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## GENERAL TERMS AND CONDITIONS

### - AYOXXA Reader AR01, LUNARIS™ Analysis Suite -

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#### 1. SCOPE

- 1.1 The services and delivery of all contracts between AYOXXA Biosystems GmbH ("AYOXXA"), a corporation organized under the laws of Germany and having a place of business located at BioCampus Cologne, Nattermannallee 1, 50829 Cologne, Germany and the commercial business customer in the meaning of Section 14 German Civil Code (*Bürgerliches Gesetzbuch - BGB*) ("Customer") identified on AYOXXA's Offer (as defined in Clause 2) concerning
- the AYOXXA Reader AR01 ("Reader"),
  - the respective LUNARIS™ control software ("Control Software"),
  - the respective analysis software LUNARIS™ Analysis Suite ("Analysis Software") (Control Software and Analysis Software also referred to as "Software") as well as
  - the Software documents and manuals for the Reader and Software ("Documents") (Reader, Software and Documents collectively, "Product(s)")
- shall solely be governed by these General Terms and Conditions ("Terms"). AYOXXA and the Customer are hereinafter also separately referred to as "Party" and jointly referred to as "Parties".
- 1.2 These Terms take precedence over other terms and conditions which may be included in a Customer's product order ("Order"), or otherwise, which shall be of no binding force or effect and to which notice of objection is hereby given.
- 1.3 In the absence of any separate, written agreement between the Parties or any written notice by AYOXXA to the contrary, these Terms shall also apply in respect of any future Customer's Orders with AYOXXA in relation to the Products.
- 1.4 AYOXXA reserves the right at any time to amend these Terms as deemed necessary due to an extension of services or legal system changes AYOXXA shall notify the Customer in writing of any amendments to these Terms and of the fact that the Customer shall have two (2) months from the date of notice to object the amendments. Failure to object within two (2) months shall be deemed a consent to the amendment of these Terms by the Customer.
- 1.5 For the avoidance of doubt, AYOXXA's salespersons or other employees or agents do not hold any actual or deemed power of attorney to act for and on behalf of AYOXXA, and do not have any authorization to enter into verbal or side contracts, including any authority to amend, supplement or waive any provision of these Terms, the Offer, the Confirmation or the Contract (as defined in Clause 2). Any agreements, amendments, supplements or waivers by any such person shall only be valid and enforceable if these have been approved by AYOXXA's management in writing prior to or at the conclusion of the Contract. This also applies to subsequent changes and supplements of the Contract, as well as any type of side notes. This Clause 1.5 shall not apply to legal representatives of AYOXXA.

#### 2. CONCLUSION OF CONTRACT

AYOXXA shall make an offer ("Offer") to the Customer concerning the Products which shall be accepted by the Customer in form of an Order. The contract concerning the ordered Products

shall only be formed and become effective upon the issuance of AYOXXA's written confirmation ("Confirmation") or delivery of the Product by AYOXXA to the Customer.

### **3. PRODUCT DESCRIPTION AND PURPOSE**

- 3.1 The Product is part of a fully-integrated system comprising the Product and the Kit (as defined in Clause 3.4) for multiplexed protein analysis, capable of delivering data from precious biological samples.
- 3.2 The Software serves to evaluate experiments performed with the Kit and the Reader. The analysis includes the following steps: experiment definition, assay, readout, analysis and report. Quantification of the readout is performed entirely by the Software providing a tailored report with detailed information on the concentration of target proteins in each sample.
- 3.3 The Products shall only be used internally by the Customer in connection with the Kit (as defined in Clause 3.4) for research purposes only, including generating of data for non-commercial diagnostic purposes as well as use for services or performances in connection with internal Clinical Research Organizations for Customer owned clinics. The Product is not a medical device, and thus may, not be used as such. The Product is a pure research tool and may not be used for any commercial diagnostic purposes. Every further use, in particular (i) the use of a part of the Product or of data generated with the Product for regulatory purposes, such as registrations of diagnostic products, as well as (ii) the use for services or performances in connection with external Clinical Research Organizations (i.e. third parties), is expressly prohibited, unless otherwise agreed by AYOXXA in a separate agreement.
- 3.4 The purpose of the Product as described in Clauses 3.1-3.3 shall hereinafter be referred to as the "Purpose".
- 3.5 AYOXXA recommends that the Products and the LUNARIS™ multiplex kits ("Kit(s)") are bought and used as a system (one Reader, one copy of the Software and one Kit are referred to as a "Product System") as those items are manufactured to be compatible.

