General Terms and Conditions for Medical Technology
EBG MedAustron GmbH

List of Contents

1. Consideration of the provisions of the Federal Procurement Act

EBG MedAustron GmbH (hereinafter: MedAustron) is a limited liability company indirectly owned solely by the state of Lower Austria for the operation of the ion therapy centre in Wiener Neustadt. MedAustron is a contracting authority within the meaning of Section 4 (1) n°3 Austrian Federal Procurement Act, which means that the provisions of the Federal Procurement Act apply to every award/order.

2. Scope and basis of contract

2.1 These General Terms and Conditions for Medical Technology (hereinafter: **GTC-MT**) apply to all procurement processes carried out by MedAustron in respect of medical devices and disposable materials dependant on (medical) devices, insofar as MedAustron has not expressly excluded their application in a procurement process.

For such procurement processes, the following sets of rules in the following order of hierarchy shall apply:

- The documents applicable to the specific procurement process engaged in by MedAustron;
- these standard GTC-MT;
- all contents of the "General Terms and of Conditions of EBG MedAustron GmbH", which do not conflict with these GTC-MT.

2.2 The GTC-MT apply as amended in the version applicable at the time the procurement process is initiated. The procurement process is deemed initiated at the time of the notice being published. In the case of procedures without prior notice, the procurement process is deemed initiated upon the invitation to bid being sent.

2.3 If MedAustron does not expressly specify a different type of procedure upon initiating the procurement process, the procurement process shall be subject to the procurement law rules on direct procurement with or without prior notice.

3. Additional terms and conditions of offer for medical devices

3.1 With its offer the bidder must prove that the medical products it offers are in compliance with the Federal Act on Medical Devices (*Medizinproduktegesetz*[1]*,* MPG) as valid at the time of the submission of the offer. The bidder shall include the declaration of conformity by the manufacturer in accordance with *Regulation (EU) 2017/745*[2] on medical devices (hereinafter: MDR) concerning medical devices in electronic form with its offer (in the case of offers in paper form by means of data storage device enclosed).

3.2 Moreover the bidder shall include with its offer:

- a detailed description of the items being delivered with type, article numbers, designation of the respective software package;
- a breakdown of all the measures specified by the manufacturer relevant for maintenance and inspection that are (operationally) necessary.

It must also include a proof of compatibility Issued by an authorised body for each accessory item that is not included in the medical product's instructions for use regarding the safety of use of this accessory item from a technical safety perspective.

[1] Federal Act on Medical Devices 2021 (Medical Devices Act 2021 - MPG 2021), Federal Law Gazette I No. 122/2021.
[2] Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC = MDR.

4. Principles of performance

4.1 The Contractor undertakes to carry out all work assigned to it with due technical and commercial care and according to its best knowledge and skills. The Contractor is an official expert (*Sachverständiger*) in accordance with § 1299 of the Austrian Civil Code (ABGB). The Contractor shall perform the contract so that it complies with the general and special standards and rules applicable in Austria and the current state of the art of the technology.

The Contractor shall comply with all rules regarding the transport of dangerous goods and hazardous waste and also special storage and operation rules. It is also under obligation to MedAustron as part of its performance duties also to take care in this respect and provide information on these issues.

The Contractor shall obligate any and all subcontractors and suppliers to comply with the rules it is subject to itself and supervise their compliance.

4.2 The Contractor shall inform MedAustron in good time of any risks discernible to an expert carrying out the performance. This duty to inform shall also apply in the event of threatening delay with performance.

4.3 The Contractor's duty to perform shall besides delivery of a functional and ready-to-use, fitted medical product also include:

- the connection of this medical product to existing devices and facilities up to and including stationary energy and media supplies;
- the connection of this medical product to existing waste disposal devices and facilities;
- the connection of this medical product to other medical products;
- all operationally necessary accessories and fitting material (eg splints, plugs, wall brackets, stands, fitting plates, ceiling anchoring rings, floor base plates, steering devices) as well as relocating such;
- the initial fitting out of the product with disposable materials.

4.4 Furthermore, the offered performance shall include:

- supporting MedAustron to obtain all necessary official permits and inspections including the supply of all required documents (proofs, declaration of conformity, certificates, etc);
- participation in any test operation up to and including the successful takeover and the necessary on-site trainings of users and medical technicians in this respect in correct management of the medical product;
- all performance and rights of use not expressly stated in the contract insofar as they are necessary for the contractual performance or functionality of the subject of the contract.

