



General Terms and Conditions of Sale
DMG America, LLC ("DMG")
As of April 2021

1. Scope/incorporation into contract

The following General Terms and Conditions of Sale (these "General Terms") shall apply to the sale of goods by DMG to any entity or individual (the "CUSTOMER"). Any oral side agreements, representations, or guarantees as well as preclusions or waivers of, amendments to, and restatements of these General Terms shall require the express written confirmation by DMG in order for them to be valid. The application of the CUSTOMER's general terms and conditions of purchase is hereby denied, even in the event that those terms have been transmitted to DMG as part of a confirmation letter or otherwise. All terms set forth in these General Terms contain the only terms and conditions applicable between the CUSTOMER and DMG relating to the utilization of services by the CUSTOMER insofar as and to the extent that these General Terms have not been modified through individual stipulations between DMG and the CUSTOMER. The sale, delivery, and use of the "Dentamile connect" software are all subject to separate terms of use.

Part A of these General Terms and Conditions of Sale form the legal framework for the delivery and rendering of all goods and services, while Part B contains specific terms governing the purchase of hardware and software for proprietary and nonproprietary products, services, installations, and commissions.

Part A. General terms governing the sale of products offered by DMG (the "DMG Products")

2. Contract formation

Offers made by DMG are nonbinding and subject to change. DMG offers become binding only after written confirmation has been given or the DMG Products have been delivered (collectively, with these General Terms, the "Agreement"). Technical modifications to the DMG Products as well as changes in form, color, and weight are permitted within reason. Whenever the CUSTOMER places an order for any DMG Products, the CUSTOMER transmits a binding offer subject to an acceptance deadline of at least two weeks. Acceptance can be rendered either in writing or by delivering the DMG Products to the CUSTOMER. During the order placement process, the CUSTOMER will give its consent to the collection and storage of the data appurtenant to the order in DMG's data processing systems; said data shall include, but are not limited to, the corporate data of the CUSTOMER.

3. Price and payment terms

- (1) The CUSTOMER shall purchase the DMG Products from DMG at the prices (the "Prices") set forth in DMG's invoice. The payment terms are as set forth in the invoice.
- (2) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by the CUSTOMER. The CUSTOMER shall be responsible for all such charges, costs and taxes; provided, that, the CUSTOMER shall not be responsible for any taxes imposed on, or with respect to, DMG's income, revenues, gross receipts, personnel or real or personal property or other assets.
- (3) Unless separately negotiated the CUSTOMER shall pay all invoiced amounts due to DMG immediately from the date of DMG's invoice. The CUSTOMER shall make all payments hereunder in US dollars.
- (4) The CUSTOMER shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with DMG, whether relating to DMG's breach, bankruptcy or otherwise.

4. Delivery and risk of loss

- (1) Should a delivery period not be stipulated, the delivery must be made within two (2) months of written acceptance of the order by DMG. In all cases, confirmed orders and delivery dates shall be subject to availability of finished DMG Products and DMG being supplied in an accurate, timely, and complete manner, unless that supply or a delay therein has been caused by DMG.
- (2) Partial deliveries can be made, in DMG's sole discretion, without liability or penalty, to the extent such are reasonable for the CUSTOMER. Each shipment will constitute a separate sale, and the CUSTOMER shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the CUSTOMER's purchase order. DMG shall have the right to make deliveries at any point in time between the date of written acceptance by DMG of the order and two (2) months from the date of such written acceptance. The delivery period shall be extended for reasonable periods of time to the extent that unforeseen hindrances prevent manufacture or delivery of the DMG Products: e.g., strike, lockouts, fire, official orders, etc.
- (3) Unless otherwise stipulated in writing, shipping shall be effected by DMG "FOB," place of delivery 242 South Dean Street, Englewood, New Jersey 07631, using DMG's standard methods for packaging and shipping such DMG Products. DMG must deliver the DMG Products by making them available to the CUSTOMER at the place of delivery in Englewood, New Jersey (place of delivery). The CUSTOMER shall take delivery of the DMG Products within 3 days of DMG's written notice that the DMG Products have been delivered to the place of delivery. The CUSTOMER shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the DMG Products at the place of delivery.
- (4) The CUSTOMER shall bear all risks of loss of or damage to the DMG Products, commencing as of the time DMG delivers the DMG Products at the place of delivery.
- (5) If for any reason the CUSTOMER fails to accept delivery of any of the DMG Products on the date fixed in DMG's invoice: (i) risk of loss to the DMG Products shall pass to the CUSTOMER; (ii) the DMG Products shall be deemed to have been delivered; and (iii) DMG, at its option, may store the DMG Products until the CUSTOMER picks them up, whereupon the CUSTOMER shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- (6) DMG shall not be liable for any non-delivery of DMG Products (even if caused by DMG's negligence) unless the CUSTOMER gives written notice to DMG of the non-delivery within five (5) days of the date when the DMG Products would in the ordinary course of events have been received.
- (7) Any liability of DMG for non-delivery of the DMG Products shall be limited to replacing the DMG Products within a reasonable time or adjusting the invoice respecting such DMG Products to reflect the actual quantity delivered.

