

General Terms and Conditions

Date: January 1, 2009

1. General

- 1.1 The following terms and conditions (hereinafter referred to as "Terms and Conditions") shall apply to all deliveries and services (hereinafter referred to as "Subject Matter") arising from and in connection with purchase, lease, software license and other agreements, including those from future transactions and continuing obligations, as well as to all offers. These Terms and Conditions shall also apply even if no renewed reference to the sole validity hereof is made in the event of continued business relationships.
- 1.2 Agreements deviating herefrom, subsequent contractual amendments and oral ancillary agreements shall only be valid if they are confirmed in writing by MOBOTIX. This shall also apply to any amendment of this clause stipulating the written form. The other party's standard conditions of purchase which are at variance with the Terms and Conditions of MOBOTIX AG (MOBOTIX) shall not be accepted by MOBOTIX.
- 1.3 Verbal and telephone orders shall be deemed placed in accordance with these Terms and Conditions.
- 1.4 If any part or parts of MOBOTIX's Terms and Conditions are invalid, for whatever reason, this shall not affect the validity of the remaining parts of these Terms and Conditions.

2. Offers, Confirmations of Orders

- 2.1 Offers by MOBOTIX shall not be binding and be subject to alteration without notice until confirmed in writing by MOBOTIX. If MOBOTIX does not issue a confirmation of the order, the contract of delivery shall come about with the delivery of the goods by MOBOTIX; in this case, the shipment of the goods shall be deemed to be confirmation of the order.
- 2.2 Information in offers made by MOBOTIX pertaining to dimensions, materials, colors, designs and other features shall be non-binding; such information shall only be binding through a written confirmation by MOBOTIX.
- 2.3 MOBOTIX reserves the right to alter warranted qualities, insofar as this is not unacceptable for the other party.
- 2.4 The other party shall be responsible for compliance with the statutory safety requirements and regulations pertaining to the handling or operation of the goods delivered.

3. Prices and Consideration, Updates

- 3.1 MOBOTIX prices are net prices. The statutory value-added tax in EUROS applicable on the date of delivery will be added to the net prices.
In offers aimed directly at consumers (including, the MOBOTIX Internet Shop, for example), gross prices including the respective value-added tax will be shown. The gross prices indicated on the date of the placement of the order shall be authoritative for contracts with consumers.
- 3.2 Insofar as a delivery period that is longer than four (4) months as of the conclusion of the contract is agreed, the prices valid on the date of delivery shall apply. **Prices are understood to be for unpacked goods ex works.**
- 3.3 For deliveries abroad, the other party will also pay the customs and customs clearance costs.
- 3.4 If the Subject-Matter contains computer programs which fall under the so-called "General Public License" (GPL) or any other Copyleft Agreement (LGPL, BSD, etc.), the other party will receive a copy of the official copy of the license together with the Subject-Matter. In addition to these Terms and Conditions, the said license shall apply specifically for the rights to and the use of the GPL software with the exception of the terms related to liability and warranty contained therein. To this extent, the provisions of

these Terms and Conditions shall apply. With regard to such programs, MOBOTIX is willing to provide the other party with the exportable programs and the source text pursuant to the copyleft licenses on requests made to MOBOTIX AG, Kaiserstrasse, 67722 Winnweiler for three (3) years as of the date of the receipt of the programs (or the processor-controlled MOBOTIX product). For this purpose, the other party shall have to communicate the serial number of his MOBOTIX Product.

The software of the Subject-Matter also contains copyrighted programs belonging to MOBOTIX. These programs may only be used by the current possessor, owner or possessor's or owner's contractor together with a MOBOTIX product with the same product type designation as the Subject-Matter.

- 3.5 MOBOTIX is not obligated to bring the programs contained in the software of the Subject Matter up-to-date, to maintain, service or even provide newer versions ("updates") free of charge. The other party is obligated to strictly comply with the type allocation of the update and the camera. If, however, MOBOTIX provides updates free of charge by opening up a possibility for downloading the programs, this shall occur to the exclusion of the liability and warranty for the new program and its installability. MOBOTIX does not represent, warrant or assume any liability for possible damages, consequential damages, breakdowns or data loss, that may result from software updates. This liability and warranty exclusion shall not apply in the event of malicious, willful or grossly negligent acts by MOBOTIX or its representatives or vicarious agents.

