

synprovis

**General Terms and Conditions Of
Business of Synprovis GmbH**



General Terms and Conditions Of Business of Synprovis GmbH

1. Scope

These general terms of contract apply to all purchases and sales and/or the use of services of Synprovis GmbH, CH-6205 Eich (hereinafter «Synprovis»). Any individual or legal entity or partnership concluding a contract with Synprovis shall be referred to as a customer.

By ordering, using/installing a product or using a service of Synprovis, the customer completely and unconditionally accepts these general contractual provisions, to the exclusion of any other existing provisions.

Contrary general terms and conditions of business are expressly excluded.

2. Conclusion of contract

An order shall only become definitive once it has been accepted by Synprovis. Synprovis reserves the right to reject any order from a customer.

3. Terms of payment

The price, which is indicated on the quote or confirmation of order, shall be invoiced.

Unless otherwise agreed, all products and services are to be paid for by means of the appended payment slip or directly into Synprovis's account.

If the customer defaults on payment, the maximum default interest permitted by law, but a maximum of default interest of 4 % per month, shall be immediately payable.

The payment of default interest by the customer shall not restrict the assertion of more extensive rights and obligations by Synprovis. The customer is to reimburse Synprovis for all of the costs and expenses associated with the collection of the outstanding payments, in particular debt collection and court fees as well as lawyers' fees. This shall not affect Synprovis's right to suspend or withhold deliveries and services in the event of a delay in payment.

4. Exchanges, returns and complaints

It is the customer's responsibility to immediately check the goods upon delivery and to complain about any defects or deviations from the order. Said objections or complaints must be notified to Synprovis as quickly as possible and at most within ten (10) days of delivery by fax or by registered letter.

The shipping costs in the event of the goods being returned are to be borne by the customer. The customer may only claim a cancellation of the sale (refund), if Synprovis is unable to remedy the defect within a reasonable period of time, or Synprovis immediately prefers a cancellation of the sale.

5. Contract-terminating provision

If the customer does not fulfil or only partially fulfils one of its obligations or does not meet a payment deadline, Synprovis reserves the right to either demand the immediate payment of all outstanding amounts, whatever the nature thereof, or to stop all deliveries or to terminate the current contract.

Upon termination of the contract for extraordinary reasons

- a) all of the licence rights arising from this contract shall lapse,
- b) the customer shall, where applicable, be obliged to immediately pay Synprovis all of the outstanding amounts, and
- c) the customer shall be further obliged to either return all of the documents in its possession or under its control, as well as all of the data storage devices containing confidential information, whatever the nature thereof, and the software including all of the copies thereof to Synprovis, or to destroy these securely and to provide evidence of this secure destruction to Synprovis by sending a report.

6. Terms of delivery

6.1 Delivery by post

The products shall be delivered to the delivery address indicated by the customer when placing its order. As an exception to this, the delivery can be effected by means of a download via the website (see below). The products shall be shipped by post.

The delivery periods indicated by Synprovis are non-binding. Synprovis and its partners shall do their best to comply with these delivery periods. In the event that they are exceeded, this exceeding of the delivery periods shall not under any circumstances give rise to the cancellation of the order, compensation or a late payment surcharge. The delivery shall be deemed to have been completed, once the product has been handed over to the customer by the carrier.

6.2 Delivery of software by website

Synprovis may, instead of or in addition to the delivery by post, immediately make the software available to the customer, following receipt of the order, for downloading on a secure, password-protected website. The password is deemed to be confidential information. Upon receipt of the password, the delivery conditions and services set out in the contract shall apply.

The password may be sent to the customer by email or post.

7. Software warranty

Only once he has completely fulfilled all of the obligations arising from the contract shall the customer be entitled to a warranty. The warranty includes and is limited to the undertakings that

- a) the data storage device, with which the software is provided, is free from defects and manufacturing defects under normal conditions of use, and
- b) that the software complies with all of Synprovis's agreed, fundamental specifications. The warranty applies for a limited period of ten (10) days following delivery. Synprovis's obligations during the course of the warranty shall be limited to repairing or replacing software which is not suitable or, at its own discretion, declaring the contract terminated and reimbursing the customer the fee paid under this agreement. Unless otherwise agreed herein, Synprovis licenses the software in accordance with the contract, to the exclusion of any guarantee of usability desired by the customer, continuous function, or defect-free functioning. All risks and hazards associated with the use of the software shall be borne solely by the customer to the maximum extent permitted by law (this excludes provisions of the section in the event of the rights of third parties being infringed). Synprovis and its suppliers exclude any further warranty without exception.

