

General terms and conditions

1. **Validity of the terms and conditions**

- 1.1 The Sysformance AG (hereinafter referred to as Sysformance) shall perform its services only on the basis of this general terms and conditions (hereinafter referred to as GTC). They shall also be valid for all future business relations without further explicit agreement. They shall become effective at the latest with the first use of Sysformance services. Counter-confirmations of the customer referring to his terms and conditions or sale conditions shall hereby be contradicted.
- 1.2 Modifications of the GTC shall only be valid if Sysformance confirms them in writing.
- 1.3 The employees of Sysformance are not entitled to make supplementary agreements in oral form or to give oral assurances that go beyond the content of the respective contract including these GTC.
- 1.4 Sysformance shall be entitled to change or to complement these GTC including all enclosures like conditions of use and specifications of services at any time with an appropriate advance notice. If the customer does not contradict the modified conditions within two weeks after the notification of change or latest in the moment where the changes should become effective, they shall become valid according to the notice. If the customer contradicts within the agreed time limit, Sysformance shall be entitled to terminate the contract effective the time of the introduction of the modifications.

2. **Contract closure**

- 2.1 The contract of the use of Sysformance services shall be deemed in effect with the countersignature of a contract by Sysformance or with the provision of the services (delivery of the access or configuration information to the customer by mail, e-mail or in oral form).
- 2.2 As far as Sysformance uses the help of third parties to perform the offered services, they shall not become contract party of the customer. There shall also be no contractual relationship between the customers of Sysformance resulting from their common use of the services.

3. **Termination**

- 3.1 Where not otherwise agreed in the contract, with respect to contracts without minimum duration the following shall apply: the contractual relationship may be terminated with a period of notice of 6 months at end of any month.
- 3.2 Where not otherwise agreed in this contract, with respect to contracts with a minimum duration the following shall apply: the contractual relationship may be terminated with the observance of a period of notice of 2 (two) months at the end of the

month the contract expires. If the contract is not terminated with observance of the notice period, it shall be renewed for further 12 (twelve) months.

- 3.3 All terminations shall be made in writing (by letter or fax).
- 3.4 After the termination of the terminated contractual relationship Sysformance shall deconfigure all accounts, entries and other things installed for this contract and shall delete all present data sets on the Sysformance systems.
- 3.5 Article 5, clause 5.2 shall be reserved.

4. **Scope of services**

- 4.1 Sysformance offers telemonitoring and measuring services for Internet services.
- 4.2 The scope of the contractual services shall result from the specifications of services of Sysformance as well as from the referring information in the order confirmation, specific contract or the subscription agreement (where available).
- 4.3 Sysformance reserves the right to extend, change and improve the services. Sysformance shall also be entitled to reduce the services, in this case article 8, clause 8.3 shall apply accordingly.
- 4.4 As far as Sysformance provides services and products free of charge, provision can be halted and access revoked at any time and without advance notice. There shall not result a reduction claim, a reimbursement claim or a claim for damages.
- 4.5 Configuration changes shall be carried out within 5 workdays within the limits of the operational capabilities of Sysformance. If the customer frequently requests changes or if the change in its extent is equivalent to a reinstallation, Sysformance will charge this to the customer at its usual rate.

5. **Responsibilities and obligations of the customer**

- 5.1 The customer is obliged to use the Sysformance services appropriately. He shall especially be obliged:
 - 5.1.1 to pay the fees, agreed upon according to the respective valid price list, when due;
 - 5.1.2 to immediately inform Sysformance if the prerequisites for reduced rates no longer exist;
 - 5.1.3 not to misuse the access to Sysformance services and to refrain from any illegal action;
 - 5.1.4 to ensure the performance of statutory requirements and public conditions as well as to take care for the granting of licenses, as far as they are needed for the subscription of Sysformance services at present or in future;
 - 5.1.5 to apply the accepted principles of data security, especially to keep passwords secret or change them immediately or have them changed if there is the presumption that third parties not entitled know about them;
 - 5.1.6 to immediately inform Sysformance about perceptible defects or damages (problem report);

- 5.1.7 where reasonable to take all measures which make the discovery of defects or damages and their causes possible or to make their removal faster and easier;
 - 5.1.8 to compensate the costs arising from the check Sysformance has to carry out in its facilities after the delivery of a problem report, if it turns out that the customer is responsible for the malfunction;
 - 5.1.9 to inform Sysformance within one month about any change in the person of the customer, any change of the customer's name or his designation in the operational data of Sysformance caused by inheritance or other legal succession.
- 5.2 If the customer violates the obligations given in article 5, clause 5.1.1, 5.1.2, 5.1.3 and 5.1.4, Sysformance shall be entitled to terminate the contractual relationship with immediate effect without period of notice and without observance of the form of the termination. In all other cases such a termination shall be possible after an ineffective written warning.

