

TRILUX Medical Terms and Conditions of Delivery and Service

As of 01.07.2018

1. Scope of Application:

1.1 The following Terms and Conditions apply to any and all business relations of TRILUX Medical GmbH & Co. KG., meaning all contracts, deliveries or other services, provided that the contractual partner is an entrepreneur in the sense of Section 14 *BGB* [German Civil Code]. These Terms and Conditions shall also govern any future business relations even if not explicitly referred to again.

1.2 Deviations from these Terms and Conditions shall only become part of the contract on the basis of an express written individual agreement between TRILUX Medical GmbH & Co. KG (hereinafter referred to as „Supplier“) and the Buyer.

1.3 Any terms and conditions of the Buyer are hereby objected to and shall not be binding upon the Supplier unless expressly accepted by the Supplier in writing.

2. Content of the Contract, Prices:

2.1 For the content and scope of deliveries and services, the order confirmation of the Supplier shall be binding. Changes to the original offer and/or order confirmation which are agreed by the Buyer with the end customer or a subcontractor of the Buyer and cause additional costs will be notified to the Buyer by the Supplier in writing in the form of a modified order confirmation. If the Buyer does not object to the modified order confirmation within seven days after receipt, the deliveries and services listed in the modified order confirmation shall become the content of the contract.

2.2 The binding nature of the written order confirmation shall also apply to orders vis-à-vis the Supplier's distribution and/or sales representatives.

2.3 Any ancillary agreements, supplements etc. require the written form to become effective.

2.4 Technical information on the products can be found in the product description. All the technical information included in the catalogues and other sales documents, lists and drawings as well as the weight and dimensions information provided by the Supplier are created with great care; the Supplier reserves the right to make subsequent correction in the case of obvious errors.

2.5 The prices are calculated on the basis of the price lists applicable at the time the contract is concluded and/or object specific offer prices. All prices are stated exclusive the value-added tax applicable at the day of delivery.

2.6 All prices include standard packaging.

3. Delivery Terms, Default in Delivery:

3.1 Compliance with deadlines for deliveries and services requires the timely reception of all specifications, documents, the required approvals and permits, especially of plans to be delivered by the Buyer as well as compliance with the agreed upon payment conditions and other obligations by the Buyer. Should these requirements not be met in time, the delivery and service periods will be extended accordingly, provided that the delay is not caused by the Supplier.

3.2 Short selling (Section 376 *HGB* [German Commercial Code] (1)) requires an express written confirmation.

3.3 If non-compliance with binding delivery terms is due to force majeure, e.g. mobilisation, war, riots or similar events, e.g. strike, lockout etc., the delivery terms shall be reasonably extended.

3.4 Such a reasonable extension of the delivery terms shall also occur in the event of default in delivery by the Supplier's sub suppliers.

3.5 If the Supplier fails to comply with the delivery or service deadlines and/or delivery or service terms, the Buyer shall be obliged to set the Supplier a reasonable grace period for delivery in writing. If the Supplier culpably fails to deliver within the set grace period, the Buyer shall be entitled to rescind the contract.

3.6 Insofar as the Supplier falls into default of delivery and so far as the Buyer satisfactorily shows that it has incurred a loss as a result thereof, the amount of any claim for compensation due to the delay is limited to 0.5% for every full week of default, but in total no more than 5% of the price of delivery or service affected by the delay. The limitation of liability shall not apply in cases of intent or gross negligence or insofar as the Supplier is mandatorily liable on account of an injury to life, body or health.

3.7 The Buyer is obliged, at the Supplier's request, to declare within a reasonable period whether it, due to a default in delivery, rescinds the contract and/or asserts claims for damages instead of performance and/or insists on delivery.

3.8 If, at the Buyer's request, delivery or consignment is deferred beyond the agreed upon delivery time, Supplier shall be entitled to charge the Buyer, for every commenced month of delay, a storage charge at a rate of 0.5% of the total price of the goods for which the delivery is delayed, at a maximum of 5% of this price, ten working days after the notification of readiness for shipping has been given at the earliest. The parties shall be free to prove higher or lower storage costs.