### **4. WARRANTY AND KIT TREATMENT**

AYOXXA will not guarantee or be held liable for suitability of the Products for the Customer's individual intended use. AYOXXA's warranty shall be limited to the respective functional specifications and the analysis certificate, if any, contained in the Order and Confirmation, describing the condition and intended purpose of the Product. Any warranty must be provided in writing and does not apply to any part of the Product that has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by AYOXXA, or part of the Product which has been used with any third party product, hardware or product that has not been previously approved in writing by AYOXXA. The Customer expressly agrees to preserve the Product in reasonable condition in accordance with the manuals it receives from AYOXXA, including but not limited to conducting regular inspection of the Product. It is the Customer's sole responsibility to ensure that its intended use of the Products complies with any applicable legal regulations.

### **5. PRICES AND PAYMENT**

- 5.1 The prices for the purchase of the Reader and the license concerning the Software and the Documents will be in accordance with AYOXXA's price-lists in effect at the time of delivery of the Product. If the price-list is adjusted between Offer and delivery of the Product, this adjustment is only binding to the Customer if there is more than four (4) months between the receipt of the Confirmation and actual delivery. Should such a price adjustment lead to a substantial price increase, the Customer is entitled to cancel the Order and terminate

("zurücktreten") the Contract by written notice to AYOXXA. The respective actual price-list is published as [link to be inserted].

- 5.2 All prices in AYOXXA's price-lists exclude value added tax (VAT; Umsatzsteuer) for each delivery of the Product at the legally applicable rate on the invoice date, if applicable. Unless otherwise agreed in writing, the delivery costs, insurance costs, customs duties or any other costs and expenses related with the purchase of the Reader and the license concerning the Software are not included in AYOXXA's price-lists. These costs, if any, shall be charged separately.
- 5.3 All payments to be made by the Customer to AYOXXA under these Terms in Euro, and shall be made by way of wire transfer to an account at a commercial bank designated by AYOXXA in its invoice.
- 5.4 Unless otherwise agreed in writing, the invoiced price shall be payable, without any set-off or deduction, not later than thirty (30) calendar days following the receipt of the invoice for the Product or of the delivery of the Product, whichever is the later point in time. This means, that the date of receipt of the payment into AYOXXA's bank account shall be, at the latest, thirty-first (31<sup>st</sup>) calendar day after the receipt of the invoice or Product, whichever is the later point in time.
- 5.5 Default interest shall be charged at a rate of nine (9) percent (per annum) over and above the prevailing base interest rate of the European Central Bank. AYOXXA reserves the right to claim higher damages against the Customer, provided that the Customer shall be entitled to prove that AYOXXA has suffered no damage or only a minor loss as a result of the delay in payment.
- 5.6 If the Customer is in default with any payment, without prejudice and in addition to any rights or remedies available to AYOXXA (including but not limited to the right to charge default interest and claim damages), AYOXXA shall be free to withhold any additional deliveries or to require an advance payment prior to such additional deliveries.

## **6. DELIVERY AND DELAY IN DELIVERY**

- 6.1 AYOXXA shall deliver the Reader and the copy of each Software in machine readable form at its option either stored on a type of data storage media in common use at the time (e.g. USB stick) or transferred by remote data transfer to the Customer. The Customer shall receive the Documents as electronic document in [English/German].
- 6.2 Unless otherwise agreed in writing and in so far as it is reasonably possible to do so, AYOXXA shall be entitled to make partial deliveries. If AYOXXA makes a partial delivery, AYOXXA shall bear any additional costs resulting from the partial deliveries.
- 6.3 Unless otherwise agreed in writing, the Product will be sent "Ex Works" (Incoterms® 2010 EXW) from AYOXXA's place of business in Cologne to the designated place of delivery being stated in the Offer. The Customer will comply with applicable German, European or other applicable export laws.
- 6.4 Upon handing over the Product to the carrier, the risk of accidental loss or accidental deterioration of the Product will pass to the Customer. AYOXXA will not secure transportation related insurance but agrees to cooperate with the Customer if the Customer wishes to secure such insurance in its own name and at its own cost. The additional costs of further storage after transfer of risk shall be borne by the Customer. If the Customer is in default with the acceptance of delivery or by the omission of cooperative actions, AYOXXA shall be entitled to demand compensation for damages and additional costs resulting there from, accidental loss or accidental deterioration of the Product as a result of such default.
- 6.5 The place of performance is the place of business of AYOXXA.

