



§ 1 Subject of Regulation

- 1) This framework contract represents the General Terms and Conditions (hereinafter GTC) of ENDOMOBIL GmbH. These GTC include the general rules applicable to the individual contracts between the client and the contractor. The individual contracts are called "individual contracts".
- 2) These GTC list the regulations that apply in principle to all "individual contracts". The provisions of these GTC shall apply if one of the contracting parties makes it clear during the negotiations on the respective "individual contract" that it wishes to make the inclusion of these GTC and its annexes the legal basis of the respective "individual contract".
- 3) Special General Terms and Conditions for specific individual contract types can be found in Parts A and B. The applicability of the legal provisions of Parts A and B shall be agreed separately in each case.
- 4) The contractor's services and offers are directed exclusively to entrepreneurs within the meaning of § 14 BGB (German Civil Code).

§ 2 Contractual components, defense clause and definitions

1) Contractual components

a) This framework contract

The provisions of the individual parts of the GTC complement each other. If there is any overlap, *lex specialis derogat legi generali* shall apply.

b) The enclosures applicable to all services of the contractor, if agreed:

- Part A - Repair - Continuous Obligation
- Part B - Rental and leasing
- Enclosure AVV - Regulations for individual contract data processing
- Enclosure HBV - Individual limitation of liability agreement, as far as agreed
- Enclosure BL - Inventory list of the client

2) Defense clause

Only the General Terms and Conditions of the contractor shall apply. General terms and conditions of the client shall not become part of the contract. Any inclusion of the client's general terms and conditions by way of any form is hereby objected to.

3) Definitions and notices

- a) "Reprocessing" means the hygienic cleaning of the device by means of disinfectants and automatic cleaning machines intended for this purpose.
- b) "Client" is the contractual partner of the contractor.
- c) "Inventory list" reflects the inventory of equipment agreed upon by the parties on which the contractor shall perform the repair under the contract.



- d) "Documentation" means either the repair manual or the operating instructions from the manufacturers for the particular equipment to be repaired, including internal test records.
- e) "Individual contract" shall mean the respective individual contract concluded under inclusion of these GTC and its enclosures.
- f) "External impact" means the improper impact coming from outside on the equipment to be repaired. For this purpose, a distinction must be made between **intent and "deliberate negligence"**, e.g.
- Defects and damage resulting from improper handling, misuse, culpable conduct, continuous or prolonged use of the device not in accordance with its intended purpose, continuous or prolonged use not in accordance with the intended use described in the operating instructions for the device (intent or "deliberate negligence"),
 - Unauthorized disassembly, repairs or modifications not performed by the manufacturer or an authorized service center;
 - Defects or damage caused by incorrect testing, maintenance, installation or any change and modification of the device;
- and **"simple negligence,"** such as:
- Defects or damage caused by accidental handling, such as immersion in liquids and resulting corrosion, rust or use of wrong accessories / wrong voltage, wrong detergents;
 - Defects and damage resulting from a single or short-term use of the device not in accordance with the intended use, a single or short-term use not described in the operating instructions of the device or accidents.
- g) "Deliberate negligence" is the disregard of the care required in traffic by the actor, whereby he expects the possible occurrence of the damaging success, but negligently trusts that the damage will not occur.
- h) "Simple negligence" is the disregard of the objectively required care of the actor in traffic, whereby he did not recognize the possible occurrence of a damaging success, although he could have recognized it with due diligence.
- i) "Quotation" means the contractor's non-binding calculation of the estimated cost of "repairing" a piece of equipment. The client may reject or accept the contractor's non-binding calculation. The cost of the contractor's performance may exceed the calculation of the estimated cost to an insignificant extent, not exceeding 20%.
- j) "Employees" are all employees of the contractor and all subcontractors commissioned with the execution of the respective "individual contract" with the consent of the client or their employees. They are obliged to maintain secrecy and to comply with data protection regulations.
- k) "Repair" means the return of a defective device to a working condition.
- l) "Wear and tear" means the normal wear and tear of the equipment as a result of normal use and normal aging of the equipment. This includes, in particular, scratches and damage to the housing surfaces and to all other, external, exposed parts which are caused by normal use by the client and/or to components located in or on the device or installed in the device which are caused by mechanical causes, such as the contact and relative movement of a solid, liquid or gaseous counterbody, which lead to loss of mass of a surface due to e.g. grinding, rolling, impacting, scratching, chemical or thermal stress, such as ducts or cables (so-called mechanical wear), unless the damage is due to a material or processing defect.
- m) "Contract conclusion" means the signing of the respective "individual contract" by both parties.