6. Use by third parties

- 6.1 A direct or indirect use of the Sysformance services by third parties shall only be allowed after an express authorization.
- 6.2 Where the use by third parties is allowed, the customer has to properly train them in use of the services. Where the use of third parties is not allowed, there shall not arise a reduction claim, a reimbursement claim or a claim for damages.
- 6.3 The customer also has to pay for the Sysformance services provided to him within the access and utilization possibilities that were used by authorized or unauthorized third parties.

7. Conditions of payment

- 7.1 Monthly flat service fees and base charges shall be paid in advance for the minimum contract duration, starting with the day of the operational provision. Afterwards the fees shall be paid annually in advance and they shall become due with the receipt of the invoice. If the fee is to be calculated for parts of a calendar month, it shall be calculated for every day with 1/30 of the monthly payment.
- 7.2 Other fees, especially usage-dependent fees (e.g. for pagers) shall be paid after the performance of the service and shall be due with the receipt of the invoice.
- 7.3 The invoice amount has to be credited to the account given in the invoice at the tenth day after the receipt of the invoice at the latest. If the customer transfers another amount as the one calculated or if the transfer does not contain the information requested in the invoice, Sysformance shall be entitled to charge a handling fee of CHF 50 per payment.
- 7.4 If the customer asserts that he or third parties he is responsible for did not cause fees he was charged with, he has to prove this assertion. Sysformance merely has to prove that the calculation system works correctly.

8. Right to setoff, right of retention, delay of performance, reimbursement

- 8.1 The customer can only offset claims of Sysformance against undisputed and legally valid claims on his part which are directly connected with the contract of use based on these GTC.
- 8.2 For delay of deliveries and services by virtue of force majeure and by virtue of events which make the performance of service considerably difficult or impossible for Sysformance – especially strike, lock-out, official orders, breakdown of communication networks, disturbances in the area of Swisscom AG services and other telecommunication service companies etc., also if they happen to suppliers or subcontractors of Sysformance or their sub-suppliers, subcontractors – Sysformance shall not be responsible for, even not in the case of bindingly agreed periods of time and dates. They shall entitle Sysformance to postpone the delivery or service for the duration of the disturbance plus an appropriate start-up period.
- 8.3 If services cannot be provided because of disturbances Sysformance is not responsible for there shall not be a reimbursement of fees. As for the rest, down times shall only be reimbursed if Sysformance or one of its vicarious agents are responsible for the disturbances or at least caused them negligently and the down times are longer than one workday.

9. Delay in payment

- 9.1 In the case of the customer's delay in payment Sysformance shall be entitled, in addition to the termination with an immediate effect stated in article 5, to take all measures which make the use of the infrastructure of Sysformance and its partners impossible. Such measures may stay in force for an undefined period after the termination of the contractual relationship.
- 9.2 In the case of delay in payment Sysformance shall also be entitled to charge interest of 8% per annum starting with the respective date.
- 9.3 The right of Sysformance to claim further damages shall be reserved.

10. Customer service

- 10.1 Sysformance remedies deficiencies of its technical equipment within its existing technical and operating capabilities within the hours of attendance (from Monday to Friday from 9.00 to 17.00).
- 10.2 For these purposes Sysformance operates a hotline which can normally be reached at the times stated in sub-section 10.1 by phone or by e-mail.

11. Confidentiality, data protection

- 11.1 As far as not otherwise agreed expressly and in writing, the information provided to Sysformance shall not be regarded as confidential.

- 11.2 The customer shall be informed herewith that Sysformance automatically processes the customer's address in a machine-readable form and for tasks resulting from the contract.
- 11.3 As far as Sysformance uses the help of third parties to carry out the offered services, Sysformance shall be entitled to disclose the customer data if this is necessary for securing the business operation.
- 11.4 The customer shall not be entitled to use Sysformance services for him or third parties to get or to make further use of data or information not determined for him or third parties.