- 6.6 Delivery dates, whether specified by AYOXXA or the Customer are, in principle, non-binding until confirmed in writing by AYOXXA as "binding". If a binding delivery date has been agreed, the delivery shall be deemed timely, if the Product is provided by AYOXXA to the carrier on the agreed date.
- 6.7 AYOXXA's compliance with any agreed delivery date shall be subject to the timely and proper fulfillment by the Customer of its obligations, including, but which is not limited to, the provision by the Customer of any necessary documents, technical details or internal approvals, and, if an advance payment is agreed in writing, the making of such payment in AYOXXA's bank account as designated by AYOXXA in the relevant invoice.
- 6.8 If AYOXXA fails to meet the communicated delivery date, other than due to a Customer failure to fulfil its obligations or otherwise as a result of events covered by Clauses 6.7 or 6.9 hereof, the Customer shall provide AYOXXA with a reasonable cure period during which AYOXXA can deliver the Kit and the Documents, unless extraordinary circumstances affecting AYOXXA (such as impossibility of fulfilling its obligations) make such cure period dispensable or inapplicable. If AYOXXA delivers the Kit prior to the end of such cure period, no damages shall be due.
- 6.9 If AYOXXA is unable to deliver the Product due to the occurrence of any event that is unforeseeable by and beyond the reasonable control of AYOXXA (including but not limited to any act of God, civil commotion, riot, war, actions or missions of governmental authorities, embargos, shortage of labor or materials, operational disruption, epidemics, storms, floods, fires, earthquakes or nuclear disasters, strikes, or lockouts, or other labor disputes) ("Force Majeure Event"), the delivery period shall be extended by the duration of such Force Majeure Event. The Customer shall have no rights or claims against AYOXXA for the delay in delivery. This also applies to the occurrence of such obstacles of completion or delivery at a sub-supplier of AYOXXA. If there already exists a delay in delivery at the time of the occurrence of any Force Majeure Event AYOXXA's responsibility for delay, if any, does not continue to have effect during the occurrence of any Force Majeure Event. Where the Customer is not responsible for the delay in delivery, and if such delay in delivery is for more than three (3) weeks, the Customer shall be entitled to terminate ("*zurücktreten*") the Contract.
- 6.10 If AYOXXA is responsible for any delay in delivery, any claims for damages by the Customer shall be subject to the limitations set forth under clause 15.

## **7. INSTALLATION; FURTHER SERVICES; AUDIT**

- 7.1 The Customer is responsible for providing the computer system environment required for the proper use and installment of the Software. The Customer shall inform AYOXXA in case of any doubt.
- 7.2 The Software shall be installed by the Customer at its computer system environment. To ensure a proper functioning of the Software, in particular the Software shall independently be used on a laptop.
- 7.3 To ensure the proper use of the Product, AYOXXA will provide initial technical training to the Customer's employees on the use of the Product, which may be conducted by AYOXXA or by a competent third party acting for AYOXXA, at the Customer's request. The Customer may also request AYOXXA to provide other training and services (e.g. maintenance services) to the Customer. The terms and conditions relating to such training or other services shall be separately agreed between the Parties (e.g. in the Offer or the Confirmation).
- 7.4 The Customer shall allow AYOXXA or an agent of AYOXXA to carry out audit(s) on whether the Customer's use of the Product is consistent with the rights granted to the Customer pursuant to these Terms and the Documents upon request by AYOXXA and the Customer shall fully cooperate with AYOXXA or its agent carrying out such audit.