5. Default

Circumstances of force majeure outside DMG's control, which render performance impossible or otherwise impede performance for any given time – such as strike, war, war-like conditions, blockades, import and export restrictions, official measures, energy or commodities shortages, epidemic or pandemic, and the like – even if they arise during default, shall justify DMG to postpone delivery for the duration of such event. Should such events lead to it being unreasonable for DMG to perform the contract on economic or organizational grounds, then DMG is authorized to withdraw from the contract in whole or in part. The right to postpone delivery or to withdraw from the contract exists regardless of whether the circumstances listed above occur at the place of delivery or at any of DMG's suppliers. The CUSTOMER shall not receive any right to compensatory damages in the event that DMG exercises such rights.

6. Limited warranty

- (1) DMG warrants to the CUSTOMER that, for a period of one (1) year from the date of shipment of the DMG Products (the "Warranty Period"), such DMG Products will materially conform to DMG's product specifications in effect as of the date of shipment and will be free from material defects in material and workmanship. **EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 6(1), DMG MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE DMG PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the DMG Products. Third Party Products are not covered by the warranty in this Section 6(1). For the avoidance of doubt, **DMG MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
- (2) DMG shall not be liable for a breach of the warranty set forth in Section 6(1) unless: (i) the CUSTOMER gives written notice of the defect, reasonably described, to DMG within seven (7) days of the time when the CUSTOMER discovers or ought to have discovered the defect; (ii) DMG is given a reasonable opportunity after receiving the notice to examine such DMG Products and the CUSTOMER (if requested to do so by DMG) returns such DMG Products to DMG's place of business at DMG's cost for the examination to take place there; and (iii) DMG reasonably verifies the CUSTOMER's claim that the DMG Products are defective. DMG shall not be liable for a breach of the warranty set forth in Section 6(1) if: (i) the CUSTOMER makes any further use of such DMG Products after giving such notice; (ii) the defect arises because the CUSTOMER failed to follow DMG's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the DMG Products; or (iii) the CUSTOMER alters or repairs such DMG Products without the prior written consent of DMG. Subject to the foregoing, with respect to any such DMG Products during the Warranty Period, DMG shall, in its sole discretion, either: (i) repair or replace such DMG Products (or the defective part) or (ii) credit or refund the price of such DMG Products at the pro rata contract rate provided that, if DMG so requests, the CUSTOMER shall, at DMG's expense, return such DMG Products to DMG. **THE REMEDIES SET FORTH IN THIS SECTION 6(2) SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND DMG'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 6(1).**



DMG America LLC
65 Challenger Road, Suite 340
Ridgefield Park, New Jersey 07660

Toll Free: (800) 662-6383
Fax: (201) 894-0213

info@dmg-america.com
www.dmg-america.com

Distribution and Manufacturing Center:
242 South Dean Street
Englewood, New Jersey 07631



(3) The CUSTOMER must inspect the delivered DMG Products for conformity within a time period of seven (7) days of receipt (the "Inspection Period"). After this period lapses, the DMG Products received shall be regarded as accepted by the CUSTOMER unless it notifies DMG in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by DMG. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in the CUSTOMER's purchase order; or (ii) product's label or packaging incorrectly identifies its contents. Obvious material defects must be reported in writing within a time period of seven (7) days of receipt of the DMG Products. The timely sending of that report within such seven (7) day period shall suffice to preserve the deadline.

