

# NIKKISO Medical Europe GmbH

## General Terms and Conditions of Sale and Services (Export)

Date: 2024-04-18

### A.

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

##### Section 1. Scope of Application

- (1) The following General Terms and Conditions of Sale of Products and Services of NIKKISO Medical Europe GmbH (hereinafter referred to as "**Terms and Conditions**") shall apply exclusively to the sale of products notwithstanding whether manufactured by NIKKISO Medical Europe GmbH or just sold by it (hereinafter referred to as "**Good(s)**") and services of NIKKISO Medical Europe GmbH (hereinafter referred to as "**NME**") outside of Germany and if these Terms and Conditions have been included in the contract in connection with the order.
- (2) Any conflicting conditions, conditions deviating from NME's Terms and Conditions or conditions by the customer (hereinafter referred to as "**Customer**"), which change the Terms and Conditions, are herewith rejected; they shall only be valid vis-à-vis NME if NME agrees to such changes in writing. Equally, NME is not bound insofar as the terms of business of the Customer deviate from applicable statutory provisions. This rejection shall apply in particular if a Customer places an order with reference to its general terms and conditions.
- (3) NME's Terms and Conditions shall also be the basis for all future transactions between the Customer and NME.
- (4) **These Terms and Conditions shall only apply vis-à-vis merchants, private and governmental entities.**

##### Section 2. No Re-Export to Russia

- (1) The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any Goods supplied under these Terms and Conditions that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.
- (2) The Customer shall undertake its best efforts to ensure that the purpose of para. (1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- (3) The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of para. (1).
- (4) Any violation of para. (1), (2) or (3) shall constitute a material breach of an essential element of the contract concluded under these Terms and Conditions, and NME shall be entitled to seek appropriate remedies, including, but not limited to:
  - (i) termination of the respective contract; and
  - (ii) a penalty. The amount of the penalty shall be determined by NME in its reasonable discretion, taking into account the circumstances of the individual case, in particular the seriousness of the breach, the extent of the breach and its effects, and shall, in the event of a dispute, be reviewed by the court having jurisdiction pursuant to Section 21 para. (2).
- (5) The Customer shall immediately inform NME about any problems in applying para. (1), (2) or (3), including any relevant activities by third parties that could frustrate the purpose of para. (1). The Customer shall make available to NME information concerning compliance with the obligations under para. (1), (2) and (3) within two weeks of the simple request of such information.

##### Section 3. 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**"), NME may accept such order within twenty-one (21) days of receipt of the order by NME. Oral agreements shall only be binding on NME to the extent that NME confirms such agreements in writing. NME shall designate one manager responsible for the transaction, who shall be able to give and accept binding declarations on behalf of NME.
- (2) NME unrestrictedly reserves all industrial property rights and copyrights to cost estimates, drawings, and other documents; they may only be furnished to third parties with the prior written consent of NME. All of the documents referred to in Sec. 2 para. 1 of these Terms and Conditions as well as the cost estimates, drawings and other documents pertaining to quotations, which were handed or transmitted to the Customer, shall be returned promptly to NME upon the order has been processed or has not been placed with NME. The Customer's documents may be disclosed and conveyed to such third parties to whom NME permissibly subcontracts or assigns in part or in full deliveries or services. For clarification: NME may at its discretion without any restrictions use – even on a commercial basis – the documents drawn up and/or exchanged between NME 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 NME's prior written consent, whereas this stipulation is without prejudice to the rights of cancellation for good cause. Insofar as NME grants the required consent to the cancellation of an order in writing in individual cases, the Customer shall pay to NME – whereas such consent does not incur any additional legal obligation upon NME – twenty percent (20 %) of the agreed price, plus any value-added tax or sales taxes, as the case may be, shall be due and payable. This shall not apply if NME proves that its loss is higher, or the Customer proves that the loss is lower in individual cases.
- (4) Fulfilment of the contract by NME 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, imposed sanctions or other restrictions). The contracting parties undertake to obtain all information and documents necessary for export, intra-Community transfers or import, and to make them available to each other in due time. If delays arise as a result of export inspections or approval procedures, these shall take precedence over the deadlines and delivery times agreed between the contracting parties. If and to the extent that necessary approvals for the execution of the contract are not granted, the contract shall be deemed not to have been concluded with regard to the parts concerned; compensation claims for any damages arising from this and for damages due to the aforementioned delay are excluded.
- (5) NME is entitled to use the services of its affiliates and other third parties as sub-contractors to perform its obligations under this contract.

