

TERMS & CONDITIONS**GENERAL TERMS AND CONDITIONS OF SALE
GEKA GMBH (INTERNATIONAL)**

These Terms and Conditions can be found on the Internet under www.geka-world.com.

1. General

1.1 The agreement between the Sulzer legal entity referring to these General Terms and Conditions of Sales (hereinafter referred to as "SUPPLIER") and the ordering entity (hereinafter referred to as "BUYER") for products to be delivered by the SUPPLIER and any services to be rendered (hereinafter referred to as "DELIVERY" OR "DELIVERIES") shall only be legally binding to the extent of the terms of the SUPPLIER's written order acknowledgement (hereinafter referred to as "SUPPLIER AGREEMENT").

1.2 Unless otherwise agreed upon in writing, the written order acknowledgement issued by the SUPPLIER as well as the present General Terms and Conditions of Sale and Delivery shall exclusively govern the SUPPLIER AGREEMENT. Any conflicting terms and conditions by the BUYER shall hereby be rejected to their fullest extent without requiring any specific or additional statement of rejection. These General Terms and Conditions for Sales shall also apply to repeat orders and subsequent supplies. The SUPPLIER AGREEMENT shall consist of the following documents, whereby, in the event of any contradictions or inconsistencies, the following order of precedence shall apply: Written order acknowledgement / order confirmation

- a. issued by the SUPPLIER;
- b. SUPPLIER's quotation;
- c. SUPPLIER's system drawings;
- d. SUPPLIER's specifications;
- e. These General Terms and Conditions of Sales;
- f. Written order placed by the BUYER.

1.3 Any cancellation of or amendments to the SUPPLIER AGREEMENT shall be excluded unless authorized by the SUPPLIER in writing.

2. Price and Payment

2.1 Prices are valid for the scope of services or supplies listed in the order acknowledgement / order confirmation. Additional or special services shall be calculated separately.

2.2 SUPPLIER shall have the right to offset any amount. In so far as the prices agreed are based on the SUPPLIER's list prices, and delivery is not to be made until more than four months after the conclusion of the contract, the SUPPLIER's list prices valid at the time of delivery apply (in each case minus an agreed percentage

or fixed discount). The sales price shall be ex works and shall not include customs duties, taxes or any other fees.

2.3 The sales price for the DELIVERIES shall be payable net, without any deductions, within thirty (30 days) after the date of invoice and shall be paid in the currency as stated in the SUPPLIER AGREEMENT.

2.4 If the BUYER does not pay by the due date, then interest will be charged on the outstanding amounts at a rate depending on the normal interest conditions at BUYER's domicile, but not less than eight percentage point (8%) above the three months' LIBOR (London Interbank Offered Rate) applicable at the due date of the delayed payment.

2.5 The BUYER's right to setoff shall be excluded.

2.6 The payment due dates must be met even if transport, delivery or acceptance of the delivered DELIVERIES are delayed or made impossible for reasons beyond the SUPPLIER's reasonable control.

3. Delivery

3.1 The DELIVERIES shall be delivered ex works (according to the applicable INCOTERMS) from the SUPPLIER or from a company affiliated with the SUPPLIER.

3.2 The delivery deadlines and dates shall be approximate and shall not be considered to be legally binding, unless the SUPPLIER AGREEMENT expressly includes a binding delivery date. The delivery shall be considered completed from such point in time in which the goods are made available ex works (INCOTERMS 2010), or upon notification of readiness for shipment. Partial deliveries shall be permitted. If the DELIVERIES cannot be shipped for reasons beyond the SUPPLIER's reasonable control, the DELIVERIES shall be stored at the cost and the risk of the BUYER.

3.3 Any liability on the part of the SUPPLIER for late delivery of the DELIVERIES shall be excluded to the extent permitted by law.

3.4 The SUPPLIER is entitled to make part deliveries.

4. Transfer of ownership, risk of loss or damage

4.1 Title to the DELIVERIES shall be transferred to the BUYER upon SUPPLIER's receipt of the sales price in full.

4.2 The risk of loss or damage to the DELIVERIES shall be transferred to the BUYER in accordance with the applicable INCOTERMS.

