

## General Terms of Delivery and payment

### Wiking Healthcare Solutions

Issue: 01.01.2010

#### 1. General Terms

1.1 These general terms of delivery and payment of Wiking Healthcare Solutions AG medical instruments (hereinafter called Wiking Healthcare Solutions) are exclusively applicable to the business relationship for its entire duration. Wiking Healthcare Solutions shall not recognize any conditions of the Customer which are in conflict with or deviate from these conditions unless Wiking Healthcare Solutions has expressly agreed to these in writing. These general terms of delivery and payment shall also apply should Wiking Healthcare Solutions unconditionally execute a delivery to the Customer in full knowledge of the conflicting or deviating terms of the Customer.

1.2 All agreements concluded between Wiking Healthcare Solutions and the customer for the purposes of execution of this contract are to be set down in writing in this contract. Any subsidiary oral agreements which are in conflict with the content of the written agreement shall only apply if confirmed in writing by Wiking Healthcare Solutions.

#### 2. Quotation and Orders

2.1. Wiking Healthcare Solutions quotations shall always be non binding.

2.2. Although in principle, contracts with Wiking Healthcare Solutions only come into force once Wiking Healthcare Solutions has issued a written confirmation, they also come into force with the commencement by Wiking Healthcare Solutions of the execution of an order. Wiking Healthcare Solutions's confirmation of order or, where no such confirmation of order exists, Wiking Healthcare Solutions's quotation, is authoritative for the content of the contract.

2.3. Wiking Healthcare Solutions reserves the right to make technical, and design changes, in particular improvements, even after confirming an order, in so far as this is reasonable for the Customer.

2.4. Where a declaration by Wiking Healthcare Solutions exists that has been designated as a description of a service or product, this description conclusively and completely specifies the characteristics and qualities of the supplied product or service. In cases of doubt, these types of descriptions, illustrations, references to DIN standards etc. should not be assumed to constitute receipt of a warranty. In cases of doubt, only explicit written declarations by Wiking Healthcare Solutions are authoritative in terms of receipt of a warranty.

#### 3. Prices

3.1. Prices are indicated in Euro or in another agreed currency and do not include Value Added Tax (VAT). The VAT shall be invoiced at the currently valid rate.

3.2. Prices shall be calculated on the basis of the prices in effect on the date of delivery/performance, in so far as no agreement to the contrary has been made.

3.3. Prices quoted shall apply from works/warehouse, including normal packaging, in so far as no agreement to the contrary has been made.

3.4. Should the customer desire an uncustomary mode of dispatch, e.g., express delivery, the additional costs shall be charged to his account.

#### 4. Terms of Payment

4.1. Invoices are payable no later than at the due date indicated in the invoice. Payment shall be made without any deduction and free of all charges. No deduction of a discount is permitted unless such discount was expressly agreed upon. Should the deduction of a discount be stipulated in the respective quotation/agreement or in the respective invoice such discount is granted only if and to the extent that at the date of receipt of payment no balance is due in favour of Wiking Healthcare Solutions. In case of repairs and deliveries of spare parts the possibility of deduction of a discount is excluded.

# WIKING

## HEALTHCARE SOLUTIONS

4.2. Payments are regarded as having been made on the day that these sums are at the disposal of Wiking Healthcare Solutions. Cheques are accepted as payment but are subject to the customary reservations. Promissory notes are only accepted after prior agreement and only as payment subject to the customary reservations. All costs arising in connection with the cheques or promissory notes are to be borne by the customer.

4.3. The Customer is only entitled to offset amounts in commercial transactions if his counterclaim has been legally established, is uncontested or is recognised by Wiking Healthcare Solutions. The Customer shall have no right to redebit or retain monies unless this is based on the same contractual relationship.