##### Section 4. Quotation, Price

Quotations by NME are non-binding and subject to change, unless they are concrete, customized, approved by NME's manager responsible and in writing. To the extent that nothing else has been stipulated, NME 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 NME) Incoterms 2020 including packing, plus the statutory value-added tax or sales taxes as the case may be, shall apply.

##### Section 5. Retention of Title

- (1) The following retention of title shall apply as security for all existing, present, and future claims of NME against the Customer arising from the contractual relationship(s) between the parties, including balance claims from a current account relationship limited to this supply relationship.
- (2) The delivered Goods remain NME's property until the full payment (including interest if any) by Customer to NME for all Goods sold hereunder and all other debts owed by the Customer to NME. If the realizable value of the securities exceeds NME's claims against the Customer by more than 10%, NME shall release securities of its choice at the Customer's request.
- (3) The Customer shall handle the Goods with due care, take any measures necessary to secure the property of NME – or to procure equivalent security rights in the country of his place of business and in any different country of designation – and he shall provide related evidence whenever requested by NME. Noncompliance with such obligation constitutes a fundamental breach of contract. The Customer shall maintain suitable insurance for the Goods and, to the extent necessary, carry out service and maintenance of the Goods.
- (4) If NME withdraws from the contract due to a breach of contract by the Customer – in particular, a default in payment -, NME shall be entitled to demand the return of the reserved Goods and to take possession of the Goods.

##### Section 6. Terms of Payment

- (1) Payments are to be made to NME's pay office within the agreed time allowed for payment and without any deductions, or if nothing else has been agreed, payments are to be made by irrevocable letter of credit on the Customer's expense. The date on which NME has finally and unconditionally received the payment (in particular, a final and unconditional credit of the payment to the account of NME in case of stipulation of a bank wire transfer) shall be decisive for the compliance of the Customer with the period for payment agreed upon between NME and the Customer.
- (2) If the Customer does not comply with a notice to pay from NME, which is sent after the agreed time allowed for payment, the Customer shall be in default. If a calendar day has been contractually stipulated for the payment, the Customer shall be in default without having received a notice to pay if the Customer does not pay on time. If the payment day has neither been contractually stipulated nor agreed separately by both parties, payment due date shall be 30 days after the shipment date. In the event of default, NME may require the Customer to pay NME interest for arrears on the overdue payment at annual rate of nine (9) percentage points above the German Bundesbank's respective basic rate of interest (*Basiszinssatz*), which shall accrue from the initial due date of the payment. If NME is able to prove higher losses as a result of the default, NME shall be entitled to demand from the Customer compensation for such higher losses. However, the Customer is entitled to prove that NME incurred no losses or significantly lower losses as a consequence of the default in payment. NME's statutory rights remain unaffected hereby.
- (3) The Customer may only set off counterclaims or withhold payments due to such claims to the extent that NME's counterclaims are undisputed or have been finally adjudicated or with a claim arising out of the same contractual relationship and resulting from NME's failure to perform a contractual obligation in whole or in part or from NME's inability to perform a contractual obligation adequately.

##### Section 7. Deadline for Deliveries or Services

- (1) Any binding or non-binding delivery dates agreed shall be provided in the individual contract in writing. Compliance is subject to correct and timely delivery to NME by its suppliers unless NME is responsible for the delay of its supplier. Compliance with delivery deadlines and delivery dates is, among others, 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 approvals of plans, and compliance with the agreed terms of payment and other obligations of the Customer. If these prerequisites are not fulfilled in time, the deadline shall be extended accordingly by the duration of the respective delay, or new delivery dates shall be agreed. Furthermore, NME is entitled to demand compensation for any costs, damage or loss incurred hereby.
- (2) For deliveries, a deadline shall be deemed complied with, if the ready-to-use shipment is dispatched within the agreed delivery or service period or has been collected by a common carrier. In the event that the dispatch is delayed for reasons for which the Customer is responsible, the deliveries shall be deemed to be fulfilled within the agreed period upon notification that the shipment is ready for dispatch within the agreed period. The remaining statutory prerequisites pertaining to a default in receipt of the delivery shall remain unaffected hereby.
- (3) NME shall not be liable for any impossibility or delay in delivery or service if such impossibility or delay is caused by Force Majeure – i.e. circumstances or incidents beyond the reasonable control of NME which could not have been prevented despite due care by NME which prevents NME from performing its obligations under a contract (such as, but not limited to, acts of God, war or armed conflicts, sanctions, blockades, embargoes, national emergencies, natural disasters, pandemics/epidemics, lawful industrial action such as strikes or lockouts, floods, earthquakes, natural disasters, transport delays, unavoidable shortages of labour, energy or raw materials, difficulties in obtaining necessary official permits, official measures or the non-delivery, incorrect or untimely delivery by suppliers despite a congruent hedging transaction concluded by NME). Force Majeure shall suspend NME's contractual obligations for the duration of the disruption and the scope of its impact and in case the performance of delivery or the services is or becomes impossible, shall be excluded. Such circumstances or incidents entitle NME to postpone the delivery or the service by the duration of the impediment plus a suitable start-up period or to declare to withdraw from or cancel the contract either wholly or partly with regard to the not yet performed part of the contract. In case of a postponement of delivery or rendering the services, NME shall – as far as possible – inform the Customer regarding the estimated endurance of such postponement. If such circumstances or incidents exceed the period of one (1) month, the Customer is entitled, after setting a suitable grace period, to withdraw or cancel the contract regarding the not yet performed portion of the contract, however, those parts of the delivery and/or services already

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delivered and/or rendered until such circumstances or incidents occurred, have to be remunerated by the Customer. The Customer shall not have any other claims.

- (4) Insofar as the Customer is in arrears with a liability vis-à-vis NME, NME's delivery obligation shall be suspended.
- (5) If the Customer is in default of the receipt of a delivery, NME may store the Goods at the Customer's risk and expense. As of the beginning of such storage, NME 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 NME, 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 NME have not occurred or are substantially lower than the lump sum fee demanded by NME according to the regulations of the foregoing sentence.
- (6) NME shall be entitled to make partial deliveries only if
  - a) the Customer can use the partial delivery within the scope of the contractual purpose,
  - b) the delivery of the remaining ordered Goods is ensured, and
  - c) the Customer does not incur significant additional expenses or costs (unless NME agrees to bear such costs).

**Section 8. Passing of Risks**

- (1) If shipment or handover of Goods is delayed due to circumstances for which the Customer is responsible, the risk shall pass to the Customer on the day NME is ready to ship or hand over and notifies the Customer thereof.
- (2) Without limiting the scope of the preceding Sec. 7 para. (1), the risk of accidental loss and accidental deterioration of the Goods shall pass to the Customer – even in the case of partial deliveries – once the Goods are handed over to the common carrier, or delivered to the forwarding agent, the carrier or other persons or institution designated to carry out the shipment. The Goods shall be packed with the customary care. Goods will be shipped at NME's best discretion. At the Customer's written request and expense, NME will insure the shipment against damage due to breakage, transportation and fire.

