1. **Scope of Application**

(1) These General Terms and Conditions of Sale and Delivery (hereinafter “General Conditions”) apply exclusively to all sales by HAAG-STREIT SURGICAL GmbH & Co. KG (hereinafter “HSK”). Any conflicting and/or supplementing terms or conditions of the buyer are not binding upon HSK. This applies also if HSK shall not expressly object to such terms or conditions or if HSK shall fulfil its obligations without objecting to such terms or conditions.

(2) The General Conditions together with the document of which they form a part contain all relevant terms and conditions of the agreement entered into with the buyer. No additional agreements exist.

(3) These General Conditions apply also to all future business with the buyer.

2. **Order**

(1) Any offers made by HSK are non-binding and subject to change. They merely constitute an invitation to the buyer to submit an offer himself.

(2) All purchase orders from buyer shall be in writing, by fax or electronic mail. Such purchase order shall become effective only after written confirmation (including e-mail) by HSK.

(3) Public statements made by HSK or the producer of the delivered goods or his assistants, in particular while promoting or labelling the goods, are not descriptions of the quality of the goods or a guarantee hereof.

3. **Prices**

(1) The prices are based on the price list valid at the time of the conclusion of the contract. Prices set forth in the confirmation of order shall be firm and binding. All prices do not include VAT, shipping or handling costs. In the event that the costs of HSK shall increase after four weeks from the confirmation of order and prior to delivery due to increases of, e.g. increases in raw material and wages, public charges or other costs beyond HSK’s control, HSK shall be entitled to adapt the prices accordingly. HSK will provide the buyer with evidence for such cost increases upon request.

(2) In the event of deliveries to other EU member states the buyer shall prior to delivery inform HSK of his VAT identification number, under which he carries out the income taxation within the European Union. Failing this, he shall pay for HSK’s deliveries the VAT amount owed by HSK in addition to the agreed purchase price.

4. **Terms of Payment**

(1) Where the contract provides for payment by Letter of Credit HSK is under no circumstances obliged to perform the contract before receiving the Letter of Credit.

(2) Payments are due and payable within thirty days from the delivery without deduction. Thereafter the buyer will be liable for default of payments pursuant to sec. 286 subsec. 2 number 2 German Civil Code. The legal consequences will be determined pursuant to section 288 German Civil Code.

(3) In the event that the buyer fails to meet his payment obligations HSK is entitled to suspend further performance either in whole or in part until payment of the amounts due or provision of security.

(4) In the event that after the conclusion of the contract the buyer’s financial situation deteriorates substantially, endangering the payment of the agreed price, e.g. suspension of payment by the buyer or filing of a petition of the commencement of insolvency proceedings upon the assets of the buyer, HSK shall be entitled to suspend performance until payment in advance or provision of security. If after a reasonable period of time the buyer shall have failed to pay in advance or provide security HSK is entitled to rescind the contract.

(5) Set-off or retention rights of the buyer are only given if his counter-claim is undisputed or has been confirmed by a final court decision. In the event of defaults of goods, the buyer’s counter rights shall remain unaffected.

(6) The buyer is not entitled to assign any rights or claims under this contract to a third party without HSK’s prior written consent.

5. **Delivery, Inspection of Goods and Default of Delivery**

(1) Time limits, in particular delivery dates stipulated by HSK, are only binding if expressly confirmed as binding in the confirmation of order. For the purpose of adherence of delivery dates placing the goods at the plant shall be decisive. HSK is under no circumstances obliged to meet confirmed delivery dates if any final specifications, information or cooperation by the buyer, in particular issuance of the Letter of Credit, adduction of domestic or foreign certificates or import licence which are required for the delivery of the goods, are received by HSK after dispatch of the confirmation.

(2) Periods of delivery shall be reasonably extended in the event of impediments beyond the control of HSK, in particular short falls in energy supply, transport impediments, health crises, embargo impositions, disturbances of operation, discontinuance of operation, strikes, industrial actions, deficiencies or delays of deliveries by sub-suppliers. If HSK is unable to perform its obligations due to such impediments the order shall be deemed cancelled. HSK will inform the buyer of such impediments without undue delay.