No additional fee exceeding the fee expressly stated in the offer shall be due to the Contractor for all these parts of performance. The Contractor shall only then be entitled to an additional fee if it has informed MedAustron in writing and prior to submitting its offer of the incompleteness of the documents it provides making up the offer in this respect.

4.5 If the Contractor considers changes to the agreed performance or to how the performance is to be rendered or additional performance to be beneficial to MedAustron, it shall notify this as well as the necessary timing of the performance to MedAustron as soon as possible in writing.

4.6 The Contractor warrants in particular:

- that its performance, in particular all products delivered, fulfil the requirements of the applicable laws (in particular the MPG), ordinances (in particular the MDR and the *MPBV*[3]) and all applicable technical guidelines and standards (especially Austrian Standards), the provisions of labour law, all applicable EU regulations and directives and the specifications of MedAustron;
- that the products delivered under the contract fulfil all specifications contained in the manufacturer's product description;
- that the products will be delivered fresh from the factory;
- that the surfaces of the product shall be treatable with all disinfection agents that are included in the lists enclosed with the bidding documents and/or - in the event that such a list is not part of the bidding documents - in the expert register of the Austrian Association for Hygiene, Microbiology and Preventative Medicine (ÖGHMP) or in the disinfection agent list of the Association for applied Hygiene (Verbundes für angewandte Hygiene, VAH);
- that the products in combination with medical gases comply with the Austrian standards (ÖNormen) EN 1089 and EN850 as well as M7377 and M7390;
- that connectors for detachable voltage connection cables correspond to the construction type of the connector pin under ÖNORM/DIN 42801 in line with ÖVE/ÖNORM E 8007;
- that the products display all Austrian Electrotechnical Association (ÖVE) certification marks, CE conformity marks or other security marks recognised by the EU as equivalent to such that are required under the law or generally accepted standards;
- that any and all official decisions ("Bescheide") by authorities, official conditions and orders, all technical guidelines, labour, payroll and social law rules and all applicable national and international standards, ordinances, rules and guidelines and all other community law specifications that are applicable to the object of the contract are observed.

4.7 The Contractor shall inform MedAustron even after termination of the contract regularly of changes in relation to the products delivered (eg further developments, updates) as well as all events that are meaningful in relation to the security of supply of the contract products. This duty to inform shall include in particular also operating problems and breakdowns as well as all other happenings which might endanger the health of staff or patients of MedAustron and/or of other third parties.

4.8 Upon request, the Contractor shall submit lists of spare parts and accessories with prices and conditions of supply for the contract products.

4.9 The Contractor is obligated to deliver the contracted products and render the contracted performance throughout the contractual relationship. If this is impossible due to product changes, it must offer to supply the successor product, whereby the contract can only be satisfied by supplying successor products subject to prior, written confirmation by MedAustron in every case.

Successor products must as a minimum comply with all requirements set out by MedAustron in the context of the procurement process as well as at least have all quality features and attributes of the product originally contracted. The supply of successor products may not lead

[3] Ordinance of the Federal Minister of Health, Family and Youth on the Installation, Operation, Use and Maintenance of Medical Devices in Healthcare Facilities (Medical Device Operator Ordinance - MPBV), Federal Law Gazette II No. 70/2007.

to any price increase, other costs of procurement or the operating costs for MedAustron. Any such cost increases resulting from successor products shall be compensated to MedAustron by the Contractor.

The successor products must be compatible with all the components already delivered by the Contractor and with the system environment of MedAustron.

The Contractor shall inform MedAustron without delay of any postponements, changes in quality features or possible cost increases or reductions in connection with the delivery of successor products. MedAustron has sole discretion to decide whether to accept the changes and consent to the delivery of successor products or whether it does not accept such change.

5. Labelling and documentation

5.1 The CE mark and the accompanying documentation (declaration of conformity) must show the conformity of the object of the contract with the relevant EU directives. If there are departures from the relevant provisions and directives, MedAustron must at its own expense and accountability take corresponding substitute measures to achieve the same security and usability (eg by risk analysis).

4.2 Part of contract performance is always the delivery (as well as the ongoing updating for any medical product guarantee and/or maintenance agreement) of all the documentation useful for the use of the medical product (in particular Installation, administration and user documentation). This documentation must describe all processes necessary for the ongoing work with the medical product so that they are understandable for a trained person.

This documentation shall include in particular the test reports for the starting test under § 3 of the Medical Device Operator Ordinance (MPBV).