**Section 9. 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 loses the right to rely on a lack of conformity of the Goods or the documents which could be discovered when taking them over if he does not give notice to NME specifying in detail the nature of the lack of conformity without undue delay, but not later than one week after he has taken them over. If circumstances indicating a lack of conformity of the Goods arise after the Customer has taken them over, he loses the right to rely on the lack of conformity if he does not verify such lack of conformity by appropriate examination of the Goods without undue delay and if the Customer does not give notice thereof to NME within one week after he has verified the lack of conformity. The Customer shall lose his right to rely on a lack of conformity of the Goods or documents, notwithstanding whether he has a reasonable excuse for failing to give the required notice. The Customer's rights resulting from a lack of conformity of the Goods shall be excluded upon the expiration of a period of one (1) year after delivery of the Goods. However, this exclusion shall not apply to the right of recourse according to Sections 445a, 445b German Civil Code (BGB); these provisions' statutory limitation periods remain unaffected.
- (2) If the Goods lack conformity and NME is responsible under statutory or contractual regulations for such lack of conformity, NME reserves the right, even after the date of delivery, to first attempt to rectify the defect, either by subsequent delivery or subsequent improvement (hereinafter referred to as "Subsequent Performance"), at NME's discretion. If NME's choice of Subsequent Performance is unacceptable to the Customer in the individual case, the Customer may refuse NME's choice. The Customer shall not be entitled to withdraw from the contract unless a lack of conformity constitutes a fundamental breach of contract and is not remedied by NME within a reasonable grace period of at least six (6) weeks to be notified by the Customer. In the event of Subsequent Performance, NME is obliged to bear all of the expenses for this purpose, in particular, transport, labor, and material costs, to the extent that such costs are not increased because the Goods have been brought to a place that is different from the original destination.
- (3) If Subsequent Performance fails, is impossible or is seriously and finally rejected by NME overall, or is unreasonable for the Customer, the Customer shall be entitled to reduce the purchase price or to withdraw from the contract at the Customer's discretion.
- (4) The content of the confirmed order is the determinant of the object of the sale. Information provided by NME on the subject matter of the delivery or service (e.g., weights, dimensions, utility values, load capacity, tolerances, and technical data) as well as representations thereof (e.g., drawings and illustrations) shall not constitute an agreement as to quality; they shall only be decisive if the usability for the contractually intended purpose requires exact conformity with such information and/or representations. With regard to the quality of the Goods, only the manufacturer's product description shall be valid, whereas public statements, promotions or advertising of the manufacturer do not represent any contractual indication of the quality of the Goods. Deviations that are customary in the trade and deviations based on legal regulations or that represent technical improvements, as well as the replacement of components by equivalent parts, are permissible insofar as they do not impair the usability under the objective requirements or contractually agreed special subjective requirements.
- (5) If NME's manuals, specifications, statements about suitability, processing and application of Goods are not complied with by the Customer or any party, if changes are made to the Goods by any party other than NME (or a party designated by NME), or if parts or modules of Goods, which do not correspond to the original specifications, or non-genuine parts or modules are used for the Goods, NME shall not be liable for defects, unless the Customer proves that the defects were not caused by or based on the aforementioned measures.
- (6) NME does not issue a warranty of condition to the Customer.
- (7) The performance of the contract by NME is subject to the proviso that there are no impediments to delivery or performance in the form of relevant national or international regulations (in particular, export control regulations, embargoes, or other restrictions). The Customer shall comply with all statutory and/or official regulations, laws, instructions, decisions and/or statutes that affect the Customer and its enterprise as well as the sale and service of the Goods. Solely the Customer shall be obliged to check if and to what import or export restrictions apply for the Goods; in case of existence of such import or export restrictions, the Customer shall be obliged to obtain the license for the import or export on his own costs. The Customer will pay all taxes, license fees, permit fees or registration fees and other costs and charges connected with the establishment and/or the operation of the Customer's business as well as the sale and service of the Goods, insofar as such exist.

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

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

**Section 11. Restrictions on Liability and Statutes of Limitation**

- (1) The liability of NME to pay compensation, irrespective of the legal basis, in particular due to impossibility of performance, default, defective or incorrect performance, infringement of contractual obligations, violation of obligations during contract negotiations and unlawful actions, insofar as it is at fault, shall be limited in accordance with this Sec. 10.
- (2) NME's as well as its institutions', legal representatives', employees' and other vicarious agents' liability in case of Force Majeure within the meaning of Sec. 6 para. (3) shall be excluded. The same shall apply in case of slight negligence unless material contractual obligations are violated. Contractual obligations, the fulfillment of which is a prerequisite for enabling the proper fulfillment of the agreement in the first place and in which the Customer may normally trust, shall be considered material.
- (3) Insofar as according to the preceding Sec. 10 para. (2), NME bears liability to pay compensation in principle, such liability shall be limited to damages which NME could have foreseen as a result of a breach of contractual obligations or under the circumstances, which have been known or should have been known to NME, applying due diligence. In addition, any liability for indirect damages and consequential damages as well as loss of profits and damages in reputation is excluded.
- (4) Insofar as NME provides technical advice or performs consulting work and such advice or consulting work does not belong to the contractual obligations of NME, such advice and consulting work shall be provided free of charge and under exclusion of any liability. Sec. 16 para. (1) remains unaffected.
- (5) The exemptions or limitations from liability according to this Sec. 10 shall not apply to the liability of NME due to wilful misconduct, guarantee of constituent element or damages to life, limb or health as well as NME's liability according to the provisions of the German Product Liability Act
- (6) Claims to compensation of the Customer shall become time-barred within twelve (12) months after the claim arises, and the Customer knows or should have known of the circumstances giving rise to the claim and of the identity of the debtor, unless such claims are based on NME's wilful misconduct, injury to life, limb and health, the provisions of the German Product Liability Act, or warranties given. In these cases, the statutory limitation periods shall apply.

