

# SOFTWARE LICENSE AGREEMENT

## NOTE

PLEASE READ THE FOLLOWING REGULATIONS OF THIS LICENSE AGREEMENT CAREFULLY.

This Agreement is a legally valid contract between you ("Licensee") and FIOR & GENTZ Gesellschaft für Entwicklung und Vertrieb von orthopädietechnischen Systemen mbH ("Licensor"), concerning the use of the software provided by FIOR & GENTZ Gesellschaft für Entwicklung und Vertrieb von orthopädietechnischen Systemen mbH.

### § 1 Object of Contract

- (1) The object of this Software License Agreement ("Contract") is to grant utilisation and exploitation rights, by the Licensor to the Licensee, for the software ("License Subject") specified in Amendment 1.  
The software specified in Amendment 1 is i.a. defined as one kind of Update. An "Update" provides software for correcting former software versions and - without being mandatory because of this contract - contains elements to expand the software's functionality by adding some functions or to enhance the performance.
- (2) The License Subject consists of the software's object code as well as the documentation described in Amendment 1.

### § 2 Granting Rights

- (1) The Licensor grants temporally and locally unrestricted, simple, untransferable rights to the Licensee to use, copy, modify and decompile the License Subject according to this contract.
- (2) The right for utilisation and exploitation is limited to the intended use ("Intended Use") described in Amendment 1.
- (3) The Licensee obtains the right to copy the License Subject for installation purposes and to utilise the software on an unlimited number of systems. The Licensee is also allowed to copy the License Subject for back-up purposes and for free transfer purposes to third parties, provided that the original copyright notice remains untouched.
- (4) The right to modify the License Subject is limited to maintaining and recreating the agreed functionality of the License Subject.
- (5) The right to decompile the License Subject is only given under the terms and conditions of § 69e (1) No. 1 to 3 of the German Copyright Law (UrhG) and according to § 69e (2) No. 1 to 3 (UrhG).
- (6) Further utilisation and exploitation rights on the License Subject are not granted to the Licensee.
- (7) On demand, and if a legitimate interest exists, the Licensee gives permission to the Licensor or an assigned third party to check if the utilisation of the License Subject complies with the rights granted by this agreement; the Licensee will support the conduct of such a review performed by the Licensor in every possible way.

### § 3 Delivery and Installation of the License Subject

- (1) The Licensor will provide the Licensee with the required number of copies of the License Subject, with the software documentation as electronic document in English/German and one copy of the Manual as an electronic document in English/German by download. The parties agree upon the place of fulfilling the delivery of the License Subject being the location of the Licensor. The Licensee bears all costs and risks associated by this delivery. The transfer risk (especially the risk of an incidental loss or destruction) of copies of the License Subject is up to the Licensee after the License Subject has been delivered.
- (2) The Licensee is responsible for providing the minimum system requirements as listed in Amendment 1.
- (3) The License Subject is installed by the Licensee.

### § 4 Royalties

Royalties for the rights granted with this agreement are not to be paid separately from the Licensee to the Licensor.

### § 5 Claims on Material Defects

- (1) The software provided by the Licensor is substantially complying with the product description. Warranty claims are not granted for insignificant discrepancies from the agreed or expected quality or for insignificant impairments on software usability. Product descriptions are - without a separately written consent - not to be considered as guarantees. When updates, upgrades or new versions have been delivered, the warranty claims are limited to the latest delivery of updates, upgrades or new versions in comparison to previous versions.
- (2) If the Licensee demands a defect-induced subsequent performance, the Licensor has the right to choose between rework, replacement or compensation. If the Licensee, after a first deadline has passed without any results, has set a further reasonable period of grace and this one has also passed without any results, or if a



reasonable number of reworking, replacing or compensating attempts remained unsuccessful, the Licensee can - complying with legal requirements - withdraw from this contract and demand compensations or the repayment of expenses. The subsequent performance can also take place when a new program version is delivered or installed or during a workaround (= detour to avoid a known malfunction of a technical system). If the defect is not affecting functionality or only affects it insignificantly, the Licensor is able - excluding further warranty claims for defects - to fix this defect by delivering either a new version or an update in the context of the Licensor's existing schedule for a new version, update or upgrade.

- (3) Defects must be reprimanded in writing by a comprehensive description of the defect symptoms and, if possible, documented by written records, hardcopies or other exemplifying documents. This reprimand is ought to enable the reproduction of the defects. The Licensee's legal review or reprimand obligations remain untouched.
- (4) The limitation period for claims of defects is 12 months. This period begins by delivering the first copy of the License Subject including the Manual. In case of updates, upgrades or new versions being delivered, the period for these parts begins at delivery.
- (5) The Licensee is to immediately examine the delivered subjects for potential transport damages or other external defects, secure relevant evidence and to hand over potential compensation claims alongside with the secured documents to the Licensor.
- (6) Compensation claims are object to the restrictions of § 7 of this contract.
- (7) If the defect results from the defectiveness of a supplier product and the supplier does not act as an agent of the Licensor and the Licensor is instead only passing on a third-party product to the Licensee, the Licensee's claims for defects are primarily limited to the claims for defects being assigned from the Licensor to the Licensor's supplier. This is not valid if the defect results from an improper handling of the supplier's product that lies in the Licensor's jurisdiction. If the Licensee cannot assert the claims of defects extra-judicial, the subsidiary responsibility for defects of the Licensor remains untouched.
- (8) Any warranty claims for defects are cancelled when the Licensee or a third party instructed by the Licensee, changes or extends the services or delivered subjects, unless the Licensee proves that these changes or extensions did not cause the defects. The Licensor is not responsible for defects that result from improper handling and operating conditions or are caused by an inappropriate equipment used by the Licensee.