8. Licence rights to, and limitations of, software

8.1 Transfer of rights

Synprovis grants the licensee a non-exclusive, non-transferable and terminable right, which cannot be sublicensed, to use the licensed products exclusively at the installation site and solely for internal use by the licensee in accordance with the agreements made (licence agreement). The licensee is entitled to make one backup copy of the software for each installation site, this being exclusively done for the purposes of archiving or restoring the system. Changing the installation site shall require the prior written consent of Synprovis.

8.2 Legal competence

Synprovis shall retain exclusive legal competence for all rights and claims to, and interests in, the software and all exploitation rights, reproduction rights (copyright), rights to trade secrets, trademarks and other intellectual property rights in the internal relationship between the parties to the contract. The licensee exclusively acquires the rights of use indicated in the licence agreement. The software is merely licensed, but not sold.

9. Indemnification and holding harmless in the case of intellectual property rights

In the event of action being taken against the licensee in connection with the use of the licensed products by third parties in accordance with the contract due to the infringement of patent rights, copyright or other intellectual property rights, either in court or out of court, Synprovis shall represent the licensee, defend unjustified claims and, in the case of justified claims, endeavour to bring about a settlement or, in the absence thereof, indemnify and hold harmless the licensee by paying the sum awarded by a final and absolute court judgement. The entitlement to indemnification and being held harmless shall only arise, if the licensee immediately notifies Synprovis in writing of the claim which has been asserted and takes all of the necessary measures which allow Synprovis, at its own expense and by enlisting Synprovis's legal counsel, to commence negotiations with the complainant or to join in court proceedings. The licensee undertakes to cooperate with Synprovis and the lawyer appointed by Synprovis at Synprovis's expense. The licensee shall still be entitled to consult a lawyer of its choice, but exclusively with due regard to the obligation to cooperate with Synprovis and at its own expense. Synprovis's obligation to reimburse the costs shall only become binding with a written statement from Synprovis. In the event that, in the opinion of Synprovis, claims are made by third parties due to the software, Synprovis shall be entitled, at its own discretion and at its own expense,

- a) to grant the licensee the right to use the software in accordance with the regulations, or
- b) to replace the software with other suitable software which does not infringe the rights of third parties, or
- c) if a) and b) are impractical, at its own discretion, to terminate the contract with the licensee with respect to the software in question, and to reimburse the licensee for the licence payments, deducting the usage fee to date which has been determined, assuming usage of five years.

Notwithstanding the above, Synprovis shall not be liable for claims by third parties arising from

- a) the use of a version other than the version of the software currently in use, if the licensee has received this version free of charge,
- b) use other than that stated in the documentation or agreed in this contract,
- c) the use of the software in conjunction with software which does not originate from Synprovis, if this circumstance is relevant to the claims made by third parties,
- d) a scenario where the software has been modified by third parties and/or use of this software,
- e) the consideration of the design, the specifications or the instructions of the licensee by Synprovis,
- f) any violation of the law by the licensee, after the latter has received a communication from Synprovis to immediately stop using the licensed products.

In the event of an alleged infringement of copyright, patent or intellectual property rights by third parties, all the obligations of Synprovis and the suppliers or licensors of Synprovis are comprehensively described in this section such that no obligations beyond this exist.

10. Website

10.1 Copyrights

All of the information and content such as presentations, designs and graphics published at the internet address www.synprovis.ch (hereinafter referred to as the «website») on the web are protected by copyright and are subject to the copyright of Synprovis. Synprovis expressly reserves all rights regarding this.

No rights whatsoever are transferred to the licensee through the use, downloading or copying thereof. The same is true regarding the designation and logo of «Synprovis GmbH».

The structure and contents of the entire website are protected by copyright. In particular, this also applies to graphics and databases.

The exploitation of data or information, in particular the use of texts of this website, shall only be permitted with the prior written consent of Synprovis.

Commercial use of any kind – including of extracts of this site – is only permitted following consultation with Synprovis.

