§ 1 General - scope of application

(1) All deliveries, services and offers of MEDSER Medical Parts GmbH & Co. KG, (hereinafter referred to as "Seller") shall be based exclusively on these General Terms and Conditions. These are an integral part of all contracts which the Seller concludes with his contractual partners (hereinafter also referred to as "Client") for the deliveries or services offered by him. They shall also apply to all future deliveries, services or offers to the Client, even if they are not separately agreed again.

(2) The Seller's offer is directed exclusively at business people (Unternehmer) within the meaning of § 14 German Civil Code (BGB). Business people within the meaning of § 14 BGB are natural or legal persons or partnerships with legal capacity with whom a business relationship is entered into, who act in the exercise of a commercial or professional self-employed business.

(3) Differing, contradictory or supplementary General Terms and Conditions of the Client or third parties shall not apply, even if the Seller does not separately object to their applicability in individual cases. Even if the Seller refers to a letter containing or referring to the terms and conditions of the Client or a third party, this does not constitute an agreement to the applicability of those terms and conditions.

(4) The agreement between us and the Client shall be governed solely by the contract concluded in writing, including these General Terms and Conditions. This fully reflects all agreements between the parties on the subject matter of the contract. Oral promises made prior to the conclusion of the individual contract are not legally binding and oral agreements between the contracting parties are replaced by the contract concluded in writing, unless it is expressly stated in each case that they continue to be binding.

§ 2 Contract formatio

(1) Our offers are subject to change and non-binding, unless they are expressly marked as binding or contain a specific period of time for acceptance.

(2) The order of the goods by the Client shall be deemed a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 14 days of its receipt by us.

(3) Acceptance can either be declared in writing (e.g. by order confirmation) or by delivery of the goods to the Client. If the order is placed electronically, we will confirm receipt of the order; the confirmation of receipt does not constitute a binding acceptance of the order.

§ 3 Delivery period and delay in delivery

(1) The time for delivery shall be agreed individually or shall be specified by us when the order is accepted.

(2) Periods and dates for deliveries and services promised by us are always only approximate, unless a fixed period or date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

(3) If a binding time for delivery cannot be honoured by us for reasons for which we are not responsible (unavailability of the subject of performance ("*Nichtverfügbarkeit der Leistung*")), we shall inform the Client hereof without delay and at the same time notify him of the new foreseen time for delivery. If the subject of performance is still unavailable within the new time for delivery, then we may rescind the contract in whole or in part; we will reimburse, without delay, any corresponding consideration already paid by the Client. In particular, late performance by a subcontractor shall constitute such an unavailability, where we have entered into a congruent counter-contract with that subcontractor. Our statutory rights of rescission and termination remain hereby unaffected, as do the statutory rules on contract execution in the event of exclusion of the duty to perform (such as impossibility or where the performance, or remedial performance, cannot reasonably be expected). The Client's rights of rescission and termination pursuant to Art. 8 of these Terms of Business also remain unaffected.

(4) The beginning of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the Client is required. If we are in default of delivery, the Seller's liability for damages is limited in accordance with § 8 of these General Terms and Conditions.

§ 4 Delivery, place of performance, passing of risk, acceptance, delay in taking possession

(1) Delivery is effected ex warehouse location, Seligenstädter Grund 13, 63150 Heusenstamm, Germany, which is also the place of performance. At the Client's request and expense, the goods may be sent to an alternative specified location ("Versendungskauf"). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.

(2) We shall be entitled to make use of third parties in the fulfilment of our obligations to perform.

(3) The risk of accidental loss and accidental deterioration of the goods shall pass to the Client at the latest upon delivery. The handover is ex warehouse of the seller. Where the goods are sent to a location specified by the Client pursuant to Art. 4(1) above ("Versendungskauf") the risk of accidental loss and accidental deterioration of the goods and the risk of delay shall pass to the Client on transfer of possession of the goods to the courier, haulier, or other person or institution chosen to dispatch the same. If acceptance has been agreed, this shall determine the passing of risk. The statutory provisions of the law on contracts for work and services also apply accordingly to an agreed acceptance. If the Client is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

(4) If the Client is in delay in taking possession of the goods, or fails to perform a required cooperative action or if delivery by us is delayed for any other reason (or reasons) for which the Client is responsible, the Client shall bear the resulting damage including additional expenses (e.g. storage costs). The storage costs amount to 0.25% of the invoice amount of the delivery items to be stored per week elapsed. We reserve the right to assert and prove further or lower storage costs.

§ 5 Prices & payment terms

(1) Unless otherwise agreed in individual cases, the prices listed in the order confirmation shall apply. The prices are in EURO ex works net of VAT plus packaging. Any customs duties, fees, taxes and other public charges shall be borne by the Client. All packaging materials, in accordance with packaging regulations (except palettes), are non-returnable to us and shall become the Client's property.