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5. Warranty

5.1 The SUPPLIER warrants for a period of 12 (twelve) months after the date of delivery ex works (according to the applicable terms) ("WARRANTY PERIOD") that the DELIVERIES will be free from defects in material and workmanship and will comply with the SUPPLIER's system drawings. PRODUCTS used by the BUYER shall be deemed to be accepted. For repaired or replaced DELIVERIES, a new warranty period of 3 (three) months after the date of delivery ex works (according to the applicable INCOTERMS) shall apply, however not exceeding 12 (twelve) months, calculated as of the date of initial delivery.

5.2 The DELIVERIES are to be carefully inspected promptly after their delivery to the BUYER or to the third party specified by BUYER. They are considered to have been approved if no notice of defects is received by the SUPPLIER with respect to apparent defects or other defects which were identifiable during an immediate, careful inspection within seven working days after delivery of the DELIVERY, or otherwise within seven working days of the discovery of the defect or the time when the defect was recognizable for the BUYER during normal use of the item supplied without closer inspection. On request by the Vendor, the DELIVERIES to which the complaint relates are to be sent back to the SUPPLIER carriage paid. If the notice of defects is justified, the SUPPLIER will reimburse the costs of the cheapest method of dispatch; this does not apply as far as the costs are arising from the DELIVERIES are located somewhere other than the place of use as determined.

5.3 In case of material defects in the DELIVERIES the SUPPLIER is initially obliged and entitled to repair them or supply replacements according to his choice, which is to be made within an appropriate period. In the event of failure, i.e. repair or replacement supply is impossible or unreasonable or in case of refusal or inappropriate delay, BUYER may withdraw from the contract or reduce the purchase price appropriately.

5.4 The warranty shall not apply in the event of improper handling or storage of the DELIVERIES, in the event the DELIVERIES are combined with products from third parties (in particular, with copies of the DELIVERIES), in the event of normal wear and tear, or for any other reasons which are beyond SUPPLIER's reasonable control.

5.5 All other warranties, conditions and representations expressed or implied by statute, common or law otherwise in relation to the DELIVERIES (including but not limited to the implied warranties of merchantability and fitness for a particular purpose) are excluded to the extent permitted by law.

6. Responsibilities and indemnification

6.1 The BUYER accepts its sole responsibility for fulfilling the fundamental regulatory requirements as well as for ensuring the suitability of the DELIVERIES for their intended purpose, in particular with regard to the DELIVERIES' compatibility with the contents (e.g., chemical compounds, adhesive compounds, etc.), the mechanical, hydraulic and chemical properties of the DELIVERIES (e.g., processing properties, shelf life, mixing

capacity and quality, etc.), biocompatibility, sterility of the DELIVERIES or any other medical or technical effects or properties of the DELIVERIES and the end products manufactured using said DELIVERIES. The BUYER shall be obligated to instruct its customers and the end users with regard to the properties, the use and the risks of the DELIVERIES in a legally compliant manner.

6.2 If the DELIVERIES are integrated as parts or accessories in medical products within the meaning of the respective applicable law, or should they be combined with medical products, it shall be the BUYER's sole responsibility to fulfill any and all regulations associated with such medical products. The BUYER shall particularly bear the sole responsibility for fulfilling the obligations towards its customers, end users, patients and government authorities

6.3 The BUYER shall forthwith indemnify, release and hold harmless the SUPPLIER, including its affiliates and their directors, officers and employees from any claims asserted by third parties for damages, costs and expenses (including legal fees) in connection with the further processing and use of the DELIVERIES, the DELIVERIES' integration in or their combination with medical products or with any other products, or in association with the distribution, marketing, sale and use of the end products. In the event that by a final and binding judgment of a court of competent jurisdiction, the SUPPLIER is held liable in accordance with the applicable product liability laws, the SUPPLIER shall absorb its share of liability from the third party claims accordingly.

6.4 The BUYER shall be obligated to include the SUPPLIER in its liability insurance policy for damages associated with the DELIVERIES to the extent of the indemnification pursuant to Article 6.3 above, which is to be combined with a waiver of subrogation and regress to the benefit of the SUPPLIER. Upon request, proof of said insurance cover is to be certified in the manner customary for the trade.

6.5 Notwithstanding anything to the contrary in SUPPLIER AGREEMENT, including all documents making part thereof and to the maximum extent permitted by law, in no event shall SUPPLIER be liable to the BUYER for loss of profit or revenue, loss of use, interruption of production, cost of capital, cost of purchased or replacement power, any and all costs relating to delay, for indirect, punitive, special, incidental or consequential damages, or claims by the Buyer's customers for such damages, in connection with the SUPPLIER AGREEMENT, whether such liability is based on contract, tort (including negligence), statute or any other basis of legal liability.

6.6 The remedies of BUYER set forth herein are exclusive, and SUPPLIER's liability with respect to any contract, indemnity, tort (including negligence), under any warranty, strict liability or otherwise shall not exceed the net value of the DELIVERIES delivered, which were the cause of the damage or to EUR 25'000 (twenty-five thousand EUROS) whichever is higher, unless claims arise from gross negligence or willful misconduct of the SUPPLIER or from SUPPLIER's legal liability for personal injuries.

7. Force majeure

7.1 The SUPPLIER's liability shall be excluded in the event of force majeure, such as but not limited to, war, riots, fire, floods, labor disputes, acts of government, coincidence, acts of the BUYER or of one of its customers, transport difficulties, problems with delivery of raw materials or any other causes beyond SUPPLIER's reasonable control, irrespective of whether such acts of force majeure occurred at the SUPPLIER, the BUYER or a third party.

7.2 In the event of an act of force majeure, the delivery date shall be extended for the duration of the delay caused by said act of force majeure. Should the condition of force majeure last longer than three months, both the SUPPLIER and the BUYER may terminate the SUPPLIER AGREEMENT in writing giving seven days' prior written notice for the delivery of DELIVERIES not yet completed. In such event, the BUYER shall be responsible for payment of the unpaid portion of the DELIVERIES. Any remaining obligations to perform on either part shall no longer apply.

8. Intellectual property and knowhow

8.1 Any and all intellectual property, including the knowhow required to design, manufacture and deliver the DELIVERIES, shall remain the sole property of the SUPPLIER. Subject to the mandatory rights under any applicable intellectual property laws, the BUYER shall not be granted any rights to intellectual property or knowhow.

8.2 The SUPPLIER retains the ownership or copyright for all offers and cost estimates issued by him as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and resources made available to the BUYER. Without the express agreement of the SUPPLIER, the BUYER may not make these objects, or the content of them, accessible to third parties or make them known to third parties, or have them used or reproduced, either by himself or by third parties. On request by the SUPPLIER he must return these objects to him in their entirety and, where applicable, destroy any copies made of them, if they are no longer needed by him in the proper course of business or if negotiations do not result in the conclusion of a contract.

8.3 To the best of SUPPLIER's knowledge, the equipment and any component part thereof, in the particular form sold by SUPPLIER, do not infringe any intellectual property rights of third parties.

8.4 In the event of any intellectual property right infringement relating to the aforesaid equipment, SUPPLIER may, in its sole discretion, procure the right to use the equipment without impairing its suitability or modify or replace it so that it is rendered non-infringing. The obligations of SUPPLIER set forth herein are contingent upon (i) SUPPLIER receiving prompt written notice from BUYER of such infringement; (ii) SUPPLIER receiving assistance from BUYER in the defense; and (iii) the right of SUPPLIER to settle or defend.

8.5 The preceding paragraph shall not apply to any equipment or component part manufactured according to BUYER'S design, or the use of any equipment or component part sold hereunder in conjunction with any other product in a combination not furnished by SUPPLIER as part of this transaction. As to any such equipment, component part or use in such combination, SUPPLIER assumes no liability whatsoever for infringement of intellectual property rights of third parties and BUYER shall indemnify SUPPLIER against any respective infringement claims.