MOBOTIX is, subject to Section 3.4, not aware of any existing – national or international – copyright, patent or any other intellectual property right of third parties regarding the software of the Subject Matter. However, MOBOTIX does not represent, warrant or assume any liability that the software will not infringe or otherwise violate any rights of third parties. In case the user is subject to infringement claims of third parties due to the use of the software, MOBOTIX shall be under no obligation to indemnify the user or hold him harmless from such allegations of third parties.

The actual use of updates shall categorically be on the basis of a freely made decision by the other party, who also knowingly and solely assumes the risks of the download, a defective self-installation and the use of the software. In particular, newer programs used with older MOBOTIX products can lead to defects and failures.

4. Delivery, Transport

- 4.1 Deliveries shall categorically be made by MOBOTIX for the other party's account and at the other party's risk, unless something else has been agreed in writing. If the other party is a consumer within the meaning of § 13 BGB [German Civil Code], the risk for deliveries only passes from MOBOTIX with their delivery to the other party.
- 4.2 MOBOTIX reserves the right to choose the shipping route; in particular, MOBOTIX may commission a third-party carrier, if required.
- 4.3 The other party is obligated to inspect the shipment without undue delay on arrival for transport damage or loss and to report any such damage or loss to MOBOTIX immediately by means of a report of the forwarding agent and a statement which has to be signed by the other party. Defective delivery items are to be kept on hand in the condition in which they were on the date the defect was ascertained, for inspection by MOBOTIX or by the respective manufacturer.

5. Delivery Period

- 5.1 Due dates shall only be binding, if they have been explicitly confirmed as such in writing.
- 5.2 If MOBOTIX does not comply with the delivery period, the other party may reject the performance of the contract after sending a warning and setting an appropriate grace period with the threat of rejection of performance. In this case, the other party's claim to damages is excluded, unless the delay is due to willful or grossly negligent conduct on the part of MOBOTIX or any statutory representative or vicarious agent of MOBOTIX. The aforesaid exclusion of liability shall not apply to liability due to death or injury to body or health.
- 5.3 In the event of force majeure, MOBOTIX is entitled to reasonably postpone performance for the duration of the impediment plus a subsequent start-up period or, if performance is actually or economically impossible, to withdraw from the contract. Force majeure shall include but is not limited to strikes, lockouts, other unforeseen breakdowns, stoppages, delays, interruptions of service or equipment failure and all losses that were unforeseeable on the date on which the contract was concluded. This shall also apply in commercial transactions, if MOBOTIX in turn does not receive deliveries within an appropriate period. In the cases cited in this section, MOBOTIX is not entitled, however, to withdraw from the contract, if MOBOTIX is responsible for the obstacles.
- 5.4 If the other party requests a Subject-Matter that differs from the one ordered prior to delivery and if MOBOTIX agrees to the other party's demand, the term of the delivery period shall be interrupted. If necessary, the delivery period shall be extended by the time required for the different execution.
- 5.5 If the other party is in default with regard to acceptance, MOBOTIX shall be entitled to reject performance of the contract, after the expiration of a grace period to be set by MOBOTIX and the corresponding threat to do so. Compensation shall amount to 30% of the purchase price, but the other party has the right to prove that a loss did not occur or was not as high. MOBOTIX is permitted to prove a higher loss.

6. Payment

- 6.1 Payments may only be made directly to MOBOTIX or to persons empowered in writing by MOBOTIX. Receivables owed to MOBOTIX shall be due with the date of the invoice. The other party shall be in default without further notice from MOBOTIX seven (7) days after the due date, to the extent that the other party has not paid.
- 6.2 Checks and bills of exchange shall only be accepted in payment, if at all, and shall only be deemed payment after they have been cashed. Discount fees and costs shall be at the expense of the other party.
- 6.3 In the event of defaults in payment, the onset of payment difficulties or the commencement of insolvency proceedings, MOBOTIX shall have the right to declare all of the amounts owed out of the business relationship to be due for payment immediately, even if they have been deferred. In case of a default in payment by the other party, moreover, MOBOTIX shall be authorized, without prejudice to any other rights, to set a grace period with the threat of rejection, and to withdraw from the contract and to insist on the return of the goods or on compensation due to non-performance.
- 6.4 It is solely up to MOBOTIX to choose the manner in which payments received shall be set off against which receivables. If costs and interest have already been incurred, MOBOTIX shall be entitled to apply payments first to the costs, then to the interest and lastly to the principle receivable.

7. Reservation of Title

- 7.1 The delivery item shall remain the property of MOBOTIX until all MOBOTIX claims arising from the business relationship between the parties, be it already incurred or future claims, have been completely satisfied.

