

**General Terms and Conditions of Klaus Wenkert Medizintechnik GmbH ("K.W.")
(dated March 2016)**

Part 1: General Terms and Conditions

Section 1 - General Provisions, Scope of Application

- (1) These General Terms and Conditions ("GTC") apply to all business transactions between K.W. and its customers ("Customers") to the extent the Customer is an entrepreneur as defined by Section 14 of the German Civil Code ("BGB"), a legal entity under public law or a special fund under public law.
- (2) These GTC specifically, but not exclusively, apply to business transactions where the Customer commissions
 - a. the sale and/or delivery of products ("Products"), particularly in the human and veterinary medical sector such as endoscopy, syringes, injection and application systems regardless of whether K.W. manufactures the Products itself or acquires the Products from its suppliers; and/or
 - b. development works in connection with the modification of K.W.'s products according to the Customer's wishes and specifications ("Services"); and/or
 - c. the provision of repair services or safety-related inspections ("Works"); and/or
 - d. services other than those described in lit. a through c. and/or or a combination thereof with regard to which no specific contractual agreement is entered into in accordance with para. 6 below.

In these GTC, "Performance" means any kind of K.W.'s activities unless the term is expressly described otherwise.

- (3) These GTC comprise four parts. Part 1 governs the general terms and conditions, Part 2 the additional terms and conditions for the sale and delivery of Products, Part 3 the additional terms and conditions for Services and Part 4 the additional terms and conditions for Works.
- (4) These GTC as amended from time to time further constitute a framework agreement applying also to all future contracts on Services, Works and Products with the same Customer without K.W. having to refer to them again in each individual case; K.W. will promptly notify the Customer in this case of any amendment hereof.
- (5) These GTC apply exclusively. Any differing, conflicting or supplementary terms and conditions of the Customer do not become part of the contract even if K.W. has been notified thereof and not objected to them separately in the individual case, except if such terms and conditions have been expressly approved by K.W. in writing. Even if K.W. refers to a letter containing or referring to terms and conditions of the Customer or a third party, no approval of their applicability can be derived therefrom.
- (6) Individual agreements entered into by the Customer and K.W. in the individual case always take precedence over these GTC. The contents of such agreement require a written agreement or K.W.'s written acknowledgement.
- (7) Legally relevant declarations and notices to be made by the Customer to K.W. after the conclusion of the contract (e.g. fixing of a period, notices of defects, notices of rescission or reduction) have to be made in writing in order to be effective.
- (8) Any reference to the applicability of statutory provisions is only made for purpose of clarification. Such statutory provisions shall thus be applicable even without such clarification unless they have directly been amended or expressly excluded by these GTC.

Section 2 - Offer and Conclusion of Contract

- (1) All offers submitted by K.W. are non-binding and without obligation unless they have been expressly marked as being binding.
- (2) By placing the order the Customer declares to intend to purchase the ordered Products and/or to commission the requested Works, Services or other Performance. K.W. is entitled to accept the offer to enter into a contract included in the order and/or request within a period of two (2) weeks after receipt of such order and/or request.

Acceptance of the order and/or request may be declared vis-à-vis the Customer in writing, in text form, in electronic form or by delivery in case of Products.

- (3) The information provided by K.W. with regard to the object of delivery or performance (e.g. weights, dimensions, utility values, capacity, tolerances and data) as well as K.W.'s descriptions of it (e.g. drawings and pictures) are only approximately applicable unless the usability for the contractually intended purpose requires precise conformity. They are not warranted characteristics of the quality but descriptions or designations of the delivery or performance. Deviations occurring due to statutory provisions or representing technical or medical improvements as well as the replacement of components by comparable parts are permissible unless they affect the usability for the contractually intended purpose.
- (4) The scope of the contractually owed delivery and/or performance is subject to the confirmation of the order by K.W., if made, including these GTC. Oral undertakings or agreements made prior to the confirmation of the order are not binding and are superseded by the confirmation of the order unless they are expressly marked as being binding. Section 1(6) of these GTC shall remain unaffected.
- (5) K.W. reserves any and all rights (including but not limited to property rights and copyrights) in the documentation provided to the Customer in connection with the order, such as pictures, drawings, service descriptions and work schedules ("**Documentation**"). This Documentation must not be made available to third parties without K.W.'s prior approval and has to be returned to K.W. at its request without undue delay.