4.4. In the event of default in payment, the Customer shall be obliged to pay interest for default as of the date on which he defaults on payment, which annual interest shall amount to 10 %-points above the applicable base rate of the European Central Bank and shall be no less than 12 %. The right of Wiking Healthcare Solutions to demonstrate a higher loss and the right of the Customer to demonstrate a significantly lower loss remain unaffected. In any case the Customer shall be liable for statutory default interest. No interest is payable on down payments and advance payments. Wiking Healthcare Solutions shall also be entitled within reasonable limits to withhold deliveries, even

those from different orders, and to perform delivery only against prepayment or on a cash-on-delivery basis.

4.5. Notwithstanding the rights contained in these terms of delivery and payment, Wiking Healthcare Solutions's legal rights in respect of default of payment and ability to pay remain unaffected. Delivery times agreed to by Wiking Healthcare Solutions shall be extended by the period of default of payment.

4.6. In the event of a perceptible deterioration in the Customer's financial circumstances, suspension of payments by the Customer, excessive indebtedness, a petition for institution of insolvency proceedings being filed, or the dishonouring of cheques by the Customer, all of Wiking Healthcare Solutions's debts shall become payable immediately. In such cases, Wiking Healthcare Solutions shall be entitled at its discretion to demand advance payment or provision of security or, should the Customer definitively refuse to meet the terms of the contract and/or to provide security, it may terminate the contract or demand damages for non-performance.

### **5. Delivery**

5.1. Delivery times/deadlines shall only be binding if confirmed by Wiking Healthcare Solutions in writing.

5.2. The delivery deadline shall be considered to have been met if, by the time of the deadline, the delivery item has been dispatched or collected from Wiking Healthcare Solutions, or, should this dispatch or collection be delayed for reasons for which Wiking Healthcare Solutions is not responsible, if notification of readiness to deliver is given within the stipulated time.

5.3. Delivery times that have agreed upon in writing shall be extended by a reasonable period should their non-observance after conclusion of a contract be the result of force majeure, mobilisation, war, riots, strikes, lock-outs, attachments, embargoes, or the occurrence of other unforeseen hindrances which cannot be eliminated by reasonable means and which are outside of the sphere of responsibility of Wiking Healthcare Solutions. The same shall apply should such circumstances affect subcontractors and ancillary suppliers. Should delivery be impossible in whole or in part because of the non-culpable failure of Wiking Healthcare Solutions to obtain supplies itself, as a result of force majeure or of difficulties not caused by negligence of Wiking Healthcare Solutions, Wiking Healthcare Solutions shall be entitled to terminate the contract. In this event, the Customer shall not be entitled to claim damages or delivery of whatever kind.

5.4. The Customer's right to termination upon expiry of a reasonable period of grace granted to Wiking Healthcare Solutions without result shall remain unaffected.

5.5. Claims for compensation or reimbursement of expenses as a result of impossibility of – or delay in – performance of the service or delivery shall be restricted to the amount of damages which could have been foreseen at the conclusion of contract. There shall be no liability in respect of the above in the event of simple negligence on the part of Wiking Healthcare Solutions. Compensation entitlements in respect of intentional damage, damage to health, personal injury or death remain generally unaffected.

# WIKING

## HEALTHCARE SOLUTIONS

5.6. Should dispatch or delivery of the goods be delayed by circumstances lying within the sphere of responsibility of the Customer, Wiking Healthcare Solutions shall be entitled to charge the resulting additional expenses to the Customer's account.

5.7. Part deliveries shall be permitted. To the extent that such part deliveries can be used on their own, they shall be considered as independent deliveries in respect of the due date of payment.

### **6. Dispatch and Packing**

6.1. Dispatch within the territory of the Kingdom of Spain shall be from a location to be specified at the discretion of Wiking Healthcare Solutions unless otherwise stipulated by the parties. The manner of delivery shall be subject to Wiking Healthcare Solutions's discretion. Special requests of the Customer shall be met in so far as this is possible. The Customer shall bear any resulting additional expenses (see Item 3.4. above).

6.2. The goods shall be delivered in packaging which is suitable for dispatch and transport. Should means of packing or transport be desired above and beyond this transportability requirement, the customer shall bear the additional expenses.

