

General Terms and Conditions of NovoFlect GmbH

NovoFlect GmbH

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Structure of the GTC

These GTC are modular in structure:

- **Part A – General Part**
- **Part B – Supply of Goods (Sale)**
- **Part C – Development and Other Contractor Services**
- **Part D – Service and Consulting Services**
- **Part E – Software and Firmware Terms of Use**

In the event of contradictions between the Parts, the special Parts (B–E) shall take precedence over the general Part (A) for the respective service.

Note on the language version

This English text is a translation provided for convenience only. In the event of any discrepancies, ambiguities or translation errors between this English version and the German original, the German version shall prevail and shall be solely authoritative.

Hinweis zur Sprachfassung

Bei der englischen Fassung handelt es sich um eine Übersetzung, die ausschließlich der besseren Verständlichkeit dient. Bei Widersprüchen, Unklarheiten oder Übersetzungsfehlern zwischen dieser englischen Fassung und dem deutschen Original ist allein die deutsche Fassung maßgeblich.

Part A – General Part

§ 1 Scope, Precedence and Rejection of Conflicting Terms

- (1) These General Terms and Conditions (hereinafter “GTC”) apply to all business relationships between NovoFlect GmbH, Max-Planck-Str. 4, 50858 Köln (hereinafter “NovoFlect”) and its customers (hereinafter “Customer”) regarding deliveries and services of NovoFlect.
- (2) These GTC apply exclusively to entrepreneurs within the meaning of § 14 BGB, legal entities under public law and special funds under public law. They do not apply to consumers within the meaning of § 13 BGB.
- (3) These GTC also apply to all future transactions with the Customer of the same kind, without NovoFlect having to refer to them again in each individual case.
- (4) **Defensive clause.** Only these GTC apply. Conflicting, deviating or supplementary general terms and conditions of the Customer – in particular purchasing, ordering or procurement conditions – shall not become part of the contract, even if NovoFlect does not expressly object to them and performs the delivery or service without reservation in the knowledge of such conditions. Deviations from these GTC shall apply only if NovoFlect has expressly agreed to them in the individual case in text form.
- (5) Contracts are concluded exclusively in accordance with § 2. Any confirmation by the Customer referring to its own terms and conditions is hereby expressly rejected.
- (6) Individual agreements made with the Customer in the individual case (including ancillary agreements, supplements and amendments) shall in all cases take precedence over these GTC. The content of such agreements shall be governed by a written contract or by NovoFlect’s confirmation in text form.

§ 2 Offer and Conclusion of Contract

- (1) Offers by NovoFlect are subject to change and non-binding, unless they are expressly designated as binding or contain a specific acceptance period.
- (2) The Customer’s order shall be deemed a binding offer to conclude a contract. NovoFlect may accept this offer within 30 days of its receipt.
- (3) The contract is concluded upon NovoFlect’s order confirmation in text form or upon performance of the delivery or service. NovoFlect’s order confirmation shall be decisive for the content and scope of the service.
- (4) Information in catalogues, data sheets, technical descriptions, illustrations and other documents is only approximately authoritative and does not constitute a guarantee of quality, unless it is expressly designated as binding or as a guarantee.

§ 3 Prices and Terms of Payment

- (1) All prices are net in euros plus statutory value added tax at the applicable rate.
- (2) Prices apply ex works / warehouse Cologne (EXW in accordance with Incoterms 2020); costs for packaging, shipping, transport, insurance and any customs duties shall be borne separately by the Customer. Deviating delivery terms (e.g. “free domicile” or DDP) shall apply only if expressly agreed in NovoFlect’s offer or order confirmation.
- (3) Invoices are due for payment within 30 days of the invoice date without deduction, unless otherwise agreed. The receipt of payment by NovoFlect shall be decisive for timeliness.
- (4) In the event of default in payment, NovoFlect is entitled to demand default interest at the statutory rate (currently nine percentage points above the base interest rate). The right to assert further damages remains reserved.

- (5) The Customer is entitled to set-off only insofar as its counterclaims have been finally established by a court, are undisputed or have been acknowledged by NovoFlect. The Customer may exercise a right of retention only insofar as it is based on the same contractual relationship.

