

**A.**

**General Terms and Conditions for the Sale of Products and Services of NIKKISO Europe GmbH**

**Section 1. Scope of Application**

- (1) The following General Terms and Conditions of Sale of Products and Services of NIKKISO Europe GmbH (hereinafter referred to as "Terms and Conditions") shall apply exclusively to the sale of products notwithstanding whether manufactured by NIKKISO Europe GmbH or just sold by it (hereinafter referred to as "Good(s)") and services of NIKKISO Europe GmbH (hereinafter referred to as "NE") outside of Germany and if the customer (hereinafter referred to as "Customer") agrees to these Terms and Conditions by placing an order. Deviations from NE's Terms and Conditions shall only apply if they have been acknowledged in writing by NE.
- (2) Any conflicting conditions, conditions deviating from NE's Terms and Conditions or conditions by the Customer, which change the Terms and Conditions, are herewith rejected; they shall only be valid vis-à-vis NE if NE agrees to such changes in writing. This rejection shall also apply in particular in the event that an order is placed with reference to the Customer's general terms and conditions.
- (3) NE's Terms and Conditions shall also be the basis for all future transactions between the Customer and NE.
- (4) These Terms and Conditions shall only apply vis à vis merchants, private and governmental entities.

**Section 2. Scope of Deliveries or Services**

- (1) If the order has to be qualified as a proposal for concluding a contract pursuant to Art. 14 United Nations Convention on Contracts for the International Sale of Goods (hereinafter referred to as "CISG"), NE may accept such an order within four (4) weeks from the receipt of the order by NE. Oral agreements shall only be binding on NE to the extent that NE confirms such agreements in writing. NE shall designate one manager responsible for the transaction, who shall be able to give and accept binding declarations on behalf of NE.
- (2) NE unrestrictedly reserves all intellectual property rights and copyrights to cost estimates, drawings and other documents; they may only be furnished to third parties with the prior written consent of NE. All of the documents referred to in Sec. 2 para. 1 of these Terms and Conditions as well as the cost estimates, drawings and other documents pertaining to quotations, which were handed or transmitted to the Customer, shall be returned promptly to NE upon the order has been processed or has not been placed with NE. The Customer's documents may be disclosed and conveyed to such third parties to whom NE permissibly subcontracts or assigns in part or in full deliveries or services. For clarification: NE may at its discretion without any restrictions use – even on a commercial basis – the documents drawn up and/or exchanged between NE and the Customer in course of processing an order for any subsequent contracts with the same or other customers.
- (3) Any individual contract hereunder may be cancelled by the Customer only with NE's prior written consent, whereas this stipulation is without prejudice to the rights of cancellation for good cause. Insofar as NE grants the required consent to the cancellation of an order in writing in individual cases, the Customer shall pay to NE – whereas such consent does not incur any additional legal obligation upon NE – twenty percent (20 %) of the agreed price, plus any valued-added tax or sales taxes, as the case may be, shall be due and payable. This shall not apply if NE proves that its loss is higher or the Customer proves that the loss is lower in individual cases.

(4) Fulfillment of the contract by NE is subject to the proviso that delivery or performance is not prevented by any relevant national or international regulations (in particular export control regulations, embargoes or other restrictions). The contracting parties undertake to obtain all information and documents necessary for export, intra-Community transfers or import, and to make them available to each other in due time. If delays arise as a result of export inspections or approval procedures, these shall take precedence over the deadlines and delivery times agreed between the contracting parties. If and to the extent that necessary approvals for the execution of the contract are not granted, the contract shall be deemed not to have been concluded with regard to the parts concerned; compensation claims for any damages arising from this and for damages due to the aforementioned delay are excluded.

(5) NE is entitled to use the services of its affiliates and other third parties as sub-contractors to perform its obligations by virtue of this contract.

**Section 3. Quotation, Price**

Quotations by NE are non-binding and subject to changes, unless they are concrete, customized, approved by NE's manager responsible and in writing. To the extent that nothing else has been stipulated, NE shall be bound by such quotation and by the prices contained therein for four (4) weeks from the date of its preparation. For the conditions of delivery and price, EXW (warehouse designated by NE in the quotation) Incoterms 2000, or the distribution warehouse designated in NE's order confirmation for the respective Goods, including packing, plus the statutory value-added tax or sales taxes shall be applied, as the case may be. NE may also designate the warehouse from which the Goods are to be delivered in the order confirmation for the Goods, whereas in case of conflict in this point between the quotation and the order confirmation, the latter shall prevail.