6.3. For after-sales service deliveries (replacement parts, repair equipment), postage and packaging shall be calculated separately.

6.4. Should damaged packaging have to be replaced, Wiking Healthcare Solutions reserves the right to charge for the replacement if Wiking Healthcare Solutions did not cause the damage.

### **7. Passing of risk**

The risk lies with the Customer for all deliveries, including any returns, even if freight prepaid, FOB or CIF delivery has been agreed. The risk shall pass to the Customer as soon as the consignment leaves the warehouse of Wiking Healthcare Solutions or of a warehouse maintained by Wiking Healthcare Solutions. Should delivery be delayed at the Customer's request or as a result of circumstances for which the Customer is responsible, the risk shall pass to the Customer for the duration of the delay as of the date of notification of readiness to deliver.

### **8. Retention of Title**

8.1. Wiking Healthcare Solutions shall retain title to the goods until all present and future claims against the Customer to which Wiking Healthcare Solutions is entitled as a result of mutual business have been settled (reserved goods). Wiking Healthcare Solutions's claims shall not be extinguished upon being included in any current account balance and Wiking Healthcare Solutions recognising this balance. The Customer shall store the reserved goods in a proper manner and insure them sufficiently at his own expense. The Customer shall be entitled to resale of the reserved goods only within the framework of his ordinary course of business, either against payment in cash or upon agreeing upon a reservation of title. The Customer shall be prohibited from transferring ownership by way of security, pledging, or otherwise disposing of the reserved goods in any manner which thwarts or impedes the reservation of title in functioning as security. Should third parties attach reserved goods in the Customer's possession, the latter shall inform such third parties of Wiking Healthcare Solutions's reservation of title, and shall inform Wiking Healthcare Solutions in writing of the attachment, enclosing the order of attachment and a statutory declaration which declares that the goods attached are identical with the reserved goods supplied.

The Customer shall bear any costs arising from attempts to prevent attachments by third parties in the event that proceedings are successful and in the event that attempts to enforce the judgement on the third parties in question are not successful.

8.2. Any modification or processing of the reserved goods effected by the Customer on behalf of Wiking Healthcare Solutions shall not give rise to any obligations for Wiking Healthcare Solutions. In the event of processing, combination, or mixing of the reserved goods with other non-Wiking Healthcare Solutions goods, Wiking Healthcare Solutions shall be entitled to the resulting fractional share of co-ownership of the new item, in accordance with the ratio between the value of Wiking Healthcare Solutions reserved goods and that of the other goods processed at the time of processing, combination, or mixing. Should the Customer acquire sole ownership of the new item, he shall grant Wiking Healthcare Solutions co-ownership of the new item in proportion to the value of Wiking Healthcare Solutions's reserved goods and shall hold the item in safe custody for Wiking Healthcare Solutions free of charge.

8.3. In the event of resale or leasing of the reserved goods, the Customer assigns to Wiking Healthcare Solutions in advance and by way of security his claims against his customers arising from this resale or leasing, up to the value of the reserved goods sold in each individual case; this assignment shall apply until all claims of Wiking Healthcare Solutions arising from business dealings with the Customer have been settled. Should the reserved goods be resold or leased together with goods from other suppliers and should an overall invoice be issued for both types of goods, the Customer shall assign to Wiking Healthcare Solutions that portion of the total price charged and/or of the total rental fee corresponding to the reserved goods included in the overall invoice; the same shall apply to ancillary rights (reservation of title, transfer of ownership by way of security, bills of exchange and the like). In a fiduciary capacity and for the account of Wiking Healthcare Solutions, the Customer shall be entitled to collect claims arising from resale which have been assigned to Wiking Healthcare Solutions, and shall be entitled to enforce ancillary rights. The Customer's authorisation to collect and the authority to enforce ancillary rights can be cancelled for good cause, in particular in the event of a substantial deterioration in his financial position. The above-mentioned authorisations, in particular the Customer's authorisation to collect, shall extinguish definitively should he fail to fulfil his financial obligations to Wiking Healthcare Solutions, should insolvency proceedings be instituted against him, or should the institution of such proceedings against him be refused for insufficiency of assets. The Customer shall not be authorised to dispose of the assigned claims by other means, e.g., by assignment to third parties (in particular to financial institutions), without prior written consent of Wiking Healthcare Solutions.