(3) HSK is entitled to make partial deliveries to the extent acceptable to the buyer.

(4) The buyer must examine the goods without undue delay following delivery by HSK and notify a defect to HSK without undue delay in writing. If the buyer fails to notify HSK the goods are deemed approved unless there is a defect which at the time of the examination was not detectable. Where such a defect becomes apparent at a later time notice must be made without undue delay following detection. Otherwise the goods are deemed approved with regard to this defect.

(5) In the event that the buyer fails to accept the due delivery HSK is, without prejudice to any other remedies, entitled to store the goods at the buyer's risk and recover from the buyer any extra expenses (such as additional storage charges) incurred due to the buyer’s failure of acceptance.

6. **Measures, Quality**

Deviations from measures and quality are admissible within the limits of DIN standards and, in their absence, within the limits of the established practice.

7. **Packing, Packaging Costs, Transport Damages**

(1) As far as customary in the trade HSK will deliver the goods packed. HSK retains the choice of appropriate packing.

(2) Any costs of packing shall be borne by the buyer.

(3) The buyer shall report any transport damages to HSK and the transport company without undue delay and shall have the facts of the case recorded.

8. **Transfer of Risk, Place of Fulfilment, Place of Payment**

(6) All deliveries shall be made ex works [EXW] pursuant to the INCO-TERMS 2020, Rosengarten 10, D-22880 Wedel, Germany. If the buyer demands shipment of the goods the risk of loss or damage to the goods passes to the buyer upon dispatch.

9. **Warranty**

(1) HSK warrants to the buyer that goods delivered by HSK will upon delivery conform to the specifications agreed between the Parties, it being understood that nothing contained herein shall be construed as guarantee.

(2) If the delivered goods should be defective HSK may remedy the defect or effect a substitute delivery at its own discretion (subsequent performance). If HSK fails to subsequently perform or subsequent performance is unacceptable to the buyer, the buyer shall be entitled to proportionate reduction of the purchase price or rescission of the contract. Additional claims of the buyer are excluded, notwithstanding any rights pursuant to Art. 10 (liability). Any claims of the buyer pursuant to sec. 478, 479 of the German Civil Code (recourse within the supply chain) remain unaffected.

(3) The warranty period shall be two years from the delivery.

10. **Liability**

(1) Subject to the regulations below HSK shall be liable for any damages incurred by the buyer as a result of a late or defective delivery of the goods or a breach of contract unless such delay, defect or breach of contract has not been attributable to negligence or willful conduct on the part of HSK.

(2) If and to the extent that HSK is liable for damages a. HSK’s liability shall be limited to the typically predictable damage, maximum € 1,000,000 (Euro one million) in total; and
b. HSK shall not be liable for any indirect and/or consequential damages, including loss of profit, loss of production and/or re-consequence of the customers.

(3) The foregoing limitations of liability pursuant to subparagraph (2) shall not apply if
a. liability is mandatory under the applicable law, e.g. under the German Product Liability Act or in case of injury to life, body or health,

b. HSK has granted a guarantee, or if

c. the damage is attributable to gross negligence or wilful conduct on the part of HSK.

(4) The exclusion and/or limitation of claims for damages according to the above subparagraphs apply also to claims against directors, officers, employees and auxiliary persons (Erfüllungsgehilfen) of HSK.

11. Liability of the Buyer
Where the goods are manufactured according to drawings, labels, trademarks or other specifications of the buyer, buyer undertakes to indemnify and hold harmless HSK from any and all claims asserted by a third party against HSK for the infringement of intellectual property rights including but without limitation patent rights, trademark rights and copyright rights.

12. Retention of Title

(1) HSK retains title to the delivered goods (hereinafter “the retained goods”) until full settlement of all claims – present and future – under the business relationship with the buyer.