(4) If the CUSTOMER timely notifies DMG of any Nonconforming Goods, DMG shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming DMG Products, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by the CUSTOMER in connection therewith. Upon demand by DMG, such Nonconforming Goods must be returned. The shipping costs shall be borne by DMG, if the rejection is timely and substantiated; otherwise, the CUSTOMER shall bear said costs. If DMG exercises its option to replace Nonconforming Goods, DMG shall, after receiving the CUSTOMER's shipment of Nonconforming Goods, ship to the CUSTOMER, at the CUSTOMER's expense and risk of loss, the replaced DMG Products to the place of delivery. The CUSTOMER acknowledges and agrees that the remedies set forth in this Section 6(4) are the CUSTOMER's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this Section 6(4), all sales of DMG Products to the CUSTOMER are made on a one-way basis and the CUSTOMER has no right to return DMG Products purchased under the Agreement or these General Terms to DMG.

7. Liability

(1) Liability claims shall have a limitation period of one (1) year, commencing as of the date on which the DMG Products were delivered, save for any liability for injury to life, limb, and health. **IN NO EVENT SHALL DMG BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT DMG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(2) **IN NO EVENT SHALL DMG'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT OR THESE GENERAL TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO DMG FOR THE DMG PRODUCTS SOLD HEREUNDER.** This limitation of liability shall not apply to (i) liability resulting from DMG's gross negligence or willful misconduct and (ii) death or bodily injury resulting from DMG's acts or omissions.

(3) DMG will maintain full documentation of the batches of the order delivered to the CUSTOMER. The CUSTOMER warrants to DMG that the DMG Products disposed of by the CUSTOMER shall be traceable and recallable. The CUSTOMER must inform DMG without undue delay of any damage event concerning any product delivered by DMG and shall guarantee without undue delay that a recall of the entire product shall be effectuated in order to avert damage, provided DMG demands that the CUSTOMER do so.

8. Traceability / incident reports / product returns concerning medical devices

(1) In the case of DMG Products that are to be regarded as medical devices, DMG shall maintain full documentation on the batches of the order delivered to the CUSTOMER. The CUSTOMER warrants to DMG the traceability and recallability of the DMG Products sold by the CUSTOMER. The CUSTOMER shall at all times maintain appropriate records to ensure the traceability of each product purchased from DMG. The CUSTOMER shall keep the documents necessary for this purpose (e.g. invoices) for at least 10 years. Upon first request, the CUSTOMER shall provide DMG with copies of all documents proving the traceability of DMG Products to the end customer in case of (i) an Incident, (ii) customer complaints, (iii) other necessary cases related to medical device law or (iv) reasonable suspicion of infringement of intellectual property rights (e.g. trademark law) related to the DMG Product.

(2) Without prejudice to the CUSTOMER's notification obligations imposed by law, the CUSTOMER shall in any case notify DMG in writing of any incident defined as follows of which it becomes aware: malfunction, failure or change in characteristics or performance, or improper labeling or operating instructions of a DMG Product, which directly or indirectly caused, could have caused, or could cause death or deterioration of the health condition of a patient, user or other person (each, an "Incident"). Notifications of such incidents to DMG shall be made immediately after CUSTOMER becomes aware of them, but no later than 3 (three) business days thereafter. The CUSTOMER shall immediately ensure the recall of the entire DMG Product to prevent damage if DMG requests the CUSTOMER to do so.

(3) Insofar as the CUSTOMER violates statutory provisions or regulatory provisions in the distribution, operation, or use of the Products, the CUSTOMER shall be obliged to indemnify DMG against all damages, losses, claims and costs resulting from the aforementioned breach of duty if and insofar as the CUSTOMER has committed such breach of duty intentionally or negligently.

9. Compliance with law

The CUSTOMER shall comply with all applicable laws, regulations and ordinances. The CUSTOMER shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement. The CUSTOMER shall comply with all export and import laws of all countries involved in the sale of the DMG Products under the Agreement or any resale of the DMG Products by the CUSTOMER.

10. Termination

In addition to any remedies that may be provided under these General Terms, DMG may terminate the Agreement with immediate effect upon written notice to the CUSTOMER, if the CUSTOMER: (i) fails to pay any amount when due under the Agreement; (ii) has not otherwise performed or complied with any of these General Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

11. Waiver

No waiver by DMG of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by DMG.