Section 3 - Performance Periods and Dates, Default

- (1) Performance periods and dates are individually agreed upon and specified upon the acceptance of the order or assignment. If no performance period and date has been specified, the period shall depend on the respective average time customary in the sector for such performance and is, if the average time customary in the sector is not shorter, at least eight (8) weeks as from the conclusion of the contract, otherwise the average time customary in the sector applies. If and to the extent the shipping of the Products has been agreed upon, the performance periods and dates refer to the time the Products are delivered to the carrier, forwarding agent or other third party entrusted with the transportation.
- (2) Performance periods and dates are only binding if they have been agreed upon in the contract as binding and if the Customer has provided K.W. with all information and Documentation as well as approvals required for Performance in due time. In the event of additional or supplementary agreements entered into at a later point in time, the performance periods and dates respectively are extended or rescheduled accordingly. As long as the Customer defaults in performing an obligation vis-à-vis K.W., K.W.'s obligation to perform shall be suspended. In case of the Customer's culpable breach of duties to cooperate, K.W. shall be entitled to claim compensation of the incurred damage including extra expenses, if applicable. Any further claims are reserved.
- (3) Unless otherwise agreed upon, the Customer has to call off the ordered Products by no later than three (3) months after the order. If the Products are not called off in due time, K.W. may rescind the contract and claim damages after an additional period set by it has expired without results.
- (4) If and to the extent K.W. is not able to meet binding performance periods and dates for reasons for which it is not responsible (unavailability of Performance), it will notify the Customer thereof without undue delay and inform him of the expected new performance period. The performance periods and dates respectively will be extended or rescheduled by the period of the unavailability of Performance. Performance shall be deemed unavailable within this meaning particularly in case of unforeseeable, unavoidable circumstances and events which are outside K.W.'s sphere of influence, such as acts of God, war, natural disasters or labor disputes, which release K.W. from its obligation to make timely Performance for the duration of such event. Performance periods and dates respectively will be extended or rescheduled by the length of the disturbance and the Customer will be notified of the occurrence of such disturbance in a reasonable manner. If the end of a disturbance is not foreseeable or if a disturbance continues for more than two (2) months, each party shall be entitled to rescind or terminate the contract. Claims for damages are excluded unless K.W. acted intentionally or grossly negligently.
- (5) The occurrence of default on the part of K.W. is subject to statutory provisions. A reminder from the Customer, however, is required in each case.

Section 4 - Prices and Terms of Payment

- (1) Unless otherwise expressly agreed upon, the current prices according to K.W.'s price list applicable at the date of the conclusion of the contract apply to any and all Performances specified therein.
- (2) If no compensation has been expressly agreed upon and if K.W.'s price list does not state a price for the agreed Performance, the customary compensation shall be deemed agreed upon. Travel and accommodation costs, costs for specific tools or materials and costs for third party services as well as all other indirect expenses have to be reimbursed separately and in advance unless otherwise agreed upon in writing.
- (3) All prices for deliveries of goods and provision of services are in euro ex works exclusive of statutory VAT. Actually incurred packaging, shipping and transportation costs of the delivery are separately invoiced to and payable by the Customer. Customs duties, fees, taxes and other public charges, if any, are borne by the Customer.
- (4) The minimum contract value amounts to €100.00 net.
- (5) Invoiced amounts are due and payable within ten (10) days after the date of invoice and delivery and/or Performance less 2% cash discount on the net invoiced amount or by no later than thirty (30) calendar days unless otherwise agreed upon in writing. K.W.'s receipt of the payment is decisive for the payment being made in due time. The Customer will be in default upon expiration of the above-mentioned payment term.
- (6) Unless otherwise agreed upon between the Customer and K.W., K.W. may request a prepayment from the Customer directly after the conclusion of the contract in the following amount:
 - a. In case of the delivery of Products, the prepayment amounts to 30% of the total price if the total price for the delivery payable by the Customer exceeds a net amount of €5,000.00.
 - b. In case of the performance of Services or Works, the prepayment amounts to 30% of the total remuneration if the total price for the Performance payable by the Customer exceeds a net amount of €10,000.00.

Upon conclusion of the contract, the Customer will receive an invoice regarding the prepayment, which is payable within fourteen (14) days after receipt of the invoice according to para. 4.

