General Terms and Conditions of Delivery and Payment of S.I.M.E.O.N. Medical GmbH & Co.KG, Tuttlingen

1. General, scope of validity

1.1 Our offers, deliveries and other services - also in the future - to the persons named in Clause 1.2 are made solely on the basis of these General Terms and Conditions of Delivery and Payment. We do not recognize any contrary conditions of the customer or any deviating conditions that are not included in our Terms and Conditions of Delivery and Payment.

1.2 Our Terms and Conditions of Delivery and Payment apply only to persons who, on the conclusion of the contract, carry out their commercial or independent professional activities ("entrepreneurs") and to legal entities under public law or special assets under public law. They do not apply to private individuals who conclude the contract for a purpose that cannot be attributed to either their commercial or their self-employed professional activity ("consumers").

2. Conclusion and content of contract, subject to change, models, production materials

2.1 Our written order confirmation is decisive for the scope of the delivery, and in the event of an offer on our part and the timely acceptance of the offer. Side-agreements and/or amendments must be confirmed in writing to be valid.

2.2 We retain all rights of ownership, copyrights and industrial property rights (including the right to register these rights) to our offer documentation, in particular, drawings, samples, cost estimates and any software (hereinafter referred to overall as "documents"); the documents may not be made accessible to third parties unless there is no discernible need to keep them confidential. If the order is not placed, the documents belonging to the offer are to be returned to us immediately on request.

2.3 If technical changes are made to the equipment after the submission of the offer, we may deliver the technically modified version. In the process, we are entitled to make deviations to illustrations, drawings, descriptions, colors, measurements, weights, quality and other information if they are deemed acceptable for the customer, taking into account the interests of both parties.

3. Prices, price adjustment

3.1 All prices are "FCA Tuttlingen" with deliveries within Germany plus packaging and the respective applicable VAT. With deliveries outside of Germany, the prices are valid "FCA Tuttlingen" (Incoterms 2000).

3.2 With contracts with an agreed delivery time of more than three months, both contracting parties can demand a change in the agreed price in the scope in which cost reductions or increases have occurred after the conclusion of the contract that could not be averted by the contracting parties, in particular due to collective wage agreements or changes in the price of material. The change in price must be restricted to the scope that is necessary to compensate for the reduction or increase in costs that has occurred. A party is entitled to a corresponding right of price adjustment if, due to delays for which the other party is responsible, the actual delivery time is more than three months.

4. Delivery time, reservation of receiving delivery ourselves, lack of ability to perform on the part of the customer, delay in acceptance

4.1 Agreed delivery times start with the conclusion of the contract, but not before receipt of the documents, permits, approvals to be obtained by the customer and the complete clarification of the technical questions to be answered by the customer. The delivery time does not include the period in which the customer is in arrears with an agreed payment, i.e. the delivery time is extended by the period in which the arrears existed. The compliance with the delivery deadline always necessitates the timely and orderly fulfillment of its obligations by the customer. If the customer initiates a change to the contract as a result of which the compliance with the original delivery time is not possible, the delivery time is extended accordingly.

4.2 The delivery time is complied with if the circumstances causing the transfer of risk pursuant to Clause 5.1 have occurred within the deadline.

4.3 The delivery period is extended - also within a delay - appropriately in the event of force majeure and with all unforeseeable obstacles that occur after conclusion of the contract that we are not responsible for to the extent that such obstacles have a demonstrable impact on the provision of the performance owed. This also applies when these circumstances occur at our pre-suppliers. We will notify the customer of the start and end of such obstacles as early as possible. If the obstacle lasts longer than three months or it is clear that it will last longer than three months, both we and the customer may withdraw from the contract.

4.4 Irrespective of Clause 4.3, this is subject at all times to our receiving correct and timely delivery.

4.5 If it becomes clear after the conclusion of the contract that our claim to payment is jeopardized by a lack of ability to perform on the part of the customer, we are entitled to refuse our performance and to carry out activities in preparation of that performance. The right to refuse performance no longer applies if the payment has been made or security has been provided for it. We can set the customer an appropriate deadline for payment/the provision of a security. After a deadline has expired to no avail, we are entitled to withdraw from the contract.

4.6 If the customer is in arrears with the acceptance of the items to be delivered or the payment of the purchase price, we can withdraw from the contract after the expiry to no avail of an appropriate subsequent period set by us and required by law and/or demand compensation instead of performance. When claiming compensation, we may demand compensation, without evidence,

- amounting to 20% of the purchase price to settle the lost earnings if the item to be delivered is a serial or a standard product, or
- amounting to 100% of the purchase price if the item to be delivered is a customized product made according to the specific requirements of the customer and the expenses necessary to create the readiness for delivery have been incurred on our part.