**Section 12. Rights of Use**

- (1) NME shall grant the Customer the non-exclusive, non-transferable right to the delivered Goods and the results of NME's services provided by NME allowing the Customer to use such results within the contractually stipulated purpose. The Customer alone shall be liable for any usage going beyond what was contractually stipulated and for any resulting breaches of industrial property rights.
- (2) The Goods are designed, authorized or warranted to be suitable for the use only according to the scope of the manufacture's product description with regard to the applicable directive. NME accepts no liability for Goods incorporated and/or used in equipment or applications which is/are not allowed in the manufacture's product description and therefore such inclusion and/or use is the Customer's own risk.
- (3) The Customer is obliged to notify NME 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 13. Industrial Property Rights**

- (1) In accordance with this Section 12, NME warrants that the Goods are not encumbered with industrial property rights or copyrights of third parties. Each party shall immediately notify the other party in writing if claims are asserted against it based on the infringement of such rights.
- (2) In the event that Goods infringe upon the industrial property rights or copyrights of a third party, NME shall, at its option and expense, either modify or replace the Goods so that the rights of third parties are no longer infringed upon, but the Goods continue to perform the contractually agreed functions, or procure the right of use for the Customer by entering into a suitable agreement. If NME fails to do so within a reasonable period of time, the Customer shall be entitled to withdraw from the contract or to reduce the purchase price accordingly. Any claims for damages by the Customer shall be subject to the limitations of Section 10 of these GTC.
- (3) In the event of products supplied by NME but manufactured by third parties infringe upon industrial property rights of a different third party, NME shall, at its discretion, either assert its claims against the manufacturers and suppliers for the account of the Customer or assign such claims to the Customer. In such cases, claims against NME shall only exist if the judicial enforcement of the aforementioned claims against the manufacturers and suppliers has been unsuccessful or is futile, e.g. due to insolvency, and only in accordance with the above Section 12 para (2).

**Section 14. Secrecy and Data Protection**

- (1) The Customer is obligated to keep secret all sales documents, specifications and price lists received, as well as other documents and information (hereinafter referred to as "Confidential Information") and to impose same obligation on its vicarious agents and employees accordingly. Items owned by NME shall be kept so that they cannot be made accessible to unauthorized third parties. Confidential Information and items owned by NME may only be disclosed to third parties after NME's express consent in writing. This duty of secrecy shall apply unless such Confidential Information becomes public knowledge without the Customer's fault.

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- (2) Unless otherwise expressly agreed in writing, the information submitted to NME by the Customer in connection with orders shall not be considered confidential.
- (3) NME advises the Customer that NME processes and stores personal data arising from the contractual relationship following the relevant data protection laws and regulations and reserves the right to disclose such data to third parties (e.g., insurance companies) to the extent necessary for the performance, execution or termination of the contract or for the assertion of contractual claims and to the extent permitted by law. (4) NME may include the Customer's name in its own list of references and use this vis-à-vis third parties.

**Section 15. Legal Succession, Reorganization**

- (1) Should NME undergo a reorganization through a change in its legal form while preserving its identity or through a change in its legal personality due to a merger, split-up or transfer of assets, the contract concluded by and between NME 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, NME shall be entitled to transfer the contracts concluded by and between NME and the Customer to a company affiliated with NME together with all of the rights and duties pertaining thereto without the Customer's consent.
- (3) Moreover, NME shall be entitled to use the services of any company affiliated with NME and other third parties as sub-contractors to fulfill its obligations under such a contract without the Customer's consent. In such cases, NME shall also be responsible for the contractually stipulated performance of the agreed obligations vis-à-vis the Customer, and for the deployment of enough qualified personnel to provide the services and to administer Customer claims.
- (4) NME reserves the right to assign its rights and obligations from the contractual relationship with the Customer to third parties. In such case, NME may disclose Customer's data to third parties. Unless otherwise contractually agreed, and with the exception of monetary receivables of the Customer against NME, the Customer is not entitled to assign rights and obligations arising from the contractual relationship with NME to third parties.