## **8. SOFTWARE LICENSE**

- 8.1 AYOXXA remains the owner of the Software.
- 8.2 Upon delivery of the Software to the Customer, AYOXXA grants to the Customer a non-exclusive, perpetual, non-sublicensable, and irrevocable right of use of the Software. The right of use is limited to its pure application and the types of use required for the Purpose. Unless otherwise stipulated by AYOXXA's Offer or in the Confirmation, the right of use does not include the processing, further development, reproduction and publication, modification, revision alteration decompilation or disassembly of any of the Software, data patterns, samples, or other information produced.
- 8.3 For the avoidance of doubt, apart from clause 8.5 the Reader and the Software may not be copied, reverse engineered, modified, revised, altered, decompiled or disassembled into its individual parts, further developed or reengineered without the prior written consent of AYOXXA. The source code of the Software shall not be disclosed to the Customer.
- 8.4 The right to use the Software is limited to the independently use on a computer system. The right to copy the Software granted to the Customer herein is limited to the installation of the Software on a computer system which is in the Customer's immediate possession and to fulfill the Purpose and a copy thereof which is required for the loading, display, running, transfer or storage of the Software as well as to the right for an authorized person to make a copy for security backup purposes, as stated in Section 69d para. 2 German Copyright Act (*Urheberrechtsgesetz - UrhG*).
- 8.5 The right to revise the Software granted to the Customer herein is limited to the maintenance or reinstatement of the agreed functionality of the Software.
- 8.6 The right to decompile the Software is only granted under the terms of Section 69e para 1 no. 1 to 3 UrhG and within the limits of Section 69e para. 2 no. 1 to 3 UrhG.

## **9. DOCUMENTS AND DATA; LICENSE**

- 9.1 AYOXXA shall retain all copyrights and proprietary rights concerning all delivered documents, data, patterns and/or samples (including but not limited to the Documents, Offer and Confirmation, illustrations, drawings, calculations, technical specifications), if any. These documents, data, patterns and/or samples may not be disclosed or provided to third parties, unless related to permissible sale as described in Clause 10. All such materials are subject to the confidentiality obligations of Clause 17.
- 9.2 Upon delivery of the Documents to the Customer, AYOXXA grants to the Customer a non-exclusive, perpetual, non-sublicensable and irrevocable right of use of the delivered Documents. The right of use is limited to its pure application and to the types of use required for the Purpose. Unless otherwise stipulated by AYOXXA's Offer ,or in the Confirmation, the right of use does not include the processing, further development, reproduction and publication, modification, revision alteration decompilation or disassembly of any of the Documents, data patterns, samples, or other information produced

## **10. RESALE AND PRE-EMPTIVE RIGHT**

- 10.1 10.1 The Customer may sell the Product (or part thereof; including the Documents) to a third party, subject to the provisions of Clause 12 hereof. However, the Customer intending to sell the Product (including the Documents) shall immediately notify AYOXXA of such intention in writing and of the sale price at which the Customer wishes to sell the Product (or such part thereof; including the Documents). The Customer agrees to grant to AYOXXA a right of first refusal in

relation to the Product (or such part thereof), and the notice from the Customer shall constitute its offer to sell the Product (or such part thereof; including the Documents) to AYOXXA at the specified sale price. AYOXXA must exercise its rights of first refusal within thirty (30) calendar days of receipt of the Customer's written notification.

- 10.2 If AYOXXA fails to exercise its rights within thirty (30) calendar days of the receipt of the Customer's written notification, it shall be regarded to have declined the offer, and the Customer may sell the Products (or such part thereof; including the Documents), to the third party, provided however that the Customer shall procure that such third party abides by the same obligations and duties, including compliance with all laws and regulations, as agreed herein.