§ 3 Subject matter of the contract

- 1) The subject matter of the contract shall be exclusively the services of the contractor designated in the "individual contract".
- 2) The "individual contracts" shall each be concluded subject to the application of these GTC and their enclosures, even if the parties decide to conclude a new contract or negotiate on it and it is clear at contract conclusion that only one Party wishes to conclude the new "individual contract" subject to these GTC and the enclosures and the respective other party does not object to this immediately.

§ 4 Repair services

- 1) The client knows that the contractor uses original new and used spare parts as well as rebuilt spare parts to perform repairs.
- 2) If the repair cannot be carried out, the item to be repaired only needs to be returned to its original condition at the express request of the client and against reimbursement of the costs, unless the work carried out was not necessary.
- 3) The contractor shall send a "quotation" to the client for the equipment that the client has sent to the contractor for repair. The client knows that the stated costs can be exceeded by max. 20%.
- 4) Information on repair times is based on estimates and is therefore not binding.
- 5) The client may only demand the agreement of a binding repair period, which must be designated as binding in writing, when the scope of the work has been precisely determined and subject to its own correct and timely delivery. In case of additional and extension orders placed later or in case of necessary additional repair work, the agreed repair period shall be extended accordingly. If the repair is delayed due to force majeure, an appropriate extension of the repair period shall apply insofar as such obstacles can be proven to have a significant influence on the completion of the repair. This shall also apply if such circumstances occur after the contractor has defaulted.

§ 5 Return of unrepaired devices

- 1) If the client does not place a repair order after receiving the "quotation" or after receiving the information that a spare part is not in stock and thus the repair may be delayed, the device will be returned to the client free of charge. In such case, the following applies:
 - If the equipment is received by the contractor in assembled condition, the equipment will be returned as received by the contractor, but without the bend rubber.
 - If the equipment is received by the contractor in a disassembled state, the contractor shall assemble the equipment, to the extent necessary for the preparation of a quotation, and return it to the client in an assembled state, whereby the functionality of the equipment shall not be established.
- 2) No "reprocessing" of the unrepaired equipment will take place. In this case, the contractor shall not be liable for the functionality of the unrepaired device and expressly advises against further use of the equipment.
- 3) Devices that cannot be repaired by the contractor shall be returned to the client on working days within 48 hours, starting from the receipt of the notification by the client that the equipment cannot be repaired. E. g. video endoscopes fall under this regulation if they require a CCD chip replacement and this is not available as a spare part at the time of repair, as well as other spare parts such as housings. Any costs incurred by other repair companies shall not be borne by the contractor, unless it is a matter of repair work that the contractor typically offers as a service, but culpably fails to perform in the individual case despite an order from the client.



§ 6 Remuneration; rights of retention; offsetting

- 1) Unless otherwise agreed, the amount of remuneration shall be based on the "individual contract". All payment modalities such as partial payments, rebates, cash discounts, etc. are regulated in the "individual contract". The same applies to travel costs and expenses.
- 2) Unless otherwise agreed, payment shall be made without cash discount after the invoice has been issued or sent. 30 days after receipt of the invoice, the client is in default.
- 3) All prices are net prices and are to be paid plus the respective **legally** applicable value added tax.
- 4) The contractor reserves the right to assert rights of retention against the client in the event of payment arrears arising from the same contractual relationship of the "individual contract".