The failure to make prepayment constitutes a right of retention/right to refuse performance on the part of K.W.. In case of late prepayment, the binding performance period extends in accordance with the delay.
- (7) If the Customer fails to pay on the due date, K.W. is entitled to charge default interest at the applicable rate. K.W. expressly reserves the right to prove and assert higher damage caused by default. In the relationship with businessmen, K.W.'s claim for commercial interest for due payments (Section 353 of the German Commercial Code ("*HGB*") shall remain unaffected.
- (8) The Customer is only entitled to offset counter-claims if they are undisputed or found to be final and absolute.
- (9) The Customer has a right of retention if his counter-claim is based on the same contract and if it is undisputed and found to be final and absolute.
- (10) As long as the Customer defaults in performing an obligation vis-à-vis K.W., K.W.'s obligation to perform shall be suspended with regard to any and all contracts and individual agreements.
- (11) If K.W. becomes aware of the risk of the Customer's impossibility to perform after the conclusion of the contract, it shall be entitled to make outstanding Performance only against prepayment or the provision of security. If the prepayment has not been made or the security not provided even after expiration of a reasonable additional period, K.W. is entitled to totally or partially rescind individual or all affected contracts. K.W. shall be free to exercise further rights.

Section 5 - Customer's Duty to Cooperate; Behaviour in case of Incidents

- (1) The Customer will support K.W. in the contractually owed Performance; such support shall include the provision of information, Documentation, data and materials which are available to the Customer and which may be necessary or useful to make the contractually owed Performance. The Customer has to ensure that K.W. is provided in due time and without specific request with any and all information, Documentation, data and materials which are necessary to make the contractually owed Performance and that it is notified of any and all circumstances and events which may affect the contractually owed Performance. The Customer has to

particularly notify K.W. of potential risks in connection with the materials or Products to be examined or manufactured and explain applicable public, operational or regulatory safety regulations and related confidential operational issues which have to be taken into consideration when making the contractually owed Performance.

- (2) The Customer has to notify K.W. without undue delay if he becomes aware that Services or Products possibly infringe industrial property rights of third parties or that third parties possibly infringe those of K.W. Any claim for indemnification pursuant to section 7 shall not be affected thereby.
- (3) Should the Customer obtain knowledge of incidents affecting K.W.'s Products and Services, he has to report the respective incident without undue delay. The Customer shall consult K.W. with regard to any further measure and response regarding the incident.
- (4) The Customer is not entitled to notify third parties (particularly public authorities) and/or the public of incidents occurring in connection with K.W.'s Products and Services without prior consultation unless he is obligated to promptly pass on such information due to mandatory statutory provisions. In this case the Customer shall promptly notify K.W. thereof.

Section 6 - Limitation of Liability, Damages

- (1) Unless otherwise provided for by these GTC including the following provisions, particularly Parts 2 through 4, K.W. shall be liable for a breach of contractual and non-contractual obligations pursuant to applicable statutory provisions.
- (2) K.W. and its vicarious agents are liable to pay damages - irrespective of the legal ground - in case of intent or gross negligence. K.W.'s liability in case of slight negligence is limited to
 - a. damages resulting from an injury to life, body or health;
 - b. damages resulting from a breach of a material contractual duty (a duty the compliance of which makes the proper execution of the contract possible in the first place and on which the contracting partner regularly relies and may rely); in this case K.W.'s liability, however, is limited to the compensation of the foreseeable, typically caused damage.
- (3) K.W. is not liable for the improper modification or treatment of the Products, with regard to medical technical equipment particularly not for damages caused by the use of inappropriate reagents or the effects of inadequate maintenance by the Customer or third parties, and not for defects based on usual wear and tear or caused by transportation.
- (4) The limitation of liability as set out above does not apply if K.W. or one of its vicarious agents fraudulently concealed a defect or assumed a warranty for the quality of the Product, the Work and the Service respectively. This also applies to the Customer's claims under the German Product Liability Act ("**ProdHaftG**"), the German Medical Devices Act ("**MPG**") or the German Drug Law ("**AMG**").
- (5) If K.W. is liable for slight negligence, the duty to pay damages for material damage and further pecuniary losses resulting therefrom are limited to the lesser of the order value (in case of framework agreements containing a call-off clause, the value of the quantity called off) or the sum insured under the respective liability insurance even if material contractual duties have been breached. The insured sum per claim amounts to €15,000,000.00 lump-sum for damage to persons or other damage (material damage or pecuniary loss).
- (6) The Customer is obligated to take appropriate measures to ward off or mitigate damages.

Section 7 - Indemnification

- (1) The Customer undertakes to indemnify, hold harmless and defend K.W. and its affiliates, employees and agents against any and all claims based on an infringement of third party rights arising from the information, Documentation, data and material provided by the Customer in connection with the contract unless K.W., its affiliates, employees, officers or directors acted intentionally or grossly negligently. K.W. is not obligated to carry out an inquiry or review regarding third party rights unless such inquiry or review has been expressly agreed upon by the parties.
- (2) K.W. will notify the Customer in due time in writing of any third party claims and the Customer is entitled to defend himself against such claims at his own expense, to take control of the proceedings and to settle claims by conciliation.