## **11. OFFSETTING, RETENTION RIGHTS AND ASSIGNMENT**

- 11.1 The Customer shall only be entitled to offset counterclaims that have been legally ascertained, are uncontested or have been accepted by AYOXXA, against amounts which are owing by the Customer to AYOXXA.
- 11.2 The Customer shall only exercise its rights of retention only to the extent that its counterclaim is based on the same contractual relationship (i.e. the Contract). The Customer may exercise its right of retention in an appropriate extent due to a notice.
- 11.3 AYOXXA shall be entitled to apply monies which it receives from the Customer to satisfy debts owing by the Customer in the order which such debts are accrued, beginning with the earliest debt owing by the Customer. If AYOXXA has incurred any costs in relation to the assertion of its legal rights to recover debts (e.g. issuing demands or reminders to the Customer), AYOXXA shall be entitled to apply the monies which it receives from the Customer towards, firstly, the payment for such costs, secondly the payment of interest accrued on the principal debt, and finally, the payment of the principal debt.
- 11.4 The Customer is not entitled to assign any of its contractual rights to any third party without AYOXXA's express written consent. Section 354a German Commercial Code (*Handelsgesetzbuch – HGB*) shall remain unaffected.

## **12. RETENTION OF TITLE**

- 12.1 Pending AYOXXA's receipt of the payment of the complete purchase price and all other payments due from the Customer under the Contract AYOXXA reserves and retains the title to the Product delivered ("Retained Product") according to Section 449 para. 1 BGB notwithstanding that the Retained Kit has been delivered to the Customer. In the event of a breach of the Contract by the Customer, AYOXXA shall be entitled to recover the Retained Product following a cure period of thirty (30) days or such longer periods as agreed by AYOXXA. The Customer shall be obliged to release and return the Retained Product to AYOXXA. The recovery of the Retained Product by AYOXXA shall be deemed to be a termination ("*Rücktritt*") of the Contract.
- 12.2 The Customer is required to handle the Retained Product carefully, without abuse misuse neglect, negligence, and must not subject the Retained Product to any abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by AYOXXA, for the duration of the retention of title and to insure the Retained Product, adequately at its own expense against all usual risks, in particular theft, fire and water damage.
- 12.3 The Customer shall notify AYOXXA immediately in the event that the Retained Product is seized or otherwise taken by third parties. The Customer shall be liable to AYOXXA for any loss incurred by AYOXXA to recover the Retained Product or to enforce its claims in connection with the seizure or take-over of the Retained Product if the third party is unable to reimburse AYOXXA for any legal and extra-judicial costs.

- 12.4 Before the title to the Product passes unconditionally to the Customer, the Customer shall not, and shall not purport to, grant, transfer or dispose of any rights in respect of the Retained Product without the written consent of AYOXXA. Any further rights of AYOXXA in connection with a Contract regarding the Product remain unaffected.
- 12.5 In the event that the retained goods are sold on, the Customer hereby transfers the resulting claim against the acquirer to AYOXXA by way of security. This applies for other claims which take the place of the retained goods or which arise with reference to the retained goods, such as insurance claims or claims arising from actions in tort in case of loss or destruction. AYOXXA empowers the Customer, revocably, to collect the claims transferred to AYOXXA in his own name on behalf of AYOXXA. AYOXXA may only revoke this power of collection in case of recovery.
- 12.6 At the request of the Customer, AYOXXA shall release the title to the extent its value exceeds the amounts which are being secured and not yet settled by more than 20 % (twenty per cent).
- 12.7 In event that the Product is delivered to a jurisdiction where the foregoing provisions on the retention of title cannot be given due effect, the Customer shall do everything to arrange for equivalent security rights for AYOXXA with undue delay. The Customer shall assist AYOXXA in all steps (e.g. registration, publication etc.) necessary or expedient to ensure the effectiveness and enforceability of such a security interest.

