1 Scope and validity

The General Terms and Conditions (GTC) of Sitasys AG (hereinafter referred to as: "Sitasys") govern the procedure, content and execution of contracts concluded with customers. Reference can be made to these GTC from a framework agreement or individual agreements. In this case, these GTC shall be deemed to form an integral part of such agreements. Individual agreements are agreements which constitute specific service obligations between the parties. Mention made subsequently herein to "agreements" shall mean any framework agreement or individual agreements. These GTC are legally binding for any offers made by Sitasys. They apply to the ordering process once the order has been placed. Any individual written agreements shall supersede these GTC. Other conditions made by the customer shall only be valid if they have been accepted explicitly by Sitasys in writing.

2 Validity of the offer

Unless another deadline is specified in the offer, Sitasys shall remain legally bound for a period of 30 days after the issue date of the offer.

3 Ordering

Offers must be accepted in writing by the customer. An agreement shall only be entered into if Sitasys has confirmed its acceptance to the customer in writing. Any changes that the customer wishes to make to the order confirmation provided by Sitasys must be mutually agreed in writing.

4 Deadlines

Sitasys agrees to comply with all of the deadlines specified in the agreement, provided that the customer also complies with his contractual obligations (payment obligations, pre-service obligations, etc.). Deadlines may be postponed accordingly should any complications arise which are out of Sitasys's control. These include but are not limited to, natural events, mobilisation, war, rioting, epidemics, industrial action and official measures. Deadlines may also be postponed if Sitasys does not receive the information it needs to process the order on time or if the customer makes subsequent changes that result in a delay. The customer does not have the right to terminate the agreement in the event of delayed delivery. Any claims for compensation shall be governed in accordance with Section 13.

5 Subject of the contract

These GTC govern the sale of Sitasys ipTNA terminal equipment incl. operating software, operating software installed on third-party hardware and the sale of operating software solely for installation on a system belonging to the customer.

6 Sitasys service

6.1 Scope of delivery/service

The exact scope and execution of delivery/service is defined in detail in the agreement and its annexes. Installation, instruction, maintenance or support services can also be arranged individually upon request. Any amendments to the agreement resulting in increased or decreased costs or changes to contractual deadlines must be submitted in writing.

6.2 Documentation

Sitasys shall provide the customer with the appropriate documentation (primarily the installation and user manual) either electronically or in paper format, along with the hardware.

6.3 Place of performance

Unless specified otherwise, the Sitasys headquarters in Solothurn shall be the place of performance for both Sitasys and the customer.
Should Sitasys also have been involved in assembly or installation, then the assembly location shall only count as the place of performance with regards to assembly obligations.

6.4 Benefits and risks

Unless explicitly agreed otherwise, the benefits and risks shall be transferred to the customer at the time of delivery (EXW Incoterms 2010).

7 Customer service duties and duties of co-operation

On entering into an agreement, the customer is bound by a duty of co-operation. In particular, the customer agrees to provide, on time, the appropriate number of relevantly qualified specialist staff needed in order to provide all of the services that form part of this agreement. Furthermore, the customer shall be responsible for providing Sitasys with the relevant details and information unprompted and on time. The customer is also responsible for any staff training needed in order to provide the service(s).

The customer agrees to install the terminal equipment in accordance with the instructions given in the manual supplied (in paper or digital format).

Additional customer duties of co-operation may be specified in the offer or in an individual agreement.

8 Rights to hardware, software and documentation supplied

The intellectual property rights of the hardware, software and documentation supplied by Sitasys, including any changes, shall remain the property of Sitasys or its subcontractors, regardless of its level of protection. The customer is granted the right to use any hardware, software and documentation supplied in accordance with the GTC, any applicable service agreement and any applicable licence conditions. Unless specified otherwise, all parts of the program (software) will be issued in the form of a user licence. After payment has been made in full, the customer shall be granted the non-exclusive, non-transferable right to use the software, without having the right to grant any sub-licenses. The content and scope of any rights to use software and other intellectual property belonging to third-party manufacturers/licensors shall be determined by the licence terms provided by the respective third-party manufacturer/licensor. All other rights, including copyright with all subsequent authority, shall remain entirely with Sitasys or - in the case of third-party software - with the respective manufacturer. The same applies to all other work resulting from this agreement (e.g. evaluations, program documents and similar produced in a written and/or machine-readable format).