- (3) The Customer undertakes to indemnify K.W. against any and all third party claims resulting from (a) a damage to the Products during handling, storage and use of the Products by the Customer and/or (b) the improper use of the Products unless the damage was caused by a defect of the Product for which K.W. is solely or mainly responsible.
- (4) Unless K.W. has provided for multiple use and/or resterilization of its Products, the Customer shall indemnify K.W. against any and all third party claims resulting from a multiple use of the Products, a resterilization of the Products and/or other recycling of them within the meaning of section 5(12) of Part 2.
- (5) The Customer is obligated to take out a liability insurance with an adequate insured sum for third party damages caused by the improper storage and/or improper use of the Products. Evidence of the insurance coverage is to be furnished at K.W.'s request.

Section 8 - Intellectual Property, Restrictions on Use

- (1) Unless otherwise agreed upon by the parties in writing, each party is and shall remain the exclusive owner of any patent rights, know-how and other intellectual property rights controlled by such party and having already existed before or created outside the respective contract ("**Background Technology**"). If and to the extent K.W.'s Background Technology is inseparably connected to the Foreground Technology pursuant to para. 2 below and mandatorily required by the Customer to use the results, the Customer shall be entitled to demand the conclusion of a license agreement on the non-exclusive use of such Background Technology on reasonable and customary terms and conditions.
- (2) To the extent K.W. requires the Customer's Background Technology to make Performance, the Customer will grant K.W. for the term and exclusively for purposes of the contract a license in such Background Technology which is not exclusive, not assignable and not sublicensable.
- (3) Unless otherwise agreed upon by the parties in writing, K.W. shall retain title to any and all results, intermediate and final results as well as any and all processes created by K.W. within the scope of the execution and during the term of the contract as well as any and all rights therein (including copyrights, if any) ("**Foreground Technology**") - to the extent legally permissible -, and such results and processes are deemed to be confidential information of K.W.. If a contracting party makes inventions, discoveries or improvements within the scope of the business relationship which are not covered by K.W.' existing patents, the statutory provisions shall apply. At K.W.'s request, the Customer, however, undertakes to transfer the invention and/or his share in the invention to K.W. against payment of a reasonable remuneration. If the Customer and K.W. are co-author of a work as defined by the German Copyright Act ("**UrhG**"), the Customer shall waive his share in the exploitation rights (Section 8(4) *UrhG*).
- (4) K.W.'s Performance may contain products the use of which by the Customer may be subject to restrictions under patent or license law. For the details of such restrictions, please see K.W.'s respective product specifications, the respective package insert or K.W.'s website, as the case may be. The Customer may also request K.W. to provide such details prior or after the conclusion of the contract.

Section 9 - Confidentiality

- (1) Each party will use its reasonable and required efforts to protect the other party's confidential information applying at least the same standard of care that applies to its own confidential information but in no event less than the usual and customary care as applied to the protection of similar confidential information. Each party will ensure that its employees, agents and contractors observe this confidentiality provision.
- (2) The obligation to keep the exchanged information secret pursuant to para. 1 above does not apply if and to the extent
 - a. the respective party has been released from this obligation by express and written approval of the other party; or
 - b. the information was already known to the other party before the disclosure of the information by K.W. or the Customer and the other party was notified thereof without undue delay; or
 - c. the information is or becomes public knowledge by way of publication or otherwise; or
 - d. the information is disclosed to K.W. or the Customer other than directly or indirectly by the other party; or
 - e. the information is disclosed to authorities due to applicable provisions.

- (3) Each party's obligation to protect the other party's confidential information expires ten (10) years after the date of the conclusion of the respective contract.
- (4) At the other party's request, the party receiving the confidential information has to return or destroy any and all documents and Documentation containing confidential information as defined above as well as any and all copies thereof within a reasonable period of time and at the other party's expense if in compliance with statutory provisions on the preservation of records. In case of documents that cannot be handed over and that contain confidential information, such as hard disks or the like, the receiving party has to delete or otherwise destroy the respective documents. At the other party's request, the receiving party will promptly notify the other party of the return, deletion and/or destruction of any and all documents and papers in accordance with the above obligation.
- (5) The provisions of this section do not apply to the extent the parties have otherwise agreed upon in writing.

