Fresenius Medical Care Deutschland GmbH
General Terms & Conditions for Web-application License

1. Introductions and Definitions

1.1 These General Terms & Conditions (the "Terms & Conditions") including appendices, apply between Fresenius Medical Care Deutschland GmbH ("FME") and the Customer, with regard to the [(Infrastructure Data Management System) Web-application] (the "Web-application") and the Gateways (Hardware") referred to in the respective Purchase Order Form as defined below.

FME provides the Customer with an IT based automated documentation System for the validation and re-validation of the water technology system, including but not limited to operation parameters, microbiological and chemical parameters etc. The scope of the Web-application does not include the processing and handling of medical parameters, patient related parameters, invoice related parameters as well as staff related parameters.

The Customer herewith agrees to share the collected data with FME and explicitly declares its consent to the use of the data collected from its machines in particular but not limited to statistical evaluations.

The Customer agrees to be bound by these Terms & Conditions with respect to all use and handling of the Web-application. Deviating Terms & Conditions used by the Customer are expressly excluded.

1.2 In these Terms & Conditions "Purchase Order Form" shall mean the ordering document provided by FME. FME's offers are non-binging unless expressly marked as binding. Written and oral orders and declarations as well as oral side agreements and covenants will become binding through FME's written confirmation only. Contractual obligations shall be deemed agreed only if made in writing. Changes and amendments to the agreement require written form. The same shall apply to any waiver of the requirement of written form.

1.3 The Purchase Order Form contains a description of the "Web-application" ordered, which is a computer program in machine-readable form including specifications, documentation and material provided by FME. The Web-application includes each Web-application Program and any updated, improved or otherwise modified version(s) thereof furnished by FME pursuant to a product quotation or an order from Customer for Customer's sole and exclusive use. The Purchase Order Form also specifies the license fee for the Web-application.

2 Grant of License

The Customer obtains a non-exclusive right to use the Web-application ("License").

3 License Fee

The License is conditioned upon the Customer having paid the license fee stated in the Purchase Order Form or otherwise agreed in writing between FME and the Customer. The license fee is exclusive of any VAT or similar taxes or public duties and fees. All such taxes, duties and fees shall be paid by the Customer.

4 Scope of the License

4.1 The Customer may use, access, display, run or otherwise interact with the Web-application access provided to the Customer, or any prior version for the same operating system, on a single computer, workstation, terminal, handheld PC, pager, "smart phone", or other digital electronic device ("computer"). If the License is a single user-license, the Customer may use only the licensed copy of the Web-application for processing of data. If the License is a several-user-license, the Customer may use as many copies of the Web-application as corresponds to the number of user-licenses.

4.2 The Customer shall introduce routines and control functions in order to ensure that the number of computers that may access the Web-application do not exceed the number of Licenses granted according to the Purchase Order Form.

4.3 Without FME's prior written consent, the Customer is not entitled to use, copy or in any other way transfer or use the Web-application in any manner except as stated in the Purchase Order Form or these Terms & Conditions. Consequently, the Customer is not entitled to decompile or disassemble the Web-application or information or material connected to the Web-application, except to the extent expressly permitted by mandatory law.

4.4 The Customer has no right whatsoever to include or link the FME-Website to its own or other websites.

4.5 Marking and/or information regarding patent, copyright or copyright notices in Web-application or computer media through which the Web-application is accessible to the Customer may not be removed, changed or modified in any way. The same applies to corresponding marking of all documentation provided by FME.

4.6 Customer is not entitled to grant any sublicenses, lease, lend or in any way let anyone else, whether directly or indirectly or against compensation or free of charge, use or in any way dispose of the Web-application; provided, however, that nothing herein shall prevent Customer from using the Product in its ordinary course of its business.

5 FME's right to the Web-application License

5.1 FME owns the Web-application, including the copyright and/or as applicable, patent rights to the Web-application.

5.2 The License does not include any transfer to the Customer of FME's ownership of the Web-application (including the computer media through which the Web-application is made available), such as copyrights, or as applicable, patents rights.

5.3 FME reserves the right to adjust, improve, update, develop or otherwise change the Web-application and/or Hardware and its specifications at any time without prior notice.

6 Delivery

The Web-application and the Hardware shall be delivered in accordance with what is stated in the Purchase Order Form. FME is not responsible for the configuration of the Web-application, unless otherwise agreed between the parties in writing. If FME agrees to assist with the configuration of the Web-application, Customer shall pay for this in accordance with FME's price list for such services in force at the time of the configuration. The Customer acknowledges and agrees that FME may engage the services of third parties in order to perform its duties, and in particular agree that these third parties shall be given access to Customer's data insofar as this is necessary for the diligent performance of the duties concerned.

7 Liability and Warranty

7.1 Examination of the Web-application and claims

At delivery, the Customer shall examine the functionality and quality of the Web-application. If the Customer concludes that the Web-application deviates from the agreed specifications or requirements for the Web-application (hereinafter referred to as "Defects"), the Customer shall notify FME in writing within thirty (30) days of delivery, with all available details regarding the alleged Defect.

Failing this, the Customer loses the right to claim any support or remedy with respect to any Defects which could have been discovered within such 30-day period.
The Customer's right to claim any support or remedy in accordance with Section 7.2 – 7.4 hereof is further conditioned on full compliance with each and all of the following provisions:

(i) the Customer shall have utilized the Web-application in the work environment prescribed by FME and according to manuals and all other instructions and directions of FME.

