

## I. General Provisions

1. The following Standard Terms and Conditions of Sale and Delivery shall apply to **avateramedical GmbH** based in Jena (entered in the Commercial Register at the local court of Jena under the number HRB 507818), **avateramedical Mechatronics GmbH** based in Ilmenau (entered in the Commercial Register at the Municipal Court of Jena under the number HRB 301594) and **avateramedical Digital Solutions GmbH** based in Hanover (entered in the Commercial Register at the Municipal Court of Hanover under the number HRB 209324). The three companies aforementioned are hereinafter jointly and severally referred as “**avateramedical**”.
2. The following terms and conditions shall apply to any deliveries and services, including information, offers, advice and repairs provided by **avateramedical**. Any terms and conditions of Customer shall apply if and only as far as they have been explicitly recognized in writing by **avateramedical**.
3. Customer data of **avateramedical** shall be stored and processed electronically as far as this is required for the appropriate handling of the business relationship.
4. The assignment of claims against **avateramedical** to any Third Party shall be excluded. Section 354 a of the German Commercial Code (HGB) shall remain unaffected thereby.
5. Any information and advice concerning the products of **avateramedical** shall be provided exclusively on the basis of previous

experiences. The values provided in this context, in particular any performance data, shall be average values determined in trials under usual laboratory conditions. This does not assume any obligation on the part of **avateramedical** that the average values identified under normal laboratory conditions and application options are complied with.

As regards any possible liability, Section XI of these Terms and Conditions shall apply.

## II. Offers and Contract Conclusion

1. Any offers submitted by **avateramedical** shall be non-binding unless the binding character of the offer has been explicitly stated and a deadline has been set. A sales contract as well as any other contract shall be deemed to be in force only after **avateramedical** has confirmed the order in writing or has delivered the goods.
2. A delivery made by **avateramedical** shall not mean that any deviating terms and conditions of Purchaser are accepted by **avateramedical**. **avateramedical** shall consider the acceptance of the ordered goods or services by Purchaser as a subsequent recognition of the terms and conditions defined herein, even if Purchaser had explicitly objected to them before or stated any other terms and conditions in the order.

## III. Prices

1. Only the prices specified in the order confirmation shall be decisive. Any additional services that are not part

of the order confirmation, but have been ordered by the customer, shall be invoiced separately.

2. Unless anything else has been defined, all prices quoted shall be net prices ex works according to Incoterms® 2010, without packaging and excise taxes. The latter shall be paid by Purchaser. Any customs duties, taxes and charges of any kind that are levied in connection with the delivery transaction outside the country of Vendor shall be paid by Purchaser or reimbursed to **avateramedical** as far as **avateramedical** has been liable to cover these expenses and provides the relevant evidence therefor. Unless anything else has been agreed and specified accordingly in the order confirmation, Purchaser shall bear any bank charges in connection with letters of credit, bank guaranties, collection procedures, redemption of documents, bill stamps, etc.

#### IV. Delivery Time

1. Delivery times shall be deemed as agreed only after an explicit written confirmation. Delivery times (agreed dates) shall start with the date of our order confirmation but not before any and all details of the order have been clarified and any certificates that might be required have been provided. An agreed date shall be deemed to have been met when the ready-for-dispatch note is issued in due time in case the goods cannot be dispatched in time without any fault on the part of **avateramedical**.
2. A delivery time or a delivery date shall be binding only if Purchaser fulfills its obligations in time, such as the down

payment, the opening of required letters of credit and the submission of evidence that all approvals from public authorities have been obtained. If the delivery is delayed due to circumstances for which **avateramedical** is not responsible, **avateramedical** shall be granted an adequate extension of the delivery period in view of the circumstances. In this case, Purchaser shall not be entitled to withdraw from the contract. If Purchaser is in arrears with its payments, **avateramedical** may postpone the fulfillment of the obligations until the payment has been received and may request that parts already delivered be returned.