4.3 Any and all documentation must comply with the usual standards at the time of the installation of the object of the contract. The contents and format must be comprehensible and usable for a technically competent person familiar with similar products. Along with the technical documentation, the Contractor shall hand over to MedAustron all data storage devices and documentation regarding any licences included.

4.4 If the medical products supplied under the contract are intended for reuse or processing, the Contractor (or the party bringing such onto the market) shall prove their suitability for an effective and appropriate reuse processing procedure (eg preparatory treatment, cleaning, disinfection, maintenance, packaging, sterilisation) and describe such in the user information in accordance with the relevant standards (eg pursuant to EN ISO 17664).

6. Appointment as system creator

6.1 If the medical products subject of the contract must be interconnected with other devices and facilities of MedAustron during carrying out of performance or after that, MedAustron shall nominate a system creator under the terms of EN 60.601 (hereinafter: **System Creator**).

6.2 The interconnection of the devices with other devices and facilities of MedAustron shall be carried out upon separate instruction by MedAustron. At this time the System Creator will also be nominated. The System Creator shall be deemed System Creator pursuant to EN 60.601 and is liable in particular for the due and proper interconnection. In the course of the interconnection s/he shall also draw up an overview plan (block wiring diagram) of the network and shall indicate any additional measures necessary as a result of the interconnection under EN 60.601 (eg separators, additional earth wires, non-earthed

electricity supply).

7. Acceptance and inspection

7.1 The day of the acceptance and transfer of risk is the first working day after successful inspection. If up to this point of time any damage of any type whatsoever appears in the object of the contract, the Contractor shall remedy such at its own expense.

It shall be an absolute prerequisite for every acceptance that any and all official permits, documentation and licences required for the contractual use of the object of the contract must have been supplied (eg technical safety test report in accordance with ÖVE/ÖNORM EN62353, software licences, plans, drawings, training documents, documentation).

MedAustron shall be entitled to refuse acceptance if there is any deficit that is more than merely trivial.

7.2 The Contractor shall supply free of charge all workers and devices or other supports necessary to carry out the inspection.

7.3 Insofar as the offer documents or the offer do not include any detailed test case list accepted by MedAustron, the inspection process shall be carried out according to MedAustron's requirements defined in the specifications for the object of the contract.

7.4 The Contractor shall inform MedAustron in writing of the readiness for inspection after rendering performance (notification of readiness for inspection). It shall be a necessary component of this notification of readiness for inspection that the following be supplied:

- a detailed breakdown of any and all the maintenance measures, calibrations, technical safety and measurement controls that must be carried out on the object of the contract;
- any and all software licenses for the programs necessary to operate the object of the contract;
- all other proofs and declarations of conformity required under these GTC-MT for the object of the contract (in particular all proofs, documents and declarations required under the MDR, the MPG and the MPBV for the object of the contract);
- confirmation of the rendering of all other parts of performance associated with the handover (eg training, user training).

7.5 The parties to the contract shall set the time for the inspection by agreement within a timeframe of 30 days after complete notification of readiness for inspection. The inspection Is concluded if the object of the contract has passed the inspection test and the Contractor has also rendered any and all parts of performance associated with the handover (eg training, user training). In all cases the inspection exam shall include the start test under the MPBV.

8. Guarantee

8.1 The Contractor gives full guarantee for contractual performance. The guarantee period shall be two years and commences with the day of acceptance.

In the case of latent defect or defect of title, the guarantee period shall commence on the day MedAustron gained knowledge of the defect or the point in time when a diligent Client ought to have noticed the defect. In the case of latent defect, the guarantee period commences, however, at the latest two years after the day of acceptance.

Defects in objects of contract that are usually left in their original packaging until use shall be deemed latent defects if such only become visible upon removal of the packaging.

8.2 The selection of the guarantee remedy shall be at the discretion of MedAustron, and

such may even without having to first request improvement or exchange demand a price reduction and provided the defect is not merely trivial also withdrawal from the contract.

If MedAustron demands improvement or exchange, the Contractor shall carry this out at its own risk and expense within a reasonable period.

In urgent cases, MedAustron is entitled to remedy defects itself without setting a grace period but at the expense of the Contractor or to have such remedied in this manner, without prejudice to its claims under guarantee arising from these defects. In the case of imminent danger, such action is also admissible without informing the Contractor. In particular, all defects shall be deemed urgent due to which:

- there is risk of non-availability of the object of the contract or of parts thereof and/or non-availability of the facility or parts of the facility of the Ion Therapy Centre for the treatment of patients;
- there is a risk of health impairments for patients, staff of MedAustron or other third parties.