- 7.2 The resale of the goods is only permitted if MOBOTIX's reservation of title is passed on. In the event that the other party does not pass on the reservation of title with the resale of the goods, the other party herewith assigns its claims against the acquirer to MOBOTIX.
- 7.3 If the Subject-Matter being sold is installed, commingled or processed, so that the reservation of title is lost, the other party herewith shall assign its claims against third parties which result herefrom to MOBOTIX in the invoice amount.
- 7.4 Pledges of delivery items or assignments thereof as security for debts prior to the full payment of the purchase price are not permitted. In the event of pledges, seizure or other third-party measures, MOBOTIX is to be notified without undue delay. The other party shall bear the costs of such measures. The sheriff is authorized to hand over the goods to MOBOTIX after the cancellation of the pledge.
- 7.5 The other party is obligated to properly store and duly insure MOBOTIX goods.

8. Warranty, Liability

- 8.1 In the event that the other party is a consumer, the other party shall be obligated to notify MOBOTIX of any defects of quality or title within one (1) month after ascertaining such defect. If the other party is a businessperson, defects of quality and title are to be reported in writing without undue delay after the receipt of the goods or the discovery of the defect. In both cases, the defects are to be described in as much detail as possible. § 377 HGB (German Commercial Code) shall apply to businesspersons to the extent that this section is applicable.
- 8.2 If the other party is a consumer, the statutory warranty provisions shall apply, to the extent that nothing else has been provided for herein.
- 8.3 If the other party is a businessperson, liability for normal wear and tear is excluded. If MOBOTIX operational or maintenance instructions are not complied with, alterations are undertaken to the product, parts are replaced or if materials which do not correspond to the original specifications are used, claims for defects shall be excluded, unless the businessperson refutes a correspondingly substantiated claim that it was precisely one of these circumstances that led to the defect. In the event of an insignificant deviation from the agreed quality or insignificant impairment of the usefulness of the goods, any claims for defects on the part of the businessperson shall likewise be excluded.
- 8.4 If the other party is a businessperson, MOBOTIX shall under no circumstance be obligated to provide a replacement or new manufacture as part of the supplementary performance. If the supplementary performance fails, the other party shall have the right to reduce the purchase price or to withdraw from the contract as the other party chooses. If the other party wants to demand damages instead of performance or wants to undertake the performance itself, rectification shall only be deemed a failure after an unsuccessful second attempt. The statutory cases pertaining to the dispensability with the setting of a grace period shall remain unaffected hereby.
- 8.5 Flash memory media (e.g. CF or SD cards, USB memory), embedded in or delivered with cameras are excluded from any liability of MOBOTIX. The same applies for any damage caused by the use of Flash memory media other than purchased by MOBOTIX.
- 8.6 The defective goods are to be sent to MOBOTIX on request. The parts replaced as part of the supplementary performance shall become the property of MOBOTIX. If the other party has combined the goods delivered by MOBOTIX with other items, **MOBOTIX shall not be liable for the costs of the installation or dismantlement** of the defective goods or the installation of the subsequently delivered replacements. The other party must give MOBOTIX an opportunity to conduct an inspection or to comment in writing, before the other party dismantles goods from MOBOTIX.

If MOBOTIX has rendered services for a repair of the camera after the report of a fault or a malfunction by the other party, and if there was and is no defect of quality, the other party shall pay a lump-sum share of the costs incurred hereby in the amount of **100.00 Euros** plus the respective statutory value-added tax. MOBOTIX shall bear the fault-finding costs.

In case of defective goods, in particular defective camera models with additional internal Flash memory media (e.g. CF or SD cards, USB memory), it is possible that data saved on an internal memory could get lost. In line with repair work, MOBOTIX endeavors to keep the loss of data as small as possible. Incidentally, for the liability of MOBOTIX in case of a loss of data, the provision set forth in clause 8.8 applies.