(2) In the case of sale by delivery to a place other than the place of performance (§ 4 Para. 1) at the request of the Client, the Client shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Client. If we do not charge the transport costs actually incurred in the individual case, a fixed fee for transport costs (excluding transport insurance) in the amount of EUR 50.00 shall be deemed agreed.

(3) Insofar as the agreed prices are based on our list prices and delivery is not to take place until more than four months after conclusion of the contract, our list prices valid at the time of delivery shall apply (in each case less an agreed proportional or fixed discount).

(4) The purchase price is due and payable within 10 days of the invoice date. Decisive for the date of payment is the date of receipt by us. Cheques shall only be considered as payment after they have been cashed.

(5) In the case of contracts with a delivery value of more than 5,000.00 EUR we shall be entitled to demand a down payment of 30% of the purchase price. In the case of contracts with delivery value of more than 10.000,00 EUR we shall be entitled to demand a down payment of 70% of the purchase price. If the contracting party has its registered domicile outside the Federal Republic of Germany, delivery shall be made after receipt of the full purchase price. The payment is due and payable within 10 days of the invoice date.

(6) If the Client does not pay on the due date, he shall be in delay. From the date of delay, the outstanding amounts shall be subject to interest from the due date at 9 percentage points above the base rate of the European Central Bank per year. The assertion of higher interest and further damages in the event of default remains unaffected.

(7) The Client shall only be entitled to set-off or retention rights to the extent that his claim has been legally determined or is undisputed.

(8) If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is jeopardised by the Client's inability to pay (e.g. due to an application for the opening of insolvency proceedings), we shall be entitled to execute or provide outstanding deliveries or services only against down-payment or a deposit and to withdraw from the contract in accordance with the statutory provisions - if necessary after setting a deadline - (§ 321 BGB). In the case of contracts for the production of individual items (custom-made products), we can declare our withdrawal immediately; the legal regulations regarding the dispensability of setting a deadline remain unaffected.

(9) In exchange for the delivery of brand-new or quality-assured spare parts, the Client is entitled to return dismantled used spare parts with the same article number which are accessible for reconditioning for partial credit to the invoice amount, if the used spare parts are arrive to us within six days of delivery of the brand-new or quality-assured spare parts by us. The offers shall indicate which spare parts are available for reconditioning ("in exchange") and the amount to be credited in the event of possible reconditioning. Since, for organizational reasons, the inspection of the returned used spare part by the manufacturer can only take place after the invoice has been issued, the list price reduced by the credit note for the parts will be invoiced for orders "in exchange". However, if reconditioning is not possible or the period for returning has been exceeded the difference for the delivered spare part will be charged against justification of the missing reconditioning possibility or not returning the exchange part in due time. Returned used spare parts shall nevertheless become our property.

(10) The purchaser is entitled to return to us original packaged spare parts with unbroken quality seal (original packaging) against payment of a handling fee of 28% of the respective spare parts list price, if the spare part arrives at the delivery address stated in the delivery note within six days of our delivery. The prerequisite for the return is the contacting of the contact person specified in the delivery note by the Client before the dispatch of the respective spare part for the determination of the concrete return procedure. The buyer bears the risk until the time of return.

§ 6 Retention of title

(1) We reserve title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims). The goods as well as the goods taking their place according to the following provisions and covered by the reservation of title are hereinafter referred to as "reserved goods".

(2) The goods subject to retention of title may neither be pledged to third parties nor transferred by way of security before full payment of the secured claims. If third parties seize the goods subject to retention of title, in particular by attachment, the Client is obliged to inform them immediately of the seller's ownership and to notify the seller of this in writing without delay in order to enable him to enforce his ownership rights. If the third party is not in a position to reimburse the seller for the judicial or extrajudicial costs incurred in this connection, the Client shall be liable to the seller.

(3) If the Client acts in breach of contract, in particular if the purchase price due is not paid, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and reserve the right to withdraw from the contract. If the Client does not pay the due purchase price, we may only assert these rights if we have previously set the Client a reasonable deadline for payment without success or if such a deadline is dispensable according to the statutory provisions.

(4) The Client may sell and/or process the goods subject to retention of title in the ordinary course of business. In this case the following conditions shall apply in addition.

(a) The retention of title also extends to the products created by the processing, combination or connection of our goods, for the full value of said products; whereof we are deemed manufacturer. Where, in the case of processing, combination or connection with goods of third parties, the latter's rights of ownership therein remain, then we shall have joint ownership therein for a share proportional to the invoiced values of the processed, combined or connected goods. Further, the same applies for the created product as for the goods delivered subject to retention of title.