10.2 Use of the website

Use of the website is subject to, inter alia, the following conditions:

- a) Synprovis makes its website available free of charge to private individuals and entrepreneurs.
- b) Commercial use of the website shall require approval from Synprovis. The term «commercial use» means, in particular, the provision of advisory services, which are based on the content of the website, irrespective of whether this advice is remunerated or not. Consent regarding commercial use may be requested from Synprovis.
- c) Links to the website are expressly permitted, provided that they remain clearly visible as offers of this website. Please inform Synprovis, if you establish a link to the website so that Synprovis can notify you accordingly of any restructuring of the website. In the event of breaches of these copyright conditions, Synprovis expressly reserves the right to initiate legal proceedings.
- d) No contractual relationship of any nature whatsoever is brought about between the user of this website and Synprovis. Synprovis does not have any wish to bring about a particular legal consequence with regard to this. In particular, no legal advice shall be provided via this website.

11. No warranty

The operator expressly reserves the right to change the information published by it at any time or to revoke public access. Furthermore, the limitations of liability set out below shall apply.

12. Links to other homepages

Other home pages can be reached from the website by means of the inserted links. The operator cannot assume any responsibility and/or liability for these home pages and their contents.

In its judgment of 12 May 1998 the Regional Court of Hamburg in Germany decided that in proposing a link, joint responsibility also has to be assumed for the contents of the linked site, if applicable. According to the regional court, this can only be prevented by expressly distancing oneself from these contents. We have placed links to other sites on the Internet on different pages of this home page. The following applies to all of these links:

We would expressly stress that we do not have any influence whatsoever on the design and contents of the linked pages. We therefore hereby expressly distance ourselves from all of the contents of all linked pages on our home page and do not make the contents thereof our own. This declaration applies to all of the links displayed on our home page.

13. Disclaimer

With the exception of the application of the «indemnification and holding harmless in the case of intellectual property rights» section, with the further exception of the liability arising from mandatory provisions of product liability, liability for personal injuries and liability for intent or gross negligence which have to be proven by the customer, any liability on the part of Synprovis, its suppliers and licensors for the deliveries and services forming the subject matter of the agreement, in particular for software, including for any actions of vicarious agents, shall be limited to the value of the delivery and service in question amounting to the net remuneration agreed with the customer and actually paid, but at most to the remuneration for the delivery and service in question in the twelve months preceding the claim. Any further claims for damages, in particular for lost profits, for consequential damages, indirect damages and damages incurred by third parties is excluded in full.

Any liability of Synprovis for deliveries and services in connection with maintenance contracts is, with the exception of liability arising from mandatory provisions, liability for personal injuries and liability for intent or gross negligence which have to be proven by the customer – including with respect to all actions of vicarious agents – shall be limited to the value of the delivery and service in question amounting to the net remuneration agreed with the customer and actually paid, but at most the fee for the twelve months preceding the claim. Any further claims for damages, in particular for lost profits, for consequential damages, indirect damages and damages incurred by third parties is excluded in full.

The parties irrevocably acknowledge the adequacy of the liability regulation in this section.

Synprovis releases itself from all claims made against us by third parties due to unauthorized content or other violations of the law, for which the customer is responsible.

14. Export provisions

The customer declares that it shall comply with all of the relevant legal provisions, in particular export regulations which apply in the country of its head office, the place of use of the software and the places in which it is subject to the local jurisdiction. The licensee shall hold harmless and indemnify Synprovis for any liability resulting from the failure to comply with these obligations.

15. Modifications and waivers

Any amendments to this contract are to be expressly identified as such and shall require the signature of agents of both parties to the contract, who are authorized to represent the parties. Unless otherwise agreed in writing, the present contract shall exclusively apply in the event of a deviation from an order.

16. Salvatory clause

In the event of a provision of this agreement being declared unlawful and therefore ineffective by the competent court, said provision shall be replaced, without the further involvement of the parties, by that permissible provision which comes closest to the legal and economic purpose of the original provisions.

17. Exclusive validity

The provisions of these General Terms and Conditions of Business shall replace all of the previous terms and conditions of business of Synprovis.

18. Applicable law and jurisdiction

This contract is subject to the **prevailing law** for Lucerne, **Switzerland**, to the exclusion of the international conflicts of laws. **The exclusive jurisdiction** is the **head office of Synprovis** (currently Eich/Lucerne). In the event of an infringement of copyright or intellectual property rights contained in the software, Synprovis is entitled to have recourse to the competent court at the place where the law has been breached.