8.3 The costs of any expert engaged to supervise the remedying of defects shall be borne by the Contractor.

8.4 The burden of proof that there are no defects shall be borne by the Contractor. The burden of proof that a defect is trivial shall likewise be borne by the Contractor. The Contractor waives the right to object on grounds of delayed notice of defects. The notice of defects shall be in good time provided it is made within the guarantee period.

9. Compensation for damage and product liability

9.1 The Contractor has sufficient liability insurance covering damage to property, personal injury and economic loss to satisfy any and all compensation or product liability claims of MedAustron and shall maintain such insurance cover for the entire duration of the contract. The Contractor shall demonstrate the existence of this insurance to MedAustron at any time upon request by means of a corresponding insurance confirmation.

9.2 The Contractor is liable to MedAustron also for any and all personal injury or damage to property that it or its auxiliaries cause in the course of or on the occasion of the performance

Claims for compensation are not limited to the defectiveness of the performance itself but also include damage consequential to defects. MedAustron is also entitled to bring compensation and recourse claims including all claims under the Austrian Product Liability rules without restriction.

Members of a consortium shall be liable in relation to the Employer jointly and severally.

10. Maintenance services

10.1 The facility and/or the part of the facility for which the Contractor must provide maintenance services in the context of its maintenance obligations shall hereinafter be referred to as the maintenance object. In the absence of any other agreement to the contrary, the maintenance object is the medical product delivered by the Contractor including all its components, software and accessories.

10.2 The Contractor is obligated to carry out **preventive maintenance**, insofar as such is commissioned.

10.2.1 The annual flat maintenance fee agreed upon commissioning the maintenance shall be due to the Contractor for the preventive maintenance. This flat maintenance fee shall

cover any and all services of preventive maintenance in a lump sum and conclusively. Thus, the annual flat maintenance fee also conclusively covers in particular any and all ancillary expenses such as travel, fares and accommodation as well as costs of parts subject to wear and tear, cleaning and lubricating material.

10.2.2 Insofar as the commissioning for preventive maintenance does not include further services exceeding those described in this section, the Contractor is obligated within the framework of the preventive maintenance to perform the following services within the maintenance times determined by MedAustron primarily during Service Slots of the accelerator system and/or on weekends and public holidays:

- upkeep of the maintenance object by calibration and gauging as well as by carrying out all services necessary for the preventive maintenance Including exchanging parts subject to wear and tear;
- technical measurement checks as well as technical safety tests including the implementation of all (eg operationally) necessary measures prescribed by the medical product manufacturer for the maintenance object;
- optimisation of the condition of the maintenance object in particular by software maintenance as well as regular replacement of cleaning and lubricating agents, accumulators and any and all other product-specific operating supplies;
- cleaning, maintenance and inspection of the maintenance object;
- installation of firmware updates. Besides this, the preventive maintenance of the accessories and fitting material of the maintenance object is also included as part of these maintenance services.

This shall in each case be carried out in compliance with all legal rules applicable at the time (in particular the MPG and the MPV).

10.2.3 The Contractor shall agree the timing of the regular preventive maintenance services with MedAustron. To this end the Contractor shall notify MedAustron at least one month in advance of the time it intends to carry such out. The actual maintenance time shall be set according to the operating needs of MedAustron.

10.3 The Contractor is obligated to carry out **full maintenance**, insofar as such has been commissioned.

10.3.1 The annual flat maintenance fee agreed upon commissioning is due to the Contractor for the full maintenance. This flat maintenance fee shall cover any and all services of full maintenance in a lump sum and conclusively. Thus, the annual flat maintenance fee also conclusively covers in particular any and all ancillary expenses such as travel, fares and accommodation as well as costs of parts subject to wear and tear, cleaning and lubricating material.