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4. Terms and Conditions of Delivery:

4.1 The Supplier is entitled to make partial deliveries to a reasonable extent.

4.2 Deviations in respect to the dimensions, weight, technical design manufacture and scope of the goods to be delivered shall be permissible within reasonable, product-specific tolerance limits.

4.3 Furthermore, the Buyer approves any and all deviating changes which serve to improve the technical properties of the goods.

5. Passage of Risk, Delivery:

5.1 Delivery shall be franco carrier, according to FCA, Arnsberg, Germany (Incoterm 2010).

5.2 For orders under EUR 500.00 net, the Supplier shall charge a handling fee of EUR 100.00 net; for orders over EUR 500.01 net up to EUR 1,000.00 net, a fee of EUR 50.00 net will be charged.

5.3 The Supplier is entitled, though not obliged, to take out separate insurance policies for the risks associated with the transport in the name and on account of the Buyer.

5.4 The risk of accidental loss and/or destruction is transferred according to the agreed upon Incoterms regulation.

5.5 Apart from that, the risk is transferred to the Buyer as soon as it falls into default after the receipt of the notification on the readiness for shipment.

6. Payment terms:

6.1 The Supplier's invoices are due for payment one month after the invoice date without any deductions. Payments shall be deemed effected once the amount is at the Supplier's disposal. If the Buyer fails to pay within the fixed period for payment, it shall enter into default, even without a reminder.

6.2 Should the time of receipt of the invoice or the payment plan or its receipt itself be unclear, payment shall be made no later than 30 days after receiving the relevant service or delivery. This means that default shall commence at the latest on the 31st day after receiving the service or delivery.

6.3 The Supplier is entitled to invoice separately partial deliveries and/or services which are factually and temporally self-contained irrespective of the completeness of the residual deliveries and services. The provisions of section 6 shall apply accordingly with regard to the payment terms.

6.4 If the Buyer enters into default of payment, the Supplier shall be entitled to demand default interest at a rate of 9% p.a. above the respective base interest rate according to Section 247 BGB. The Buyer cannot raise the objection that the Supplier incurred only a lower or no interest damage. The right to assert any additional claims for damages is reserved.

6.5 The Supplier is not obliged to accept bills of exchange. These shall only be accepted in individual cases on the basis of a separate agreement in place of fulfilment. The payment is only deemed effected once the bill of exchange or cheque was cashed. The discount and collection expenses for the bill of exchange are charged to the issuer upon maturity of the claim and are immediately payable in cash.

6.6 Independent of individual payment conditions agreed upon in separate agreements, accounts payable to the Supplier shall become due if circumstances regarding the Buyer become known which indicate that agreed payment terms will not be complied with. This shall be the case should there be signs of a deterioration of the Buyer's assets, especially in the case of a discontinuation of payments, cheque and bills of exchange protests or default of payment, if they provide evidence that the Supplier's claim to remuneration are jeopardised by a lack of solvency of the Buyer. In such cases, the Supplier is entitled to request concurrent performance against payment or the provision of further securities. Furthermore, the Supplier is entitled to set a deadline before which the Buyer must provide the concurrent remuneration for the service or provide the security. The Supplier may rescind the contract after the period has expired and no payment was made.

6.7 Retention of payment by the Buyer in case a justified complaint of defects has been lodged regarding the quality of goods shall only be permitted to an extent reasonably proportionate to the defect in quality which has arisen. The Buyer shall have no other right to withhold payments.

6.8 The Buyer may offset claims only with undisputed or legally binding counterclaims.

7. Retention of Title:

7.1 The delivered goods (reserved goods) shall remain the property of the Supplier until such time as all claims of the Supplier from the Buyer based on their business relations are fulfilled.

7.2 For the duration of the retention of title, the Buyer shall not be entitled to pledge the reserved goods or use them as security. In the event of an attachment, seizure, or other manner of disposition or intervention by a third party, the Buyer is obliged to notify the Supplier thereof immediately.

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7.3 The Buyer is entitled to resell the reserved goods in the ordinary course of business, provided that it receives the agreed upon remuneration or that no non-assignment clause is agreed upon. The Buyer assigns already as of now the claim arising from the resale to the purchase price as security to the Supplier. It remains, however, authorised to collect the claim assigned as a security, provided that this authorisation is not revoked. The authorisation may be revoked if the Buyer culpably fails to meet its contractual duties or no longer meets them. If a revocation of this authorisation has been made, the Supplier shall be entitled to announce the assignment. The Buyer shall be obliged to provide any and all documents required for the announcement of the assignment and collection without undue delay.