- 8.7 The other party is obligated not to use defective devices any more and once defects are known, to take immediate measures to prevent or limit consequential damage or loss. By the way, MOBOTIX is to be informed at once.
- 8.8 (a) MOBOTIX shall be liable in cases of willfulness or gross negligence on the part of MOBOTIX or any representative or vicarious agent in accordance with the statutory provisions. In other respects, MOBOTIX shall only be liable under the German Product Liability Act, for death or injury to body or health or for culpable infringements of major contractual duties. The claim for damages for the infringement of major contractual duties is, however, limited to typical, foreseeable loss or damage. Liability for loss or damage caused by the delivery item to the other party's legal assets shall be completely excluded. The provisions of the two preceding sentences shall not apply, to the extent that there is deliberate intent or gross negligence or there is liability for death or injury to body or health. To the extent that MOBOTIX is liable under this provision, liability shall be limited to €50,000.00 per damaging event.
- (b) The provision of the preceding paragraph shall apply to damages in addition to performance and damages in lieu of performance, on whatever legal basis, in particular but not limited to defects, infringements of duties arising from the relationship under the German law of obligations or a tort. This provision shall also apply to claims to reimbursement of futile outlays.
- 8.9 The other party is solely responsible for compliance with the respective statutory safety regulations in effect concerning the handling or the operation of the devices delivered. In particular, provisions concerning the operation of the terminals to ISDN must be complied with and the corresponding surge protection must be installed prior to start-up. If the corresponding regulations, provisions and guidelines are disregarded, the goods or devices delivered may not be put into operation. In these cases, liability on the part of MOBOTIX is excluded.
- 8.10 With contracts pertaining to used items, all warranty claims are excluded to this extent. This shall not apply to contracts with consumers or in the event of deliberate intent or if MOBOTIX has concealed defects with the intent to deceive.
- 8.11 With regard to the other party's rights, the other party that is not a consumer does not have any right of retention against MOBOTIX receivables that do not refer to this contractual relationship. For contracts with merchants, a legal entity under public law or a public-law investment fund, a right of retention or a right to refuse performance on the part of the other party is excluded.
- 8.12 Prior to linking MOBOTIX products to other things, in particular but not limited to an IT or a telecommunications system, the other party must ensure that any failure or malfunction on the part of the MOBOTIX product can not cause further damage to the other party's things or data. The other party must heed the MOBOTIX product notes prior to installation. The other party shall be obligated to perform regular data back-ups, at least once a day.

a) Without prejudice to the provision in Section 8.10, the statute of limitations for claims of defects of quality shall be six (6) months to the extent that a used item is the delivery item; for

other claims, and rights owing to defects, the statute of limitations shall be one (1) year.

b) To the extent that a new item is the delivery item, the statute of limitations for claims and rights for whatever legal reason shall be one (1) year.

c) The statutes of limitations pursuant to the foregoing paragraphs a) and b) shall not apply in the event of deliberate intent or if MOBOTIX has concealed the defect with the intent to deceive. In the event of deliberate intent, the statutory statutes of limitation shall apply. If MOBOTIX has concealed the defect with the intent to deceive, those statutes of limitations that would have applied without the occurrence of the intent to deceive shall apply.

- 8.13 Data communications via the Internet may not be free of errors and/or can not be warranted to be available at all times. Therefore, MOBOTIX is liable for neither the constant and uninterrupted availability of its Internet Shop nor for technical or electronic errors during a sales event over which MOBOTIX has no control, in particular but not limited to the delayed processing or acceptance of offers.

9. Returns

- 9.1 Return shipments of goods shall only be permitted with the prior consent of MOBOTIX, which is granted through the indication of a return number (RMA Number). The other party will be sent a return shipment form (RMA Order) by MOBOTIX. The return shipment form is to be enclosed with return shipments with a detailed description of the fault(s).
- 9.2 The return must be made to the place determined by MOBOTIX for the return shipment. This shall be the place of performance for the return and with the proper acceptance, the place at which the risk passes to MOBOTIX.

10. Right of Revocation, Caution

- 10.1 If the contract is concluded via the MOBOTIX Internet Shop, the other party, provided he is a consumer in the meaning of sec. 13 BGB (German Civil Code), may revoke the declaration of contract within two (2) weeks without giving any reasons in text form (e.g. by letter, fax or e-mail) or by returning the goods, insofar as this other party is a consumer. This deadline shall commence at the earliest with the receipt of a notice concerning the right of revocation in written form. The timely dispatch of the revocation or the goods shall be sufficient to comply with the said deadline. The revocation is to be addressed to: MOBOTIX AG, Kaiserstrasse, 67722 Winnweiler, Fax: +49 6302-9816-190; e-mail: order@mobotix.com.
- 10.2 In the event of a valid revocation, the performance received by both parties is to be returned and any benefit drawn (e.g. interest) is to be handed over. If the other party cannot return or incompletely returns the performance received or only in a worsened condition, the other party must replace the value to this extent. When handing over items, this shall not apply if the worsening of the items is due solely to the examination – such as would be possible with regard to a transaction in a store. In other respects, the other party can avoid this duty to replace the value if the other party uses the item with care and refrains from everything that would impair its value. Goods that are capable of being sent by package are to be shipped returned. With the return shipment of goods, the order value of which amounts is 40 Euros or less or in the event of a higher price, if the other party has not yet provided consideration or made a partial payment on the date of the revocation, the other party shall bear the costs of the return shipment, unless the goods delivered do not correspond to the goods ordered. The return shipment shall be free of charge otherwise. Items not capable of being shipped in packages shall be fetched from the other party.