The contracting parties are at liberty to provide evidence that the actual damage is higher or substantially lower. The rules under the law for the determination of the compensation are unaffected by this if the contract has already been fulfilled entirely on our part. We are also entitled to charge the additional expenses, in particular storage costs, incurred if the customer refuses acceptance. In the event of storage at our own premises, the usual local storage costs will be charged.

4.7 If we fall into arrears with the delivery or performance as the result of simple negligence, our liability for compensation due to the delay in delivery or performance, which can be demanded alongside the delivery/performance, is restricted to 0.5% of the delivery/performance value for each completed week of delay, but up to a maximum of 5% of the delivery/performance value. If the customer files for compensation in the aforementioned cases instead of delivery or performance, this claim to compensation is limited to 15% of the delivery/performance value. The restrictions on liability pursuant to the aforementioned Clauses 1 and 2 do not apply in the event of delay as a result of gross culpability, nor with an injury to life, body and health, nor with business which must be settled on a fixed date.

5. Delivery, transfer of risk

5.1 Unless otherwise indicated in our order confirmation, "FCA Tuttlingen" is agreed with regard to the transfer of risk with deliveries within Germany. This also applies if partial deliveries are made. With deliveries abroad "FCA Tuttlingen" (Incoterms 2010) applies.

5.2 At the customer's request and at the latter's cost we will insure the goods against the usual risks.

5.3 Partial deliveries are permissible in an acceptable scope.

6. Conditions of payment

6.1 Our invoices are to be paid in advance without deduction. Services and deliveries of spare parts are to be paid in advance without deduction. The payment is not deemed to have been paid until we can dispose over the amount without recourse (receipt of payment).

6.2 The statutory regulations regarding arrears apply, also with regard to the arrears interest. This does not affect the claiming of arrears that go beyond this.

6.3 An offsetting, or a retention with the effect of an offsetting, of payments is only permitted as a result of legal claims by the customer which have been recognized by us, are not disputed and are ready for decision or are final and conclusive.

7. Notice of defect, rights with material defects

7.1 If the purchase is a commercial transaction for both parts, the customer must give written notice of any kind of defects within eight working days (Saturday is not classed as a working day) from delivery - hidden defects, however, within eight working days of their discovery; otherwise, the goods are deemed to have been approved.

7.2 Rights with regard to material defects can only be generated if the goods delivered have a material defect on transfer of risk. In this case, subject to Clause 7.3 to 7.6, the customer can demand as subsequent fulfillment at our discretion either the correction of the defect (subsequent improvement) or the delivery of a defect-free item (replacement delivery). If we are unwilling or unable to provide subsequent improvement/replacement delivery, in particular if this is delayed beyond appropriate lengths of time for reasons for which we are not responsible, or if the subsequent improvement/replacement delivery fails, the customer is entitled, if further attempts at subsequent fulfillment cannot be deemed acceptable for it, at its discretion, to withdraw from the contract or reduce the purchase price.

7.3 There are no claims as the result of material defects from unsuitable or improper use or handling of the item delivered, natural wear and tear (in particular of wear parts), unsuitable operating materials, etc. In particular, there are no claims for material defects in the event of damage as the result of chemical, electronic or weather influences, damage caused by spare parts that are not original Simeon spare parts, damage due to arbitrary redesign/change of equipment, damage due to fault installation or putting into operation, and damage due to improper servicing (maintenance and/or repair).

7.4 The limitation period for claims arising from material defects are two years.

7.5 For damage due to the defectiveness of the item delivered, we are only liable up to the limits given in Clause 8.

7.6 If the defective item of delivery is a third-party product, we are entitled to assign our claims relating to material defects against our pre-suppliers to the customer and to refer it to the possibility of recourse against the pre-suppliers (in court). Claims cannot be filed against us from Clauses 7.2 and 7.5 if the claims against our pre-suppliers are unenforceable despite the timely recourse (in court) and/or it is unreasonable to file claims in individual cases.

7.7 Replaced old parts become our property. On request, they are to be returned at our costs.

8. Liability

8.1 We are liable in accordance with the provisions of the Product Liability Act and the cases of incapacity and impossibility for which we are responsible. We are also liable for damage pursuant to the statutory provisions in the cases of willful intent, gross negligence, with the assumption of a guarantee and with injury to life, body or health which we are responsible for. For the rest, if we breach a cardinal obligation with simple negligence, i.e. obligations whose fulfillment makes the orderly implementation of the contract at all possible and the contracting partner can regularly trust in compliance with these obligations, and obligations whose breach jeopardizes the attainment of the contractual purpose, our obligation of replacement is restricted to the foreseeable damage typical of such contracts. This does not affect Clauses 4.4 and 4.6 (Reservation of receiving delivery ourselves and/or limitation of liability in the event of delayed delivery). In all other cases of liability, compensation claims due to a breach of an obligation from a debt relationship and due to unauthorized activity are excluded so that we are not liable in this respect for lost earnings or other financial loss incurred by the customer.

8.2 If our liability is excluded or restricted as a result of the aforementioned provisions, this also applies to the personal liability of our staff, employees, workers, representatives and vicarious agents.

9. Retention of title

9.1 Until the complete fulfillment of all - including future - claims (including all ancillary claims such as e.g. bill

of exchange costs, financing costs, interest) from the business relationship with the customer, we reserve ownership of the goods delivered. If a current account facility agreement has been agreed with the customer, the retention of title exists until the full settlement of the recognized current account balance. With the receipt of a check or bill of exchange, fulfillment does not occur until the check or bill of exchange has been cashed and we can dispose over the amount without risk of recourse. If payment based on the check-bill of exchange method has been agreed with the customer, the reservation of title also extends to the cashing of the bill of exchange issued by us by the customer and does not expire with the crediting of the check received in our account.

9.2 The customer is obligated to handle the retained goods with care and to notify us immediately of any pledging, confiscation, damage and loss; a breach of this obligation gives us the right to withdraw from the contract. The customer bears all costs that arise in particular within the framework of third party proceedings to rescind a pledging and if applicable to re-procure the items delivered if they cannot be collected from third parties. The customer is obligated to insure the retained goods against loss and damage for the time in which the retention of title exists and to notify us of this in writing. If this is not done, we are entitled to conclude the insurance ourselves at the customer's cost.

9.3 The customer may only process and sell the retained goods in an orderly and usual business transaction and may not pledge or use them as security.

9.4 In the event of arrears in payment, or if the customer breaches other fundamental contractual obligations, we are entitled to provisionally take back the retained goods. The exercising of the right to take goods back does not represent a withdrawal from the contract unless we have explicitly declared the withdrawal. The right to take goods back does not extend to goods that have already been paid. The costs arising from exercising the right to take back (in particular for transport and storage) shall be borne by the customer if we have not threatened to take the goods back with a suitable period of notice. We are entitled to utilize the retained goods that have been taken back and to satisfy our claims from the proceeds thereof if we have previously threatened utilization. When issuing the threat, we must set the customer a suitable deadline for fulfilling its obligations.

9.5 The customer already assigns to us now the purchase price, wage or other receivables arising from the re-sale or further processing or other legal grounds (e.g. in an insurance claim or with unlawful action) with regard to the retained goods (including the recognized balance of a current account agreement and/or, in the event of an insolvency of the business partner of the customer, the "causal balance" that then exists) amounting to the invoice value of the retained goods; we accept the assignment. We hereby give the customer the revocable authorization to collect the receivables assigned to us on our behalf in its own name. This authorization to collect can only be revoked if the customer does not meet its payment obligations in an orderly manner. At our request, the customer must provide the information necessary for the collection regarding the claims assigned, make the corresponding documents available and notify the debtor of the assignment.

9.6 The processing or alteration of the items delivered by the customer is always done on our behalf. If the item delivered is processed with items that do not belong to us, we acquire co-ownership of the new item in the ratio of the value of the item delivered to the other items processed at the time of processing. For the rest, the same applies to the object created by this processing as to the object delivered under retention of title.

If the item delivered is combined with other items that do not belong to us and thus forms a single item and if this results in our loss of ownership, it is already agreed now that the customer's ownership of the single item is transferred to us on a pro rata basis (i.e. in the ratio of the value of the item delivered to the other combined items at the time of combination). The customer shall store the goods that are co-owned by us free of charge. For the rest, the same applies to the object created by this combination as to the object delivered under retention of title.

9.7 If the realizable value of the securities granted to us pursuant to the aforementioned provisions exceeds our claims towards the customer by more than 10%, and not only temporarily, we will release securities in this respect at our own discretion and at the customer's request. The aforementioned coverage limit of 110% is increased by the amount of VAT that we are charged in utilizing the security collateral and that arises from the delivery by the customer to us being subject to VAT.

10. Intellectual property rights of third parties

If the intellectual property rights of third parties are breached by an object to be delivered that has been created based on deliveries, samples or other specifications of the customer, the customer shall indemnify us from all claims that are filed in this respect.

11. Place of fulfillment, place of jurisdiction and applicable law

11.1 Unless otherwise agreed, the place of fulfillment is 78532 Tuttlingen.

11.2 If the customer is a merchant pursuant to the German Commercial Code (HGB), a legal entity under public law or a special asset under public law, the place of jurisdiction for all rights and obligations of the participants to the contract arising from any form of transaction - including disputes relating to bills of exchange and checks - is 78532 Tuttlingen (Federal Republic of Germany). This applies accordingly if the customer does not have a general place of jurisdiction in Germany, moves its place of residence or normal domicile away from Germany, or its place of residence or usual domicile is not known at the time the action is filed. However, we are also entitled to file legal action against the customer at the latter's general place of jurisdiction.

11.3 For these General Terms and Conditions of Delivery and Payment and the entire legal relationships between us and the customer, the law of the Federal Republic of Germany applies to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).