§ 4 Delivery and Performance Time

- (1) Delivery and performance dates are binding only if they have been expressly confirmed by NovoFlect as binding in text form. In case of doubt, stated periods are non-binding approximate dates.
- (2) Compliance with deadlines presupposes that all cooperation services to be rendered by the Customer, documents to be provided, approvals and technical clarifications are available in good time and that agreed advance payments have been received. Otherwise, the deadlines shall be extended appropriately.
- (3) Partial deliveries and partial services are permissible insofar as they are reasonable for the Customer.
- (4) If NovoFlect is in default, liability shall be limited in accordance with § 6.

§ 5 Retention of Title

- (1) Delivered goods shall remain the property of NovoFlect until full payment of all claims arising from the business relationship (goods subject to retention of title).
- (2) The Customer is entitled to resell or process the goods subject to retention of title in the ordinary course of business. The Customer hereby assigns to NovoFlect, by way of security, the claims accruing to it from the resale in the amount of the invoice value of the goods subject to retention of title. NovoFlect accepts the assignment.
- (3) In the event of conduct by the Customer in breach of contract, in particular default in payment, NovoFlect is entitled, after the unsuccessful expiry of a reasonable period, to take back the goods subject to retention of title.

§ 6 Liability

- (1) NovoFlect is liable without limitation
 - a) in cases of intent and gross negligence,
 - b) for damage arising from injury to life, body or health,
 - c) under the provisions of the Product Liability Act,
 - d) to the extent of a guarantee assumed by NovoFlect.
- (2) In the case of slightly negligent breach of a material contractual obligation (cardinal obligation), NovoFlect shall be liable, limited in amount to the foreseeable damage typical of the contract, but no more than EUR 10,000,000.00 per case of damage, insofar as this amount is not lower than the foreseeable damage typical of the contract. Material contractual obligations are those whose fulfilment makes the proper performance of the contract possible in the first place and on whose compliance the Customer may regularly rely.
- (3) In all other respects, the liability of NovoFlect – on whatever legal grounds – is excluded.
- (4) NovoFlect is liable for the loss of data only to the extent that would also have arisen in the event of proper and regular data backup by the Customer. The Customer is itself responsible for appropriate data backup.
- (5) Insofar as the liability of NovoFlect is excluded or limited, this shall also apply to the personal liability of the legal representatives, employees and vicarious agents of NovoFlect.

§ 7 Confidentiality

- (1) The parties undertake to keep secret all information of the other party that has become known to them in the course of the business relationship and that is marked as confidential or is confidential by its nature, not to disclose it to third parties and to use it exclusively for the purposes of the contract.
- (2) Excepted is information that is or becomes demonstrably publicly known without this being based on a breach of duty, that was already known to the receiving party or that it lawfully obtained from third parties, or that must be disclosed due to a statutory obligation or an official/judicial order.
- (3) The obligation shall continue to apply for the duration of the business relationship and for five (5) years after its termination.

§ 8 Export Control

- (1) The performance of contracts is subject to the proviso that there are no obstacles to it on account of national or international foreign trade regulations and no embargoes or other sanctions opposing it. This includes in particular German foreign trade law (AWG/AWV), the Dual-Use Regulation (EU) 2021/821 and, where applicable, US (re-)export control regulations.
- (2) The Customer is obliged to provide NovoFlect, upon request, with all information and documents required for the export, transfer or import, in particular regarding the final whereabouts, end use and final recipient of the deliveries and services (e.g. by means of an end-use certificate).
- (3) If an official authorisation is required for performance, delivery and performance periods shall be extended by the period until it is granted. If a required authorisation is refused or not granted within a reasonable time, NovoFlect is entitled to withdraw from the contract; any liability or default of NovoFlect is excluded in this respect.
- (4) The Customer may not export, re-export or pass on the delivered goods, software and technologies in breach of applicable export control law.

§ 9 Force Majeure

- (1) Events of force majeure that substantially impede or render impossible the delivery or service for NovoFlect shall release NovoFlect from the obligation to perform for the duration of the disruption and to the extent of its effect. Force majeure includes in particular natural disasters, pandemics, war, labour disputes, official measures, shortages of energy or raw materials, as well as supply shortages of its upstream suppliers for which NovoFlect is not responsible.
- (2) NovoFlect shall inform the Customer without undue delay of the occurrence and the expected duration of the disruption. If the disruption lasts longer than two (2) months, both parties are entitled to withdraw from the contract with respect to the affected part of the service.

§ 10 Final Provisions

- (1) The law of the Federal Republic of Germany shall apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (2) The exclusive place of jurisdiction for all disputes arising out of or in connection with the business relationship shall be Cologne, provided that the Customer is a merchant, a legal entity under public law or a special fund under public law. NovoFlect is also entitled to bring an action at the Customer's general place of jurisdiction.
- (3) The place of performance for all services is NovoFlect's registered office in Cologne, unless otherwise agreed.

- (4) Amendments and supplements to the contract as well as ancillary agreements require text form. This also applies to the cancellation of this text form requirement. Prevailing individual agreements pursuant to § 1 para. 6 remain unaffected.
- (5) Should any provision of these GTC be or become wholly or partly invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby. The statutory provision shall take the place of the invalid provision.
- (6) Information on the processing of personal data is contained in NovoFlect's privacy policy, available at <https://novoflect.de/en/privacy-policy/>.

Part B – Supply of Goods (Sale)

§ 1 Scope of Application and Quality

- (1) This Part B applies to contracts of sale for goods of NovoFlect.
- (2) The quality of the goods is determined exclusively by the agreed specification, the data sheet or the product description of NovoFlect. Public statements, advertising claims or commendations do not constitute a statement of quality. A guarantee is assumed only insofar as it is expressly designated as a “guarantee” by NovoFlect in text form.

§ 2 Delivery, Shipment and Transfer of Risk

- (1) Delivery is made ex works / warehouse Cologne (EXW in accordance with Incoterms 2020), unless otherwise agreed (cf. Part A § 3 para. 2).
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Customer as soon as NovoFlect has handed over the goods to the Customer, the forwarding agent, the carrier or the person otherwise designated to carry out the shipment. In the case of collection by the Customer, the risk shall pass upon notification that the goods are ready for collection.
- (3) If shipment or handover is delayed for reasons for which the Customer is responsible, the risk shall pass to the Customer already upon notification of readiness for shipment.
- (4) NovoFlect shall take out transport insurance only at the express request and at the expense of the Customer.
- (5) Partial deliveries are permissible within the scope of Part A § 4 para. 3.

§ 3 Duty to Inspect and Give Notice of Defects

- (1) The Customer shall inspect the delivered goods without undue delay after delivery. Apparent defects must be notified in text form within five (5) working days of delivery, and hidden defects without undue delay after their discovery. § 377 HGB remains unaffected.
- (2) If the Customer fails to carry out the timely inspection or notice, the goods shall be deemed approved in this respect, unless NovoFlect has fraudulently concealed the defect.

§ 4 Liability for Defects (Warranty)

- (1) In the event of a defect in the goods, NovoFlect shall, at its option, provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery).
- (2) If subsequent performance fails, is unreasonable or is seriously and definitively refused by NovoFlect, the Customer may, in accordance with the statutory provisions, reduce the price or withdraw from the contract and claim damages in accordance with Part A § 6.
- (3) The limitation period for claims for defects is twelve (12) months from delivery; for purchased-in hardware, § 5 applies in addition. This does not apply in the cases of Part A § 6 para. 1 (in particular intent, gross negligence, personal injury, guarantee, product liability); in this respect, the statutory periods apply.
- (4) Claims for defects do not exist in the case of natural wear and tear or in the case of damage arising after the transfer of risk as a result of improper storage, handling or commissioning, failure to observe operating, installation or maintenance instructions, unauthorised modifications or repairs by the Customer or third parties, or operation outside the specified conditions.
- (5) Mandatory statutory rights of recourse of the Customer (§§ 445a, 445b BGB) remain unaffected.

§ 5 Purchased-In Hardware / Third-Party Products

- (1) If NovoFlect supplies hardware that it obtains from third parties and resells essentially unchanged (in particular accessories), the following provisions apply in addition.
- (2) NovoFlect assigns to the Customer the claims for defects to which it is entitled against the upstream supplier or manufacturer. The Customer accepts the assignment and shall first assert these claims against the upstream supplier or manufacturer.
- (3) If the assertion against the upstream supplier or manufacturer remains unsuccessful or is unreasonable for the Customer, NovoFlect shall be liable on a subsidiary basis in accordance with § 4.
- (4) Existing manufacturer guarantees shall, where available and transferable, be passed on to the Customer; they apply in addition to the statutory rights in respect of defects.

§ 6 Retention of Title

The retention of title pursuant to Part A § 5 applies.

§ 7 Conformity (CE / EMC / Radio)

- (1) NovoFlect supplies the products with the conformity agreed for the respective product or required by law (e.g. CE marking, electromagnetic compatibility, radio requirements). The respective product description or data sheet shall be decisive.
- (2) For prototypes, functional samples and products not intended for general placing on the market, Part C § 6 (limited conformity) applies.
- (3) The Customer is responsible for compliance with the regulations applicable at the place of use when operating the products, in particular in the case of radio applications (e.g. permissible frequency use and transmission power).

§ 8 Waste Equipment / Disposal (ElektroG / WEEE)

- (1) NovoFlect is registered in the register of the stiftung elektro-altgeräte register (WEEE Reg. No. DE 27901336).
- (2) If the delivered goods are electrical or electronic equipment used exclusively in households other than private ones (B2B equipment), the Customer shall assume the proper disposal of the waste equipment in accordance with the ElektroG at its own expense and shall release NovoFlect from take-back and disposal obligations in this respect, insofar as such an agreement is permissible under § 19 ElektroG.
- (3) If the Customer passes the equipment on to commercial third parties, it undertakes to pass on the disposal obligation together with an obligation to pass it on further.

§ 9 Default of Acceptance

If the Customer is in default of acceptance or breaches other obligations to cooperate, NovoFlect is entitled to demand compensation for the resulting damage, including any additional expenses (e.g. storage costs). Further statutory rights remain unaffected.

Part C – Development and Other Contractor Services

§ 1 Subject Matter of the Service

- (1) The subject matter and scope of the development or contractor service result from NovoFlect's order confirmation and the underlying service description / specification / requirements specification.
- (2) Unless expressly agreed, NovoFlect does not owe any particular suitability for a purpose of use going beyond the agreed specification and no marketability, series-production readiness or conformity with standards or official requirements (e.g. CE marking, EMC conformity, radio approvals).

§ 2 Customer's Obligations to Cooperate

- (1) The Customer shall provide NovoFlect with all information, documents, specifications, interface descriptions, materials and items to be supplied that are necessary for the provision of the service in good time, in full and in a suitable form, and shall name a competent contact person.
- (2) Documents, specifications and requirements provided by the Customer shall not be checked by NovoFlect for accuracy, completeness or freedom from third-party rights, unless this is expressly commissioned. If defects in the service are based on faulty requirements or items supplied by the Customer, the Customer shall bear the responsibility.
- (3) If the Customer does not fulfil its obligations to cooperate in good time, agreed dates shall be postponed appropriately; NovoFlect may invoice any additional expenses arising as a result separately.

§ 3 Changes (Change Requests)

- (1) If the Customer wishes changes to the agreed scope of services after conclusion of the contract, NovoFlect shall examine whether and under which conditions (remuneration, dates) the change can be implemented, and shall submit a corresponding offer to the Customer.
- (2) The change shall be implemented only after mutual agreement in text form. Until then, the work shall be continued on the basis of the original agreement.

§ 4 Acceptance

- (1) Insofar as the service is capable of acceptance, the Customer is obliged to accept it as soon as NovoFlect notifies completion and the service essentially fulfils the agreed specification.
- (2) The Customer shall inspect and accept the service within ten (10) working days of its provision or of notification of completion. Insignificant defects do not entitle the Customer to refuse acceptance; they shall be remedied within the framework of liability for defects.
- (3) The service shall be deemed accepted if the Customer does not refuse acceptance within the period stating at least one defect, or if it puts the service into use or uses it productively.
- (4) Insofar as services are rendered in separable parts, NovoFlect may demand partial acceptances.

§ 5 Intellectual Property Rights and Rights of Use (CORE PROVISION)

- (1) **Definitions.**
 - a) **Background IP Rights** are all knowledge, inventions, developments, processes, designs, circuits, layouts, software, firmware, libraries, tools and other intellectual property rights and protected subject matter of NovoFlect that exist independently of the respective order or arise outside the

order – including their further developments. These include in particular NovoFlect's RIS platform, its hardware design fundamentals as well as its software and firmware.

- b) **Project Results** are the work results created by NovoFlect specifically for the Customer within the framework of the specific order.
- (2) **Background IP Rights remain with NovoFlect.** The Customer acquires no ownership and no intellectual property rights in the Background IP Rights. Insofar as Project Results contain or presuppose Background IP Rights, the Customer shall receive in respect thereof merely a simple (non-exclusive), non-transferable and non-sublicensable right of use, limited to the scope necessary for the intended use of the Project Results.
- (3) **Project Results.** Subject to full payment of the agreed remuneration, the Customer shall receive in the Project Results created specifically for it a simple (non-exclusive) right of use, unlimited in time and territory, for the contractually agreed purpose. NovoFlect remains entitled to use and exploit freely, also for other purposes and vis-à-vis third parties, the know-how underlying the Project Results as well as non-customer-specific, generally exploitable findings and development modules. However, NovoFlect shall not exploit the customer-specific Project Results with direct competitors of the Customer in the same field of application for a period of twelve (12) months from acceptance. This restriction does not cover the Background IP Rights (para. 2) or non-customer-specific, generally exploitable findings and development modules.
- (4) **Exclusive Rights / Transfer of Rights Only Against Separate Agreement.** The granting of exclusive rights of use, the transfer of rights in Project Results or the transfer of other intellectual property rights requires an express, separate agreement in text form and separate, reasonable remuneration. Even in the case of such a transfer, the Background IP Rights (para. 2) shall always remain with NovoFlect.
- (5) **Precedence of This Provision; Rejection of Assignment Clauses.** Conflicting provisions of the Customer – in particular clauses in purchasing, ordering or procurement conditions that provide for a transfer of all rights in NovoFlect services to the Customer – shall not become part of the contract (cf. Part A § 1 para. 4). Any transfer of rights going beyond the preceding paragraphs shall take place exclusively in accordance with para. 4.
- (6) **Employee Inventions.** Inventions by employees of NovoFlect are subject to the Act on Employee Inventions; in relation to the Customer, the rights belong to NovoFlect, unless otherwise agreed pursuant to para. 4.
- (7) **Software and Firmware.** For software and firmware supplied together with the goods, the Software and Firmware Terms of Use (Part E) apply in addition. Software and firmware of NovoFlect are Background IP Rights within the meaning of para. 1 lit. a and are exclusively licensed in accordance with Part E, not transferred.

§ 5a Publications

- (1) If the Customer – in particular as a college, university or research institution – intends to publish Project Results or information from the cooperation (e.g. in scientific publications, conference contributions, lectures or academic qualification theses), it shall submit the draft of the publication to NovoFlect for review in good time before submission or publication.
- (2) NovoFlect shall review the draft within 30 days of receipt. Within this period, NovoFlect may demand that confidential information as well as Background IP Rights of NovoFlect be removed from the publication.
- (3) If a postponement is necessary to secure industrial property rights, in particular a patent application, NovoFlect may postpone the publication by up to a further 60 days.
- (4) If NovoFlect does not respond within the review period, consent to publication shall be deemed granted. The Customer's legitimate interest in publication otherwise remains unaffected.

§ 6 Prototypes and Functional Samples

- (1) Prototypes, functional samples, laboratory samples and pre-series specimens serve exclusively for testing, demonstration and further development. They are not series-production or market-ready products.
- (2) Unless expressly agreed, NovoFlect does not owe, in the case of prototypes and functional samples, any particular service life, any series quality, any suitability for continuous or productive use and any conformity with standards or official requirements (in particular no CE/EMC conformity or radio approval). Use shall in this respect be at the Customer's own risk.
- (3) Liability for defects for prototypes and functional samples is limited to warranted characteristics and to the specification expressly agreed in the order.

§ 7 Liability for Defects in Contractor Services

- (1) The limitation period for claims for defects is twelve (12) months from acceptance. This does not apply in the cases of Part A § 6 para. 1 (in particular intent, gross negligence, personal injury, guarantee, product liability); in this respect, the statutory periods apply.
- (2) In the case of justified notices of defects, NovoFlect shall first provide subsequent performance, at its option, by remedying the defect or by re-production. If subsequent performance fails, the Customer shall be entitled to the statutory rights; liability for damages shall be governed by Part A § 6.
- (3) Claims for defects do not exist in the case of defects based on requirements, items supplied or interventions by the Customer or third parties, on use not in accordance with the intended purpose, or on omitted maintenance.

Part D – Service and Consulting Services

§ 1 Nature of the Service

- (1) NovoFlect renders the agreed service and consulting services with the care of a competent provider in accordance with the recognised state of the art.
- (2) NovoFlect does not owe any particular work result and no particular economic or technical success. In particular, NovoFlect assumes no warranty that the Customer's objectives pursued with the consulting will be achieved. NovoFlect's recommendations serve as a basis for decision-making; the decision on their implementation and the responsibility for this lie with the Customer.

§ 2 Deployment of Personnel

- (1) NovoFlect selects the persons deployed to render the services at its own discretion and is entitled to replace them with equally qualified persons. The Customer has no claim to the deployment of specific persons, unless expressly agreed otherwise.
- (2) The deployed personnel shall not be integrated into the Customer's work organisation and shall be subject solely to NovoFlect's right to issue instructions. The Customer's technical specifications regarding the subject matter of the service remain unaffected by this.

§ 3 Customer's Cooperation

The Customer shall provide NovoFlect with the information, documents and access necessary for the provision of the service in good time and in full, and shall name a competent contact person. Part C § 2 applies accordingly. The quality of the consulting service depends substantially on the completeness and accuracy of the information provided by the Customer; the Customer is responsible for its accuracy.

§ 4 Remuneration

- (1) Unless otherwise agreed, remuneration shall be calculated according to the time actually incurred at the agreed hourly or daily rates.
- (2) Travel times, travel costs and other expenses shall be remunerated separately according to expenditure, unless otherwise agreed.
- (3) Estimates of effort and budget figures are non-binding and do not constitute a fixed-price commitment, unless they are expressly designated as binding.

§ 5 Dates

Agreed dates presuppose the timely cooperation of the Customer (Part A § 4 para. 2 applies accordingly). Dates for services are non-binding in case of doubt.

§ 6 Consulting Results and Rights of Use

- (1) In respect of written consulting results, reports, concepts and other documents prepared within the framework of the service, the Customer shall receive a simple right of use for the contractually agreed purpose. Part C § 5 (in particular the reservation of the Background IP Rights and the free further use of the know-how by NovoFlect) applies accordingly.

- (2) The passing on of consulting results to third parties or their use for purposes other than those agreed requires the prior consent of NovoFlect in text form.

§ 7 Liability

The liability of NovoFlect is governed by Part A § 6. NovoFlect is liable for the professional provision of the service, not for the occurrence of a particular success (§ 1 para. 2).

§ 8 Term and Termination

- (1) Contracts concluded for a fixed period or for a specific project end upon expiry of the period or completion of the project.
- (2) Continuing obligations concluded for an indefinite period may be ordinarily terminated by either party with a notice period of four (4) weeks to the end of the month.
- (3) The right to extraordinary termination for good cause remains unaffected. Services rendered up to the effective date of a termination shall be remunerated.

Part E – Software and Firmware Terms of Use

§ 1 Subject Matter and Licence Model

- (1) Software and firmware are not sold to the Customer but are exclusively provided for use (licensed). All rights in the software and firmware remain with NovoFlect or its licensors; they are Background IP Rights within the meaning of Part C § 5 para. 1 lit. a.
- (2) Unless otherwise agreed, the provision shall be permanent against a one-time remuneration that is settled with the price of the associated hardware.