11. Items Manufactured to Order

- 11.1 Unless otherwise agreed, one-third (1/3) of the estimated costs shall be due for payment upon receipt of the confirmation of the order from MOBOTIX.

- 11.2 Tools, molds, etc. shall be the sole property of MOBOTIX, even if they are invoiced to the other party.
- 11.3 The other party shall indemnify MOBOTIX against all claims which could be asserted against MOBOTIX or the MOBOTIX's supplier by virtue of industrial property rights, copyrights, trademarks, etc., at first request and without limitation as to the amount for goods manufactured to the other party's requirements, specifications, etc. The same shall apply if the other party uses goods from MOBOTIX without the consent of MOBOTIX so that third-party rights can be infringed.

12. Data Protection

- 12.1 MOBOTIX shall use the personal data communicated by the other party (form of address, name, address, date of birth, e-mail address, telephone number, fax number, bank account data, and credit card number) pursuant to the provisions of the German data protection laws.
- 12.2 To the extent that such data are necessary for the justification, the design or alteration of the contractual relationship (inventory data), the other party's personal data shall be used solely to process the purchase agreements entered into, for example, to deliver the goods to the address supplied by the other party. Any other use of the inventory data for advertising or market research purposes or for the needs-driven design of MOBOTIX's offers shall require the explicit consent of the other party. The other party shall have the possibility of granting this consent prior to placing an order. This declaration of consent shall be made on a completely voluntary basis and can be retrieved from the MOBOTIX website and revoked by the other party at any time.
- 12.3 The personal data of the other party that are required to enable the availment and invoicing of offers made by MOBOTIX (utilization data) shall initially also be used solely for the processing of the purchase agreements concluded. Such utilization data, are in particular but not limited to the features for identifying the user, information on the beginning and the end and the extent of the respective use and information on the teleservices utilized by the user. In addition, MOBOTIX shall use such utilization data for advertising and market research purposes or for the needs-driven design of the teleservices to create user profiles utilizing pseudonyms. The other party shall be entitled and shall have the possibility to revoke such use of the utilization data.
- 12.4 To the extent that the other party wishes further information or wants to retrieve or revoke the consent to use the inventory data explicitly granted by the other party or to revoke the use of the utilization data, MOBOTIX is at the other party's disposal under the e-mail address of info@mobotix.com.

13. Miscellaneous

- 13.1 The other party's set-off rights shall be excluded, unless they pertain to uncontested, non-appealable counterclaims or counterclaims recognized by MOBOTIX.
- 13.2 The other party's rights arising from business transacted with MOBOTIX shall not be transferable. § 354a HGB shall remain unaffected hereby.

14. Export

- 14.1 All of the products delivered by MOBOTIX are to be retained in the country of delivery agreed with the other party. The other party is aware of the fact that the re-export of products is subject to the foreign trade laws of the Federal Republic of Germany or of the country of origin, and are subject to approvals, if necessary.
- 14.2 The other party has the responsibility of obtaining information about these regulations in detail and of applying for the requisite permits, if necessary. The other party further agrees to put all recipients of such products or technical information obtained from MOBOTIX under the same obligation and to inform the said recipients about the necessity of complying with such legal regulations.

- 14.3 Information and permits shall be granted under German law by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA), 65760 Eschborn/TS, and under US law by the U.S. Department of Commerce, Office of Export Administration, Washington, D.C. 20230, U.S.A.

15. Venue

- 15.1 The legal relationships between the other party and MOBOTIX shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 15.2 The place of performance for the performance to be rendered by both parties shall be Kaiserslautern. To the extent that this is legally permitted, the courts in Kaiserslautern shall have exclusive jurisdiction over any and all disputes. MOBOTIX reserves the right to institute legal proceedings against the other party with the courts at the other party's domicile. If the other party is a consumer, the venue shall be determined in accordance with the statutory provisions.