

1. Scope of application

These Business and Delivery Conditions (Allgemeine Geschäfts- und Lieferbedingungen, "AGB") shall apply to all deliveries and services (hereinafter referred to as "Contract Products") supplied by us (Söring GmbH) to our customers and/or service recipients (hereinafter referred to as "Customer").

Our AGB shall apply exclusively. General terms and conditions of business of the Customer, the content of which differs from or conflicts with our AGB, do not apply.

2. Offers, quotation documents, contract formation

- 2.1. Our offers are subject to change. Technical descriptions and other specifications in offers, brochures and other information do not constitute a warranty and only become part of the contract if they are part of the agreed quality of the Contract Product.
- 2.2. Neither the original nor copies of offers or quotation documents prepared by us may be made available temporarily or permanently to competitors or their employees without our consent.
- 2.3. In the interest of further technical and medical development we reserve the right to modify the design and execution even after the acceptance of an order to the extent that the interests of the Customer are not affected by this in an unacceptable manner and the modification is customary in the trade.
- 2.4. Orders of the Customer that are not based on a written offer submitted by us only become binding on us upon our express written order confirmation.

3. Price, delivery conditions

- 3.1. The prices agreed are net from the warehouse of Söring GmbH, Quickborn (FCA Söring GmbH, Justus-von-Liebig-Ring 2, 25451 Quickborn, Germany – Incoterms, as amended) plus tax in the applicable statutory amount.
- 3.2. The costs of packaging, shipping, customs duties, public charges and insurance(s) shall be borne by the Customer.
- 3.3. Unless expressly agreed otherwise, we are entitled to make partial deliveries to the extent that the Customer can reasonably be expected to accept this.

4. Delivery dates, default

- 4.1. Compliance with agreed upon delivery dates is subject to the timely performance of the contractual obligations assumed by the Customer, particularly the performance with respect to the agreed upon payment and, as applicable, the provision of the agreed upon collateral.
- 4.2. Fixed delivery dates are only deemed agreed if this has been expressly confirmed in writing by Söring GmbH. Delivery periods start running on the date of the formation of the contract, but only after all details of the order have been unambiguously clarified with the Customer, providing any required certifications. They are deemed complied with if the Customer is notified that the Contract Products are ready for shipment within the delivery period if they cannot be dispatched in time for reasons beyond our control.
- 4.3. If we fail to make a delivery by a delivery date that was agreed as binding, the Customer can only claim damages in lieu of performance and/or rescind the contract if it has provided us with an adequate grace period of at least two weeks in writing. Such a grace period does not need to be provided if the performance owed is impossible (Section 275 BGB (German Civil Code)) or if the grace period is dispensable in accordance with the relevant statutory regulations. The respective burden of proof lies with the Customer.
- 4.4. If we fail to comply with a delivery date, our liability for damages is limited as specified in Section 13 (Liability) of these AGB.
- 4.5. Force majeure, in particular floods and other natural disasters, explosions, fire, war, civil unrest, regulatory actions (especially embargoes and other governmental ac-

tions and restrictions), which prohibit the processing of the order or the delivery of the Contract Products or other performance, and other external unforeseeable events, such as transport infrastructure / transport disruptions, strikes, lock-outs, general energy or raw material shortages, etc., shall release us from the performance obligations and a default of delivery for the duration of the disruption and the scope of its effect.

5. Shipping, passing of the risk

- 5.1. Contract Products are dispatched and shipped at the risk of the Customer. The risk shall pass to the Customer as soon as we have made the shipment available to the freight forwarder, carrier or forwarding agent (FCA Söring GmbH, Justus-von-Liebig-Ring 2, 25451 Quickborn, Germany, see Section 3.1).
- 5.2. If the dispatch of the delivery is delayed for reasons for which the Customer is responsible, the risk of accidental deterioration or accidental loss shall pass to the Customer upon the notification that the Contract Products are ready for shipment. Any storage expenses incurred after the passing of the risk shall be borne by the Customer. Further claims shall remain unaffected by this.
- 5.3. If the Customer is in default of acceptance, we are entitled to claim compensation for any related expenses incurred by us; the risk of accidental deterioration or accidental loss shall pass to the Customer as soon as it is in default of acceptance.