(b) Claims against third parties (such as payment claims) ensuing from selling on the goods, or the created product, are hereby assigned by the Client to us now in their entirety (or for the value of our joint property share pursuant to the foregoing sub-paragraph, as the case may be), as security. We accept the assigned rights. The Client's obligations pursuant to Art. 6(2) also apply in respect of the assigned claims.

(c) Besides us, the Client is also authorised to collect claimed payments. We shall not collect payment insofar as the Client fulfils its payment obligations to us, does not delay payment, does not apply to enter insolvency proceedings and is not in any other way affected in its capacity to perform its obligations. Should that however be the case, then we may demand that the Client notifies us of the assigned claims and of the corresponding debtors, provides all details required and all corresponding documents necessary for the collection and notifies the debtor/s of the assignment.

(d) If the liquidable value of the securities is more than 10% above the value of our claims, then at the Client's request, we shall release securities selected by us.

§ 7 Claims for defects

(1) The Client´s rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or faulty assembly instructions) shall be governed by the statutory provisions, unless otherwise specified below.

(2) The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions which are the subject of the individual contract are deemed to be an agreement on the quality of the goods; it makes no difference whether the product description originates from the Client, the manufacturer or from us.

(3) Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory regulation whether a defect is present or not (§ 434 (1) sentences 2 and 3 BGB). However, we do not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) Claims for defects against the Seller shall become time-barred 12 months after delivery or, if acceptance is required, after acceptance.

(5) The Client's defects claims are conditional on fulfilment of its statutory duties of inspection and defect notification (Sections 377 & 381 of the German Commercial Code (§§ 377, 381 HGB)). The delivered items must be carefully inspected immediately after delivery to the Client or to the third party designated by the Client. With regard to obvious defects or other defects which would have been recognisable in an immediate, careful inspection, they shall be deemed to have been approved by the Client if we do not receive a written notification of defects within seven working days of delivery. With regard to other defects, the delivered goods shall be deemed to have been approved by the Client if we do not receive the notification of defects within seven working days of the time at which the defect became apparent; however, if the defect was already apparent at an earlier time during normal use, this earlier time shall be decisive for the start of the period for notification of defects. At our request, a delivery item which is the subject of a complaint must be returned to us carriage paid. If the complaint is justified, we will reimburse the costs of the most favourable dispatch route; this does not apply if the costs increase because the delivery item is located at a place other than the place of intended use.

(6) If the delivered item is defective, we may initially choose whether we provide remedial performance by eliminating the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). Our right to refuse the chosen type of subsequent performance under the statutory conditions remains unaffected.

(7) We are entitled to make the due remedial performance conditional upon the Client's payment of the due contract price. The Client may however withhold a portion of the contract price commensurate with the defect.

(8) The Client shall afford us the time and opportunity required for due remedial performance, in particular by granting possession of the affected goods for the purpose of inspecting them. In the case of substitution then the Client shall return the defective goods to us in accordance with the statutory provisions.

(9) In the case of an actual defect, we shall bear the cost necessarily incurred in the inspection and making good thereof, specifically the cost of transport, labour and materials. Should the Client's claim for remedy of a defect prove unjustified however, then we may request compensation of the ensuing costs from the Client.

(10) In urgent cases, e.g. where operational safety is jeopardised, or for the avoidance of disproportionate damage, the Client may remedy the defect himself and claim compensation of the objectively necessary expense incurred. We are to be informed of such an event without delay, beforehand if possible. The Client's right to remedy the defect himself shall not apply in cases where we would be entitled to refuse remedial performance according to the statutory provisions.

(11) If the remedial performance has failed or a reasonable period to be set by the Client for the remedial performance has expired without success or is dispensable according to the statutory provisions, the Client may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right to withdraw from the contract. The right of withdrawal is limited to the affected contractual relationship and cannot be extended to other contractual relationships still existing in the business relationship. A remedy of defects shall be deemed to have failed after the third unsuccessful attempt, unless otherwise specified in particular by the nature of the item or defect or other circumstances.

(12) Due to a breach of duty which does not consist of a defect, the Client may only withdraw or terminate the contract if we are responsible for the breach of duty. A free right of termination by the Client (in particular according to §§ 651, 649 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

(13) In individual cases where the delivery of used goods is agreed with the Client, shall be subject to the exclusion of any warranty for material defects.

(14) Claims of the Client for damages or compensation for futile expenditure shall apply exclusively in accordance with following § 8.

§ 8 Liability for damages

(1) Our liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tortious acts is limited in accordance with this § 8.