8.4. In the event of default by the Customer in making payment to Wiking Healthcare Solutions, dishonouring of promissory notes or cheques, suspension of payments, excessive indebtedness, or should his assets be the subject of insolvency proceedings, or should the institution of such proceedings be refused for insufficiency of assets, the entire balance of his debts shall become payable, including promissory notes with later maturities. In this event, the Customer shall, at the request of Wiking Healthcare Solutions, provide Wiking Healthcare Solutions with a list of all goods still in his possession which are subject to reservation of title, and a list of debts assigned to Wiking Healthcare Solutions, which list shall include names and addresses of debtors and the amount of the debts. Should the conditions described above apply, the Customer shall, upon request of Wiking Healthcare Solutions, inform the debtors of the assignment of the debt to Wiking Healthcare Solutions. Wiking Healthcare Solutions shall be entitled to bring about the notification of such third party debtors itself. Wiking Healthcare Solutions shall also be entitled to repossess the goods subject to its reservation of title with a view to utilisation or discharging the balance of the debts. The Customer shall be obliged to procure possession of the goods for Wiking Healthcare Solutions or to allow the authorised representative of Wiking Healthcare Solutions access to the business premises during normal business hours. The demand for return or the seizure of the goods shall not constitute termination of the contract.

8.5. At the Customer's request, Wiking Healthcare Solutions shall be obliged to release security at the Customer's discretion where the total value of such security exceeds the value of Wiking Healthcare Solutions's claims against the Customer arising from current business dealings by more than 20 %.

8.6. Should the proposed reservation of title not be legally effective in the territory in which the goods are located, the parties agree that the legal stipulations in that territory which are most similar to the rights of retention of title are to apply. Where special requirements are necessary to meet these stipulations, the Customer is obliged to ensure that these requirements are met at his own cost.

9. Complaints and Warranties Any complaints regarding incomplete, false or defective deliveries are to be reported in writing immediately after delivery. Hidden defects are to be reported in writing after these have been established. Wiking Healthcare Solutions shall be liable for defects in the consignment subject to the following conditions:

9.1. As a rule, the warranty period shall last 12 months - unless otherwise agreed in writing – from the date of delivery to the Customer. The warranty period shall be extended by the period in which the delivered product cannot be used because of the need for remedy of defects or replacement of goods. However, remedy of defects shall not result in a new warranty period except for the newly fitted or repaired parts. In case of death, personal injury or damage to health as well as in case of intent, violation of material contract obligations or grossly negligent

# WIKING

## HEALTHCARE SOLUTIONS

violence of other obligations under the contract the statutory period of limitation applies. Where a defect causing damage forms part of an indemnity agreement between Wiking Healthcare Solutions and the Customer or where a defect was fraudulently concealed a limitation or reduction of the statutory period of limitation is excluded. The provisions contained in Spanish Civil Code remain unaffected as a whole.

9.2. During the warranty period, Wiking Healthcare Solutions shall at its own discretion either replace or repair free of charge any parts which are found to be unserviceable or of substantially impaired serviceability as a result of circumstances which are shown to have existed before the passing of risk. Defective design, poor materials and faulty construction shall constitute such circumstances.

9.3. The Customer shall fulfil all his contractual obligations, in particular the stipulated terms of payment. The Customer shall be entitled to withhold payment because of a defect only if a complaint in respect of a defect of goods has been filed within the applicable time period. In this event, the payment withheld shall be in reasonable proportion to the extent of the defect noted.