(2) The retained goods are always processed or transformed by the buyer on behalf of HSK as producer, but without binding HSK. In case HSK loses title to the delivered goods due to processing or transformation HSK acquires partial title to the new product proportionate to the value of the delivered goods in relation to the value of the other components of the new product at the time of the processing. Where the title entirely passes to the buyer due to fixed attachment or mixture, the buyer is obliged to transfer to HSK a partial title proportionate to the value of the delivered goods in relation to the value of the other components of the new product at the time of the fixed attachment or mixture. The buyer will diligently store the goods to which HSK has acquired the (partial) title on behalf of HSK. If the goods are situated with a third party, the buyer herewith assigns all claims for possession against the third party. HSK herewith accepts such assignment. HSK’s partial title acquired under the provisions of this clause shall pass to the buyer under the same conditions as HSK’s full title to the delivered goods.

(3) The buyer shall be entitled to resell retained goods in the ordinary course of his business. The buyer assigns to HSK all present and future accounts receivable (including VAT) resulting from the sale of these goods in the amount corresponding to the invoice value of the respective retained goods. HSK accepts such assignment. The buyer remains entitled to collect said accounts receivable from the respective party which does not, however, affect HSK’s right to collect the account receivable itself. HSK is obliged not to collect the assigned accounts receivable, while the buyer fulfils his obligation to forward the collected payments to HSK, is not in default of payment and no filing for the commencement of insolvency proceedings has been made and the buyer has not suspended payment.

(4) The buyer is not entitled to use the goods title to which is retained for any other purposes. In particular he is not entitled to transfer ownership by way of security or pledging. The accounts receivable assigned to HSK may be assigned for security purposes to or pledged in favour of a third party only with HSK’s prior written consent.

(5) The buyer must notify HSK in writing without undue delay of any attempts of impairment or attachment of the retained goods by third parties. The cost required to protect the right of HSK has to be borne by the buyer to the extent that such costs will not actually be reimbursed by the third party.

(6) If the buyer commits a material breach of contract, in particular if he is in default of payment, HSK shall, after giving reasonable notice, be entitled to take the goods title to which is retained back at the buyers expense or to demand assignment of the rights of possession which the buyer has towards third parties. In addition thereto HSK is entitled to revoke the buyer’s right to sell the goods, collect accounts receivable and to use, process, ship or sell the retained goods. HSK may offset the proceeds of the sale against the outstanding amounts. The buyer is liable for any loss to the extent that the proceeds of the sale are lower than the purchase price outstanding.

(7) To the extent that the value of the securities provided exceeds the claims of HSK by more than 10% HSK is obliged upon the buyer’s request to release securities at its discretion.

(8) To the extent that HSK is entitled to take back retained goods, the buyer undertakes to offer HSK and its representatives the irrevocable right to enter its premises during normal business hours and to tolerate the removal of the retained goods.

14. WEEE and RoHS regulations
The buyer shall comply with EU Directives 2011/65/EU (Restriction on Hazardous Substances, RoHS 2) and 2002/96/EC (Waste Electrical and Electronic Equipment, WEEE) generally and as implemented within each country into which the goods are imported, exported or distributed by the buyer. Such obligation shall include registering as a “producer” under applicable WEEE legislation (i.e. for Germany § 10 of the German Electrical and Electronic Equipment Act - ElektroG (ElektroG)). The buyer shall notify HSK in the event it should export any of the products outside of Germany. Buyer agrees to indemnify and hold harmless HSK from any liability pursuant to the applicable WEEE and RoHS regulations.

15. Proof of Export
If the buyer who is not a resident in the Federal Republic of Germany (external buyer) or his representative calls for goods and carries or dispatches them abroad (external territory) the buyer shall provide HSK with the necessary fiscal proof of export. Failing this proof the buyer shall pay for the deliveries the VAT amount owed by HSK in addition to the agreed purchase price.

16. Governing Law, Disputes

(1) The contract is governed by the laws of the Federal Republic of Germany, excluding its conflict of laws rules. The CISG (United Nations Convention on Contracts for the International Sale of Goods) is not applicable. Trade Terms as provided for under the General Conditions shall be interpreted in accordance with the International Rules for the Interpretation of Trade Terms (INCOTERMS) as amended at the time of the delivery.

(2) All disputes arising out of or in connection with the contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The place of the arbitration shall be Hamburg, Germany. The language of the arbitration shall be English.

17. Severability
Should any particular provision of these General Conditions be invalid or unenforceable, the rest of these General Conditions shall not be affected and remains valid.