**Section 4. Retention of Title**

- (1) The ownership of the Goods shall remain in NE until the full payment (including interest if any) by Customer to NE for all Goods sold hereunder and all other debts owed by the Customer to NE.

- (2) In case of contract breach by the Customer including, without limitation, default in payment, NE is entitled to take possession of the Goods.
- (3) The Customer shall handle the Goods with due care, maintain suitable insurance for the Goods and, to the extent necessary, carry out service and maintenance of the Goods.

**Section 5. Terms of Payment**

- (1) Payments are to be made to NE's pay office within the agreed time allowed for payment and without any deductions, or if nothing else has been agreed, payments are to be made by irrevocable letter of credit on the Customer's expense. The date on which NE has finally and unconditionally received the payment (in particular, a final and unconditional credit of the payment to the account of NE in case of stipulation of a bankwire transfer) shall be decisive for the compliance of the Customer with the period for payment agreed upon between NE and the Customer.
- (2) If the Customer does not comply with a notice to pay from NE, which is sent after any agreed time allowed for payment, the Customer shall be in default from the original payment due date by the notice. If a calendar day has been contractually stipulated for the payment, the Customer shall be in default without having received a notice to pay if the Customer does not pay on time. If the payment day has neither been contractually stipulated nor agreed separately by both parties, payment due date shall be 30 days after the shipment date. In the event of default, NE may require the Customer to pay NE interest for arrears on the overdue payment at annual rate of eight percent (8 %) plus the average bank rate for the relevant year at NE's place of business, which shall be accrued from payment initially due. If NE is able to prove higher losses as a result of the default, NE shall be entitled to demand from the Customer such higher losses. However, the Customer is entitled to prove that NE incurred no losses or much lower losses as a consequence of the default in payment. NE's statutory rights remain unaffected hereby.
- (3) The Customer may only offset such receivables, which are uncontested or have been finally and uncontestedly adjudged and may only assert rights of retention insofar as they are based on the same contractual relationship.

**Section 6. Deadline for Deliveries or Services**

- (1) Any binding or non-binding delivery dates agreed shall be provided in the individual contract in writing. Compliance with delivery deadlines and delivery dates is subject to the timely receipt of all of the documents to be furnished by the Customer, as well as the required approvals, releases, timely clarification and approval of plans, and compliance with the agreed terms of payment and other obligations of the Customer. If these prerequisites are not fulfilled within time, the deadline shall be extended accordingly by the time caused by the respective delay, or new delivery dates shall be agreed. Furthermore, NE is entitled to demand compensation for any costs, damage or loss incurred hereby.
- (2) For deliveries, a deadline shall be deemed complied with, if the ready-to-use shipment is dispatched within the agreed delivery or service period or has been fetched by a common carrier. In the event that the dispatch is delayed for reasons for which the Customer is responsible, the deliveries shall be deemed to be fulfilled within the agreed period upon notification that the shipment is ready for dispatch within the agreed period. The remaining statutory prerequisites pertaining to a default in receipt of the delivery shall remain unaffected hereby.
- (3) Delays in delivery and service due to Force Majeure - i.e. circumstances or incidents which can not be prevented despite due care by the management – shall suspend NE's contractual obligations for the duration of the disruption and the scope of its impact and in case the performance of delivery or the services is or becomes impossible, shall be excluded. Such circumstances or incidents entitle NE to postpone the delivery or the service by the duration of the impediment plus a suitable start-up period or to declare to withdraw from or cancel the contract either wholly or partly with regard to the not yet performed part of the contract. In case of a postponement of delivery or rendering the services, NE shall - as far as possible - inform the Customer regarding the estimated endurance of such postponement. If such circumstances or incidents exceed the period of one (1) month, the Customer is entitled, after setting a suitable grace period, to rescind or cancel the contract regarding the not yet performed portion of the contract, however, those parts of the delivery and/or services already delivered and/or rendered until such circumstances or incidents occurred, have to be remunerated by the Customer. The Customer shall not have any other claims.
- (4) Insofar as the Customer is in arrears with a liability vis-à-vis NE, NE's delivery obligation shall be suspended.
- (5) If the Customer is in default of the receipt of a delivery, NE may store the Goods at the Customer's risk and expense. As of the beginning of such storage, NE may charge a storage fee in the amount of 0.25 % of the invoice amount for every month of storage commenced or the actual additional costs to NE, whichever is higher. The stipulation of the above sentence is without prejudice to the right of the Customer to prove that the damages incurred to NE have not occurred or are substantially lower than the lump sum fee demanded by NE according to the regulations of the foregoing sentence.
- (6) NE is entitled to make partial deliveries and render partial services at any time.