9.4. The Customer shall grant Wiking Healthcare Solutions the necessary time and occasion to fulfil the warranty obligations. Should he refuse to do so, Wiking Healthcare Solutions shall be released from the warranty obligation and from the liability for defects.

9.5. Should Wiking Healthcare Solutions allow a reasonable period of grace to expire without remedying the defect or replacing the goods, or should Wiking Healthcare Solutions refuse to take either action, or should remedy or replacement be impossible, the Customer shall be entitled to avail himself of his right to termination of contract or reduction of the purchase price.

9.6. Any improper repairs or modifications effected by the Customer or by third parties shall nullify any warranty or liability, unless the Customer proves that the defect is not the result of this intervention.

9.7. The liability for defects shall not apply to normal wear and tear, nor to damage occurring after passage of risk as a result of faulty or negligent handling, overuse, inappropriate equipment, or such chemical, electro-chemical or electrical influences as are not provided for in the contract.

9.8. Any further claims or rights of the Customer against Wiking Healthcare Solutions or against persons employed by Wiking Healthcare Solutions resulting from defects in supplied goods shall be barred, in particular claims for damage not affecting the supplied goods themselves. This shall not apply where there is willful misconduct, damage to health, personal injury or death. The above exclusion of liability shall also not apply where the defect causing the damage or loss is the subject of a warranty agreement between Wiking Healthcare Solutions and the Customer or where the defect was fraudulently concealed. The provisions contained in the Spanish Civil Code remain unaffected.

9.9. In so far as the Wiking Healthcare Solutions product is equipped with accessories from third-party companies and the warranty terms and conditions of the third party company are included with the Wiking Healthcare Solutions product, Wiking Healthcare Solutions shall assume these terms and conditions only in so far as they are not more disadvantageous for Wiking Healthcare Solutions than the above provisions. Otherwise the above provisions shall apply.

9.10. Warranty claims arising from any batteries included shall be barred. Such batteries shall only be for demonstration purposes and operational tests.

### 10. Liability

10.1. Unless otherwise explicitly stipulated in these general terms of delivery and payment, or in the contract on which the delivery is based, Wiking Healthcare Solutions shall only be liable for damages which are caused by gross negligence or with intent of Wiking Healthcare Solutions, its agents or its executives. However, notwithstanding the above, Wiking Healthcare Solutions shall also be liable for simple negligence in cases of material breach of contract. This liability for material breach of contract is restricted to such damage as is foreseeable and typical for the agreement in question. In respect of non-material breach of contract, Wiking Healthcare Solutions is also only liable for such damages in cases of gross negligence.

10.2. In the event of damage to health, personal injury or death, where liability pursuant to the Spanish Product Liability Act exists, and where there is wrongful intent, the liability of Wiking Healthcare Solutions is unrestrictedly subject to the statutory regulations. Liability in respect of



# WIKING

## HEALTHCARE SOLUTIONS

impossibility or delay in delivery/performance is solely subject to Item 5.5. of these Terms of Delivery and Payment.

### 11. Assignment of Claims

Claims arising from this contractual relationship and all claims against the damaging party or its insurer arising from the loss of or damage to the reserved goods may only be assigned to third parties with prior written permission of Wiking Healthcare Solutions.

### 12. Export control rulings

12.1. The export of certain goods, information, software and documentation can for example, by very nature of their type or their purpose or end purpose be subject to the approval agreement. The end user shall strictly abide by the relevant export regulations pertinent to the goods, information, software and documentation in question, in particular with regard to the EU, EU member states as well as the USA.

12.2. In abidance with the legislation governing export controls of the Wiking Healthcare Solutions, as well as of the EU member states and the USA the customer is under obligation to procure at his own cost and before the actual export of products or technical information, which he has received from Wiking Healthcare Solutions, all the required export licenses and any such other documents necessary.

12.3. The customer shall be under obligation, not to sell, export, reexport, deliver or otherwise pass on, whether directly or indirectly, such products or technical information to persons, companies or to other countries in so far as this be in breach of laws and rulings of the Kingdom of Spain, other EU member states or the USA. The customer is obliged to inform all recipients of these products and/or of any technical information of the requirement to abide by these laws and rulings.