### **13. NOTIFICATIONS OF DEFECTS IN QUALITY, LIABILITY ON DEFECTS**

- 13.1 The Customer shall inspect the Products immediately after delivery by AYOXXA pursuant to Section 377 HGB. The Customer must notify AYOXXA of any recognizable defects within ten (10) calendar days from receipt of the Product. Furthermore, the Customer must notify AYOXXA of any non-recognizable defects at the time of delivery within ten (10) calendar days from the detection of such defect. All notifications shall be made in writing.
- 13.2 The notice includes a description of defects and evidence in the form of hard copies or other documents demonstrating the defects. This shall not affect the statutory obligation of the Customer to inspect and notify defects.
- 13.3 The Product shall be substantially in accordance with the product description. Subject to applicable laws AYOXXA shall not be liable for any defect which does not significantly reduce or limit the value or usability of the Product (being minor or immaterial deviations from the agreed or assumed characteristics, or slight impairment of use) unless separately agreed in writing.
- 13.4 In the event of a defect for which notification has been timely provided and which not only insignificantly reduces or limits the value or usability of the Product, AYOXXA may, at its option, deliver a replacement or carry out repairs on the delivered Product. The remedy of the defect of the Software may also take place through the delivery or installation of a new program version. If the defect does not or not substantially impair the functionality of the Software, then AYOXXA is entitled, to the exclusion of further rights in case of defects, to remedy the defect by delivering a new version or an update as part of its version, update and upgrade planning.
- 13.5 In respect of updates, upgrades and the delivery of new versions of the Software, the Customer's rights in case of defects according to this Clause 13 shall be limited to the new features of the update, upgrade or new version compared to the previous version release.
- 13.6 If the defect is caused by a defective product of AYOXXA's supplier, whereby the supplier is not engaged by AYOXXA to assist with the performance of the Contract and AYOXXA is merely passing on such third party product to the Customer, the Customer shall in the first instance be entitled to require AYOXXA to assign its rights against the supplier to the Customer, such that the Customer can bring a claim against the supplier. This shall not apply, if the defect is caused

by improper handling of the supplier's product for which AYOXXA is responsible. In the event that the Customer is unable to claim against the supplier for the defect, AYOXXA shall be liable to the Customer.

- 13.7 AYOXXA may refuse to remedy defects or deliver replacements, until the Customer has paid the price of the Products.
- 13.8 If AYOXXA fails or refuses to deliver a replacement or effect repairs on the delivered Products on accordance with Clause 13.4, the Customer may terminate ("*zurücktreten*") the Contract and return the Products to AYOXXA, provided that the right to claim damages shall remain unaffected.
- 13.9 Claims for defects shall become barred one (1) year after the date of delivery of the Product or the complete Product System. , save for defects which are fraudulently concealed, shall remain unaffected.
- 13.10 In the event that the Product is returned, the Customer shall return the Reader and the Documents back to AYOXXA and the Customer shall permanently delete and/or destroy all installations of the Software and any copies of the Documents. Upon AYOXXA's request, the Customer shall confirm in writing such permanent deletion and/or destruction and that no copies of the Software and Documents or copies thereof were retained.
- 13.11 In the event that the Product is returned, the costs of shipping, shipping insurance, packaging and/or customs duties shall be initially borne by the Customer. If the Product is returned due to a defect, the costs of shipping, completed shipping insurance, packaging material and/or customs duties shall be borne by AYOXXA. Damage to the Product, which is attributable solely to improper packaging during the return of the Product, shall be borne by the Customer. Any previous damages and defects in the Product shall also be taken into account in assessing damages to be borne by the Customer.
- 13.12 AYOXXA shall not be responsible for defects, which are caused by (i) improper use or improper operation (including but not limited to any storage, operation or servicing of the Product which is not in accordance with the handling instructions provided by AYOXXA, or any repair of the Product by unqualified persons) (ii) the use of unsuitable means of operation by the Customer (including but not limited to any. exposure to direct sunlight, contact with water, fire or heat, charged to a faulty electrical connection), (iii) the use of items other than those specifically recommended by AYOXXA (e.g. under Section 2.13.4) and approved accessories spare parts and/or consumable supplies (e.g. as stated in the Documents or other written explanations), as well as (iv) usage beyond the Purpose. The limitation of liability applies to AYOXXA only to the extent that there has been no deliberate or grossly negligent behavior on its part which is in conflict with the terms of Clause 13 above.
- 13.13 Products which are free of defects shall only be returned or exchanged by AYOXXA upon the prior written agreement between the Parties.
- 13.14 Any claims for damages of the Customer are subject to the limitations set forth under clause 15.