#### **§ 6 Claims for Defects of Title**

- (1) The software delivered or provided by the Licensor is free of third-party rights that oppose a utilisation according to this contract. Exceptions are standard reservations of titles.
- (2) If third parties are entitled to those rights and claim them, the Licensor has to do everything possible to defend the software against the claimed rights of third parties on the Licensor's own expenses. The Licensor will immediately inform the Licensee in writing about the enforcement of such rights of third parties to grant the Licensor authority and the power of attorney necessary to defend the software against rights claimed by third parties.
- (3) When defects of title exist, the Licensor
  - (a) is entitled to choose,
    - (i) by legitimate measures, cancel third-party rights that affect the utilisation of this software according to this contract, or
    - (ii) cancel their enforcement, or
    - (iii) modify or replace the software in a manner that it does no longer infringe on third-party rights, if the mandatory software functionality is not significantly impaired, and
  - (b) is obliged to reimburse all essential, refundable expenses for legal services paid by the Licensee.
- (4) If a release according to paragraph (3) fails within an appropriate period of grace, the Licensee can, under legal conditions, withdraw from the contract under the legal conditions and claim compensation for damages.
- (5) Furthermore § 5(4) and (6) apply accordingly.

#### **§ 7 Liability, Claims for Damages**

- (1) The Licensor is, according to this contract, only liable in accordance to the following regulations from (a) to (e):
  - a) The Licensor's liability is unrestricted for deliberate or grossly negligent damages caused by the Licensor, the Licensor's legal representatives or executives as well as for deliberately caused damages, of other agents; liability for gross negligence, of other agents follows the rules for slight negligence set forth below in (e).
  - b) The Licensor's liability is unrestricted for deliberate or negligent damages resulting from harm to life, body and health by the Licensor, the Licensor's legal representatives or agents.
  - c) The Licensor is liable for damages due to non-existing, guaranteed characteristics up to the amount covered by the warranty purpose and recognisable for the Licensee when the warranty was delivered.
  - d) The Licensor is liable for damages to the product liability according to the rules of the German Product Liability Act.
  - e) The Licensor is liable for damages resulting from contractual obligations (cardinal duties) violated by the Licensor, the Licensor's legal representatives or agents. Cardinal duties are the essential obligations



forming the basis of this contract and have been crucial for the completion of this contract; the Licensee can rely on these obligations being fulfilled. If the Licensor has slightly deliberately infringed on these cardinal duties, the Licensor's liability is limited to the sum that has been foreseeable for the Licensor at the point the particular service has been provided.

- (2) The Licensor's liability for the loss of data is limited to the sum that had accrued for the restoration of properly and regularly saved data.
- (3) As a matter of principle, any further liability of the Licensor is excluded.

### **§ 8 Final Conclusions**

- (1) Any alterations to this contract are to be made in writing to become effective. This is also valid for an alteration of this written form requirement.
- (2) The laws of the Federal Republic of Germany are applied to this contract, except the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods from 11 April 1980).
- (3) The contract parties agree on the location of the Licensor being the sole place of jurisdiction for all disputes arising from and in connection with this contract, provided that the Licensee is a merchant in terms of the German Commercial Code (HGB) or the Licensee does not reside in the Federal Republic of Germany at the time of action.
- (4) The invalidity of single regulations of this contract does not affect any remaining regulations. In this case, the contract parties are bound to agree on valid regulations which economically come the closest to the intended purpose of the invalid regulations. This is also valid for closing potential contractual gaps.



# AMENDMENT 1

## Terminology:

*Software* – refers to the software specified in this document.

*Update* - an "Update" provides software for correcting former software versions and - without being mandatory because of this contract - contains elements to expand the software's functionality by adding some functions or to enhance the performance.

## Definition of "Software" according to the Software License Agreement:

TITLE	VERSION	NUMBER OF LICENSES
Updater for the NEURO TRONIC W.3 multi-purpose device and the e-Cast operator device	From v.1.1.0 upwards - you will find the latest version on the attached Patch documentation	Unlimited

### Software-Title:

Small, stand-alone program that cannot be installed and is associated by updates that can be downloaded on the FIOR & GENTZ website.

### Intended Use:

Software for updating and/or upgrading some electronic products (e.g. e-Cast operator device, NEURO TRONIC W.3 multi-purpose device) of the FIOR & GENTZ Gesellschaft für Entwicklung und Vertrieb von orthopädiotechnischen Systemen mbH.

### Software Update Installation Guide:

You can download an installation guide for our **Software Updates** in PDF format on our website at [www.fior-gentz.com/updates](http://www.fior-gentz.com/updates)

### System Requirements:

Compatible with Microsoft Windows, the minimum operating system is Windows XP

## Software Architecture:

