

Contract, General Terms and Conditions

13.01.2022

Oncology treatment protocols on the Internet - Onkopti®.

from
Company
Onkodin GmbH
Finkenhain 8
D 67661 Kaiserslautern
Germany
represented by the managing director, Prof. Dr.med. Hartmut Link

(hereinafter Contractor = CO)

The user acquires licenses of the database of digitized oncological therapy protocols (Onkopti®) including supportive therapy.

Licensor is Contractor (CO).

The license covers the data of digitized therapy protocols of oncology for the drug therapy of malignant diseases.

2. licenses of all protocols can be ordered in three not publicly available variants (PDF views). The price list is available on request.

3. the protocols are made available by arrangement from the server of the Fraunhofer Institute IESE in Kaiserslautern, by e-mail or by electronic storage media.

4. updates and upgrades of the protocols are included as far as they are created during the first 12 months after the start of the term.

5. study protocols are not included, they can be included additionally, for which a separate effort-related price agreement is required.

6. an application program is not part of this agreement.

The current price according to the price list plus VAT is agreed for the "read only" type of use of offered PDF files.

The Contractor may change the price list. The changed price shall apply to the user if he does not object within 4 weeks from notification of the change (by e-mail or fax). In the event of an objection, the Contractor shall discontinue the possibility of use for the Client.

Terms of payment:

100% upon placement of order

Other agreements

The term of the contract is 12 months after provision. The database is provided from the information on the deposited e-mail address or FAX number of the user about the activation.

The PDF files of the Onkopti® protocols are provided to the user as a simple personal license for individual use.

Any further use of the Onkopti® protocols in physical or non-physical form, such as copying, distributing, forwarding, exporting to other media or publishing also publications about the project only together with the licensor Onkodin GmbH.

The contract is automatically renewed for another 12 months, unless it is terminated in writing three months before the end of the contract. The prices for the Onkopti® database will then be based on the prices valid at the time.

Obligation of the client at the end of the contract

If no follow-up agreement is reached, the protocols and their printouts may not be used for new therapy cycles and must be deleted from all storage media and programs.

Any printouts of the protocols must be destroyed. The deletion or destruction must then be confirmed in writing. The user undertakes vis-à-vis the Contractor to pay the Contractor a contractual penalty to be determined by the Contractor at its reasonable discretion, the appropriate amount of which shall be reviewed by the competent regional court for its fairness in the event of a dispute, but at least € 40,000.00, to refrain from using, distributing or making available the PDF files without the required consent of the Contractor or otherwise evaluating them or having them evaluated by third parties.

Liability

Onkodin GmbH assumes no liability for the correctness of the Onkopti® protocols. The application is at the user's own risk and responsibility.

Supplementary Terms and Conditions for the Provision of the Onkopti® Database

1. Subject matter of the contract

The following terms and conditions shall apply to the provision and use of Onkopti® in the version provided within the scope of the contract.

They shall not apply to additional services such as installation, parameterization and adaptation of Onkopti® to the needs of the client (CL).

2. Type and scope of performance

2.1 Contractor (CO) shall provide CL with the Onkopti® database (hereinafter: Onkopti®) for the applications agreed in the contract in the formats PDF, BD Cato, MS Excel, online views or agreed export variants.

The transfer and use shall be limited in time, unless otherwise agreed.

2.2 The Onkopti® database does not contain any programs.

2.3 The Excel template of Onkopti® has been checked with a current virus scan program prior to the respective delivery to the CL. The CO declares that the check did not reveal any indication of damaging functions of the Excel template of Onkopti®. Furthermore, it is the responsibility of the CL to set up an appropriate virus protection program.

2.4 The CL shall be responsible for the proper data backup.

3. Rights of use

3.1 Onkopti® is protected by copyright.

3.2 Onkopti® shall be provided to CL for use in accordance with its intended purpose for the period agreed in the contract. Unless otherwise agreed in the contract, the CO shall grant CL the non-exclusive right to use Onkopti® in the system environment agreed in the contract for a limited period of time and subject to termination.

3.3 CL undertakes to take appropriate technical and organizational measures to ensure that Onkopti® is used as intended.

3.4 CL undertakes not to convert Onkopti® into any other code form unless this is permissible under copyright law.

3.5 Insofar as Onkopti® is provided with a copy and/or use block, this may not be circumvented.

4. Term of the contract and termination of the rights of use

4.1 The duration of the provision of Onkopti® results from the contract. If no date for the end of the provision period is agreed in the contract, the provision of Onkopti® can be terminated with a notice period of three months to the end of a calendar month, but at the earliest to the end of a minimum contract period agreed in the contract. A different notice period may be agreed in the contract.

4.2 If CL violates the agreed rights of use or property rights of Onkodin GmbH, the CO may terminate the rights of use to Onkopti® extraordinarily.

4.3 CL shall ensure that Onkopti® is permitted for use, in particular whether export control regulations of the Bureau of Export Administration, US Department of Commerce, permit the use. CL's failure to comply with such regulations shall not result in CL's right to terminate the contract.

4.4 In the event of termination, CL shall be obliged to delete the original including the documentation and all copies or to return them to the CO. Reference is made to the agreed obligation of the Customer at the end of the contract.

5. Availability of Onkopti®

5.1 The database of Onkopti® shall be contractually available to 99.8% in a calendar year (see service description appendix 1). This shall not apply to disruptions beyond the CO's control or which occurred through no fault of the CO.

5.2 Planned maintenance work for which the Database is not accessible shall be notified by CO to CL in due time. The notification shall be sent to the contractual e-mail address of CL. The notice shall state the start and expected end of the maintenance work.

6. Default of CO

6.1 In case of default, CL shall set CO a reasonable period of time, but at least 24 hours, for performance, depending on the severity of the fault. After expiry of this period, CL may withdraw from the contract in whole or in part.

6.2 CL shall not be entitled to claim damages against the CO for delay or non-performance.

7. Liability for Defects

7.1 The protocols are only a treatment recommendation. Diagnostics, indication for therapy as well as treatment of malignant diseases must be carried out in each individual case by the physician experienced in hematology and oncology on his own responsibility.

7.2 The warranty claims of CL do not extend to Onkopti® which CL has modified or which CL does not use in the system environment agreed upon in the contract, unless CL proves that such use is not the cause of the reported defect.

7.3 Prerequisites for CL's claims are the reproducibility or detectability of the defects.

7.4 CL shall report defects within the meaning of 7.3, depending on the severity of the defect, within a reasonable period of time, stating the information known to it and useful for their detection on a form - Fault Report Form - unless another form of fault report has been agreed. He shall cooperate within the bounds of what is reasonable and take measures to facilitate the detection of the defects and their cause.

7.5 If the obligation of the CO to remedy defects is not excluded by contract, the following shall apply:

7.5.1 The CO may remedy the defect at its option by removal, bypass by a second access or new delivery. The rectification of defects also includes the delivery of a printed or printable correction instruction for the documentations, as far as this is necessary.

The obligation of the CO to remedy defects shall apply to the respective current version of Onkopti®.

7.5.2 If the CO does not successfully complete the rectification of defects within a reasonable period of time, depending on the severity of the defect, CL shall grant CL a grace period. After expiry of the grace period, CL may demand a reasonable reduction of the remuneration or terminate the transfer agreement with respect to the Onkopti® concerned.

7.5.3 The CO shall otherwise be liable without limitation

- for intent or gross negligence,
- for injury to life, limb or health, as well as
- according to the provisions of the Product Liability Act.

In case of a slightly negligent breach of an obligation which is essential for the achievement of the purpose of the contract (cardinal obligation), the liability of the CO shall be limited to the amount of the damage which is foreseeable and typical according to the type of the business in question.

7.5.4 The Contractor shall have no further liability. The above limitation of liability shall also apply to the personal liability of CO's employees, representatives and bodies.

7.6 Claims of CL for compensation of lost profit are excluded.

8. Infringement of property rights

8.1 If a third party asserts claims against CL due to infringement of property rights by the Onkopti® database supplied by the CO and if the use of the Onkopti® is thereby impaired or prohibited, the CO shall be liable as follows:

The CO shall, at its option and at its expense, either modify or replace the Onkopti® database in such a way that it does not infringe the property right but still essentially complies with the agreed functional and performance features in a manner reasonable for CL, or indemnify CL against license fees for the use of Onkopti® during the agreed transfer period vis-à-vis the property right holder or third parties.

CL shall, at CO's option, either delete Onkopti® including documentation and all copies or return it to CO. A claim for compensation shall only exist for the period during which Onkopti® could be used by the Customer.

8.2 Prerequisites for the liability of the CO according to clause 8.1 are that the CO is immediately notified of claims of third parties, does not acknowledge the alleged infringement and either leaves any dispute, including any out-of-court settlements, to the CO or conducts them only by mutual agreement. Any necessary court and attorney fees incurred by CL as a result of legal defense shall be borne by the CO.

If CL discontinues the use of Onkopti® for reasons of mitigation of damages or other important reasons, it shall be obliged to point out to the third party that the discontinuation of use does not imply an acknowledgement of the alleged infringement of property rights.

If a modification or replacement pursuant to 8.2 Alternative 1 is not possible on other terms, CO shall notify CL thereof and prohibit CL from using the product at a certain point in time (right of extraordinary termination).

8.3 Insofar as CL itself is responsible for the infringement of property rights, claims against CO shall be excluded. Claims of CO against CL shall remain unaffected.

8.4 Further claims of CL due to an infringement of third party property rights are excluded.

9. Liability

The CO assumes no liability for the correctness of the Onkopti® protocols. The application is at the user's own risk and responsibility.

10. Statute of limitations

Ansprüche nach Ziffer 6 bis 8 verjähren in 3 Jahren ab Kenntnis, spätestens jedoch in 8 Jahren nach erstmaliger Überlassung.

11. Privacy, secrecy and security

11.1 Before handing over a data carrier to the CO, CL shall ensure the deletion of contents worthy of protection, unless otherwise agreed.

11.2 CL shall ensure that all persons entrusted by it with the processing or performance of the contract comply with the statutory provisions on data protection. The written commitment to data secrecy required under data protection law shall be made at the latest prior to the first commencement of the activity and evidence thereof shall be provided to the CO upon request.

11.3 CL may terminate the Agreement in whole or in part if the CO culpably fails to comply with its obligations under Clause 11.2, taking into account the facts under Clause 11.1, within a reasonable period of time set or violates data protection provisions intentionally or by gross negligence.

11.4 CL and CO shall be obliged to mark and treat as confidential all confidential information, business and trade secrets obtained within the scope of the contractual relationship, in particular not to disclose them to third parties or to use them for purposes other than contractual purposes. This shall also apply to the exchange of experience.

12. Written form

1. The contract and its amendments as well as all declarations, notification and documentation obligations relevant to the contract must be in writing. This also applies to provision 12 itself.

2 Applicable law

2. 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). The place of jurisdiction for all disputes shall be Kaiserslautern, to the extent permitted by law. The CO is granted the right to sue for claims arising from the contract also at the place of jurisdiction of CL.

3 Salvatory clause

Should individual provisions of the contract be invalid, this shall not affect the validity of the remaining provisions.