§ 2 Rights of Use

- (1) **Application Software.** NovoFlect grants the Customer in the application software supplied a simple (non-exclusive), non-transferable and non-sublicensable right to use the software, as intended, for the operation and use of the hardware delivered by NovoFlect. The scope (in particular the number of installations or users) is determined by the agreement reached; if nothing is agreed in this regard, use is limited to the operation of the delivered hardware.
- (2) **Firmware.** In the firmware deployed on the hardware, the Customer shall receive a right of use within the framework of the intended operation of the respective hardware. The right of use in the firmware is inseparably connected with the hardware; the firmware may be passed on only together with the associated hardware and only by imposing these terms.
- (3) The acquisition of hardware transfers no rights in the software or firmware going beyond the preceding paragraphs.

§ 3 Restrictions

- (1) The Customer is not entitled to reproduce, distribute, rent, lend, make publicly available or transfer the software or firmware to third parties beyond the agreed scope. The creation of a backup copy to the necessary extent remains permissible.
- (2) Modification, translation, back-translation, decompilation or disassembly is permissible only within the limits of §§ 69d, 69e UrhG (in particular to establish interoperability). In all other respects, these acts are not permitted without the prior consent of NovoFlect.
- (3) Copyright notices, trademarks, serial numbers and other markings may not be removed or altered.
- (4) There is no claim to the release of the source code of the software or firmware, unless expressly agreed otherwise or mandatorily resulting from applicable open-source licences (§ 5).

§ 4 Updates, Maintenance and Support

- (1) The Customer has a claim to updates, upgrades, maintenance or support only insofar as this is separately agreed.
- (2) If NovoFlect provides updates or patches, these terms apply accordingly to their use.

§ 5 Open-Source Software

- (1) Software and firmware of NovoFlect may contain components that are subject to open-source licences (hereinafter “OSS Components”). For the OSS Components, the respective open-source licence terms apply with priority.

- (2) Insofar as the open-source licence terms grant the Customer more extensive rights or oblige NovoFlect to certain obligations (e.g. to provide source code), these shall take precedence over the provisions of this Part E; the restrictions under § 3 do not apply in this respect.
- (3) NovoFlect shall, upon request, provide the Customer with information about the OSS Components contained in the software or firmware provided and the respectively applicable licences.
- (4) The ownership of rights of NovoFlect regulated in § 1 and Part C § 5 relates to the proprietary components developed by NovoFlect itself; it does not establish any rights in the OSS Components going beyond the respective OSS licence.

§ 6 Third-Party Rights (Defects of Title)

- (1) NovoFlect warrants that the software and firmware provided are free, within the contractually agreed scope of use, from third-party rights that conflict with the intended use.
- (2) If claims are asserted against the Customer on account of the infringement of third-party rights through the intended use, the Customer shall inform NovoFlect without undue delay in text form and shall leave the conduct of the dispute to NovoFlect, insofar as reasonable.
- (3) In the event of a justified claim, NovoFlect is entitled, at its option, to procure for the Customer a necessary right of use or to modify or replace the software or firmware in such a way that the infringement of rights ceases without the owed functionality being substantially impaired. In all other respects, liability is governed by Part A § 6.

§ 7 Liability for Defects

- (1) The quality of the software and firmware is determined by the agreed specification or documentation. An insignificant deviation does not constitute a defect. It corresponds to the state of the art that software cannot be created entirely free of errors.
- (2) In the event of a defect, NovoFlect shall provide subsequent performance; § 4 (Updates) remains unaffected. In all other respects, the rights in respect of defects and the limitation period of twelve (12) months apply accordingly to Part B § 4 or, in the case of development services, Part C § 7.
- (3) The Customer is itself responsible for regular data backup corresponding to the state of the art (cf. Part A § 6 para. 4).

§ 8 Termination of the Right of Use

- (1) In the event of a serious or repeated infringement of the rights of use or of the restrictions under § 3 that is continued despite a warning, NovoFlect may revoke the right of use for good cause.
- (2) Upon termination of the right of use, the Customer shall cease using the software concerned and delete existing copies; the right of use in the firmware inseparably connected with the hardware remains unaffected by this for the intended operation of the hardware.