10.3.2 Insofar as the commissioning for full maintenance does not include further services exceeding those described in this section, the Contractor is obligated within the framework of the full maintenance to perform the following services within the maintenance times determined by MedAustron primarily during Service Slots of the accelerator system and/or on weekends and public holidays as well as to carry out the upkeep of the maintenance object:

- upkeep of the maintenance object by calibration and gauging as well as by carrying out all services necessary for the full maintenance including exchanging parts subject to wear and tear;

- technical measurement checks as well as technical safety tests including the implementation of all (eg operationally) necessary measures prescribed by the medical product manufacturer for the maintenance object;
- optimisation of the condition of the maintenance object in particular by software maintenance as well as regular replacement of cleaning and lubricating agents, accumulators and any and all other product-specific operating supplies;
- cleaning, maintenance and inspection of the maintenance object;
- installation of firmware updates. Besides this the operating maintenance of the accessories and fitting material of the maintenance object is also included as part of these maintenance services.
- trouble-shooting for the maintenance object in compliance with the agreed response times (cf section 9.6) and service restoration times (cf section 9.7);
- delivery of all spare parts, full maintenance accessories and fitting materials as well as all services and replacement parts for parts subject to wear and tear required for the full maintenance;
- carrying out of inspection tests and sub-tests for maintenance services.

This shall in each case be carried out in compliance with all legal rules applicable at the time (in particular the MPG and the MPV).

Excluded from the scope of the full maintenance is exclusively the delivery of ordinary disposable materials (printer paper, CD-ROMs) as well as the making available of replacement devices (apart from under section 9.3.4) as well as remedying errors in the maintenance object that are demonstrably brought about by incorrect use and/or lack of care or wrong care of the maintenance object by MedAustron or by Force Majeure.

10.3.3 The Contractor shall agree the timing of the regular full maintenance services with MedAustron. To this end the Contractor shall notify MedAustron at least one month in advance of the time it intends to carry such out. The actual maintenance time shall be set according to the operating needs of MedAustron.

10.3.4 In the case of outage of the maintenance object for prospectively more than 36 hours, the Contractor shall if desired by MedAustron make available an equivalent replacement device free of charge until the maintenance object is operating again.

10.4 It shall be a part of every maintenance obligation to draw up and hand over the associated documentation and proofs of maintenance services.

10.4.1 Without delay after carrying out a maintenance or upkeep measure or after technical safety or functionality tests, the Contractor shall hand over to MedAustron without being asked the relevant report signed by the Contractor's staff member responsible for carrying out the measure or test (maintenance report). The maintenance report must comply with any and all relevant legal rules and state all the measures undertaken in the context of the maintenance services provided.

10.4.2 If new insights for the future operation of the maintenance object arise from the maintenance, remedying of defects, use of spare parts or technical safety or functional tests, the Contractor shall expressly inform MedAustron thereof in writing in the maintenance report and include corresponding recommendations for future actions.

10.4.2 In the context of the maintenance, the Contractor shall also support MedAustron in fulfilling its duties to register as well as managing the device file and the inventory.

The Contractor shall convey to MedAustron in each case within four weeks after a calendar year and/or four weeks after the termination of the contract a digital documentation of the previous calendar year with at least the following information:

- begin and end of the activities;
- type of the activities (eg maintenance, trouble-shooting, technical safety and functional tests);
- description of the work carried out per maintenance object;
- record of the spare parts used per maintenance object;
- record of the meter reading for each maintenance object (eg operation hours, numbers of uses).

In respect of technical safety and functional tests as well as technical measurement checks, this information shall be provided directly after such have been carried out.

10.5 Unless other **On-call Maintenance Times** are expressly agreed, the On-call Maintenance Times shall be Monday to Friday (including any public holidays that fall on these weekdays) from 06:00 to 23:00 CET. During the On-call Maintenance Times the Contractor must keep a helpdesk available per email and telephone for the provision of technically competent information and support to MedAustron regarding all topics associated with the use of the maintenance object.

10.6 Unless other **Trouble-Shooting Response Times** are expressly agreed, the Contractor guarantees the following Trouble-Shooting Response Times (in each case starting from Contractor's receipt of the trouble report; error classes by analogical use of the error classes definition under the General Terms of Contract of the Federation for IT Services, Software - *Allgemeine Vertragsbedingungen des Bundes für IT-Leistungen Software*, (hereinafter: AVB-IT/SW):

- a time of one working hour4 for errors in error class 1 – "critical";
- a time of three working hours for errors in error class 2 – "serious";
- a time of two working days5 for errors in error class 3 – "slight";
- a time of ten working days for errors in error class 4 – "trivial".

The Contractor shall comply with these times. This requirement is fulfilled if it has demonstrably begun work on the problem reported by MedAustron (and/or a third party engaged by MedAustron) within the times allocated using technically competent staff.

If MedAustron has documentation of the trouble report being sent, the Contractor shall be refutably assumed to have received the trouble report within the usual time for the respective means of communication. If the Contractor claims that a trouble report sent did not arrive or did not arrive within the usual time for the respective means of communication, it must provide proof thereof.