Unless explicitly agreed otherwise, the customer is not entitled to: (a) replicate or allow any hardware or components to be replicated; (b) reproduce any of the software provided or make it available to third parties; or (c) copy or publish the documentation or allow it to be copied or published. These obligations and rights remain legally binding when transferring the system to a third party.

9   Privacy policy, data security

9.1   Privacy policy

Both Sitasys and the customer agree to instruct their employees, support staff and third parties to comply with the provisions of the Federal Data Protection Act in the same manner as Sitasys and the customer themselves at all times. This obligation includes taking any technical and organisational security measures that are necessary. The customer is responsible for ensuring that any employees and third parties who use its services and systems comply with the relevant provisions. The customer shall inform any persons affected about the use of their data, and shall obtain the necessary consent where applicable (this includes permission to transfer data processing to Sitasys should such a case be provided for). Sitasys shall only collect, store and process data which is required for providing services, invoicing, and safeguarding operation and the infrastructure.

If Sitasys provides a service in cooperation with a third party, or if the customer uses the services or data resulting from this cooperation, Sitasys is entitled to forward data about the customer or respective contractual partner to third parties, provided that this is required for invoicing or to honour its contractual obligation. For these purposes, and in order to comply with the relevant statutory provisions, Sitasys is also entitled to transmit this data overseas upon request. Sitasys undertakes to comply with existing legislation when handling data. Specifically, the customer does not have permission or authorisation to use any third party data which he has transmitted to Sitasys, and Sitasys is entitled under certain circumstances to deny him access to this data.

9.2   Data security

Sitasys cannot guarantee the confidentiality of messages and documents which are transmitted over the Internet. However, Sitasys undertakes all technically feasible and reasonable measures to guarantee its data security as far as possible.

10   Prices and payment terms

10.1   Prices

Unless agreed otherwise, all prices quoted are net in Swiss Francs (CHF) and are exclusive of VAT and inflation. Any rates of inflation shall be adjusted in accordance with the Swiss National Consumer Price Index under the "private services" sub index. The starting point is the index rate at the time the offer is submitted. Any other price changes are only possible following a mutual, written agreement.

10.2   Payment terms / late payment

- Unless agreed otherwise, the customer must settle each Sitasys invoice within 30 days of the invoice date in accordance with the contractually agreed payment plan.
- Payments shall be made by the customer even if he is making a warranty claim or if deliveries or services have been delayed due to reasons for which Sitasys cannot be held accountable.
- If the customer does not meet the agreed payment deadlines, he shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile, but not less than 5% over the discount rate set by the Swiss National Bank. The right to claim further damages is reserved.

11   Retention of ownership

Any goods supplied shall remain the property of Sitasys until the agreed price, along with any additional costs and interest, has been paid. These goods may neither be pledged nor sold before this time, neither may they be hired out without permission. Sitasys is authorised to record retention of ownership in the property register at the customer's domicile. Furthermore, the customer agrees to inform Sitasys immediately in writing if he changes his domicile or business address, or if a third party makes a claim against any goods provided under retention of ownership.

12   Warranty

12.1   General

The statutory warranty rules shall apply unless specified otherwise in these Terms and Conditions. Different warranty rules may exist in relation to third-party manufacturer products and software. The customer accepts the warranty requirements provided by the relevant manufacturer. Sitasys guarantees solely that its products include the features that have been agreed in writing. Any further warranty is excluded.

12.2   Warranty period

The warranty period is twelve months after delivery or – if an installation or acceptance agreement has been concluded – after installation or acceptance. Shorter warranty deadlines may apply for third-party manufacturer products and software. Third-party manufacturer products such as these are governed exclusively by third-party manufacturer warranties. Sitasys accepts no warranty obligation for these types of products. However, Sitasys undertakes to negotiate the best possible warranty terms with the third-party manufacturer.

12.3   Scope of warranty

Defects resulting from improper operation or handling, improper or inadequate intervention, natural wear and tear, deficient maintenance or similar caused by reasons for which Sitasys cannot be held accountable are excluded from the warranty. Operating and consumer materials, such as batteries and rechargeable batteries, are excluded from all warranties. Neither is the warranty valid if the customer or third parties make any changes or carry out any repair work without written permission from Sitasys, or if the customer fails to take appropriate measures immediately in order to minimise damage.

In particular, Sitasys cannot guarantee that the hardware and software it supplies can be used without interruption and without fault in all of the combinations required by the customer, with all data, computer systems and programs, nor that any additional program errors can be ruled out as a result of rectifying one particular program error.

Any defects caused by circumstances out of Sitasys's control are excluded from the warranty. These include but are not restricted to:

-   any intervention in the program by the customer or third parties;
-   influences caused by a third-party power unit, or by machines and programs which have not been supplied by Sitasys;
-   operating errors caused by the customer or by third parties.

Unless explicitly agreed otherwise in the agreement, all open source components shall be provided on an "as is" basis, and Sitasys cannot be held responsible for the use or distribution of open-source components or products. Sitasys expressly rejects warranty for any form of representation (regardless of whether this be explicit, implied, verbal, in writing, or with reference to statutory provisions) for open-source components or products. In particular, any Sitasys warranty with regards to any representations of merchantability, suitability for purpose, system integration capabilities, accuracy of data, titles or the non-infringement of third-party rights shall be excluded in the case of open-source components or products. When supplying software for third-party products or software for installation on a system owned by the customer, Sitasys cannot provide any form of warranty for defects resulting from incorrect installation or commissioning of the software supplied, nor for any software installed on third-party products.

12.4   Warranty claims
Unless a specific acceptance procedure has been agreed, the customer must examine the object ordered within 14 days of delivery. In case of installation by Sitasys, the period only becomes effective once the installation is complete. The customer must inform Sitasys of any defects identified within 24 hours. The error message must be documented correctly and must be fully understood by Sitasys. Should the customer fail to carry out the inspection and/or inform Sitasys, then all of the product functions shall be deemed in good working order and the delivery will be deemed to be approved. Should any defects occur during the warranty period and details of these are provided in writing and in good time - then these shall either be repaired, or the defective product replaced with an equivalent at the discretion of Sitasys. Cancellation of contract or reduction of purchase price is excluded. Any replaced parts remain the property of Sitasys.

The customer must allow Sitasys a reasonable period of time to rectify any defects.

Any on-site, packaging and delivery costs shall be borne by the customer. Any material, labour and return costs shall be borne by Sitasys. In the event of faulty software, Sitasys shall bear any return costs for corrected software versions. All of the customer's on-site costs (for example for installation, copying and downloading) shall be borne by the customer. Should it be discovered while rectifying defects that the warranty does not apply to the case in question, then all of the costs shall be borne by the customer in accordance with the conditions of the applicable Sitasys service price list.

Any warranty claims shall be processed within a reasonable time frame on normal working days and during Sitasys business hours. Any extended warranty periods and extended on-call times or response times may be agreed in separate maintenance contracts. Any existing hardware and software which is re-used or used again for investment purposes is excluded from this warranty.

13   Liability
Sitasys is liable for damages proven to be caused by Sitasys, up to the purchase price but no more than CHF 20,000 per incident. Any further liability is explicitly excluded as far as permitted by law. In all cases, Sitasys is excluded from any liability for direct and indirect damage, in particular any consequential loss, loss of profits, unrealized savings, additional expenses incurred by the customer, third-party claims, etc. Should the applicable provisions of third-party manufacturers provide for additional liability limitations, then Sitasys shall be liable solely and for no more than this reduced liability of the third-party manufacturer.

The customer is responsible for adequately protecting (backing up) any data and programs on its devices. Sitasys cannot be held liable under any circumstances for damage or loss to data or to programs which are located on devices undergoing repair.

14   Final provisions

14.1   Transferring rights and obligations
The customer is not permitted to transfer any rights and obligations arising out of the contractual relationship with Sitasys to third parties without prior written consent from Sitasys.

14.2   Invalidity
The invalidity of individual provisions shall not affect the validity of any of the remaining provisions. The parties agree to replace any invalid provisions with a new provision which reflects the purpose of the agreement as closely as possible from an economic perspective.

14.3   Jurisdiction
The area of jurisdiction is **Solothurn (Switzerland)**. Sitasys is also entitled to instigate legal proceedings against the customer at his domicile.

14.4   Applicable law
The legal relationship between Sitasys and the customer is governed by Swiss law. The same also applies to these General Terms and Conditions.
The application of the United Nations Convention dated 11 April 1980 regarding contracts for the International Sale of Goods ("CISG") is explicitly excluded.

Although due care and attention has been given to this translation, the German version shall prevail in the event of any interpretation disputes and discrepancies.