§ 7 Time of performance; delay; partial performance by the contractor

- 1) Payments by the client shall be due within 30 days after receipt of an auditable invoice and must be made in favor of the contractor to one of the accounts specified in the invoice.
- 2) If the client fails to determine on which debt he is paying, incoming payments shall first be booked against existing ancillary claims (interest, etc.) and then against the client's oldest debt in each case.
- 3) If the client fails to meet its payment obligations in due time, the contractor may, without prejudice to the assertion of further damages, claim default damages from the client in the amount of the statutory default interest.
- 4) If the client fails to meet its payment obligations despite a reminder setting a reasonable grace period, the contractor shall be entitled, without prejudice to the rights under paragraph 3, to cease work on all services agreed in the "individual contract" and the associated agreements or within the scope of the provision of continuing obligations for the services not yet paid for in each case, as well as to withdraw from the relevant contract, and to invoice the client for all costs incurred up to that point.

§ 8 Warranty

- 1) The client knows that the contractor uses original new and used spare parts as well as rebuilt spare parts to perform repairs.
- 2) In the event of defects in the "repair service", the contractor shall initially provide warranty by means of subsequent performance. The contractor shall have the right to choose the type of subsequent performance. The defect shall be notified to the contractor in text form (e.g. by email).
- 3) The statute of limitations for claims arising from defects in the repair or new, installed spare parts is 12 months and begins with the acceptance of the agreed services. Claims for damages due to material defects with the exception of claims due to intentional or grossly negligent conduct and of claims due to damage to life, body and health shall also be subject to a limitation period of 12 months. The warranty for material defects in installed, used spare parts is excluded, with the exception of claims for damages due to intentional or grossly negligent breach of obligations of the contractor and claims based on injury to life, body and health. Claims under the Product Liability Act (Produkthaftungsgesetz) shall remain unaffected by this provision.
- 4) The right to assert withdrawal from the "individual contract" due to the existence of an insignificant defect which only insignificantly restricts the usability of the functions of the device is excluded. The right to substitute performance according to § 637 BGB (Civil Code) is excluded if the contractor is able and willing to remedy the defect.



§ 9 Liability

- 1) In case of unfeasible repair, the contractor shall not be liable for any damage to the object of repair.
- 2) of liability shall not apply in the event of injury to life, body or health caused by a negligent or intentional breach of duty by the contractor or an intentional or negligent breach of duty by a legal representative or vicarious agent of the contractor. Also unaffected is the liability according to § 7 Liability Act (HPfIG) in relation to personal injury, as well as claims for damages arising from the breach of essential contractual obligations. Material contractual obligations are those the fulfillment of which is necessary to achieve the objective of the contract. In this context, the contractor shall only be liable for the damage typical for the contract and foreseeable at the time of contract conclusion in the event of a breach of material contractual obligations. Foreseeable damage typical for the contract is damage that the contracting party has foreseen as a possible consequence of a breach of contract at the time of contract conclusion or should have foreseen, taking into account the circumstances of which it was aware or should have been aware if it had exercised due care.
- 3) In case of a damage caused in any other way, not relating to the case in point 1, the contractor shall be liable in accordance with the statutory provisions in the event of intent and gross negligence, including that of its vicarious agents. In the event of negligently caused damage to property and financial loss, the contractor and its vicarious agents shall only be liable in the event of a breach of a material contractual obligation, but limited in amount to the damage foreseeable at the time of contract conclusion and typical for the contract.
- 4) The contractor shall not be liable for any loss of data or damage resulting from the client's failure to back up the device and the "data" processed with it within reasonable periods of time using the respective current and proven state of the art means.
- 5) If the parties have individually negotiated the provisions on limitation of liability, the provisions of Enclosure HBV shall apply, which shall take precedence over the provisions of this Agreement.

§ 10 Duties of cooperation

- 1) The duties of cooperation result from the respective "individual contract" and the following provisions:
- 2) Apart from the special regulations, the following duties of cooperation shall generally apply to the client. The client shall create the necessary organizational conditions for the acts of cooperation; in particular, it shall
 - assist the contractor to the best of its ability in the search for the cause of the malfunction and, if necessary, encourage its employees to cooperate with the "employees" employed by the contractor;
 - the client undertakes to actively cooperate in the fault analysis when faults occur and to document faults in such detail (a diagnostic slip will be provided to help document the fault) that it is possible to reproduce the fault. This obligation is based on the client's ability to identify and name technical faults in the device. A fault report should contain information about the type of technical fault, the module in which the technical fault occurred, the version number, and any work performed on the device when the technical fault occurred. The fault report must be produced in text form.
- 3) If it is apparent to the contractor that the client is not performing an obligation to cooperate in accordance with the contract, the contractor shall inform the client of this and point out the consequences. The contractor shall not be in default as long as the client fails to fulfill an obligation to cooperate incumbent upon it in accordance with the contract. In all other respects, the statutory provisions shall apply.



§ 11 Force majeure

- 1) Neither party shall be liable to the other party in the event of a breach of its contractual obligations if an event of force majeure delays, prevents or hinders the performance of the said obligations. Force majeure is defined as an event beyond the control of one of the parties which could not reasonably have been foreseen at the time of the conclusion of the contract and the effects of which cannot be avoided by taking appropriate measures ("force majeure"). The contract parties agree that in particular the following events shall be considered as force majeure: total or partial destruction by fire, flood, war, governmental intervention, power supply difficulties, strike or lockout, pandemics or epidemics, acts of terrorism and/or threats of acts of terrorism on the premises of the contract parties, and natural disasters recognized by the state.
- 2) The parties expressly agree that any event caused directly or indirectly by an epidemic situation, such as, in particular, the spread of the virus responsible for COVID-19 (and mutations thereof), and the measures taken following such a situation (including reasonable measures taken by the parties in this regard), and which prevents either party from fulfilling its contractual obligations without unreasonable costs, shall be subject to the presumption of applicability of this point 4, even if the criteria of force majeure as defined in this article should not be met. The contract parties shall nevertheless use their best efforts to meet the agreed contractual deadlines, and each party shall promptly inform the other party of any difficulties in this regard.
- 3) The contract party invoking the rights referred to in this clause shall promptly provide the other party with evidence, in writing or by fax or e-mail, of the situation or circumstances preventing it from fulfilling its obligations under this agreement. In addition, the contracting party must specify the period of time during which it will probably be unable to fulfill its contractual obligations due to the situation or circumstances. In the event of the occurrence of such a force majeure event, performance of this agreement shall be presumed until the force majeure event disappears, ceases or terminates. However, if the case of force majeure lasts for more than thirty (30) days or if the obstacle to the performance of the obligation is definitive, either of the parties shall have the right to terminate the contract by operation of law, in writing, with ten (10) days' notice, without any compensation being owed by either party.

§ 12 Acceptance

- 1) An acceptance of the "repair" is made against the provisions of the "individual contract". The client shall inspect the repaired device immediately after receipt for functionality of the device or defects of the service.
- 2) The acceptance can be recorded in writing or in text form (e.g. by e-mail) after receipt of the device at the latest within 3 working days beginning with the following day on which the repaired device was received. If the client puts the repaired equipment into operation without claiming material defects within the period specified in sentence 1, but at the latest after 7 working days, the existence of tacit acceptance shall be assumed. However, the contractor shall separately inform the client thereof.

§ 13 Retention of title, extended lien

- 1) The contractor retains ownership of essential accessories, spare parts and replacement aggregates until all payments under the repair contract have been received. Further security agreements can be concluded.
- 2) The contractor shall be entitled to a lien on the client's object of repair that has come into its possession on the basis of the contract because of its claim under the repair contract. The right of lien may also be asserted on account of claims arising from work carried out earlier, deliveries of spare parts and other services, insofar as they are connected with the object of repair. For other claims arising from the business relationship, the right of lien shall only apply insofar as these are undisputed or legally binding.
- 3) The contractor shall be entitled to assert its rights arising from the retention of title - in particular to take back the goods delivered under retention of title - without prior withdrawal from the respective purchase contract.