**Section 7. Passing of Risks**

- (1) If the delivery of Goods or provision of services is delayed for reasons for which the Customer is responsible, the risk shall pass to the Customer with the notification that the Goods are ready to be shipped
- (2) Without limiting the scope of the above mentioned Sec. 7 para. 1, the risk of accidental loss and worsening of the Goods shall pass to the Customer – even with partial deliveries – once the Goods are handed over to the common carrier, or delivered to the forwarding agent, the carrier or other persons or institution designated to execute the shipment. Packing will be done with the customary care. Goods will be shipped at NE's best discretion. At the Customer's written request and expense, NE will insure the shipment against damage due to breakage, transport and fire.

**Section 8. Representations**

- (1) The Customer shall examine the Goods, or cause them to be examined for conformity immediately after the Goods are received at their destination. The Customer shall report to NE in writing any lack of conformity, specifying its nature, within a period of 48 hours after the Customer has, or ought to have, discovered such lack of conformity. If the Customer fails to promptly notify NE within the 48 hours period and the Customer has no justified excuse, NE shall no longer be liable for any lack of conformity of the Goods de-

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livered. The Customer's rights resulting from a lack of conformity of the Goods shall in any event be excluded upon the expiration of a period of one (1) year after delivery.

- (2) If the Goods lack conformity and NE is responsible under statutory or contractual regulations for such lack of conformity, NE reserves the right to first attempt to rectify the defect, either by subsequent delivery or by reworking (hereinafter referred to as "**Subsequent Performance**"), at NE's discretion. In the event of Subsequent Performance, NE is obliged to bear all of the expenses for this purpose, in particular, transport, labor and material costs, to the extent that such costs are not increased because the Goods have been brought to a place that is different from the original destination.
- (3) If Subsequent Performance fails, is impossible or is seriously and finally rejected by NE overall, or if it would be unreasonable to expect the Customer to accept such remedy, the Customer shall be entitled to reduce the purchase price or to cancel the contract at the Customer's option.
- (4) If the Customer chooses to cancel the contract due to a defect after a failed Subsequent Performance, the Customer shall not have any claim for damages apart from such cancellation of the contract.
- (5) The period for claims by the Customer based on defective Goods shall be one (1) year from the delivery of the Goods.
- (6) With regard to the quality of the Goods, the manufacturer's product description only shall be valid. Public statements, praises or advertising of the manufacturer do not represent any contractual indication of the quality of the Goods.
- (7) If NE's manuals, specifications, statements pertaining to suitability, processing and application of Goods are not complied with by the Customer or any party, if changes are made to the Goods by any party other than NE (or a party designated by NE), or if parts or modules of Goods, which do not correspond to the original specifications, or non-genuine parts or modules are used for the Goods, NE shall not be liable for defects, unless the Customer proves that the defects were not caused by or based on the aforementioned measures.
- (8) NE does not issue a warranty of condition to the Customer.
- (9) The Customer shall comply with all statutory and/or official regulations, laws, instructions, decisions and/or statutes that affect the Customer and its enterprise as well as the sale and service of the Goods. Solely the Customer shall be obliged to check if and to what import or export restrictions apply for the Goods; in case of existence of such import or export restrictions, the Customer shall be obliged to obtain the license for the import or export on his own costs. The Customer will pay all taxes, license fees, permit fees or registration fees and other costs and charges connected with the establishment and/or the operation of the Customer's business as well as the sale and service of the Goods, insofar as such exist.