7.4 A sale is not a sale in the ordinary course of business if the Buyer pledges the reserved goods contrary to section 2 to a third party, transfers it as security and/or makes it an object of factoring and/or sale-lease-back procedures.

7.5 In the case that the reserved goods are worked and/or processed, this is done on behalf of the Supplier as manufacturer in the sense of Sections 950 et seqq. *BGB*. In this case, the Supplier is entitled to co-ownership of the new object created by working and/or processing the reserved goods to the proportion of the reserved goods to the value of the new object at the time of working and/or processing. The Supplier shall also be entitled to pro-rata co-ownership of the new object if goods of third parties were also processed in addition to the reserved goods. Should the Buyer resell the newly produced object, it assigns already as of now the claim arising from the resale to the value of the reserved goods as security to the Supplier.

7.6 Should the reserved goods be damaged or otherwise impaired, the Buyer must inform the Supplier thereof immediately. Should such damage or impairment establish claims for the Buyer vis-à-vis third parties, the Buyer already as of now assigns these claims as security to the Supplier.

7.7 If the value of all securities provided to the Supplier exceed the value of all securitised claims by more than 20%, the Supplier shall release a part of the securities at the Buyer's request.

7.8 In the case of a violation of contractual duties by the Buyer, especially default of payment, the Supplier shall be entitled to rescind the contract and to reclaim the reserved goods. The Buyer is obliged to surrender such goods. The reclamation of the reserved goods and/or the assertion of the retention of title alone does not require a cancellation of the contract by the Supplier and neither does it constitute an implied declaration of cancellation of the contract, unless the Supplier has expressly declared that this action does constitute a cancellation of the contract.

8. Acceptance:

8.1 Within a reasonable period prior to delivery of the goods, the Buyer shall indicate to the Supplier the name(s) of one or more persons who is/are authorised to take receipt of the delivery and sign the delivery note. This shall especially be the case if delivery is made to a location other than the Buyer's domicile.

8.2 If none of the authorised persons named by the Buyer is present, or is ready to take receipt of the goods, at the agreed place on the agreed date for delivery, the Buyer shall enter into default of acceptance, the consequence being that the risk shall pass to the Buyer. Furthermore, the Buyer shall bear the extra costs arising as a result of the need to make a delivery again.

8.3 The Buyer shall not refuse to take receipt of deliveries on account of insubstantial defects.

9. Warranty:

9.1 The Buyer shall not be entitled to any warranty claims if the Buyer fails to meet its examination and reporting duties (Sections 377, 381 *HGB*). Should any defects be found during the examination, such defects must be reported in writing to the Supplier immediately. Such notification will be considered immediately effected if was communicated within 10 working days after the defect was found. Obvious defects (including incorrect or short deliveries) are to be reported within ten working days from the time of delivery. Should the Buyer fail to inspect the goods properly or report the defects in due time, the Supplier shall not assume any liability over the unreported defects.

9.2 Section 438 of the German Commercial Code shall apply to transport damage. The goods shall be deemed delivered in a condition compliant with the contract if no discernible external damage or obvious loss is reported immediately and/or no damage not discernible from the exterior is reported within 7 days. Should the Buyer fail to report the damage, it shall be liable for the damages incurred by the Supplier as a result of the presumption of conformity according to Section 438 of the German Commercial Code, especially for the loss of the Supplier's claims vis-à-vis the freight carrier.

9.3 The Buyer shall not be entitled to any warranty claims in the event of merely insubstantial deviation from the agreed specification or in the event of a mere insubstantial impairment of usability.

9.4 Furthermore, the Buyer shall not be entitled to any warranty claims in the event of normal wear and tear, in the event of damage or loss arising after the passage of risk due to incorrect or negligent

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treatment or handling, excessive use, unsuitable operating material, defective construction or foundations or by reason of exceptional external influences not stipulated in the contract, as well as in the event of non-reproducible software errors.