Insofar as this is technically possible and makes sense, MedAustron shall grant to the Contractor as desired remote access for maintenance, so that the Contractor can use this

[4] Working hour in the sense of Section 10.6 and Section 10.7 is the time of 60 minutes within the On-call Maintenance Times (cf Section 10.5). For example, a working hour begun on Monday at 22:45 CET ends the next day, Tuesday, at 6:45. CET

[5] Working day under Section 10.6 and Section 10.7 is each calendar day begun within the On-call Maintenance Times (cf Section 10.5). For example, a working day begun on a Monday at 22:45 CET ends on the same day at 23:00 CET. On the next day, Tuesday, the second working day begins at 06:00 CET.

remote maintenance access for ongoing monitoring of problem-free functioning of the maintenance object and the internal assessment of the relevance of any problem that arises.

The Contractor shall provide to MedAustron at the latest 14 days after conclusion of the contract telephone numbers, email addresses and postal addresses of the unit to which MedAustron can address requests for trouble-shooting.

10.7 Unless other **Repair Times** are expressly agreed, the Contractor shall guarantee the following Repair Times (in each case starting from Contractor's receipt of the trouble report; error classes by analogical use of the error classes definition under the General Terms of Contract of the Federation for IT Services, Software - AVB-IT/SW:

- a Repair Time of four working hours for errors in class 1 – "critical";
- a time of eight working hours for errors in error class 2 – "serious";
- a time of 15 working days for errors in error class 3 – "slight";
- a time of 30 working days for errors in error class 4 – "trivial".

Repair time is the duration of time between the receipt of a trouble report and the activation of a "Work-Around-Solution", with all the functions of the unit affected by the problem being available as provided for and in full capacity. As long as a problem impairs the patient care at the Ion Therapy Centre MedAustron, it can under no circumstances be regarded as repaired.

10.8 Every breach of the provision on Troubleshooting Response Times or Repair Times shall result in imposition of a penalty of 5% of the flat annual maintenance fee applicable at the time of the breach. The sum of all penalties falling due as a result of breaches of the Troubleshooting Response Times and Repair Times may not within one calendar year exceed 20% of the respective flat annual maintenance fee applicable. If the Contractor claims not to have been at fault in respect of a breach of the provisions on Troubleshooting Response Times or Repair Times, it must provide proof thereof (assumption of fault).

Furthermore, MedAustron shall be entitled to terminate the Maintenance Contract without notice if the Contractor has breached its duty to comply with Response and Repair times at least three times within the previous six months.

10.9 The Contractor shall submit two invoices for the flat annual maintenance fee, on the 30 June and 31 December of the current maintenance year respectively, for the maintenance work done in the respective half year previously.

The billing period for the calculation of the flat annual maintenance fee is the calendar year. If the obligation to provide maintenance and trouble-shooting does not extend to all calendar months in a calendar year, the flat annual maintenance fee shall be reduced pro rata corresponding to each full calendar month for which the obligation did not apply.

11. Default and substitute performance

11.1 There is default if performance is not rendered at the proper time and in the proper place and in the stipulated manner. There is also default if MedAustron refuses acceptance on the basis of material defects.

If the Contractor defaults or such default is threatened, the Contractor must inform MedAustron thereof without delay in writing.

11.2 In the case of default MedAustron may as it chooses:

- insist on performance;

- withdraw from the contract subject to setting a reasonable grace period and if necessary carry out substitute performance at the expense and risk of the Contractor;

as well as in each case of default on a deadline (Interim or final) that carries penalties require payment of a contractual penalty under Section 10.3. The contractual penalty must be calculated in the second case above up until the effectiveness of the withdrawal or the arrival of the replacement purchase (depending on which time is later).

11.3 In the event that a deadline (interim or final) carrying penalties for delay is not met for reasons for which the Contractor is accountable, a penalty in the amount of 0.2% per day but at the most 5% of the fee stated in the offer for the overall performance (per interim or final deadline) per calendar day shall fall due.

Furthermore, the Contractor shall be liable for any default on a deadline for which it is at fault and all damage not covered by the above penalties up to their actual extent.

12.Economic loss

The Contractor shall compensate MedAustron and its managers and staff for any and all economic loss that they suffer due to administrative penalties that were imposed on them due to the Contractor breaching its contractual obligations (eg breach against the Law on Employing Aliens ("Ausländerbeschäftigungsgesetz"), labour law rules or social insurance registration duties).