**Section 9. Restrictions on Liability and Statutes of Limitation**

- (1) The liability of NE to pay compensation, irrespective of the legal basis, in particular due to impossibility of performance, default, defective or incorrect performance, infringement of contractual obligations, violation of obligations during contract negotiations and unlawful actions, insofar as it is at fault, shall be limited in accordance with this Sec. 9.
- (2) NE's as well as its institutions', legal representatives', employees' and other vicarious agents' liability in case of Force Majeure within the meaning of Sec. 6 para. (3) and slight negligence shall be excluded. The same shall apply in case of gross negligence, unless this does not result in a violation of essential contractual obligations. Essential shall be such contractual obligations, the fulfillment of which is a prerequisite for enabling the proper fulfillment of the agreement in the first place and in which the Customer may normally trust.
- (3) Insofar as according to the preceding Sec. 9 para. (2), NE bears liability to pay compensation in principle, the liability shall be limited to such damages which NE has been able to foresee as a result of a breach of contractual obligations or under the circumstances, which have been known or should have been known to NE, applying due diligence, however, in any case not exceeding an amount of 500,000.00 EUR per case and an overall amount of [...] EUR per year. In addition, any liability for indirect damages and consequential damages as well as loss of profits and damages in reputation are - as far as legally admissible - excluded.
- (4) Insofar as NE provides technical advice or performs consulting work and such advice or consulting work does not belong to the contractual obligations of NE, such advice and consulting work shall be provided free of charge and under exclusion of any liability. Sec. 16 para. (1) remains unaffected.
- (5) The exemptions or limitations from liability according to this Sec. 9 shall not apply to the liability of NE due to wilful misconduct, guarantee of constituent element or damages to life, limb or health as well as NE's liability according to the provisions of the German Product Liability Act or mandatory provisions of the German Medical Products Act.
- (6) Claims to compensation of the Customer shall become time-barred within twelve (12) months following the origination of the claim and obtaining the knowledge or ought to be known of the facts on which the claim is based as well as the person of the debtor, unless such claims are based on wilful misconduct, damages to life, limb and health, or the provisions of the German Product Liability Act or the German Medical Products Act. In this case, the statutory limitation periods shall apply.

**Section 10. Exclusion of Subsequent Performance and Withdrawal from the Contract**

- (1) If a deadline for performance set by the Customer has passed fruitlessly and if the Customer does not comply with the subsequent request by NE to inform NE as to whether the Customer wishes to retain its claims to performance or demands compensation for damages instead of performance within another period set by NE for this purpose, the claim to performance will be excluded after the expiration of the adequate period associated with foregoing request for information.
- (2) Due to a breach of duty that is not based on a defect of the Goods, the Customer may only withdraw from the contract if the circumstance justifying the withdrawal is based on a fault or negligence for which NE is responsible. In the event of an insignificant breach of duty, withdrawal from the contract is excluded.
- (3) Furthermore, withdrawal from the contract is excluded in cases in which the Customer would only be statutorily obliged to receive compensation instead of a refund for the Goods.

**Section 11. Rights of Use**

- (1) NE shall grant the Customer the non-exclusive, non-transferable right to the delivered Goods and the results of NE's services provided by NE allowing the Customer to use such results within the contractually stipulated purpose. The Customer alone shall be

liable for any usage going beyond what was contractually stipulated and for any resulting breaches of industrial property rights.

- (2) The Goods are designed, authorized or warranted to be suitable for the use only according to the scope of the manufacturer's product description with regard to the applicable directive. NE accepts no liability for Goods incorporated and/or used in equipments or applications which is/are not allowed in the manufacturer's product description and therefore such inclusion and/or use is/are the Customer's own risk.
- (3) The Customer is obliged to notify NE immediately of any infringements of industrial property rights by third parties and to provide the documents and knowledge required to take actions to prevent unlawful encroachments.

**Section 12. Third-Party Industrial Property Rights**

- (1) NE shall defend the Customer at NE's own expense against all claims asserted against the Customer for an alleged infringement of third party's industrial property rights regarding the deliveries or services provided by NE to the extent NE is liable (hereinafter "NE's Infringement") and reimburse the Customer for all reasonable costs and amounts of damages finally adjudicated, insofar as (i) the Customer notifies NE without undue delay of such claims in writing, (ii) furnishes all of the requisite information and provides other reasonable support, and (iii) NE retains its sole right to decide whether or not to take action against the claim or to make a settlement.
- (2) In the event of NE's Infringement, except Sec. 12 para. 3 below, NE may, with excluding further claims, but subject to the provisions in Sec. 8 and Sec. 9 of these Terms and Conditions, at its own discretion and its own expense, modify or replace the respective deliveries or services in such a way so that such respective deliveries or services does not infringe third-party industrial property rights.
- (3) NE is not liable for any infringement of third party's industrial property rights, if such infringement is based on a modification of the deliveries or services that were not executed or authorized by NE, either wholly or in part. Furthermore, NE is not liable for the infringement resulting from a use of the respective the deliveries or the services that was not contractually provided for.