Section 10 - Final Provisions

- (1) These GTC are subject to the laws of the Federal Republic of Germany to the exclusion of the provisions of the UN Sales Convention.
- (2) Exclusive place of jurisdiction for any and all disputes arising under or in connection with the parties' contractual relationship, including these GTC, shall, to the extent the Customer is an entrepreneur as defined by the German Commercial Code (*HGB*), a legal entity under public law or a special fund under public law, be K.W.'s place of business in Tuttlingen/Germany (Tuttlingen local court (*Amtsgericht*), Rottweil regional court (*Landgericht*)).

This also applies if the Customer has no general place of jurisdiction within Germany or if his place of business, residence or habitual abode is unknown at the time the action is commenced. K.W. is, however, also entitled to commence an action at the Customer's general place of jurisdiction or place of performance. Mandatory, statutory provisions regarding the exclusive place of jurisdiction shall not be affected thereby.
- (3) In the event any provision of the contract, including these GTC, is or becomes totally or partially invalid, the validity of the remaining provisions hereof shall not be affected thereby. In lieu of the totally or partially invalid provision, such provision shall apply which most closely corresponds to the economic purpose of the invalid provision.
- (4) A German and an English version of these GTC are available on K.W.'s webpage at www.wenkert.com/AGB. In case of conflicts between the German and the English version, the German version of these GTC shall prevail.

Part 2: Additional Terms and Conditions for Sales and Deliveries

Section 1 - Scope of Application

- (1) These Additional Terms and Conditions for Sales and Deliveries ("**Sales Terms**") apply in addition to the GTC to the extent K.W. undertakes to deliver Products to the Customer (Sections 433 et seq. *BGB*). The Sales Terms also apply to contracts pursuant to which movable things to be manufactured or produced are to be delivered (Section 651 *BGB*).
- (2) In the event of conflicts between the Sales Terms and the GTC in the individual case, the Sales Terms shall prevail to the extent required to resolve such conflicts.

Section 2 - Performance by Installments

K.W. is only authorized to make performance by installments if

- the delivery by installments can be used by the Customer within the scope of the intended contractual use;
- the delivery of the rest of the ordered Products is ensured and

- the Customer does not incur considerable extra efforts or expenses thereby (unless K.W. agrees to bear such costs).

Section 3 - Special Design according to Customer's Specifications, Reservation of Right of Modification

- (1) The parties agree that K.W. produces special designs, i.e. Products manufactured according to drawings, samples, specifications or other information from the Customer, only in such tranches as ordered in the respective case. When defining the actually produced quantity, K.W. takes the usual amount of defective goods in the manufacturing into account. K.W. cannot exclude that the usual amount of defective goods is undercut or exceeded within the scope of manufacturing.
- (2) K.W. will notify the Customer of deviations, if any, in the scope of the manufactured Products from the agreed quantity without undue delay but by no later than upon delivery.
- (3) If there is a deviation within the meaning of section 3(1), K.W. is entitled to adjust the scope of supply and services in accordance with the actual production by at least +/- five (5) percent. The purchase price will be adjusted proportionately in accordance with the deviation in the delivery.

Section 4 - Passing of Risk, Default of Acceptance

- (1) Unless otherwise agreed upon by the parties, all deliveries of the Products are EXW K.W.'s production site (Incoterms 2010).
- (2) The Customer's default of accepting delivery is subject to statutory provisions. Should the Customer be in default of acceptance of delivery or should he breach his other obligations to cooperate with K.W., K.W. shall be entitled, without prejudice to its other rights, to reasonably store the Products at the Customer's risk and expense or to rescind the contract or claim damages in accordance with statutory provisions, particularly after an additional period set has expired without results.
- (3) Should deliveries by K.W. be late, the Customer shall only be entitled to rescind the contract if K.W. is responsible for the delay and if a reasonable additional period for delivery set by the Customer has expired without results.

Section 5 - Quality, Customer's Rights in case of Defects, Duty to Inspect the Products