12.4. The customer shall procure at his own cost all licenses and documents required for export and import, which may also be required for using the products. Refusal of export permission does not entitle the end user/ordering person or body/ purchaser to withdraw from the contract or to claim for damages.

### 13. Data Protection

Data will be processed according to the applicable laws and taking account of our "privacy policy". Data collected from the customer will only be collected, processed and used to the extent required for the conclusion and performance of the sales agreement and / or any further agreements between Wiking Healthcare Solutions and the customer.

### 14. Place of Performance

The place of performance for deliveries, payments and warranties shall be Torredembarra.

### 15. Place of Jurisdiction

15.1. For all disputes, including actions in summary proceedings based solely on documentary evidence , and actions in summary proceedings for unpaid cheques, Tarragona shall be the agreed place of jurisdiction for merchants entered in the commercial register, legal persons under public law, and separate public estates. This shall also apply in the event that the customer's legal residence or habitual place of residence is unknown, is located abroad, or has been transferred abroad.

15.2. For all above listed cases Wiking Healthcare Solutions shall also be entitled to file a lawsuit in the court with jurisdiction over the customer.

### 16. Validity of the Wiking Healthcare Solutions Terms of Delivery and Applicable Payment Law

16.1. Should individual provisions of the contract concluded within the frame work of these terms and conditions or individual provision of these Terms of Delivery and Payment be invalid, this shall affect neither the validity of the other provisions nor that of the contract.

16.2. The Terms of Delivery and Payment and the contracts concluded within the framework of these terms and conditions are subject to Spanish law. The Vienna Convention (UN Convention on Contracts for the International Sale of Goods of 11 April 1980) is not applicable.

### 17. Business Dealings with Non-Commercial Entities

17.1. The above provisions shall apply to business dealings with purchasers who are not commercial entities/business persons within the meaning the Spanish Civil Code , with the following amendments:

17.2. Item 3.2. shall apply subject to the provision that the price calculation is based on the prices applicable on the date of delivery/ performance if the delivery or performance occurs more than four months after conclusion of the contract.

# WIKING

## HEALTHCARE SOLUTIONS

17.3. The reservation of current account in Item 4.1. shall not apply. The interest rate stated in Item 4.4 shall be 5 %-points above base rate, subject to a minimum interest rate of 7%.

17.4. Item 5.7. - Partial deliveries - shall not apply.

17.5. Item 6.4. - Packaging damages – and Item 7 – Passing of risk – shall not apply

17.6. Item 8 - Reservation of title - shall apply with the following wording: Wiking Healthcare Solutions shall retain title to the goods delivered until the purchase price has been paid in full. Wiking Healthcare Solutions's claims shall not be extinguished upon being included in any current accounts balance and Wiking Healthcare Solutions recognizing this balance. The customer shall be entitled to resale of the reserved goods only within the framework of his ordinary course of business, either against payment in cash or upon agreeing upon a reservation of title. In the event of sale, the Customer shall assign to Wiking Healthcare Solutions all resulting claims against the purchaser in full and with all ancillary rights (reservation of title, transfer of ownership by way of security) until all debts arising from the purchase price have been paid in full. The reservation of title shall also extend to new products manufactured by combining the goods which Wiking Healthcare Solutions has delivered with other objects. In the event of combination with other objects, Wiking Healthcare Solutions shall acquire co-ownership, which co-ownership the Customer shall hold in safe custody for Wiking Healthcare Solutions.

17.7. Item 9.1 shall apply with the following wording: The warranty period shall last 24 months from the date of delivery to the user.

17.8. Item 9.2 shall apply with the following wording: During the warranty period, Wiking Healthcare Solutions shall at the choice of the user either replace the goods or remedy the defect free of charge.

17.9 Item 9.4. Sentence 2 shall not apply.

\*\*\*\*\*