**Section 13. Secrecy and Data Protection**

- (1) The Customer is obligated to keep all sales documents, specifications and price lists received, as well as other documents and information (hereinafter referred to as "**Confidential Information**") secret and to impose same obligation on its vicarious agents and employees accordingly. Items owned by NE shall be maintained so that they cannot be made accessible to unauthorized third parties. Confidential Information and items owned by NE may only be disclosed to third parties after NE's express consent in writing. This duty of secrecy shall apply unless such Confidential Information becomes public knowledge without failure of the Customer.
- (2) Unless otherwise expressly agreed in writing, the information submitted to NE in connection with orders shall not be deemed to be confidential.
- (3) NE is authorized under Art. 7 of the Directive 95/47/EG., as part of the intended purpose of this business relationship, to process the personal data entrusted to NE or to have such data processed by third parties in compliance with the data protection provisions. This includes in particular processing the data for purposes of the performance of the contract or prior to entering into a contract, for compliance with legal obligations to which NE is subject or for legitimate interests pursued by NE or by third parties to whom the data are disclosed.
- (4) NE may include the Customer's name in its own list of references.

**Section 14. Legal Succession, Reorganization**

- (1) Insofar as NE undergoes a reorganization through a change in its legal form while preserving its identity or through a change in its legal personality due to a merger, split-up or transfer of assets, the contract concluded by and between NE and the Customer, together with all of the rights and duties pertaining thereto, shall be continued with the newly formed or acquiring legal entity.
- (2) Furthermore, NE shall be entitled to transfer the contracts concluded by and between NE and the Customer to a company affiliated with NE together with all of the rights and duties pertaining thereto without the Customer's consent.
- (3) Moreover, NE shall be entitled, to use the services of any company affiliated with NE and other third parties as sub-contractors to fulfill its obligations by virtue of this contract without the Customer's consent. In such case also, NE is responsible for the contractually stipulated performance of the agreed obligations and vis-à-vis the Customer, and deploying enough qualified personnel to provide the services, to administer Customer claims.
- (4) NE reserves the right to assign the Customer's receivables to third parties. In this case NE may disclose customer's data to third parties. Except Customer receivables, rights and duties under this contract are not assignable unless otherwise provided herein.

**B.**

**Special Supplementary Terms and Conditions for Services provided by NIKKISO Europe GmbH**

**Section 15. Service Provision**

- (1) NE shall provide its services at its own discretion and in compliance with any existing manufacturer's specifications and recommendations through its officials, employees or sub-contractors (hereinafter referred to as "**Service Providers**"). NE may replace the Service Providers either wholly or partly.
- (2) As a matter of principle, NE shall render its services at its respective branch office. When necessary, the parties shall reach an agreement concerning the provision of services at the Customer's premises or at the premises of a third party, designated by the Customer.
- (3) In case NE renders maintenance services regarding hemodialysis machines (each a "**Device**" and jointly "**Devices**"), such services are performed in accordance with the German Medical Products Act as well as the German Medical Products Operator Ordinance, in force at the given time. If and to the extent nothing contrary has been agreed upon between the Parties in writing, the following definitions of the following notions shall be valid and decisive:

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- a) **Maintenance** designates a combination of all technical and administrative measures and management measures during the life cycle of a Device for the preservation of the serviceability of the Device or the restoration of the same, in accordance with the periods designated by the manufacturer. Maintenance in particular includes the measures known as (i) upkeep, (ii) inspection, (iii) repair, (iv) improvement and (v) analysis of weaknesses;
  - b) **Upkeep** designates all measures for the preservation of the nominal condition of a Device and includes in particular the (i) preparation of a maintenance plan with binding character taking specific circumstances of the individual Device into account, (ii) preparation of the implementation of Upkeep measures and (iii) implementation of Upkeep measures and feedback;
  - c) **Inspection** designates all measures for the determination and assessment of the actual condition of a Device, including the determination of the causes leading to the deviation from the nominal condition, the degree of wear and tear, and the development of necessary consequences for the restoration of the nominal condition. Measures of an inspection include the (i) preparation of a plan for the determination of the actual, (ii) preparation of the performance of determination of the actual condition, (iii) performing the determination of the actual condition, (iv) submission of the result as to the actual condition, (v) evaluation of the results regarding the determination of the actual condition and (vi) development of the necessary consequences on the basis of the evaluation in order to restore the nominal condition;
  - d) **Repair** designates all measures for the restoration of serviceability (nominal condition) of a Device, with the exception of improvements. Repair measures include the (i) work order, order documentation and analysis of the contents of the order, (ii) planning in terms of showing and assessing alternative solutions, (iii) decision in favour of a solution, (iv) preparation of the implementation of the Repair, including, calculation, scheduling, coordination, provision of personnel, resources and materials, (v) preparation of work schedules, (vi) implementation of Repair, (vii) functional test and acceptance (viii) notice of completion and (ix) evaluation, including documentation.
- (4) In the event of a malfunction of a Device and after having been notified thereof by the Customer, NE's technical service shall first contact the Customer by telephone within [...] hours in principle, to obtain a description of the malfunction and, if possible, rectify the malfunction via telephone. If the malfunction cannot be rectified by telephone due to its nature, NE shall use its best efforts to commence repair usually within twenty-four (24) hours following the notification of the malfunction by the Customer and the unsuccessful attempt to rectify the malfunction via telephone according to sentence 1. Sentence 1 and 2 shall not apply if a bank holiday or Sunday is between the notification of the malfunction by the Customer and the expiry of the [...] hours according to sentence 1 or the twenty-four (24) hours according to sentence 2. In this case NE will commence with the rectification of the malfunction, respectively repair on the following business day.

**Section 16. Written Confirmation**

- (1) Oral information provided by NE shall only be binding to the extent that NE confirms it in writing.
- (2) If NE has presented the services in writing, then only the written presentation shall prevail. Oral explanations and information by employees of NE shall always be non-binding.
- (3) In case NE renders maintenance services, the Customer shall be obliged to notify NE without delay in writing (e-mail or fax sufficient) of any decommissioning, replacement or any other reason for putting the Device out of service, and of each purchase and commissioning of an additional Device. The same shall apply if the Customer and NE have concluded a spare parts delivery agreement, based on which NE delivers spare parts for the Devices to the Customer.

**Section 17. Verification; Customer's Obligation to Cooperate**

- (1) All the services will be properly rendered by suitably qualified personnel acting with reasonable care. The test media and measurement devices as well as inspection instruction, work instruction and certification, necessary to render maintenance services regarding the Devices shall be provided by NE.
  - (2) If not otherwise agreed between the Parties in writing, the dates for conducting the maintenance services shall be agreed upon between the Parties at least one (1) week prior to the envisaged date and, as a rule, being provided at the place of operation of the Device on business days Monday through Friday between 08:00 am and 05:00 pm.
  - (3) The Customer or the third party designated by the Customer must support NE in the elimination of impediment/obstacle/shortcomings of the services. NE will make every effort to eliminate such impediment/obstacle/shortcomings within a suitable period of time.
  - (4) The Customer in particular is obliged to,
    - a) provide the employees or other vicarious agents of NE with an appropriate work station. In addition, in case of conducting maintenance services, the Customer shall be obliged to provide all required supplies and equipment allowing for the operation of the Devices;
    - b) make the Devices for which maintenance services are to be provided available free from visible soiling and contamination, with the surfaces wiped with a disinfectant and the hydraulic system (dialysis system) disinfected using the automatic disinfection program. If for technical reasons an automatic disinfection of the dialysis system is impossible, the Customer must clearly mark the Device with a warning notice to this effect and at the same time notify the employee or vicarious agent thereof;
    - c) separately and expressly notify the employee or vicarious agent of NE, at the time of ordering and/or making an appointment for rendering maintenance services, if a Device scheduled for maintenance was used for the treatment of patients with a contagious disease and/or a notifiable infectious disease (including, but not limited to, hepatitis, MRSA, HIV) and clearly mark the Device with a warning notice to this effect;
    - d) undertake a visual check of the Devices on a daily basis and to pay attention to extraordinary text messages on the screens. Extraordinary incidents have to be recorded by the Customer and are to be submitted to NE without delay;
    - e) to maintain at all time accessories regarding the Device itself or its operation in excellent condition.
- (jointly hereinafter referred to as the "Cooperation Obligations")

- (5) Any additional costs arising from or in connection with the violation of the Cooperation Obligations shall be borne by the Customer. Furthermore, the Customer shall be liable for any and all damages of NE or its employees or vicarious agents arising from or in connection with the infringement of the Cooperation Obligations.
- (6) NE is entitled to refuse the performance of maintenance services for a Device if the Device shows unacceptable visible soiling (e.g. fluids and/or blood have entered the Device) and special measures to clean and disinfect (hereinafter referred to as "Decontamination") the Device have to be taken before the commencement of the maintenance in order to avoid any endangerment of NE's employee or vicarious agent. If the maintenance is refused on the basis of such unacceptable soiling, this shall be documented by the employee or vicarious agent. In any such event, the decision regarding the performance of the maintenance shall exclusively be within NE's, respectively NE's employees' or vicarious agents' sole discretion.
- (7) In special cases (e.g. endangerment of employees or vicarious agents), NE is entitled to carry out the Decontamination and to charge these services separately.