- (1) K.W. warrants that the quality of its Products is in accordance with the accompanying product information as well as K.W.'s specifications. These specifications are based on analytical methods and procedures of K.W.. Unless otherwise contractually agreed upon, K.W. only owes Products being suitable and having the quality usually fitting the purpose as it is customary for things of the same kind and which the Customer may expect from such kind of thing.
- (2) K.W. warrants that its Products are clear and free of industrial property rights and copyrights of third parties within Germany and the other member states of the European Union.
- (3) K.W. warrants that its Products dispose of the required product approvals within Germany and the other member states of the European Union. K.W., however, points out that the operating manuals attached to the Products are not available in all languages spoken in the member states of the European Union. K.W. does not accept any warranty regarding the conformity of its Products with the statutory provisions applicable in the respective countries if its Products are imported to countries not being member states of the European Union.
- (4) K.W. does not assume any warranty that its Products do not infringe any third party industrial property rights to the extent the Products were manufactured, sold and/or delivered in accordance with the specifications and/or the Customer's information, Documentation, data and material, and K.W. demonstrates that it is not liable with regard to the infringement of the industrial property right. Section 7 of Part 1 of the GTC (Indemnification) applies.
- (5) Any of the Customer's claims based on defects requires his compliance with his statutory duties to inspect the Products and give notice of defects (Section 377, 381 HGB). The Customer has to promptly notify K.W. in writing of any defects identified during the inspection or later. Notice of defects shall be deemed to have been made in due time if it is made within one (1) week, whereat the due dispatch of the notice is sufficient to observe the time limit. Regardless of the duties to inspect the goods and give notice of defects, the Customer has to notify K.W. in writing of obvious defects (including wrong or short delivery) within one (1) week after delivery,

whereat the due dispatch of the notice is sufficient to observe the time limit also in this case. If the Customer fails to properly inspect the Products, K.W. shall not be liable for the defect not notified by the Customer.

- (6) In each case of a notice of defects, K.W. shall be entitled to inspect and examine the rejected Products. K.W. may engage a qualified third party in this regard. If it turns out that a defect claimed by the Customer does actually not exist or that it was caused by improper use and/or storage by the Customer, K.W. shall be entitled to charge any expenses incurred as a result of the follow-up of the notice of defects to the Customer to the extent the Customer has acted at least in a grossly negligent way.
- (7) Should the delivered Product be defective, K.W. shall first assume warranty at its option either by way of repair or substitute delivery.
- (8) The Customer has to grant K.W. the required period of time and opportunity to make supplementary performance, particularly to return the rejected Product for purposes of inspection. In the event of substitute delivery, the Customer has to return the defective Product in accordance with statutory provisions. Supplementary performance includes neither the dismantling nor the removal of the defective Product nor the new assembly and/or the new installation.
- (9) If supplementary performance fails, is unreasonable for the Customer or K.W. has refused it pursuant to statutory provisions, the Customer's rights are subject to statutory provisions in consideration of section 6 of Part 1 of the GTC (Limitation of Liability, Damages).
- (10) The Customer shall not have any claims based on a Product being free of defects if the defect was caused by the Customer or a third party and if K.W. is not responsible for the respective defect. This specifically applies if the Customer or a third party has modified the Product or used reagents not suitable for the Product or if the defect was caused by improper storage by the Customer.
- (11) To the extent K.W.'s Products are not intended for multiple use and/or resterilization, claims of the Customer based on the missing recyclability of these Products are excluded.
- (12) To the extent K.W.'s Products are not intended for multiple use and/or resterilization, claims of the Customer resulting from the multiple use, resterilization and/or other processing of the Products are excluded.

Section 6 - Reservation of Title

- (1) K.W. reserves title to the sold Products until full payment of any and all - including future - receivables resulting from the business transaction between K.W. and the Customer. This also applies if payments have been made for specific Products designated by the Customer.
- (2) Any Products subject to a reservation of title ("**Reserved Products**") may neither be pledged to a third party nor provided as security nor otherwise encumbered by third party rights until full payment of the secured receivables.
- (3) The Customer is obligated to promptly notify K.W. in writing of any attachment of the Reserved Products by a third party, including but not limited to a pledge, as well as of any other third party detriment to K.W.'s security interest and damage or destruction of the Products, if any. The Customer has to hand-over to K.W. any Documentation required to intervene, to assist K.W. in such measure to the extent reasonable, and to bear any reasonable intervention costs incurred by K.W..
- (4) The Customer is entitled to use and resell the Reserved Products in the ordinary course of business unless he has already assigned claims from such resale to a third party. He is obligated to reserve title vis-à-vis the purchaser until full payment. The Customer hereby, moreover, assigns any and all claims against the purchaser in connection with the resale of the Reserved Products to K.W. to secure the secured receivables. K.W. accepts the assignment.
- (5) After assignment of the claims, the Customer is entitled to collect the receivables from any resale. K.W.'s collecting power shall not be affected thereby. As long as the Customer properly observes his payment obligation, K.W. will not assert any claims by itself. The Customer has to disclose the third party debtor and notify him of the assignment at K.W.'s request. Regardless thereof, K.W. is also entitled to notify the third party debtor of any assignment. The Customer undertakes not to assign any receivables from the resale of the Reserved Products to third parties, not to refer to defenses under an existing prohibition of assignment, if any, and not to agree upon a prohibition of assignment with the third party debtor.