3. In case of delivery times and dates that are not explicitly defined as fixed in the order confirmation, Purchaser may set an adequate period for the delivery/services two weeks after these dates have expired. Only when this additional period has elapsed shall **avateramedical** be in default.
4. Notwithstanding the rights of **avateramedical** from a default of Purchaser, delivery times and dates shall be extended by the period Purchaser fails to fulfill its obligations towards **avateramedical**. Should **avateramedical** violate any of its obligations - irrespective of the cause - **avateramedical** shall be liable for damages of any kind only as far as stipulated in Section XI of these Terms and Conditions.
5. Delivery dates shall apply subject to punctual deliveries from our suppliers.
6. In accordance with the legal provisions, Customer shall be entitled to withdraw from the contract unless

the obstacle is only of temporary nature and the postponement of the delivery date can reasonably be expected to be acceptable to Customer.

7. As far as reasonably acceptable to Customer, **avateramedical** shall be entitled to provide partial deliveries and services.
8. If Customer has a contractual or statutory right of withdrawal and **avateramedical** sets an adequate deadline for making use of this right, the right of withdrawal shall expire if the withdrawal is not declared prior to the expiration of this deadline.

### V. Dispatch, Passing of Risk, Transportation, Packaging, Insurance

1. The rights and risks for the product shall be passed to Purchaser as soon as they are ready for dispatch. If Purchaser does not specify a type of dispatch, **avateramedical** shall choose the type of transportation that makes sure that the delivery dates are complied with and the goods are transported appropriately. The insurance for the transportation of the goods shall lie within the responsibility of Purchaser. Irrespective of whether **avateramedical** arranges for transportation and insurance, Purchaser shall bear any costs arising in this respect.
2. If the dispatch of the delivery is delayed for reasons for which Customer is responsible, the risk of accidental deterioration and accidental loss shall pass to Customer once the ready-for-dispatch note has been issued. Any

storage costs after the passing of the risk shall be borne by Customer.

**avateramedical** shall be entitled to charge 1 % of the gross order value per month for storing the goods. Any further claims shall remain unaffected. If Customer is in default of acceptance, **avateramedical** shall be entitled to request the reimbursement of the costs incurred in this context; the risk of accidental deterioration and accidental loss shall be passed to Customer as soon as the Customer is in default of acceptance.

### VI. Payment

1. Any payments shall be made in Euro and free of postage and expenses.
2. Payment shall be due as soon as the products are made available for dispatch unless anything else has been agreed. Any down payments made by Customer shall be considered when invoicing the delivery price. They shall not be regarded as forfeit money referred to in the Section 353 of the German Civil Code (BGB) the abandonment of which entitles Purchaser to terminate the contract. If Purchaser does not accept the delivery on the contractually agreed date, it shall nevertheless be obligated to make the payments depending on the delivery date.
3. When the term allowed for payment is exceeded, **avateramedical** shall be entitled to charge interest in the same amount as the applicable rates for bank overdrafts, however not less than 5 percentage points above the marginal lending facility rate (MLF rate) of the European Central Bank.

Any Party shall be entitled to provide evidence for another interest rate disadvantage. Any further claims in case of default shall remain unaffected. The timeliness of the payment shall depend on the date of receipt of the payment and not its date of dispatch.

4. As far as any costs and interest are charged, **avateramedical** shall be entitled to credit the payments first to the costs, then to the interests and last to the main debt.
5. Retention of payments by Customer because of or an offset with counter-claims shall be admissible only if these counterclaims are undisputed or have been determined to be final and conclusive.
6. Any and all claims of **avateramedical** - even those under other contracts with Customer - shall be immediately due for payment in case of default in payment or cessation of payment by Customer or if **avateramedical** gains knowledge of other circumstances giving rise to justified and serious doubts as far the solvency or creditworthiness of Customer is concerned. This shall also apply if these circumstances on Customer's part existed already when the contract was concluded but were not known or had not to be known by **avateramedical**. In all cases referred to above, **avateramedical** shall also be entitled to execute any pending deliveries only against cash in advance or by way of security and, if this advance payment or security is not provided within two weeks, to withdraw from the contract without setting another deadline. Any further claims shall remain unaffected.