**Section 18. Termination of the Contract**

- (1) If not otherwise agreed between the Parties, each Party may terminate the contract even without good cause at anytime with a notice period of three (3) months to the end of a month. In the event of a termination by the Customer, NE's claim to remuneration/compensation in accordance with NE's current price list will remain preserved to the full extent; the whole remuneration/compensation shall be due for payment upon the termination, without any offsetting.
- (2) Either party may terminate this contract without notice if the other party:
  - a) failed to comply with an important clause of the contract which may trigger a considerable disadvantages from a reasonable commercial point of view. If NE terminates the contract, then the provisions of the aforementioned para. 1 shall apply with respect to the remuneration/compensation.
  - b) (1) filed a petition in bankruptcy, (2) a petition in bankruptcy is filed against the other party, (3) the other party becomes insolvent or bankrupt, (4) the other party goes into liquidation or receivership.
- (3) These provisions shall not affect any claims such as damages that the party terminating the contract may have.
- (4) Terminations must be made in writing to be valid.

**C.  
Final Provisions**

**Section 19. Customer's Duties to Cooperate**

- (1) The Customer shall provide NE with the access to the information required for NE's activities at any time, and in particular, furnish documents and give instructions to the Customer's own employees to provide information. The Customer will inform NE of all circumstances relevant to the effective provision of deliveries or services without delay.
- (2) At NE's request, the Customer shall confirm in writing the correctness and completeness of the documents submitted and the information provided by the Customer.
- (3) If the Customer fails to comply with its duty to cooperate with NE despite a written warning notice with a deadline or if the Customer repeatedly and seriously fails its contractual obligations, NE shall be entitled to cancel or terminate whole or any part of any contract with Customer without notice. Besides this right of cancellation and termination, NE shall have a right to claim compensations for any and all damage or loss incurred by NE for such non-comply or failure of Customer's duty/obligation or additional expenditure caused hereby.
- (4) Customer agrees that all of the duties of cooperation listed herein are essential primary duties of the Customer.

**Section 20. Applicable Law, Choice of Venue**

- (1) The provisions of the CISG shall apply. With respect to the matters not governed by the CISG, the laws of the Federal Republic of Germany shall apply without recourse to the international private law. The provisions of the Incoterms 2000 shall apply subsidiarily.
- (2) Unless mandatory statutory provisions provide otherwise, the forum and venue for all disputes arising between NE and the Customer arising from or in connection with the contract and/or these Terms and Conditions (including their validity and interpretation) shall be the courts at Hanover or the Supplier's domicile if NE so chooses.

**Section 21. No Waiver**

If any breach of any provision of these Terms and Conditions or the respective contract by the Customer is not sanctioned by NE, this does neither constitute any waiver by NE to comply with the infringed provision nor any abrogation of the infringed provision by way of conclusive behaviour.

**Section 22. Miscellaneous**

If one or several provisions of these Terms and Conditions or the respective contract are or become completely or partially invalid, void or unenforceable, the validity of the remaining provisions of these Terms and Conditions and/or the contract shall remain unaffected. Sec. 139 German Civil Code is expressly not applicable. The same shall apply if these Terms and Condition and/or the contract contains a gap. If the invalid, void or unenforceable provision does not seek to ensure the protection of a Party, the Parties are obliged to agree upon a provision which, as far as legally possible, comes closest to what was intended by the Parties or what the Parties would have agreed upon, instead of the invalid, void or unenforceable provision as well as the gap, considering the meaning of the invalid, void or unenforceable provision. If the invalidity, voidness or unenforceability is based on the agreed upon scope or time period (e.g. deadline or date) of performance, the Parties are obliged to agree upon a provision that comes closest to what is permitted by law in that case. Apart from that, the invalid, void or unenforceable provision shall be replaced by the corresponding legal provision.