- (6) The Customer is entitled to treat or process the Reserved Products. The treatment or procession of the Reserved Products by the Customer shall always occur for and on behalf of K.W.. If the Reserved Products are processed by using objects which are not from K.W. K.W. shall acquire joint title to the new object in proportion of the value of the goods delivered by K.W. to the value of the other processed objects. Para. 1, 4 and 5 above also apply to the new object created on K.W.'s behalf and K.W.'s joint title respectively. This also applies if the Reserved Products are connected or mixed with other objects which are not from K.W.. If K.W.'s title expires due to such connection or mixing, the Customer hereby assigns any title he may have to the extent of the value of the Reserved Products. Para. 1, 4 and 5 above also apply in this case to any arising joint title.
- (7) K.W. hereby undertakes to release the provided security at its option insofar as its value exceeds the value of the claim to be secured by more than 10%.
- (8) In case of an act performed by the Customer contrary to the contract, including but not limited in the event of a default in payment or breach of an obligation pursuant to para. 2 and 3 above, K.W. is entitled to rescind the contract in accordance with statutory provisions and to claim return of the Reserved Products on the basis of the reservation of title and rescission of the contract. If the Customer fails to pay the purchase price, K.W. may exercise such rights only if it has set a reasonable period for payment which has expired without results or if the setting of such period is not required under statutory provisions.

Section 7 - Resale and Delivery

- (1) The Customer is obligated to comply with applicable laws, including but not limited to the German Act against Unfair Competition ("*UWG*") and provisions under medical product and/or pharmaceutical law or pharmaceutical provisions on his own responsibility when he resells or delivers K.W.'s Products.
- (2) Para. 1 above also applies if the Customer has processed or mixed K.W.'s Products with other objects.
- (3) The Customer is not entitled to use K.W.'s registered trademarks for goods not manufactured by K.W. or processed Products without K.W.'s prior written approval.
- (4) Unless otherwise agreed upon, the Customer is entitled to sell and deliver the Products only if they are complete (including packaging, operating manuals, warning notices, etc.). Products available for clinical use are only intended for use in hospitals and may only be resold as a whole and not in partial amounts and only in the original packaging. This does not apply to deliveries made within the scope of an officially approved supply contract by supply pharmacies pursuant to Section 14 of the German Pharmacy Act ("*ApoG*"). Any supply of other customers with products available for clinical use is only permissible if these customers themselves resell such products available for clinical use to hospitals or supply pharmacies pursuant to Section 14 *ApoG*.
- (5) The Customer is notified that Products may be subject to export or import control. Each contracting party is responsible on its own to observe the respective export and import regulations.

Section 8 - Statute of Limitations

- (1) The mutual claims of the contracting parties shall become time-barred in accordance with statutory provisions unless hereinafter otherwise provided for.
- (2) Notwithstanding Section 438 para.1 no. 3 *BGB*, the general limitation period for claims based on defects of quality or title shall be one (1) year after delivery and/or the passing of risk. If and to the extent acceptance has been agreed upon, the statute of limitations commences upon acceptance.
- (3) The statutory statute of limitations for third party claims for return in rem (Section 438 para. 1 no. 1 *BGB*), in case of K.W.'s intentional behavior (Section 438 para. 3 *BGB*), for recourse claims of the supplier (Section 479 *BGB*), under the German Product Liability Act (*ProdHaftG*), the German Medical Devices Act (*MPG*) and the German Drug Law (*AMG*) as well as for claims for damages set forth in section 6 para (2) and (4) of Part 1 shall remain unaffected. In these cases, the statutory provisions on the statute of limitations exclusively apply.

Part 3: Additional Terms and Conditions for Service Contracts

Section 1 - Scope of Application

- (1) These Additional Terms and Conditions for Services ("**Service Terms**") apply in addition to the GTC (printed above) to the extent K.W. undertakes to provide Services (Sections 611 et seq. *BGB*) as defined by section 1 para. (2) lit. (b) of the GTC.
- (2) In the event of conflicts between the Service Terms and the GTC in the individual case, the Service Terms shall prevail to the extent required to resolve such conflicts.