12. Limitation on liability

- 12.1 Sysformance shall exclude any liability as far as statutorily permitted. Especially the liability for any damage not caused intentionally or grossly negligent by Sysformance or its vicarious agents shall be excluded.
- 12.2 Sysformance shall not be liable neither for the completeness, correctness or topicality of the measuring data, results and information measured, calculated or otherwise generated by their services, nor for the punctual or successful alerting in case of breakdown of one of its services controlled by it.
- 12.3 As far as no other provisions in these terms and conditions exclude a liability of Sysformance, Sysformance shall have a limited liability in the case of damages which
 - 12.3.1 resulted from the use of Sysformance services,
 - 12.3.2 resulted from the failure to examine saved or transmitted data on the part of Sysformance
 - 12.3.3 or which resulted from the failure of Sysformance to save or transmit data as demanded. The liability shall be limited to the amount of CHF 500 (five hundred Swiss francs), as far as there is no intentional or grossly negligent act.

13. Liability of the customer

The customer shall be liable for any consequence and disadvantage which happens to Sysformance or third parties as a result of misuse or illegal use of Sysformance services or the customer's failure to perform his other obligations.

14. Additional provisions to projects and software deliveries

- 14.1 The right of use of project results may only be transferred to third parties after the approval of Sysformance. The approval may be given expressly or implied already in the contract where the execution of the respective project is agreed upon.
- 14.2 In the case of software deliveries the content and the scope of services shall result from the service description of Sysformance.
- 14.3 Where the development of software is owed, the customer shall only get the unrestricted and exclusive right of use or disposal for the whole result

of the tasks carried out by Sysformance if this is expressly agreed. The delivery of source codes shall also only take place if this is expressly agreed. As for the rest, all proprietary rights shall stay at Sysformance.

- 14.4 The right of use of software developed or delivered by Sysformance shall include the use and the duplication for the internal use of the customer. The customer may however not make software in whole or in part accessible to third parties. Third parties shall not be people who carry out the right of use on behalf of the customer or who are 100% subsidiary firms.
- 14.5 If the right of use for software may be transferred to third parties divergent from sub-section 14.4, all copies have to wear the original copyright notices as well as all other notices of protective rights.
- 14.6 If claims in connection with the respective subject matter of the contract (software development or execution of other projects) concerning patent infringement or the infringement of another exclusive right are asserted, the customer shall be expected to inform Sysformance immediately and in writing. The customer shall not carry out essential legal proceedings and shall leave the defense against such claims, especially the process control including the conclusion of a compromise, to Sysformance on its request.
- 14.7 If the use of the subject matter of the contract or its parts is prohibited by a judicial decision or if there could in Sysformance's opinion be a suit because of the infringement of property rights, Sysformance shall have the choice between the following measures:
 - 14.7.1 to change the subject matter of the contract in a way that it no longer infringes property rights;
 - 14.7.2 to procure the customer the right of further use of the subject matter of the contract;
 - 14.7.3 to replace the subject matter of the contract with a subject matter of a contract which does not infringe property rights and which either corresponds with the customer's demands or which is equivalent to the prior subject matter of the contract;
 - 14.7.4 to take back the subject matter of the contract and to reimburse the customer the paid fee minus an appropriate amount for the use and depreciation.
- 14.8 The preceding obligation shall not be applicable for such subject matters of a contract in which the infringement of the property rights is based on a customer's concept or on the fact that the customer changed the subject matter of the contract or that it was run with subject matters of a contract not delivered by Sysformance

15. Final provisions

- 15.1 Should any of the provisions in these terms and conditions are or become invalid, this shall not affect the validity of the remaining provisions. In place of the invalid provision an alternative provision corresponding to the purpose of the agree-

ment or coming close to it shall be valid, which the parties would have agreed upon to reach the same economical result if they had known about the invalidity of the provisions. Same shall apply for the incompleteness of the provisions accordingly.

- 15.2 Only Swiss law shall apply. The applicability of the United Nations Convention on Contracts for the International Sale of Goods from 11 April 1980 (Vienna Convention) shall expressly be excluded.
- 15.3 Place of performance shall be Zurich. Jurisdiction for all disputes directly or indirectly resulting from

the contractual relationship shall for both parts be Zurich, also for suits in the special procedure deciding claims arising out of a bill of exchange or action for assertion of a claim concerning payment of a cheque.

In case of conflicts or discrepancies between this English language version and the German language version, the German version shall be authoritative.

4th April 2007, © Sysformance AG

Above mentioned terms and conditions read and accepted:

Place, date:

Legally valid signature
and company stamp:
