as defined below or by law. In case of such a non-attributable failure, the performance of the relevant part(s) of the Agreement shall be suspended for the period that such non-attributable failure continues, without CogniMed being responsible or liable to the Buyer for any damage resulting therefrom. The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond CogniMed's reasonable control - whether or not foreseeable at the time of the Offer, Confirmation or Agreement - as a result of which CogniMed cannot reasonably be required to execute its obligations. Such circumstances or occurrences include but are not limited to: acts of God, war, civil war, insurrections, strikes, fires, floods, earthquakes, labour disputes, epidemics, governmental regulations and/or similar acts, freight embargoes, non-availability of any permits, licenses and/or authorisations required, defaults or delays of suppliers or subcontractors and/or inability or impracticability to secure transportation, facilities, fuel, energy, labour, materials or components. If fulfillment of the contract becomes unreasonable for a party as a whole or in parts, it shall be entitled to cancel all or any part of the Agreement without any liability of CogniMed towards the Buyer. CogniMed shall inform the Buyer as soon as possible about the unavailability of the delivery and the estimated duration of it.

(7) CogniMed reserves the right to make part-deliveries and part performance at any time, in so far as the Buyer can be reasonably expected to accept such part-deliveries or part performance.

(8) If the Buyer fails to accept delivery, CogniMed may claim damages and any additional expenses. The same applies, if the Buyer neglects its duties to cooperate in respect of deliveries. Whenever the Buyer fails to accept delivery, or accepts delivery late, liability for the goods, risks of accidental impairment and loss, shall be deemed to have passed to the Buyer at the moment when acceptance was due.

(9) If the Products are delivered by road by CogniMed or on behalf of CogniMed, the Buyer shall be responsible to ensure appropriate access and suitable unloading facilities at the Buyer's expense. The Buyer shall also ensure that a sufficiently large workforce of the Buyer shall be available to unload the Products.

(10) Unless specified by the Buyer, the mode of transportation of the Products shall be decided by CogniMed. Whenever commissioning has been stipulated, it shall take place without delay, latest within 21 days after CogniMed shall have pronounced the equipment ready for commissioning.

§ 4 Payment Terms

(1) Prices in any Offer, Confirmation or Agreement are expressed in Euros. Prices are based on delivery Ex-Works excluding packaging, unless agreed otherwise in writing, and shall exclude taxes, duties or similar levies payable (hereinafter "Charges") on the Products. CogniMed shall add taxes, duties and similar levies to the sales price on the day of issuing the invoice where CogniMed is required by law to pay or collect these taxes, duties and similar levies.

(2) No discount is allowed for early payment unless agreed to in writing by CogniMed. Net payment is due immediately at the date of invoice unless agreed otherwise between CogniMed and the Buyer in writing. Payments are only considered to have taken place once CogniMed is in receipt and free to dispose of the sum. In the event that payment is made by way of cheque, the payment shall only be considered to have taken place when the cheque has been cashed.

(3) If the Buyer is in arrears with a payment, CogniMed shall be entitled to claim a reminder fee in the amount of 3 Euro in respect of each notice demanding payment, without prejudice to the rights of the Buyer to lead evidence establishing that CogniMed suffered damages due to the arrears amounting to less than the aforementioned reminder fee. The statutory provisions governing arrears of payment shall determine all remaining claims and rights.

(4) In the event that the Buyer cancels or otherwise fails to fulfill its contractual obligations specified in the agreement, CogniMed may, without prejudice to its further rights and remedies available to it, demand a penalty of 15 per cent of the sum payable in terms of the order, provided however that the amount payable shall in all cases be at least 200,000 Euro, in consideration for damages suffered and profits frustrated. The Buyer shall be entitled to lead evidence establishing that CogniMed suffered damages actually amounting to a lesser sum, or no damages at all.

(5) The Buyer shall not offset, withhold or reduce any payment(s) due by the Buyer to CogniMed, except where the Buyer has undisputed claims, or claims admitted by CogniMed, or claims that have been awarded by final and unappealable judgment is possible. The Buyer shall only be entitled to exercise a retaining lien where his claim within one and the same contractual relationship.

§ 5 Passing of Risk - Shipment/Packaging

(1) Loading and Shipment take place uninsured and at the Buyer's risk. CogniMed shall consider the Buyer's wishes and interests regarding the mode and type sequence of despatch. Any resulting additional charges - even when freight paid was stipulated - shall be borne by the Buyer.

(2) CogniMed shall not accept returns of transport and other packaging material (including as per the stipulations contained in any packaging ordinance or regulations), except pallets. The Buyer shall dispose of all packaging at its own expense.

(3) Whenever the delivery of the Products is delayed because of an act or omission of the Buyer, CogniMed shall store the Products at the Buyer's expense and at the risk of the Buyer. Our notification that the Products are ready for shipment shall, in this instance, be deemed to constitute shipment.

(4) At the Buyer's request and cost, CogniMed shall procure transport insurance for the delivery.

§ 6 Condition of the Products

(1) The quality and realisation of Products shall be as specified by agreement in writing. If no particular specifications have been agreed to in writing, CogniMed's standard specifications for the Product shall apply. Any specifications shall be considered to be functional specification only and shall not be taken as any kind of guarantee of appearance and workmanship or durability.

(2) It is the responsibility of the Buyer to read and to become familiar with the safety instructions and warnings and to inform and instruct all users accordingly. The same shall apply to all non-binding and free trials, experimental Products, beta testing Products and samples of newly developed Products.

(3) Installation shall be carried out by CogniMed only on the basis of a separate agreement and with the understanding that it shall always be the Buyer's responsibility to provide all necessary pre-conditions for installation.

§ 7 Limited Warranty / Disclaimer

(1) Claims for defects shall only be recognized where the Buyer has duly complied with his duties to examine the goods and to notify CogniMed of any defects as provided for in section 377 German Commercial Code.

(2) In so far as a defect exists for which CogniMed carries the liability, the Company shall be obliged to remedy such defect, provided that the Buyer's rights to rescind the contract or to reduce the purchase price payable are waived, except in those instances where CogniMed may be entitled, in terms of the statutory provisions, to refuse to remedy the defect. The Buyer shall concede a reasonable period of time for the remedying of defects. CogniMed shall be entitled to elect whether to replace or repair a defective product. In all instances of repair of a defective product, CogniMed shall bear the cost of repair but excluding transportation, travelling time and labour. If the remedying of defects is unsuccessful, the Buyer or the Buyer's agent may rescind the Agreement or accordingly reduce the consideration payable. Die remedying of defects may be considered to have relied upon two consecutive but unsuccessful repair attempts, except where further repair attempts appear appropriate and can be reasonably considered to be acceptable by the Buyer. The Buyer shall be entitled to claim damages as provided for hereinafter only once the attempts to remedy a defect can be considered to have failed, without prejudice to the provisions made hereinafter.

(3) Any warranty claims of the Buyer shall prescribe after a period of twelve (12) months from the date of delivery, except where CogniMed shall have disguised a defect, acting in bad faith, in which the statutory provisions shall be applicable, without prejudice to CogniMed's liability in terms of paragraphs 4 and 5 hereinafter.

(4) In accordance with the statutory provisions, CogniMed shall be obliged to accept a return of new Products or a reduction of the purchase price, even where no due notice has been given by the Buyer. If the Buyer's claim is to be considered a final purchaser of consumer products who is entitled to demand the return of the Product or the reduction of the purchase price because of a defect of the Product, or whenever the Buyer is the addressee of such a claim by his client, who in turn sold the Product to a final purchaser of consumer products. This shall not, however, be barred whenever the Buyer failed to fulfill his duties of inspection and notification of defects in terms of section 377 German Commercial Code.

(5) The claims referred to in the foregoing paragraph 4 shall further be barred whenever they are based on advertising representations or other contractual obligations that do not originate from CogniMed, or whenever the Buyer has given the end user additional warranties. Likewise, no claim shall be allowed whenever the Buyer was in fact not under a statutory duty to entertain claims by the end user, or whenever the Buyer did not object to the claims of an end user on those grounds. The same shall apply whenever the Buyer has made warranties exceeding those stipulated by statutory provision.

(6) CogniMed carries full liability in terms of the statutory provisions for damages resulting from injury to the life, body or health caused by intent or gross negligence of CogniMed or its legal representatives or vicarious agents as well as for damages covered by the provisions of the Statute on Product Liabilities. Damages not covered by the terms of the foregoing sentence, which are caused by willful or grossly negligent breaches of contract, or deceit by CogniMed or its legal representatives or vicarious agents, the Company shall be liable in terms of the statutory provisions. However, if in this event, CogniMed or their legal representatives or vicarious agents did not act willfully and with intent, claims shall be limited to those damages that could be typically expected to occur. In so far as a specific warranty was assumed, or particular propriety guaranteed, CogniMed shall be liable in terms of such warranty or guarantee. CogniMed shall, however, assume liability for damages resulting from defects of the Product which are covered by our warranty or guarantees only to the extent that the risk of such damages (other than the damages to the Product itself) occurring falls evidently within the scope of the warranty or guarantees.

(7) CogniMed further accepts liability for damages resulting from negligent conduct, but only to the extent that the negligence concerned the contractual obligations that can be considered to be essential to the contractual relationship, known in German law as "Kardinalpflichten", provided that the actual damages can be related to the contract as typical and foreseeable.

(8) Any and all further liabilities are herewith excluded, irrespective of the possible legal grounds and including liability for tort or claims for compensation for wasted efforts in lieu of performance, notwithstanding CogniMed's liability in terms of the provisions in the foregoing paragraphs nos. 2 to 5 hereof. In so far as liability is thus limited or excluded, this shall apply equally to the personal liability of our employees, workers, collaborators, agents and vicarious agents.

(9) Claims for damages by the Buyers based on defects shall prescribe on year after delivery of the Products, except where CogniMed, their legal representatives or their vicarious agents have been found to have been at

fault for the occurrence of death, bodily injuries, or impairments of health, or whenever CogniMed, their legal representatives or their vicarious agents have acted willfully, or with gross negligence, or where their vicarious agents have acted willfully.

§ 8 Retention of Title

(1) Goods remain the property of CogniMed GmbH until payment has been received in full ("reserved property"), including all receivables from open accounts now or in future. CogniMed shall be entitled to retake possession of reserved property in the event of any breach of contract by the Buyer, as for instance in a case of default on payment, after having given reasonable notice. Whenever CogniMed retakes possession of its reserved property, same shall be deemed to constitute a rescission of contract, entitling CogniMed to freely dispose of the repossessed items of reserved property. CogniMed shall be entitled to deduct an appropriate amount from the proceeds of such disposal, in order to cover its expenses, and thereafter to set of the balance against any amounts owing by the Buyer.

(2) The Buyer shall treat the reserved property with care and shall insure the items at his cost against risks of fire, water damage, and theft so as to ensure sufficient cover of their new value. All maintenance and inspections that may become necessary shall be carried out in good time by the Buyer at his cost.

(3) The Buyer may dispose of or sell the reserved property in the ordinary course of his business, on condition that he shall not be in arrears with payments. Any granting of liens or cessions in respect of the reserved property shall not be allowed. The Buyer herewith cedes and assigns in full, and CogniMed herewith accepts such cession and assignment in security of its rights, of all and any claims concerning the proceeds resulting from the resale of items of reserved property, or proceeds resulting from any other insurances, such as compensation paid by insurers or tort claims. CogniMed in this respect authorizes the Buyer herewith to enforce in his own name but on behalf of CogniMed any claims thus ceded and assigned, provided, however, that such authority may at any time be withdrawn, should the Buyer default on his duties to make payments in good time to CogniMed. The Buyer shall not be allowed to cede and assign such claim under any circumstances, not even in the context of factoring, unless such cession and assignment gives rise to a duty of the factoring party to pay to CogniMed directly any arrears owed by the Buyer.

(4) Any alterations or processing of reserved property shall be deemed to have been done on behalf of CogniMed. In so far as such processing brings about commingling with other materials that are not the property of CogniMed, co-ownership shall be established in favour of CogniMed, in proportion of the value of its reserved property which value shall be deemed to be the invoiced price inclusive of value added tax at the time of processing. The produce of such processing shall be subject to the same conditions as the reserved property. Whenever processing has resulted in an inseparable new product, CogniMed shall acquire co-ownership title in proportion of the value of its reserved property which value shall be deemed to be the invoiced price inclusive of value added tax at the time of processing. Whenever the product of the Buyer is to be considered the principal product, after processing, it shall be deemed that the Buyer and CogniMed have conveyed to a pro-rata inception of ownership title in favour of CogniMed, who herewith declares its anticipatory consent to the inception of ownership title in its favour, and stipulates that the Buyer shall act as trustee and custodian of such property on behalf of CogniMed.