9.5 If and to the extent improper alterations to the goods are carried out by the Buyer or by third parties, any defect-related claims with regard to the respective goods shall cease to exist.

9.6 In the event of a justified complaint of defects, i.e. upon the presence of defect in quality which, or whose cause, already existed at the time of passage of risk, the Supplier shall be entitled to provide remedy (elimination of defects) or substitute delivery (delivery of a replacement), at its own discretion.

9.7 The Buyer must give the Supplier sufficient time and the possibility to carry out the owed substitute performance; in particular, the Buyer must provide the contested goods to the Supplier for testing purposes. The substitute performance includes neither the disassembling of the defective product nor the assembly and re-installation works if the Supplier was not originally obliged to the installation. The expenses required for the purpose of testing and substitute performance, in particular the transport, road, labour and material costs (not incl. disassembly and re-assembly costs), shall be borne by the Supplier, provided that there really was a defect. Should the Buyer's warranty claim turn out to have been unjustified, the Supplier is entitled to demand a reimbursement of the resulting costs.

9.8 If the Supplier delivers a defect-free item for the purpose of substitute delivery, the Buyer shall be obliged to return the defective item. This shall apply mutatis mutandis to defective components if these are replaced with defect-free components within the framework of remedy works.

9.9 Should the Supplier be unable to provide substitute performance and/or is entitled to refuse remedy or substitute delivery pursuant to Section 439 Para. 3 *BGB*, or if a delay in the remedy or substitute delivery beyond a reasonable period occurs which is the responsibility of the Supplier, or if the substitute delivery or remedy fails twice, the Buyer shall be entitled, at its discretion, to either rescind the contract or request a reduction of the purchasing price.

9.10 The Buyer's statutory recourse claims against the Supplier exist only to the extent that they fulfil the statutory requirements. For this reason, no recourse claims shall exist if the Buyer concludes agreements with its customers going beyond the statutory claims for defects within the framework of a guarantee or goodwill.

9.11 To the extent the provisions concerning consumer goods purchase (Sections 474 et seqq. *BGB*), especially concerning the recourse liability (Sections 478 et seqq. *BGB*) are not applicable due

to an absence of the statutory requirements, a one-year warranty period shall apply. By way of derogation, the statutory five-year warranty period pursuant to Sections 438 Para. 1 No. 2 *BGB* shall apply to items normally used in constructions and which have caused defects in them.

9.12 Any consequences prescribed by law with respect to a breach of the duty to inspect the goods and file a complaint in due time (pursuant to Section 377 *HGB*) shall remain unaffected by the foregoing.

9.13 In all other respects, claims for damages shall be governed by section 11. Further claims of the Buyer towards the Supplier or their vicarious agents or claims other than those regulated in this section and section 11 due to material defects are excluded.

10. Taking Back the Goods:

10.1 Return shipment of defect-free goods shall be subject to the Supplier's prior written consent as well as the Buyer's confirmation of a completed disinfection of the goods. Otherwise, the Supplier shall be entitled to refuse to accept the goods.

10.2 The supplier shall invoice a flat rate processing fee of 30% for taking back the goods. Furthermore, the Buyer shall bear all transportation expenses as well as the costs of packaging, re-packing and possible repairs.

10.3 The return of defect-free goods with a total worth of less than EUR 100.00 is not possible.

11. Claims for Damages/Liability:

11.1 The Buyer's claims for damages, on whatever legal basis, especially due to a violation of contractual obligations and to unauthorised actions, are excluded, unless a mandatory liability under the *Produkthaftungsgesetz* [Product Liability Act] applies, in cases of liability for intentional or grossly negligent misconduct, for an injury to life, body or health or due to a breach of material contractual duties.

11.2 Claims for damages for a breach of material contractual duties are, however, limited to the amount typical and foreseeable, provided that such limitation is not excluded due to a different reason because of intentional or grossly negligent misconduct and/or injury of life, body and health.

11.3 In cases the Supplier is not able to perform and it is responsible for these circumstances, the Buyer's claims for damages shall be limited to 10% of the value of that part of the delivery which cannot be put into useful operation due to the inability to perform, provided that the Supplier can be accused of intentional or grossly

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negligent misconduct and no mandatory liability due to an injury of life, body and health applies. The Buyer's right to rescind the contract shall be unaffected by this.