6. Payment terms

- 6.1. Unless otherwise agreed in writing, payments for invoices related to purchase transactions shall be made with a 2% discount within 14 days of the receipt of invoice or net within 30 days.
Payments for invoices related to lease transactions, repair and assembly work or services shall be made net within 30 days of the receipt of invoice.
Payments are deemed made in time if we receive them within the specified period.
Bills of exchange and checks are only considered a payment after they have been paid or have cleared and are accepted without any obligation with respect to a timely presentation or protest.
- 6.2. We are entitled to claim default interest in the amount of nine (9) percentage points above the base interest rate per year and a flat rate payment of EUR 40.00 from the occurrence of a default of payment, notwithstanding the option to assert a claim for damages for any additional actual damage. We reserve the right to calculate statutory interest payable after the due date.
- 6.3. The Customer is only allowed to withhold payments or offset counterclaims against them to the extent that its counterclaims are undisputed or have been declared unappealable. This does not apply to counterclaims of the Customer that are directly related to a remediation of defects or a reversal – for a defect that has not been remedied or could not be remedied by us by way of subsequent performance – and are based on the same contractual relationship as the payment claim of Söring GmbH.

7. Place of performance

The place of performance for all mutual obligations, including the warranty obligations, is the registered office of Söring GmbH in Quickborn.

8. Reservation of title

- 8.1. Our deliveries are always made subject to reservation of title. In this context the following provisions shall apply in addition to the applicable laws.
- 8.2. All Contract Products delivered remain our property (goods subject to reservation of title) until all claims based on an ongoing business relationship are fully satisfied, regardless of the legal theory they are based on.
- 8.3. The Customer is only allowed to further process the

goods subject to reservation of title or combine or mix them with other objects or resell them in the ordinary course of business and as long as it is not in default. It may not pledge them or convey or assign them as collateral.

Any working or processing of the goods subject to reservation of title by the Customer is always done on our behalf without creating any obligations for us. We are entitled to the ownership of the new objects in their respective working or processing state. If the goods subject to reservation of title are processed, worked, combined, mixed or connected with products not owned by us, we are entitled to co-ownership of the new objects in the ratio of the invoice price of the goods subject to reservation of title compared to the invoice price of the other products.

- 8.4. The Customer already hereby assigns all claims from the resale of the goods subject to reservation of title to us. We already now accept this assignment. The claims are used as security to the same extent as the goods subject to reservation of title. Assignments made for the purposes of this paragraph are limited to the amount of the invoice price of the goods subject to reservation of title. The Customer is authorized to collect on the claims assigned until we revoke this right which we may do at any time.
- 8.5. The Customer is obligated to notify us of any attachment or other seizure of the goods subject to reservation of title by third parties without undue delay. All expenses required to intervene shall be borne by the Customer if they cannot be collected from the third party. If the Customer allows its customer to defer the payment of the purchase price, it shall reserve the title to the goods subject to reservation of title with the same conditions we have attached to the reservation of title with respect to the delivery of the goods subject to reservation of title. Otherwise the Customer is not authorized to resell the goods subject to reservation of title.
- 8.6. If the Customer meets the objective criteria for the obligation to file for insolvency, it may not dispose of the goods subject to reservation of title anymore in any way; a respective request is not required. The Customer shall report the inventory of the goods subject to reservation of title to us without undue delay. In this event we are also entitled to rescind the contract and demand that the Customer return the goods subject to reservation of title. If the goods subject to reservation of title were processed, worked, combined, mixed or connected with other products, we may demand that they be handed over to a trustee; the Customer is obligated to provide us with a list of all co-owners of the goods subject to reservation of title, including the name of their company and/or their name, their address and their co-ownership share. The same applies by analogy to claims that have been assigned to us in accordance with the preceding paragraphs; in addition, the Customer shall provide us with the names and addresses of all debtors and a copy of the documents evidencing the claims against them without being specifically requested to do so.