(5) In the event that rights of third parties are executed as against the reserved property, the Buyer shall duly warn them and inform CogniMed without delay, so as to enable CogniMed to exercise their rights. The Buyer shall be liable for any costs incurred by CogniMed in this event, to the extent that the third party concerned should be found to be unable to compensate CogniMed.

(6) CogniMed shall release any security it holds if their value exceeds 10 per cent to CogniMed. The Buyer shall not be allowed to elect that CogniMed shall be free to elect which specific securities it shall release.

§ 9 Rights of Use

(1) Any and all software (code and manuals) is copyright protected. Any rights pertaining to software and related documentation as supplied in the context of the agreement between the Company and the Buyer shall vest in the context of that relationship in CogniMed alone, alternatively in the authors of such software.

(2) CogniMed herewith grants the Buyer the non-exclusive, but in time and geographically unlimited right to use the software for his business and for his own purposes. This right excludes the permission to grant sub-licenses. The software is supplied exclusively for use with the sold Product. Utilisation of the software on more than one user station is prohibited, as is the installation and usage in a local area network.

(3) CogniMed can revoke the right of use for important reasons. Failure by the Buyer to make full and final payment on due date shall be deemed to constitute such an important reason. When the Right of use is revoked, the Buyer shall return the original software and any existing copies and will delete stored programs. At CogniMed demand, Buyer will confirm the return and deletion in writing.

(4) In case of transfer to a third party, Buyer will forward that third party's name and address to CogniMed immediately. The software may only be transferred to a third party on condition that third party agrees to the continuing validity of the contractual terms. Whenever the Buyer transfers the software to a third party, the Buyer shall ultimately stop utilisation of the software and may not retain copies. The Buyer shall surrender any media and manual and all originals to the third party.

(5) Except in so far as is permitted under the statutory exception provided for in sections 69 and following of the German Intellectual Property Law ("UrhG"), the Buyer shall not duplicate, modify, translate, or convert the software, from its objects back into its source code, nor alter any proprietary rights legends, serial numbers, trade marks or other identification attributes of the software.

(6) Whenever the CogniMed supplies specific and individual developments, the Buyer shall benefit from an exclusive right of usage.

§ 10 Export Certification and Value added tax identification number

Whenever a non-national Buyer collects Products for export, such Buyer shall be duty bound to supply to CogniMed without delay the requisite proof of export. Supplies to other countries that are members of the European Union, Buyer shall furnish his Value added tax identification number, under which he deducts his Value Added Tax within the European Union. Should the Buyer fail to comply with this duty, CogniMed shall be entitled to claim the tax rate that would have been applicable if the product had not been exported.

§ 11 Export Limitations of Products

CogniMed warns that export limitations may apply in respect of Products, in view of certain proprietary rights, or national or foreign statutory provisions. Export limitations shall be as stipulated in the accompanying documentation of any product, or in terms of the Contract. By accepting CogniMed's offer, entering into any agreement and/or accepting any Products, Buyer agrees that he will not deal with the Products and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

§ 12 Listing of Clients in the Reference / Customer List

CogniMed reserves the right to list clients in its reference / customer list.

§ 13 Place of execution, Governing law and Jurisdiction

(1) The place of execution and jurisdiction for all deliveries and payments (including claims and bills of exchange) shall be the place of principal business of CogniMed, in Germany. All disputes shall only be subject to the exclusive jurisdiction of the competent courts at that principal place of business in Germany. CogniMed shall, however, always be permitted to bring any action or proceedings against the Buyer in any competent court at the Buyer's place of business or residence.

(2) Any relations between the contracting parties shall be governed by and construed in accordance with the laws of Germany. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

(3) Single legally binding contractual language is German. This also applies, if contracts are prepared in languages other than German, and in respect of this the translated version of the original German General Terms and Conditions of CogniMed.

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