### VII. Retention of Title

1. All goods delivered shall remain the property of **avateramedical** (Retained Goods) until any and all claims, irrespective of the legal cause, from all contracts concluded at the same time or afterwards have been settled, including any future or contingent claims. This shall also apply if payments are allocated to specifically designated claims.
2. Any transformation and processing of the Retained Goods shall be made for **avateramedical** as manufacturer within the meaning of Section 950 of the German Civil Code (BGB), without constituting an obligation for **avateramedical**. The processed goods shall be considered as Retained Goods within the meaning of Paragraph 1 above. When Retained Goods are processed, combined and blended with other goods by Customer, **avateramedical** shall be entitled to co-ownership of the new goods in the proportion of the invoice value of the Retained Goods to the other goods used. If the ownership of **avateramedical** is extinguished by combining or blending the goods, the ownership rights for the new stock or product Customer is entitled to are assigned already today in the proportion of the invoice value of the Retained Goods; Customer shall store the new products for **avateramedical** free of charge. The co-ownership rights thus created shall be considered as Retained Goods within the meaning of Paragraph 1.
3. Customer shall be entitled to sell or process the Retained Goods or to combine them with or integrate them

into other objects (hereinafter shortly referred to as Resale) only in the due course of business and as long as Customer is not in default. Any other disposition of the Retained Goods shall be inadmissible. Any seizures or other access to the Retained Good by a Third Party must be immediately reported to **avateramedical**. All intervention costs shall be charged to Customer as far as they cannot be collected from the Third Party (opponent in the action against compulsory enforcement) and the action against compulsory enforcement had been justified. If Customer grants deferment of payment to its own customer, it shall retain title to the Retained Goods towards this customer on the same conditions as **avateramedical** retained the title when delivering the Retained Goods. Customer shall, however, not be obligated to retain title of any future claims towards its own customer as well. Otherwise, Customer shall not be authorized to resell the goods.

4. Herewith, any claims of Customer from Resale of the Retained Goods are assigned already to **avateramedical**. They serve as a means of security to the same extent as the Retained Goods. Customer shall be entitled and authorized to resell them only if it is guaranteed that the claims resulting therefrom are assigned to **avateramedical**.
5. If Customer sells the Retained Goods together with other goods not supplied by **avateramedical** for one total price, the assignment of the claims from this sale shall correspond

to the amount of the invoice value of the Retained Goods sold this way.

6. If the assigned claim is included into a current invoice, Customer herewith assigns a part of the balance corresponding to the amount of this claim, including the final balance, from the current account to **avateramedical**.
7. Until revocation by **avateramedical**, Customer shall be entitled to collect the claims assigned to **avateramedical**. **avateramedical** shall have the right of revocation if Customer does not duly fulfill its payment obligations from the business relationship with **avateramedical** or if **avateramedical** gains knowledge of circumstances indicating that the creditworthiness of Customer might be considerably impaired. If the requirements for making use of the right of revocation are met, Customer shall, as soon as requested to do so, inform **avateramedical** of the claims assigned and their debtors, provide all details required for collecting the claims, hand over the corresponding documents to **avateramedical** and inform the debtor about the assignment. **avateramedical** shall also be entitled to inform the debtor about the assignment.
8. If the value (the nominal value for payments due, the estimated value for movable objects) of the securities to the benefit of **avateramedical** exceeds the claims secured by a total of more than 50 per cent, **avateramedical** shall be obligated to release securities, at its own option, when requested to do so by Customer.