**B.**

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

**Section 16. Service Provision**

- (1) NME shall provide its services at its own discretion and in compliance with any existing manufacturer's specifications and recommendations through its officials, employees, or sub-contractors (hereinafter referred to as "Service Providers"). NME may replace the Service Providers either wholly or partly.
- (2) As a matter of principle, NME shall render its services at its respective branch office. When necessary, the parties shall reach an agreement concerning the provision of services at the Customer's premises or at the premises of a third party, designated by the Customer.
- (3) In case NME renders maintenance services regarding hemodialysis machines (each a "Device" and jointly "Devices"), such services are performed in compliance with the relevant German laws and regulations in force at the given time. If and to the extent nothing contrary has been agreed upon between the Parties in writing, the following definitions of the following notions shall be valid and decisive:
  - a) **Maintenance** designates a combination of all technical and administrative measures and management measures during the life cycle of a Device for the preservation of the serviceability of the Device or the restoration of the same, in accordance with the periods designated by the manufacturer. Maintenance in particular includes the measures known as (i) upkeep, (ii) inspection, (iii) repair, (iv) improvement and (v) analysis of weaknesses;
  - b) **Upkeep** designates all measures for the preservation of the nominal condition of a Device and includes in particular the (i) preparation of a maintenance plan with binding character taking into account specific circumstances of the individual Device, (ii) preparation of the implementation of Upkeep measures and (iii) implementation of Upkeep measures and feedback;
  - c) **Inspection** designates all measures for the determination and assessment of the actual condition of a Device, including the determination of the causes leading to the deviation from the nominal condition, the degree of wear and tear, and the development of necessary consequences for the restoration of the nominal condition. Measures of an inspection include the (i) preparation of a plan for the determination of the actual condition, (ii) preparation of the performance of the determination of the actual condition, (iii) performing the determination of the actual condition, (iv) submission of the result as to the actual condition, (v) evaluation of the results regarding the determination of the actual condition and (vi) development of the necessary consequences on the basis of the evaluation in order to restore the nominal condition;
  - d) **Repair** designates all measures for the restoration of serviceability (nominal condition) of a Device, with the exception of improvements. Repair measures include the (i) work order, order documentation and analysis of the contents of the order, (ii) planning in terms of showing and assessing alternative solutions, (iii) decision in favor of a solution, (iv) preparation of the implementation of the Repair, including, calculation, scheduling, coordination, provision of personnel, resources and materials, (v) preparation of work schedules, (vi) implementation of Repair, (vii) functional test and acceptance (viii) notice of completion and (ix) evaluation, including documentation.

**Section 17. Details of Service Provision**

- (1) All the services will be properly rendered by suitably qualified Service Providers acting with reasonable care. The test media and measurement devices as well as inspection instruction, work instruction and certification, necessary to render maintenance services regarding the Devices shall be provided by NME.
- (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, such maintenance services shall be provided at the place of operation of the Device on business days Monday through Friday between 08:00 am and 05:00 pm.
- (3) If NME has presented the services in writing, then only the written presentation shall prevail.

- (4) NME is entitled to refuse the performance of maintenance services for a Device if the Device shows unacceptable visible soiling (e.g. fluids and/or blood have entered the Device) and special measures to clean and disinfect the Device (hereinafter referred to as "Decontamination") have to be taken before the commencement of the maintenance in order to avoid any endangerment of the Service Provider. If the maintenance is refused based on such unacceptable soiling, this shall be documented by the Service Provider. In any such event, the decision regarding the performance of the maintenance shall exclusively be within NME's, respectively the Service Provider's, sole discretion.
- (5) In special cases (e.g. endangerment of Service Providers), NME is entitled to carry out the Decontamination and to charge these services separately.