9. Rights related to software

- 9.1. All programs remain our property. Programs, documentation and subsequent supplements may not be made available to third parties without our prior written consent and may not be copied or otherwise reproduced, not even for the Customer's own purposes except for a backup copy.
- 9.2. The Customer is granted a non-exclusive and non-transferable right to use the programs and associated documentation and subsequent supplements for the internal operation of the Contract Products for which programs are delivered. For programs and documentation which are developed at the request of the Customer and constitute our delivery the Customer is granted the requested number of individual licenses within the limit of a non-exclusive and

non-transferable right of use. The time limit of the right of use granted is agreed in the individual case. If there is no respective agreement, the right of use shall expire one year after it was granted.

- 9.3. Source programs are usually not made available. They are only made available on the basis of a separate written agreement.

10. Set-up and commissioning

- 10.1. At the request of the Customer we will set up and commission the Contract Products delivered by us in return for the reimbursement of the travel expenses and payment of the applicable hourly rates of Söring GmbH. Travel time and waiting periods are charged as working time. The Customer shall make any required assistants available to the employees of Söring GmbH at its expense.
- 10.2. Any official permits required for the installation and the operation of the Contract Products delivered by us shall be procured by the Customer.

11. Warranty

- 11.1. The Customer shall inspect the goods promptly after their delivery at its expense and notify us of any noticeable defects (including wrong deliveries or shortfalls) in writing without undue delay, but at the latest within a preclusive period of seven days. It shall notify us of hidden defects in writing without undue delay after their discovery. Otherwise the goods are deemed accepted.
- 11.2. Upon prior consultation with us the Customer shall return rejected Contract Products to an address specified by us in appropriate packaging (preferably in the original packaging) for review. It shall observe Söring's Return Material Authorization Process (RMA Process) in this context. For justified notifications of defects that are provided in a timely manner we will remedy the defects by way of subsequent performance which, at our discretion, may consist of the remediation of the defect or the delivery of a product that is free of defects; in this context we are only responsible for the costs that are necessary for the subsequent performance.
- 11.3. If the Customer has transported the Contract Product to a place other than the place of performance and if this causes an increase in the cost of the subsequent performance, the Customer shall pay the related difference.
- 11.4. Unless otherwise agreed, the quality of the Contract Product that is owed under the respective contract is exclusively based on our product specifications that were subject of the contract when it was formed. All information on our products, especially illustrations, drawings or information on the weight, dimensions and performance, contained in our offers and printed materials shall be regarded as approximate average values. They do not constitute a warranty of quality, but are descriptions or designations of the Contract Products. Unless limits for deviations have been expressly agreed in the order confirmation, deviations that are customary in the industry are acceptable in any case.
- 11.5. With respect to new Contract Products, the limitation period for claims based on defects is 12 months from the passing of the risk. If parts of Contract Products are replaced, if the Contract Products are repaired or if services are provided with respect to the Contract Products not only as a gesture of goodwill, but expressly in the context of subsequent performance, the limitation period for claims based on defects with respect to the parts that were replaced or the repairs that were made is six (6) months, but it shall run at least until the expiration of the original warranty period of the Contract Product. Replaced parts become our property.
- 11.6. The aforementioned limitation periods (Section 11.5) do not apply to claims for damages based on a defect of the Contract Product, the replaced part or any repair made. However, this exception for claims for damages only ap-