Section 2 - Warranty, Customer's Rights in case of Insufficient Performance, Statute of Limitations

- (1) K.W. will perform the ordered Services according to the current state of science and technology by applying its existing own knowledge and experience or own knowledge and experience gained during the term of the contract as well as by applying its best efforts.
- (2) Within the scope of performance, K.W. shall only owe the proper provision of the Services by applying best care. K.W. thus only warrants compliance of the results specified in the respective report(s) with the results obtained within the scope of the Services according to the current state of scientific knowledge. Otherwise, any warranty is excluded. K.W. particularly does not assume any warranty for the achievement of the specified objective of the project and/or the fitness of the results for a specific purpose or the further procession or use of the results by the Customer. Section 6 para. (2) through (6) of Part 1 of the GTC applies accordingly.
- (3) Notwithstanding Section 195 *BGB*, the general limitation period shall be one (1) year as from the statutory commencement of the limitation period (Section 199 *BGB*). Claims under the German Product Liability Act (*ProdHaftG*), the German Medical Devices Act (*MPG*) and the German Drug Law (*AMG*) as well as the claims for damages set forth in section 6 para. (2) and (4) of Part 1 of the GTC shall remain unaffected. In these cases, the statutory provisions on the statute of limitations exclusively apply.
- (4) Furthermore, K.W. does not assume any warranty that the Services or the use of the results do not infringe third party industrial property rights. Section 7 of Part 1 of the GTC applies accordingly.

Section 3 - Term, Termination

- (1) Unless the service contract does not have a fixed term or provides otherwise, the contract shall run for a period of six (6) months as from its conclusion. If neither party terminates the contract by giving at least three (3) months' written notice prior to the expiration of the respective term, the contract shall automatically extend for another six (6) months.
- (2) The parties' statutory right to terminate the contract for cause (*wichtiger Grund*) without prior notice shall remain unaffected.

Part 4: Additional Terms and Conditions for Works

Section 1 - Scope of Application

- (1) These Additional Terms and Conditions for Contracts of Work ("**Terms of Work**") apply in addition to the GTC (printed above) if the Customer requests the creation of a Work as specific result (Section 631 et seq. *BGB*) and K.W. expressly undertakes to effect such Work.
- (2) In the event of conflicts between the Terms of Work and the GTC in the individual case, the Terms of Work shall prevail to the extent required to resolve such conflicts.

Section 2 - Acceptance, Passing of Risk

- (1) The Customer shall bear the risk of accidental loss of or damage to the Work as from the time of its acceptance.
- (2) If the Customer does not accept the Work, even though the Work is in accordance with the contract, K.W. is entitled to request the Customer to accept the Work within a reasonable additional period set by it. If the Customer does not accept the Work within the additional period, the Work is deemed to have been accepted.

Otherwise, the statutory provisions regarding acceptance of works and section 4 para. (2) of Part 2 referring to a default of acceptance apply in case of failed acceptance.

- (3) If the creation of the Work by K.W. is delayed, the Customer shall only be entitled to rescind the contract if K.W. is responsible for the delay and if a reasonable additional period set by the Customer to create the promised Work has expired without results.

Section 3 - Quality, Customer's Rights in case of Defects, Duty to Inspect the Work

- (1) K.W. will use commercially reasonable efforts according to the current state of scientific knowledge to provide the Work to the Customer as agreed upon by the parties. Unless otherwise contractually agreed upon, K.W. only owes the Work being suitable and having the quality for the purpose as is usual and customary for works of the same kind and which the Customer may expect from such kind of work. K.W. exclusively warrants compliance with accepted standards of technology, application of scientific care and the provision of the agreed Services by qualified personnel but not the Work's fitness for a particular purpose or for further processing or use of the Work by the Customer unless otherwise expressly agreed upon in the contract.
- (2) The unconditional acceptance of the Work excludes all other rights and claims of the Customer for defects already identifiable at the time of acceptance. The assertion of claims for defects not identifiable at the time of acceptance is excluded unless the Customer notifies K.W. in writing of the defect without undue delay upon identification of the defect.
- (3) The Customer's rights in case of defects of the Work are subject to the respective provisions of section 5 para (7) through (10) of the Sales Terms (Part 2).

Section 4 - Statute of Limitations

- (1) The mutual claims of the contracting parties shall become time-barred in accordance with statutory provisions unless hereinafter otherwise provided for.
- (2) Notwithstanding Section 634a para. 1 *BGB*, the general limitation period for claims based on defects of quality or title shall be one (1) year after acceptance.
- (3) The statutory statute of limitations in case of K.W.'s intentional behavior (Section 634a para. 3 *BGB*), for claims under the German Product Liability Act (*ProdHaftG*), the German Medical Devices Act (*MPG*) and the German Drug Law (*AMG*) as well as for the claims for damages set forth in section 6 para. (2) and (4) of Part 1 of the GTC shall remain unaffected. In these cases, the statutory provisions on the statute of limitations exclusively apply.