11.4 In case the Buyer's customers or their respective costumers raise justified claims for substitute performance, the Buyer shall give the Supplier the opportunity to effect such substitute performance itself within a reasonable amount of time before the Buyer procures a "replacement" elsewhere. The Buyer shall be obliged to subject its customers to these obligations accordingly. Should the Buyer fail to meet these obligations, the Supplier reserves the right to reduce the compensation by the amount which it would have incurred were it to carry out the substitute performance itself. Section 444 *BGB* shall remain unaffected.

11.5 The compensation for expenses in the framework of substitute performance of the Buyer vis-à-vis its customers are further excluded if the Buyer fails to make use of its right to refuse this manner of substitute performance respectively both manners of substitute performance due to unreasonable expenses contrary to its obligation to minimise losses.

11.6 Claims of the Buyer on the basis of expenses required for the purpose of substitute performance, in particular transport, road, labour and material costs, are excluded to the extent that the expenses are increased due to the item subsequently having been brought to a location other than the recipient address provided by the Buyer, unless such relocation is in line with the item's intended use. This shall apply mutatis mutandis to recourse liability.

11.7 The periods of limitation binding for such claims (cf. section 9.11) shall apply to claims for damages and compensation associated with defective goods. Claims for damages based on liability pursuant to the *Produkthaftungsgesetz*, intentional or grossly negligent misconduct, as well as injury to life, body and health or breach of material contractual obligations shall be subject to the statutory periods of limitation.

12. Adjustment of the Contract:

To the extent that unforeseen events in the sense of 3.3 or circumstances in the sense of Section 313 *BGB* significantly change the economic significance or the content of the delivery or seriously affect the Supplier's operations, the contract will be adjusted according to the principles of fairness and good faith. Should this be deemed economically unfeasible, the Supplier shall be entitled to rescind the contract. Should the Supplier wish to make use of this right of cancellation, it must immediately inform the Buyer thereof as soon as it becomes aware of the significance of the relevant event, also if an initial agreement with the Buyer was made to extend the delivery period.

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Limited partnership, registered in Arnsberg, legal court of registry Arnsberg, HRA 7043 · Personally liable shareholder: Danlux GmbH, registered in Arnsberg, District Court of registry Arnsberg HRB 9943 · Managing Director: Masayoshi Yamanaka · VAT registration number: DE 815231720

13. Materials of the Buyer:

13.1 Any and all materials, products etc. (materials of the buyer) to be provided by the Buyer or the end customer are to be delivered to the Supplier free of charge and at the latest 20 working days before the delivery date of the Supplier. The Supplier's examination of the materials shall be limited to quantity and transport damages. No qualitative inspection will be made.

13.2 There shall be no liability of the Supplier for any defects or damages attributable to defects of the materials of the Buyer. The Buyer shall indemnify the Supplier with regard to all claims asserted due to defects or damages attributable to the materials of the Buyer.

14. Miscellaneous:

14.1 The Supplier reserves the unlimited proprietary rights and copyrights for the exploitation of cost estimates, drawings and other documents (hereinafter referred to as "documents"). Third parties may only be given access to the documents with the Supplier's prior consent and are to be immediately returned to the Supplier upon request should the contract not be awarded to the Supplier. Sentences 1 and 2 shall also apply to the Buyer's documents; though these can be made available to such third parties who are permissibly commissioned for the delivery by the Supplier.

14.2 German material law shall apply to the legal relationship associated with this contract under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

14.3 The courts at the seat of the Supplier shall have exclusive jurisdiction for all disputes arising out of or in connection with the contractual relationship, whether directly or indirectly.

14.4 If any provision of these Terms and Conditions or a provision in the framework of another agreement is or becomes invalid, the remaining provisions or agreements shall not be affected by this.

15. Additional Terms and Conditions for Assembly and Installation Works

All installation works shall be, to the extent that these are a part of the services to be provided by the Supplier, carried out. In this case, the GENERAL TERMS AND CONDITIONS OF DELIVERY AND ASSEMBLY of TRILUX Medical shall apply as a supplement.

15.1 Preparation of the Works:

15.1.1 The condition for the due and timely provision of the assembly works is that: a) all technical and contractual details and



specifications are clarified; b) the Buyer has provided for all necessary constructional, technical (ventilation, AHU equipment and lines) and legal conditions for the provision of the works which are in its sphere of responsibility; c) the Buyer has ensured that the place of assembly is accessible for all necessary machines, materials and equipment; d) the necessary permits of third parties, including municipalities, gas, water and energy suppliers have been granted. The provision of these permits shall be in the responsibility of the Buyer; however, the Supplier is entitled to file necessary notifications to the competent authorities on behalf of the Buyer and at its expense; e) the assembly site is clean and dry; f) the Buyer has approved the final architectural drawings, as well as the documentation, works drawings, product drawings (approval drawings) and other technical and contractual details from the principal required for the beginning of production of the contractual product before the agreed upon date, though at least 2 weeks before the start of assembly works, in writing; g) the additional requirements stipulated in the offer incl. the list of services are met.

15.1.2 The Buyer is required to bear the costs of the execution of the service incl. the test and provide in a timely manner: a) an adequate number of qualified and properly instructed staff members of the Buyer; b) appropriate rooms for the secure storage of equipment and materials; c) all earthwork, building activities and other ancillary services outside the Supplier's area of expertise, including the required specialists and labourers, construction materials and tools; d) the equipment and materials required for the assembly works and commissioning which are not a part of the Supplier's conventional tools such as scaffolding, lifting equipment and other facilities, fuel, lubricants, energy and water at the point of use including connections, heating and illumination, as well as medical gases, piping systems, building site power supply no further than 25 m away from the construction site; e) the coordination of the works as well as the definition of the connections and correlations with the other project members, to the extent they affect the provision of the works by the Supplier.

15.2 Further Cooperation of the Buyer, Materials of the Buyer:

15.2.1 If the Buyer requests special marking of the packaging units, e.g. indicating dimensions, recipient of the goods, information in further languages etc., the respective labels are to be provided by the Buyer.

15.2.2 To the extent not expressly agreed otherwise, the Buyer shall provide the confirmations and certificates required at the project site as well as any necessary import and export permits. To the extent that the respective documents are to be obtained by the Supplier, the Buyer shall notify the Supplier thereof in due time.

15.2.3 The Supplier will only install materials provided by the Buyer which are marked with the CE marking. Should individual materials not comply with this requirement, the Buyer shall inform the

Supplier of this before the contract is concluded. Any possible delays/damages connected with services rendered by the Supplier which were caused by an omission of such notification shall be charged to the Buyer.

15.3 Passing of Risk, Acceptance:

15.3.1 If the works, either fully or in part, are destroyed or damaged before acceptance by force majeure, war, riots, theft or other objectively unavoidable circumstances beyond the responsibility of the Supplier (risk of accidental loss and destruction), the Supplier shall be entitled to claim remuneration on a pro rata basis for the parts of the works that have been completed up to this date. The regulations and/or terms of the Incoterms conditions agreed upon shall apply to the transfer of risk of conveyance regarding the contractual items.

15.3.2 If after completion of the work – if applicable, also before the lapse of the agreed upon term of execution – the Supplier requires their acceptance, the Buyer shall be obliged to declare acceptance within 12 working days after receipt of the notification. The acceptance may only be denied in case of material defects and only until the defects are remedied. If the Supplier requires, stand-alone parts of the works shall be accepted separately.

15.3.3 The acceptance shall be deemed to have been declared if the deadline according to section 15.3.1 above has expired without acceptance by the Buyer even though it was obliged to do so.

15.3.4 If the Supplier does not expressly request an acceptance declaration, the works shall be deemed to be accepted upon expiry of six working days after commencement of usage/operation of the works by the Buyer or the end user.

15.3.5 If the shipment, the delivery, the beginning, the implementation of the assembly works or the commissioning is delayed due to circumstances for which the Buyer is responsible or if the Buyer enters into default of acceptance for any reason, the risk shall be passed to it.

15.3.6 Upon acceptance of the works, the risk of accidental loss or destruction passes to the Buyer, unless it has already passed to it pursuant to section 15.3.1.

I have read the GTCs and declare that I agree with the provisions:

Name:

Signature:

Date:

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