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 authorized by 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 or contentions by the Customer, which change the Terms and Conditions, are hereby rejected; they shall only be valid vis-à-vis NE if NE agrees to such changes in writing. This rejection shall also apply particularly 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 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 destroyed promptly by NE upon the order being processed or has not been placed with NE. The Customer’s documents may be disclosed and conveyed to such third parties to whom NE permitsly 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; however, this stipulation is subject to the rights and obligations of good faith for cause good. Insurably as NE grants the required consent to the cancellation of an order in writing in accordance to “CISG”, the order or any part of it will be cancelled by NE – whether or not NE’s 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) Fulfilment 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 upon by 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 saltation warehouse agreement concluded in NE’s name is binding 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, which the Terms and Conditions 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 the 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 irrecoverable 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, though having 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 has been contractually stipulated for the payment, the Customer is responsible, the notice shall be recorded in a notary office, 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 before NE’s place of business, which shall be ascertained 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 incontestably adjudged and may only assert rights of retention insfar 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, NE may postpone the delivery until such prerequisites are fulfilled. If the delay becomes unreasonable for NE, the Customer is entitled to demand compensation for the delay, even if NE is not able to prove any losses or much lower losses as a consequence of the delay.

(2) For deliveries, a deadline shall be deemed complied with, if the ready-to-use shipment is dispatched within the agreed time or service period as soon as the shipment is 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 delivery is available. Moreover, NE shall be entitled to demand compensation for any 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 the performance of the delivery or the service 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 service, NE shall as far as possible inform the Customer regarding the expected end of the delay and the duration 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 occur, 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 by the storage cost 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) If not 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, or entrusted to other persons or institutions designated to execute the delivery of the shipment. Packing will be done with the customary care. Goods will be shipped at NE’s best discretion. After the shipment, NE is no longer liable. If NE is not entitled to the shipment due to breakdown, 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 return 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 as no justified excuse, NE shall no longer be liable for any lack of conformity of the Goods
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 negotiation and unlawful acts, is limited to the amount of the respective delivery and material costs, to the extent that such costs are not increased because the 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 were brought to a location different from the destination.

(2) If NE, due to its own fault, has not been able to perform its services or delivery properly, NE is authorized to terminate the contract in accordance with the Customer's own wishes.

(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 the protective measures which the respective deliveries or services were not contractually provided for.

Section 13. Secrecy and Data Protection

(1) NE shall be entitled 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 obligations on its vicarious agents and employees accordingly. Insofar as by NE the Customer notifies NE without undue delay by the Customer that such claims in writing, (ii) furnishes all of the requisite information and provides other reasonable support, and (ii) NE retains its side 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 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 the protective measures which the respective deliveries or services were not contractually provided for.

Section 14. Legal Succession, Reorganization

(1) Insofar as NE undergoes a reorganization according to a change in its legal form while preserving its identity or through a change in its legal personality due to a merger, splitting up of assets, the transfer of assets, the conversion 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. In such case also, NE is responsible for the contractually stipulated performance of the agreed obligations and vis-a-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 certain data to third parties. Except Customer receivables, rights and duties under this contract are not assignable unless otherwise provided herein.

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 subcontractors (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 hereby agree to a commitment concerning the provision of services at the Customer's premises or at the premises of a third party, designated by the Customer.

(3) If 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 Order Ordinance in force at the time the respective contract has been entered into. The Customer may inspect, at the Customer's premises or any other premises, the Company's products and services at the Customer's sole request and risk.

(4) In case the 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 Order Ordinance in force at the time the respective contract has been entered into. The Customer may inspect, at the Customer's premises or any other premises, the Company's products and services at the Customer's sole request and risk.

Section 16. Special Supplementary Terms and Conditions for Services provided by NIKKISO Europe GmbH

(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 responsible 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 use and the manufacturer's product description with regard to the applicable directive. NE accepts no liability for Goods incorporated and/or used in equipment or applications which is/are not allowed in the manufacturer's product description and therefore such inclusion shall be at 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 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 and to contact NE in case of 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 performed by suitably qualified personnel acting with reasonable care. The test media and measurement devices as well as inspection instructions, 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 impediments, shortcomings or obstructions of the services. NE will make every effort to eliminate such impediments/obstacle/shortcomings within a suitable period of time.

(4) The Customer in particular is obliged to:
   a) provide the employees of other vicarious agents of NE with an appropriate work station.
   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 in 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 or 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 test results on the screens. Extraordinary test results 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 cannot be taken to render the Device and the hydraulic system (dialysis system) suitable for use (hereinafter referred to as ’Decommissioning’). The Device have to be taken before the commencement of the maintenance and/or repair works. In case NE renders maintenance services, the Customer shall be obliged to notify NE with delay. In case of a termination by the Customer, NE’s claim to remuneration/compensation shall be due for performance upon the termination, without any offsetting.

(7) 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 disadvantage 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, (5) a receiver or appointed administrator is appointed against the other party.

(8) NE may terminate this contract if the Customer fail to comply with its duties to cooperate. In such case, NE shall be entitled to terminate the contract without notice. In the event of a termination by the Customer, NE’s claim to remuneration/compensation shall be due for performance upon the termination, without any offsetting.

(9) NE may terminate this contract without notice if the Customer fail to comply with its duties to cooperate. In such case, NE shall be entitled to terminate the contract without notice. In the event of a termination by the Customer, NE’s claim to remuneration/compensation shall be due for performance upon the termination, without any offsetting.

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 any time 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 fails to comply with the Cooperation Obligations, or if the Party terminates the contract without due notice of its intention.

(3) NE has a right to terminate the contract if the Customer fails to comply with the Cooperation Obligations, or if the Customer terminates the contract without due notice of its intention.

(4) NE has a right to terminate the contract if the Customer fails to comply with the Cooperation Obligations, or if the Customer terminates the contract without due notice of its intention.

(5) NE has a right to terminate the contract if the Customer fails to comply with the Cooperation Obligations, or if the Customer terminates the contract without due notice of its intention.

(6) NE has a right to terminate the contract if the Customer fails to comply with the Cooperation Obligations, or if the Customer terminates the contract without due notice of its intention.

(7) NE has a right to terminate the contract if the Customer fails to comply with the Cooperation Obligations, or if the Customer terminates the contract without due notice of its intention.

(8) NE has a right to terminate the contract if the Customer fails to comply with the Cooperation Obligations, or if the Customer terminates the contract without due notice of its intention.