§ 14 Rental devices

- 1) Rental devices are made available to the client against payment of a rental fee. The amount of the rental fee can be found in the "individual contract". The rental devices provided shall be returned by the client without delay at the client's expense after the end of the agreed term of the loan. In case of late return of the rental device by the client, the client has to pay an additional rental fee of 25 € (net, plus VAT) per day.
- 2) The rental devices will be inspected upon receipt by the contractor for damage that is not due to normal "wear and tear". Repair costs on these rental devices that are due to "wear and tear" shall be borne by the contractor. Damages caused by an "external impact" up to an amount of 250 € net are to be borne by the client. If the damage caused by the "external impact" exceeds the amount of € 250 net, the repair costs or damage shall only be borne by the client if no electronics insurance as per lit. c) has been taken out.
- 3) If the client wishes to take out electronic insurance for the rental of the rental device, the client shall pay a lump sum of € 65.00 (net, plus VAT) to the contractor. In the event of damage, a deductible of the client in the amount of € 250.00 (net, plus VAT) must then be taken into account if damage is due to an "external impact". In all other respects, the contractual conditions of the electronics insurance apply.

§ 15 Guarantee

- 1) The client is granted a six-month warranty on installed used spare parts which are installed in the course of repair, starting from the date of receipt of the repaired equipment by the client.
- 2) The guarantee does not cover defects of the installed spare part if they are due to "external impacts". In the event that a spare part required for the repair is no longer available during the warranty period or can no longer be procured or can only be procured under unreasonable circumstances, the guarantee is excluded. The client shall not incur any further costs in the event of a guarantee claim.
- 3) The client must immediately notify the contractor of the guarantee claim in writing or in text form.
- 4) The written notification and document submission shall be addressed to
ENDOMOBIL GmbH
Am Farmböddel 12
Fax: +49 (0) 4327 25300 – 25
E-Mail: info@endomobil.com
- 5) The client shall notify the contractor in text form of the defect/fault and that a guarantee inspection is to be carried out. The device is disinfected and then checked for damage by the contractor in the incoming inspection. The guarantee service is provided in such a way that the defect in the spare part is analyzed. If an "external impact" can be excluded, the spare part will be replaced at the contractor's expense.
- 6) The warranty rights apply independently of the guarantee and are not limited by it.

§ 16 Amendment of contract, applicable law and place of jurisdiction

- 1) All agreements which contain an amendment, supplement or concretization of an element of the contract within the meaning of § 2, as well as special guarantee commitments and agreements, must be recorded in writing. If declarations of the aforementioned kind



are made by representatives or auxiliary persons of the contractor, they shall only be binding on the contractor if the contractor's management gives its written consent thereto. The written form can be replaced by the text form according to the specifications of the respective "individual contract".

- 2) Irrespective of sec. 1), the contractor shall be entitled to unilaterally modify these GTC, insofar as this is necessary for the elimination of equivalence disruptions arising subsequently or for the adaptation to changed legal or technical framework conditions. The contractor shall inform the client of such a change by sending a notice of the content of the changed provisions to the respective contact addresses (primarily the e-mail address). The amendment shall become part of the contract if the client does not object to its inclusion in the contractual relationship in text form to the contractor within 4 weeks after receipt of the amendment notification.
- 3) With regard to all legal relations arising from this contractual relationship, the parties agree that the law of the Federal Republic of Germany shall apply. If the client is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the contractor's registered office shall be the exclusive place of jurisdiction for all disputes arising in connection with the performance of this contractual relationship. Notwithstanding the foregoing, the contractor shall also be entitled to bring an action before the court having jurisdiction over the client's registered office.

These GTC are valid from 01.08.2021