12. Confidential information

All non-public, confidential or proprietary information of DMG disclosed by DMG to the CUSTOMER is confidential, solely for the use of performing the Agreement and may not be disclosed or copied unless authorized in advance by DMG in writing.

13. No third-party beneficiaries

The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these General Terms.

14. Governing law and jurisdiction; waiver of jury trial

All matters arising out of or relating to these General Terms is governed by and construed in accordance with the internal laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rule (whether of the State of New Jersey or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New Jersey. Any legal suit, action or proceeding arising out of or relating to these General Terms shall be instituted in the District Court for the District of New Jersey or the Superior Court of New Jersey in Bergen County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. **EACH PARTY HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THESE GENERAL TERMS OR THE AGREEMENT OR THE TRANSACTIONS RELATING TO ITS SUBJECT MATTER.**

15. Notices

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the sales confirmation or to such other address that may be designated by the receiving party in writing.

Part B: Special terms governing the sale of hardware and nonproprietary software products

The terms set forth in this section of Part B amend and/or restate the terms contemplated under Part A exclusively as regards the sale and delivery of hardware and nonproprietary software. To the extent that the terms set forth in this section do not so amend/restate, the terms of the section contemplated under Part A remain applicable even for the sale of hardware and nonproprietary software.

16. Hardware (3-D printers and accessories)

(1) The place of delivery, place of destination, and further constituents of performance shall be determined in the respective offer extended to the CUSTOMER; here, the place of delivery/destination is the CUSTOMER's registered office, as set forth in the order.



DMG America LLC
65 Challenger Road, Suite 340
Ridgefield Park, New Jersey 07660

Toll Free: (800) 662-6383
Fax: (201) 894-0213

info@dmg-america.com
www.dmg-america.com

Distribution and Manufacturing Center:
242 South Dean Street
Englewood, New Jersey 07631



- (2) Unless otherwise stipulated, it is incumbent upon the CUSTOMER to install and to configure the hardware and/or software after receipt. The CUSTOMER shall test, thoroughly, the hardware and/or software prior to deployment for conformity and usability in the existing hardware. Should the test reveal that there are no material nonconformities, the CUSTOMER must accept the hardware. Nonconformities must be reported to DMG without undue delay within five (5) business days of their discovery; otherwise the hardware shall be regarded as having been accepted. Should the CUSTOMER refuse acceptance by citing material nonconformities, then DMG shall have the right to effectuate subsequent performance or replacement delivery and, subsequent to that performance or delivery, to give notice again that such is ready for acceptance. Should acceptance not be effectuated by the CUSTOMER within a time period of fourteen (14) calendar days or should, within that time period, no written statement by the CUSTOMER be provided describing exactly how which parts of which performance remains unfulfilled, then acceptance shall be deemed to have been effectuated.
- (3) DMG can stipulate with the CUSTOMER that DMG render certain performances during the installation/hardware commissioning process at the CUSTOMER's premises. Insofar as DMG assumes hardware installation services, the following applies: within the sphere of its establishment, the CUSTOMER must ensure that any prerequisites necessitated by the rendering of the services are fulfilled, including, but not limited to, providing at no charge requisite infrastructure such as work stations, work supplies/material, telecommunications connection, and so forth. The CUSTOMER must honor scheduled appointments. The CUSTOMER shall review and shall be responsible for guaranteeing that, at the place of commissioning, the prerequisites necessary for safe operations are fulfilled. It is presumed that, as regards any relevant rooms, the CUSTOMER is in compliance with applicable rules and regulations concerning its establishment. Further duties to assist shall be listed in any offer necessitating them. Prior to commencing any installation work, DMG shall designate an authorized person as a contact person. DMG can also cause services to be carried out, in whole or in part, by subcontractors of its choosing. The choice of subcontractor shall be at DMG's own discretion. DMG's installation work includes work required to take into due commission hardware and the corresponding software. As part of the transfer of natural possession to the CUSTOMER, there shall be training, based on an instruction manual, on how to use the hardware and software. DMG can, at its own free discretion, determine the nature, scope, and duration of these services; DMG is also free to suspend, at any time, any work regarding the commissioning of hardware and software, if DMG believes such to be pertinent and will not be required to render damages, substitute/subsequent performance for such suspension.
- (4) Any DMG services to take hardware into commission, as provided at no charge by the CUSTOMER, is voluntary aid provided to the CUSTOMER and **do not constitute any required part and/or some ancillary performance of the purchase and delivery of hardware**. The failure of such services, be they cancelled or otherwise refused, shall not give the CUSTOMER cause to withdraw (from the hardware purchase contract), to offset claims, to assert any right of retention, or to assert any rights arising from applicable warranty law.
- (5) DMG does not produce the software responsible for the direct operation of the hardware (3D printer) (hereafter, the "Third-Party Software"); DMG provides this Third-Party Software to the CUSTOMER in/with the hardware and approves of operating this hardware in compliance with the specifications made by the Third-Party Software's producer. The Third-Party Software's producer grants the CUSTOMER a simple license to operate the hardware in accordance with the operation specification. The respective software producer's terms of use and licensing apply to the acquisition and maintenance of the Third-Party Software. Any installation, maintenance, servicing, or other services are not part of the performance by DMG; those services must be stipulated and, where applicable, compensated separately between the CUSTOMER and such producer. DMG is only responsible for ensuring that the Third-Party Software and its updates are installed on the hardware separately and provides such for use with the printer as described by DMG insofar as the CUSTOMER has a valid usage and licensing agreement with the producer of the Third-Party Software. The CUSTOMER is required to comply with the instructions of the software producer.
- (6) DMG disclaims any liability for any damage that results from any installation of the Third-Party Software that is either nonconforming or not authorized by DMG, and DMG assumes no warranties of any kind for defects, nonconformities and/or the omission present in the Third-Party Software. There shall be precluded any claims to any reduction in price/subsequent performance against DMG in connection with nonconformities in or caused by the Third-Party Software.
- (7) The CUSTOMER is required to operate the hardware and the software in keeping with the instruction and operation manuals. The specification in the user documentation is exhaustive as regards the facts relating to the hardware or Third-Party Software. The hardware and corresponding Third-Party Software are not medical products, but are used for the manufacture of medical products (custom-made products) and are operated in a healthcare-provider environment. For this reason, the CUSTOMER is required to operate and to monitor the hardware and the Third-Party Software in compliance with the requirements set forth in provisions of law governing medical products and to use that hardware and software in accordance with their intended purpose, as specified by DMG; in particular, the CUSTOMER shall guarantee – in the event of resale – that the hardware is traceable and recoverable.
- (8) The foregoing warranty contemplated by Part A, Section 6, and the liability contemplated by Part A, Section 7, relate only to the hardware and not to the Third-Party Software and shall be rendered by DMG to the extent described only if, when operating the hardware, the CUSTOMER complies with the instructions specified by DMG. Further **disclaimers of liability and/or disclaimers and/or refusals of warranty actions** by DMG are given, if (i) the CUSTOMER uses software from third parties to operate the hardware which have not been supplied or approved by DMG and/or (ii) changes to the hardware, repairs to the hardware, or other encroachments into the control units, the motor, or regarding any mechanical and/or electrical functions – which have not been authorized by DMG – have been effectuated regarding the hardware; and/or (iii) nonconformities exist in the hardware that were caused at the CUSTOMER's through ancillary or consequential damage such as water or overheating damage, electrical discharges, misuse, neglect, or improper storage or usage; and/or there exists a system environment for which DMG is not responsible; and/or (iv) the CUSTOMER uses the hardware other than as intended by DMG and/or the CUSTOMER operates the hardware in breach of applicable medical product law, unless the CUSTOMER evinces that the abovementioned facts and circumstances are not causative for the occurrence of the nonconformity.
- (9) During any warranty work (see Part A, Section 6, above), DMG can loan out to the CUSTOMER a replacement for the nonconforming hardware. Besides in the case of performances expressly inclusive of data backups, DMG disclaims all liability for the loss of data, provided the damage would not have occurred within the CUSTOMER's sphere of responsibility, had the data been backed up properly. A proper data backup shall be presumed whenever the CUSTOMER backs up its data at least daily in a machine-readable form and, by extension, guarantees that those data can be recovered with reasonable efforts. Extending beyond the foregoing, DMG's liability for the loss of data shall be limited to expenditures typical of recovery efforts in cases involving wrongful intent and gross negligence, which expenditures would have arisen had the data been backed up properly.
- (10) The execution of maintenance agreements concerning third-party software in the hardware shall be effected by the CUSTOMER in its sol