(2) We shall not be liable in the event of simple negligence unless it is a matter of a breach of essential contractual obligations. Essential contractual obligations are the obligation to timely delivery and installation of the delivery item free of material defects as well as consulting, protection and care obligations which are intended to enable the Client to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the Client's personnel or to protect the Client's property from substantial damage. Any further liability is excluded regardless of the legal nature of the claim asserted. This limitation of liability also applies to our organs, legal representatives, employees or other vicarious agents.

(3) Insofar as we are liable for damages pursuant to § 8 (2), this liability shall be limited to foreseeable damages at the time of conclusion of the contract as a possible consequence of a breach of contract or which we should have foreseen if we had exercised due diligence. Indirect damages and consequential damages resulting from defects of the delivery item are furthermore only eligible for compensation if such damages are typically to be expected when the delivery item is used for its intended purpose.

(4) Insofar as we provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of performance owed by us, this shall be done to the exclusion of any liability.

(5) The limitations of liability in this § 8 do not apply to our liability due to intentional or grossly negligent actions, for guaranteed characteristics, for injury to life, body or health or for our liability under the Product Liability Act (Produkthaftungsgesetz).

§ 9 Industrial property rights, copyrights and know-how

(1) The Client acknowledges our industrial and intellectual property rights and our know-how.

(2) All industrial property rights, including our know-how, remain our sole property. Subject to mandatory provisions arising from applicable law or unless otherwise agreed in writing, the Client shall not be granted any rights to our industrial property rights or know-how.

(3) Work results such as inventions which we or our vicarious agents achieve in connection with the performance of the contract are exclusively entitled to us.

(4) We also reserve the ownership or copyright of all offers and cost estimates submitted by us as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Client. The Client may not, without our express consent, make these items accessible to third parties, make them known, use them himself or have them used or reproduced by third parties, either as such or in terms of their content. At our request, he must return these objects to us in full and destroy any copies that may have been made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

§ 10 Use of software

(1) Insofar as software is included in the scope of delivery, the Client is granted a non-exclusive right to use the delivered software including any pertinent documentation. The software is provided for use on the delivered item foreseen for the purpose. Use of the software on more than one system is not permitted.

(2) The Client may only make copies of, edit, translate or reverse engineer the software to the extent permitted by law (Sections 69 a et seq. Of the German Authorship Act ("*Urhebergesetz*")). The Client shall not remove or alter without our express prior permission, any manufacturer statements, particularly copyright claims. All other rights to the software and documentation (including copies thereof) shall remain with us or the software supplier, as the case may be. Granting of sublicenses is not permitted.

§ 11 Confidentiality

(1) The Client is aware that electronic and unencrypted communication (e.g. by e-mail) involves security risks. In this type of communication, the Client shall therefore not assert any claims based on the lack of encryption, unless encryption has been agreed upon beforehand.

(2) The Client shall treat as confidential for an unlimited period of time all information or information material (including, in particular, information on operational processes, business relations and know-how) which becomes known to him directly or indirectly, orally, in writing or in any other way, within the scope of the contractual relationship, and which is designated as confidential or, by its nature, is normally regarded as confidential, and shall use it exclusively within the scope of the services covered by the respective contract. The only information and information material that is exempt from this confidentiality obligation is that which

(a) are already in the public domain at the time of their disclosure, i.e. readily available to any third party

b) a contractual partner after becoming aware of it is lawfully made accessible by a third party who is not subject to a confidentiality obligation towards the other contractual partner in this respect,

(c) at the request of an authority or any other authorised third party, it is mandatory to inform that authority or third party.

(3) The Client shall only grant access to confidential information to advisors who are subject to professional confidentiality or who have previously been subject to obligations of confidentiality under this Agreement. Furthermore, the Client will only disclose confidential information to those employees who need to know it for the execution of the respective contract and will oblige these employees to maintain confidentiality to the extent permitted by employment law, even after they have left the firm.

§ 12 Remarks on use of personal data

We process personal data in the course of executing the order. The data processing is carried out in accordance with the statutory provisions. You can find further information on our data protection regulations here: www.medser.de/datenschutz.

§ 13 Choice law and place of jurisdiction

(1) The contractual relations between us and the Client are subject exclusively to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. The conditions and effects of the retention of title pursuant to § 6 shall however be subject to the law prevailing at the place of the goods storage, insofar as the chosen law is thus impermissible or invalid in favour of the German law.

(2) If the Client is a businessman within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, or if the Client has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all possible disputes arising from the business relationship between the Seller and the Client shall be Heusenstamm. However, we shall also be entitled to sue the Client at any other competent place of jurisdiction. Mandatory statutory provisions regarding exclusive places of jurisdiction shall remain unaffected by this provision.