#### **14. THIRD PARTY CLAIMS ON AND DEFECT IN TITLE**

- 14.1 In event of any third party claim or legal defect in respect of the title of the Product, the Customer shall inform AYOXXA in writing without undue delay of the claiming of such rights by third parties and shall give AYOXXA all powers of attorney and authorizations which are necessary in order to defend the Product against the rights claimed by third parties.
- 14.2 In the event of a third party claim and/or to the extent that there are defects in respect of the title of the Product, AYOXXA is



- (a) entitled at its option to either (i) take legitimate measures to remove, dispute or challenge the third party rights, which impair the contractual use of the Product, or (ii) remedy the enforcement of such claims, or (iii) change or replace the Product in such a manner, that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the Product; and
  - (b) under an obligation to reimburse the Customer for any costs incurred by the Customer in disputing or challenging the third party rights.
- 14.3 If AYOXXA fails to perform its obligations under Clause 14.2 fails within a reasonable time limit set by the Customer, then the Customer may by subject to the statutory prerequisites at its option terminate (“zurücktreten”) the Contract without penalty or reduce the price as confirmed in the Confirmation and claim damages against AYOXXA.
- 14.4 In all other respects Clauses 13.6 to 13.13 apply accordingly.

## **15. LIABILITY**

- 15.1 AYOXXA shall only be liable, in accordance with the statutory provisions, for damages that AYOXXA or its performing and vicarious agent caused by gross negligence and/or willful misconduct.
- 15.2 In the case of violation of essential contractual obligations (cardinal obligations), AYOXXA shall also be liable for slight negligence, whereby this liability is limited to the foreseeable, contractual damages, which would have been reasonably foreseeable on the date the Contract is concluded or on the date when the breach of duty was committed. Cardinal obligations are such basic duties which form the essence of the contract, which were decisive for the conclusion of the contract and on the performance of which the Customer may rely.
- 15.3 AYOXXA shall be liable for losses arising from the lack of any characteristics of the Product which are explicitly warranted (i.e. assured) up to the amount which is covered by the purpose of the warranty and which was foreseeable for AYOXXA at the time the warranty was given. AYOXXA warrants to the Customer that the Product will meet the warranty as specified in writing in the Offer and Confirmation. Any warranty provided in writing in the Offer or Confirmation does not apply to any part of the Product that has been subjected to abuse, misuse, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by YOXXA, or to any part of the Product which has been used with any third-party product, hardware or product that has not been previously approved in writing by AYOXXA
- 15.4 If any part of the Product does not meet the written warranty specifications, the Customer’s exclusive remedy is as described herein.
- 15.5 Claims for damages under the German Product Liability Act (*Produkthaftungsgesetz – ProdHaftG*), and the injury and damage to life, body and health shall remain unaffected by any limitation of liability, as far as applicable.
- 15.6 Notwithstanding Clause 15.5 AYOXXA shall not be liable for damages resulting from improper handling or improper use of the delivered Product.

## **16. DISPOSAL OF ELECTRICAL AND ELECTRONIC EQUIPMENT**

- 16.1 Should the delivered Products be goods according to the German Act governing Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment (*Elektro- und Elektronikgerätegesetz – ElektroG*), the Customer shall dispose of such goods at its own expense in compliance with statutory provisions. The Customer exempts AYOXXA from all

obligations according to Section 19 para. 1 sentence 4 ElektroG (the manufacture's return obligation) and from related claims of third parties.

- 16.2 In event that the Customer may transfer the Products to a third party, the Customer shall commit such commercial third party to dispose these goods properly after termination of use at their own expense in accordance with the statutory provisions and, in case of passing the goods anew, to impose a respective future obligation. Should the Customer fail to impose such contractual obligation on commercial third parties to which the delivered Products are transferred, it is the Customer's duty to take back the Products at its own expense and to orderly dispose of the in compliance with statutory provisions.

## 17. CONFIDENTIALITY

- 17.1 "Confidential Information" shall mean any and all confidential and proprietary information, either of business or technical nature, data or know-how, whether provided in written, oral, visual or other form, disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party") pursuant to the Terms and which is clearly marked as "confidential" and/or information which is reasonably regarded as confidential due to its nature.

- 17.2 The Parties each agree:

- (a) to maintain in confidence the Confidential Information received hereunder from the other Party, so as not to disclose the same directly or indirectly to any third party, using the same degree of care as the Receiving Party uses to maintain its own confidential information; and
- (b) not to use, without the Disclosing Party's prior written consent, the Confidential Information except for the contemplated for activities within the scope of these Terms.

- 17.3 The Parties agree to limit access to Confidential Information received hereunder to those of their employees who have a need to know the Confidential Information in furtherance of these Terms. In addition, the Parties may disclose such Confidential Information to their respective directors and professional advisors for use solely in accordance with the scope of the Purpose. All such further recipients of Confidential Information shall be bound by confidentiality and obligations in such manner that will enable the Receiving Party to comply with its obligations under these Terms.

- 17.4 The obligations set out in this Clause 17 shall not apply to:

- (a) information which at the time of disclosure is in the public domain, or which after disclosure becomes part of the public domain through no fault of the Receiving Party; or
- (b) information which the Receiving Party can prove by written or other tangible evidence that it was already in its possession at the time of disclosure hereunder; or
- (c) information which the Receiving Party can prove by written or other tangible evidence that it has received in good faith from a third party, which to the Receiving Party's knowledge the third party without breach of any confidentiality obligation is free to disclose to others; or
- (d) information which the Receiving Party can prove by written or other tangible evidence is independently developed by the Receiving Party without reference to the Confidential Information disclosed to it pursuant to these Terms.

- 17.5 Notwithstanding the obligations set forth in Clause 17.3 here above, each Party may disclose Confidential Information to the extent necessary to comply with the requirements of a government agency or any other applicable law or regulation, so long as the Receiving Party first provides the Disclosing Party (where permitted) with notice of such requirements and its

intent to make the disclosure in order to give the Disclosing Party a reasonable opportunity to obtain a suitable protective order.

- 17.6 The Parties agree that, upon written request of the Disclosing Party, the Receiving Party shall destroy or return to the Disclosing Party all Confidential Information received from the Disclosing Party under these Terms in written or other tangible form, including all copies thereof, provided, however, that one (1) copy may be retained solely for determining the Receiving Party's obligations hereunder.
- 17.7 The obligations under this Clause 17 shall survive for a period of five (5) years following the effective date of the Contract, even in the event of termination ("*Rücktritt*") or expiration of the Terms.

## **18. GOVERNING LAW, DISPUTE RESOLUTION AND VENUE**

- 18.1 These terms shall be governed and construed in accordance with the laws of Germany. These terms shall not be governed by the United Nations Conventions for the International Sale of Goods, the application of which is expressly excluded.
- 18.2 The regional courts (*Landgericht*) of Cologne, Germany shall have exclusive jurisdiction and venue over all disputes arising out of or in connection with the contract, provided that the Customer is a merchant within the meaning of the HGB, a legal entity under public law or if upon the commencement of legal proceedings, the Customer has no place of business or ordinary residence in Germany.

## **19. MISCELLANEOUS**

- 19.1 Personal data (such as contact details) of the Customer which is received by AYOXXA shall be collected, used and processed by AYOXXA, solely for the purposes of performing the Contract, in accordance with the applicable data protection laws.
- 19.2 Contact details of AYOXXA's customer service can be found at [www.ayoxxa.com](http://www.ayoxxa.com).
- 19.3 Either Party may only advertise the business relationship with the other Party, in particular by mentioning or using the company, name and/or company logo of the other Party, with the prior written consent of such other Party.
- 19.4 These Terms, the Contract, and the separate license agreement to be agreed between the Parties concerning the use of the Kit if applicable are the entire and only agreement between the Parties with respect to the subject matter (i.e. Purpose) and constitute the entire and only agreement between the Parties with respect to the subject matter and may not be amended, superseded or altered except by an instrument in writing duly executed and delivered on behalf of each of the Parties hereto; this also applies to this clause 19.4. Regardless of the aforesaid, in case the provided Software is subject to license agreements between AYOXXA and third parties (e.g. proprietary software, open source software), Customer shall be obliged to comply with such third party license terms and shall only use the Software in compliance with such third party license terms. AYOXXA shall provide Customer with such third party license terms.
- 19.5 Any headings used in these Terms are for convenience purposes only and shall not have any effect on the interpretation of the Terms.
- 19.6 If any provisions or part of this contract is invalid or unenforceable, it shall not affect the remainder of the contract, but the remainder shall be binding and effective. In such case the invalid provisions or unenforceable provision shall be replaced by a valid and enforceable provision which comes as close as possible to the commercial scope of the invalid or unenforceable provision.