8.6 In the event of any joint development of intellectual property by SUPPLIER and BUYER,

a. SUPPLIER shall have the right to protect under its sole and exclusive ownership any and all intellectual property and knowhow related to the design and manufacture of the DELIVERIES ("SUPPLIER IP") and products belonging to and related primarily to the business of SUPPLIER ("SUPPLIER PRODUCTS"),

b. BUYER shall hereby irrevocably assign to SUPPLIER, and will cause its personnel to irrevocably assign to BUYER and then to SUPPLIER, ownership of all right, title and interest throughout the world in SUPPLIER IP free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law,

c. to the extent that the assignment of rights to said intellectual property and knowhow is not possible under the law, BUYER grants SUPPLIER an irrevocable, cost-free, and sublicensable right to use such intellectual property and knowhow that is not limited as to time, scope, content or territory including the right to make improvements and modifications thereto,

d. BUYER hereby warrants that it will not apply for or to be registered as owner of any SUPPLIER IP, and

e. SUPPLIER shall grant BUYER a nonexclusive cost-free limited license and right to sublicense to BUYER to the extent necessary for the sales and distribution of products belonging to and related primarily to the business of BUYER ("BUYER PRODUCTS"); and

f. BUYER shall have the right to protect under its sole and exclusive ownership any intellectual property and knowhow related primarily to the design and manufacture of BUYER PRODUCTS and not related to DELIVERIES of SUPPLIER or SUPPLIER PRODUCTS ("BUYER IP"),

g. SUPPLIER shall hereby irrevocably assign to BUYER, and will cause its personnel to irrevocably assign to SUPPLIER and then to BUYER, ownership of all right, title and interest throughout the world in BUYER IP free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law,

h. to the extent that the assignment of rights to said intellectual property and knowhow is not possible under the law, SUPPLIER grants BUYER an irrevocable, cost-free, and sublicensable right to use such intellectual property and knowhow that is not limited as to time, scope, content or territory including the right to make improvements and modifications thereto,

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i. SUPPLIER hereby warrants that it will not apply for or to be registered as owner of any BUYER IP,

right at its own expense and on condition of providing the other party with a nonexclusive cost-free license and right to sublicense.

j. BUYER shall grant SUPPLIER a nonexclusive cost-free license and right to sublicense to the extent necessary for the sales and distribution of DELIVERIES and SUPPLIER PRODUCTS.

10. Miscellaneous

10.1 Assignment

Any attempt to assign, transfer, or delegate any of the rights, duties or obligations herein to a third party without prior written consent of the other party shall render such attempted assignment or transfer null and void. SUPPLIER affiliated companies shall not be considered third parties for this purpose.

10.2 Waiver of Rights

SUPPLIER's or BUYER's failure to exercise any of its rights shall not constitute or be deemed a waiver or a forfeiture of such rights.

10.3 Severability

If any provision in the SUPPLIER AGREEMENT, including the present General Terms and Conditions of Sale, or the documents making part thereof should be or become invalid, the valid provisions of the SUPPLIER AGREEMENT shall remain in force, and the invalid one shall be replaced by a regulation which meets the original economic intent of the invalid provision as far as legally possible

9. Place of jurisdiction and applicable law

9.1 The SUPPLIER AGREEMENT shall be subject to the laws of Switzerland excluding the conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG). All disputes arising out of or in connection with the SUPPLIER AGREEMENT or its validity shall be submitted to the exclusive jurisdiction of the ordinary courts of Zurich 1, Switzerland. The SUPPLIER shall have the right to take legal action against the BUYER at its place of business

9.2 In the event of any dispute as to whether intellectual property and knowhow in this paragraph is SUPPLIER IP or BUYER IP, SUPPLIER and BUYER shall use reasonable efforts to resolve the dispute, including by elevation within their respective organization. BUYER and SUPPLIER shall pay the remunerations under the applicable law on employed inventors for their employees. SUPPLIER shall register and maintain SUPPLIER IP at its own expense, and BUYER shall register and maintain BUYER IP at its own expense. Prior to discontinuing the prosecution, the maintenance or the defense of an intellectual property right by one of the parties, this party has to inform the other party, which herewith is granted an option to take over the intellectual property