**Section 18. Customer's Obligation to Cooperate and to Notify NME**

- (1) The Customer or the third party designated by the Customer shall assist NME in the elimination of impediments/obstacles/shortcomings of the services to the extent necessary. NME will make every effort to eliminate such impediments/obstacles/shortcomings within a suitable period of time.
- (2) The Customer in particular is obliged to
  - a) provide the Service Providers with an appropriate workstation. In addition, in case of conducting maintenance services, the Customer shall be obliged to provide all required supplies and equipment allowing for the operation of the Devices;
  - b) make the Devices for which maintenance services are to be provided available free from visible soiling and contamination, with the surfaces wiped with a disinfectant and the hydraulic system (dialysis system) disinfected using the automatic disinfection program. If for technical reasons an automatic disinfection of the dialysis system is impossible, the Customer must clearly mark the Device with a warning notice to this effect and at the same time notify the Service Provider thereof;
  - c) separately and expressly notify the Service Provider, at the time of ordering and/or making an appointment for rendering maintenance services, if a Device scheduled for maintenance was used for the treatment of patients with a contagious disease and/or a notifiable infectious disease (including, but not limited to, hepatitis, MRSA, HIV) and clearly mark the Device with a warning notice to this effect;
  - d) undertake a visual check of the Devices on a daily basis and to pay attention to extraordinary text messages on the screens. Such incidents have to be recorded by the Customer and are to be submitted to NME without delay;
  - e) to maintain at all time accessories regarding the Device itself or its operation in excellent condition. (hereinafter jointly referred to as the "Cooperation Obligations")
- (3) 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 NME or its Service Providers arising from or in connection with the infringement of the Cooperation Obligations.
- (4) In case NME renders maintenance services, the Customer shall be obliged to notify NME without delay in writing (e-mail or fax sufficient) of any decommissioning, replacement, or any other reason for putting the Device out of service, and of each purchase and commissioning of an additional Device. The same shall apply if the Customer and NME have concluded a spare parts delivery agreement, based on which NME delivers spare parts for the Devices to the Customer.

**Section 19. Termination of the Contract**

- (1) If not otherwise agreed between the Parties, each Party may terminate the service contract, even without good cause, at any time with a notice period of three (3) months to the end of a month.
- (2) Either party may terminate the service contract without notice if the other party
  - a) fails to comply with a material term of the contract which may trigger considerable disadvantages from a reasonable commercial point of view; or
  - b) suffers a material deterioration in its financial circumstances, which justifies the expectation that it will be unable to meet its contractual obligations in the long term.
- (3) These provisions shall not affect any claims such as damages that the party terminating the contract may have.
- (4) Terminations must be made in writing to be valid.

**C.**

**Final Provisions**

**Section 20. Customer's Duties to Cooperate**

- (1) The Customer shall provide NME with access to the information required for NME's activities at any time, and in particular, furnish documents and give instructions to the Customer's own employees to provide information. The Customer will inform NME of all circumstances relevant to the effective provision of deliveries or services without delay.
- (2) At NME's request, the Customer shall confirm in writing the correctness and completeness of the documents submitted and the information provided by the Customer.
- (3) If the Customer fails to comply with its duty to cooperate with NME despite a written warning notice within a reasonable deadline set in such warning notice or if the Customer repeatedly and seriously fails to uphold its contractual obligations, NME shall be entitled to cancel or terminate the contract with the Customer without notice in whole or in part. Besides this right of cancellation and termination, NME shall have a right to claim compensation for any and all damage or loss incurred by NME for such non-compliance or failure of Customer's duty/obligation or additional expenditure caused hereby.
- (4) Customer agrees that all of the duties of cooperation outlined in this Sections 17 and 19 are material primary duties of the Customer.

**Section 21. Applicable Law, Choice of Venue**

- (1) The provisions of the CISG shall apply. With respect to the matters not governed by the CISG, the laws of the Federal Republic of Germany shall apply without recourse to the international private law. The provisions of the Incoterms 2020 shall apply subsidiarily.
- (2) Unless mandatory statutory provisions provide otherwise, the forum and venue for all disputes arising between NME and the Customer arising from or in connection with the

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contract and/or these Terms and Conditions (including their validity and interpretation) shall be the courts at Hanover.

**Section 22. No Waiver**

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

**Section 23. Miscellaneous**

If one or several provisions of these Terms and Conditions or the respective contract are or become completely or partially invalid, void or unenforceable, the validity of the remaining provisions of these Terms and Conditions and/or the contract shall remain unaffected. Sec. 139 German Civil Code (*BGB*) shall expressly not be applicable. The same shall apply if these Terms and Condition and/or the contract contain a gap. The Parties are obliged to negotiate on a provision in place of the invalid, void or unenforceable provision or the gap, which, as far as legally possible, comes closest to what was intended by the Parties or what the Parties would have agreed upon, taking into account the meaning of the invalid, void or unenforceable provision or gap.