(ii) the Customer shall have utilized the Web-application with machine equipment and operative systems stated in the Purchase Order Form or in the product specifications provided by Customer and accepted by FME,

(iii) it can be shown that the Defect has occurred in an unaltered most current version of the Web-application,

(iv) the Customer at its own costs shall have provided FME with all necessary information and/or material, in order for FME to verify the alleged Defect, and

(v) the Defect shall have occurred within twelve (12) months from delivery of the Web-application.

7.2 Support

FME will, subject to Section 7.1 hereof, free of charge provide the Customer with appropriate support in case of Defects of the Web-application.

The support will be provided within reasonable time from the date Customer has notified FME in writing of the Defect.

At the request of the Customer, FME may, at its sole discretion, provide support not related to any Defects. The Customer shall pay FME for such support in accordance with FME's price list in effect from time to time.

7.3 Remedy in case of Defects

In case of a Defect, FME will, subject to Section 7.1 hereof, free of charge either, at the option of FME, (i) remedy the Defect, (ii) replace the Web-application, or (iii) refund the license fee.

7.4 Limited warranty and limitation of liability

FME represents and warrants that the Web-application will be free from defects in material and workmanship for a period of twelve (12) months after delivery.

Any warranty claim of the Customer is subject to customer's examination of the Web-application after receipt and due notification of FME about the non-conformity in accordance with the applicable laws.

It is within the FME's sole discretion whether the defect will be repaired or if any necessary component will be replaced.

Except for this warranty as stated above, FME makes no, and hereby disclaims any representation or warranty of any kind, express or implied, with respect to the Web-application, whether as to merchantability, fitness for a particular purpose, warranties arising from course of dealing or usage or trade or any other matter. For the avoidance of doubt, it is the sole responsibility of the Customer to provide suitable measures for the protection against loss of data, especially but not limited to back-up-functions, data storage and archiving etc. No employee, representative or agent of FME has any authority to bind FME to any affirmation, representation or warranty except as stated in this section 7.4

FME's sole obligation in case of a breach of warranty under this Section 7.4 hereof shall be to either, as set forth in Sections 7.2 and 7.3 hereof. Under no circumstances shall FME have any liability to the Customer or any other person or entity for any indirect, special, incidental or consequential damages of any description, whether arising out of warranty or other contract, negligence or other tort, or otherwise, including without limitation, lost goodwill, loss of investment or profit or other losses.

FME shall not be liable at all for the functionality or quality of plug-ins or other auxiliary programs designed to work together with the Web-application, or for the interoperability of such programs together with the Web-application.

8 Term and Termination

8.1 Period of validity of the License.

Unless otherwise agreed in writing between the parties, after the license fee has been paid the License remains in force, subject to Section 8.2 hereof, until terminated in writing by the Customer with three (3) months' notice of termination.

8.2 FME's right of termination.

FME shall have the right to terminate the License with immediate effect (and claim damages as set forth in Section 11 hereof) if the Customer should breach any of its material obligations under these Terms & Conditions.

8.3 The Customer shall not be entitled to any refund of the license fee irrespective of the reason for termination of the License.

9 Cancellation of the Web-application

In case of termination of the License, irrespective of the reason for such termination, the Customer shall immediately return to FME the Web-application and all copies, parts and documents related thereto (with exception for archived copies archived by the Customer in accordance with any applicable law). In connection therewith, the Customer shall confirm in writing that it has fully complied with this obligation.

10 Confidentiality

The Web-application contains business and professional know-how and other confidential information belonging to FME that have been disclosed and made accessible to third parties only through the License. The Customer is obliged not to make the Web-application available to third parties without FME's written permission, and to take all appropriate measures to prevent disclosure to third parties of such know-how and confidential information. The Customer shall ensure that its employees, agents and other representatives are informed of and complies with this confidentiality obligation as well as the obligations regarding the rules for the use of the Web-application as set forth in Section 4. During the term of the License, the Customer shall use, store and maintain the Web-application in a manner that will prevent any dissemination of know-how and confidential information. The confidentiality obligation will remain in force after the expiry of the License and these Terms & Conditions.

11 Liability

If the Customer shall breach any of the material provisions of these Terms & Conditions, the Customer shall fully compensate FME for any loss incurred by FME as a result thereof.

12 Force Majeure

12.1 Neither party shall be liable for any delay or non-performance of its obligations hereunder in the event and to the extent that such delay or non-performance is due to an event of force majeure.

12.2 Events of force majeure are events beyond the control of the parties which occur after the date that these Terms & Conditions has entered into force and which were not reasonably foreseeable at that time and whose effects are not capable of being overcome without reasonable expense and/or loss of time. Events of force majeure shall include (without being limited to) war, civil unrest, blockades, boycotts, strikes, lock-outs and other general labor disputes, acts of government or public authorities, natural disasters, exceptional weather conditions, breakdown or general unavailability of transport facilities, accidents, fire, explosions and general shortages
of energy, failures in external network, Web-application defects or inefficiencies (other than with respect to the Web-application), or other defects in computer equipment. Strikes, lock-outs, boycotts or blockades are events of force majeure even if the Parties have taken the action itself or are the subject of the action.

13 Disputes

13.1 These Terms and Conditions shall be governed by and construed according to German law under exclusion of the United Conventions on Contracts of the International Sales of Goods (CISG) and the regulations for conflicts of law.

13.2 All disputes, controversies, differences or claims which may arise among the parties out of or in connection with or in relation to these Terms & Conditions or for the breach thereof and which cannot be settled by mutual consent, shall be finally settled by a Board of Arbitrators consisting of three arbitrators, the appointment and procedure of which shall be determined in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Frankfurt am Main, Germany. The arbitration panel shall decide in final manner with exclusion of recourse to the ordinary courts of law, and its decision shall be binding on both parties. The arbitration shall be conducted in the English language; the same applies for the written documents given to the Arbitration Board.