- plies to claims for damages based on a defect that are due to injuries to the life, limb or health of a person or to gross negligence or willful conduct by us or persons employed by us in the performance of our obligations or to liability under the Product Liability Act.
- 11.7. Wear and tear, and failures or damage to the Contract Products that were caused by the improper operation (including, without limitation, overload) and/or a modification of the Contract Product by the Customer (such as the replacement of parts) or the use of consumables that do not comply with the original specification and our instructions, do not constitute defects that give rise to claims based on defects.
- 11.8. The Customer is only entitled to rescind the contract or reduce the purchase price if the legal requirements are met.
- 12. Maintenance, repairs**
- 12.1. The Customer shall place separate, written orders with Söring's customer service for maintenance or repairs to original Contract Products whether they are requested by the Customer under this warranty obligation or not. It shall observe Söring's Return Material Authorization Process (RMA Process) in this context.
- 12.2. Such Contract Products shall be cleaned by the Customer before they are sent and shall be sterilized if they are actually or possibly contaminated with pathogens or other potentially harmful substances. These Contract Products shall be properly packaged and shipped to the delivery address specified by Söring's customer service. We are entitled to refuse to accept Contract Products that have not been cleaned. The resulting costs shall be borne by the Customer.
- 12.3. With respect to such Contract Products that are part of the order for maintenance or repair the risk shall only pass to us when they are received at our company.
- 13. Liability**
- Claims for damages of any kind against us or against our legal representatives or persons employed by us in the performance of our obligations are barred except in cases of intent, gross negligence, or the breach of a material contractual duty. As used here, material contractual duties are all duties that enable the proper performance of the contract and on the compliance with which the Customer may regularly rely. However, with the exception of cases of intent, liability shall be limited to compensation for the foreseeable damage typically incurred with this type of contract. The aforementioned limitations of liability and exclusions of liability do not apply to liability under the Product Liability Act or cases of injury to the life, body or health of any person. If the Customer asserts a claim for the reimbursement of expenses (§ 284 BGB (German Civil Code)) rather than a claim for damages, all provisions of this Section 13 shall apply accordingly.
- 14. Disposal**
- The Customer shall observe the information accompanying our goods with respect to the disposal of the Contract Products and shall ensure that they are disposed of properly, in compliance with the statutory provisions. If the Customer disposes of them, it shall submit the proof of disposal from the certified waste disposal company to us in writing without undue delay. If the Customer desires that we dispose of the Contract Products, we will do so free of charge. This would need to be coordinated with Söring's customer service and requires compliance with Söring's RMA process. In this event the Customer shall deliver the Contract Product to be disposed of at its expense, carriage paid to our registered office in Quickborn, cleaned and free of any contamination. If the Contract Products to be disposed of are delivered to us without having been cleaned and/or without prior notice (without RMA number from Söring's customer service) we are entitled to refuse to accept them. The resulting costs shall be borne by the Customer.
- 15. Obligation to report, resale**
- 15.1. The Customer has a duty to notify us of all incidents (Section 29 MPG (German Medical Devices Act), Section 2 MPSV (Medical Devices Safety Plan Ordinance)) or near-incidents involving our products without undue delay in writing, regardless of whether they need to be reported to public authorities in accordance with the applicable regulations for medical devices.
- 15.2. The Customer shall notify us of any resale or other transfer of our products, providing the name of the purchaser or recipient, without undue delay or take other suitable actions to ensure that we can obtain information on the disposition of our products at any time.
- 15.3. If the Customer resells our products, it shall take suitable actions to ensure that we can safely assume that all applicable statutory provisions, especially those relating to medical devices, are complied with during and after the resale. This also includes the provisions regarding the disposal (see Section 14).
- 16. Confidentiality, data privacy**
- 16.1. Unless expressly otherwise agreed, the information provided to us in connection with orders is not considered confidential unless their confidentiality is obvious.
- 16.2. Please note that we store personal data related to our business relationship with you and make it available to our organization for the purpose of providing customer support.
- 16.3. With respect to Contract Products for which Söring is considered the manufacturer we reserve proprietary rights and copyrights in illustrations, drawings, calculations, descriptions and other documents.
- 17. Governing law; dispute resolution**
- 17.1. This Agreement shall be governed by the laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on the International Sale of Goods.
- 17.2. In the event of a dispute, the parties shall try to settle the dispute through amicable negotiations.
- 17.3. Venue shall only lie in the city where our registered office is located if the Customer is a businessman, a legal entity under public law or a special fund under public law, or if the Customer has no general venue in Germany. If the registered office of the Customer is located abroad, the party bringing the lawsuit is entitled to appeal to the court of arbitration of the German Institution of Arbitration instead. If this happens, the court of arbitration shall have exclusive jurisdiction. The place of arbitration shall be Hamburg. The language used in the proceedings shall be German.
- 18. Transferability of the rights, written form**
- 18.1. The Customer is not entitled to transfer its rights under this Contract.
- 18.2. Ancillary agreements, reservations, changes and supplements are only effective if they are put in writing.