9. When **avatera**medical invokes Retention of Title, this shall be deemed to be a withdrawal from the contract only if **avatera**medical explicitly declares its withdrawal in writing. Customer's right to own the Retained Goods shall expire if it does not fulfill its obligations from this or any other contract.

### VIII. Warranty and Obligation to report Defects

1. Customer shall be obligated to inspect the goods supplied immediately after receipt at the agreed location of delivery and destination - even if demonstration devices had been sent before - and check diligently that the delivery is complete and correct. The time allowed for giving notice of defects within the meaning of Section 377, Paragraphs 1 and 2 of the German Commercial Code shall be 8 days; the time when a written notice of defects is received by **avatera**medical shall be decisive. The period of limitation for claims for defects shall be one year; this shall not apply to defects consisting of a right in rem of a Third Party on the basis of which surrender of the goods may be requested.
2. The rejected goods shall be returned for inspection to **avatera**medical in the original or an equivalent packaging. In case of a justified and timely notice of defects, **avatera**medical shall remedy the defects by way of subsequent performance, at its own option, either by correcting the defect or by supplying a product without defect; **avatera**medical shall bear the costs for remedying the defect as far as

these costs are not increased by the fact that Customer has relocated the item delivered to another place than the place of performance.

**avatera**medical shall be entitled to refuse subsequent performance in accordance with the legal provisions. If subsequent performance is rejected, fails or is unacceptable to Customer, the latter shall be entitled to withdraw from the contract or to reduce the remuneration pursuant to the provisions laid down in the following Paragraph 3. Warranty shall be excluded in case of defects of the product supplied or parts thereof which are due to usual wear and tear.

3. Customer shall be entitled to withdraw from the contract - as far as withdrawal is not excluded by law - or to reduce the purchase price only after an additional period of time set by Customer for subsequent performance has expired without success, unless the setting of a deadline is not necessary (Section 323, Paragraph 2; Section 440; Section 441, Paragraph 1 of the German Civil Code). In case of withdrawal, Customer shall be liable for deterioration, perishing and loss of use not only with respect to the usual care exercised in its own affairs but for any negligent or deliberate action.
4. The provisions laid down in Section XI shall apply to any claims for damages and reimbursement of expenses on the part of Customer.
5. In case of fraudulent concealment of a defect or if warranty for the quality of the item supplied is granted with the transfer of risk as defined in Section 444 of the German Civil Code

(the seller declares that the item purchased has a certain quality at the moment when the risk is passed and that seller will assume responsibility for all consequences if this quality is not given, irrespective of a fault), the rights of Customer shall be determined exclusively by the legal provisions.

6. Apart from the legal reasons for a refusal, **avateramedical** shall also be entitled to refuse subsequent performance if and for as long as Customer has not returned the rejected goods despite a request submitted by **avateramedical**; Customer shall not have the right to withdraw from the contract or to reduce the purchase price in case of such a refusal. Customer shall have no warranty rights if the goods were modified or altered without the consent of **avateramedical** unless Customer provides evidence that the defect was not caused by these alterations or modifications.
7. If the end customer of the purchased item in the supply chain is a consumer, Customer - considering also the further requirements of Section 377 of the German Commercial Code - shall be entitled to have recourse to the statutory provisions (Sections 478, 479 of the German Civil Code). Customer shall, however, only be entitled to claim damages and reimbursement of expenses as far as defined in Section XI.
8. If the goods supplied deviate from the order confirmation only as far as it is customary in the industry, this shall not constitute a defect. Customer shall not be entitled to any

warranty claims for defects in case of goods that had been sold as declassified or used material.

9. If the instructions of use or maintenance of **avateramedical** are not observed, the products and/or services are modified, parts exchanged or consumables used that do not correspond to the original specifications, warranty shall not apply unless Customer provides evidence that the defect is not caused by these facts.

### IX. Rights to the Software

1. All programs shall remain the property of **avateramedical**. The programs, documentation and subsequent additions must not be made accessible to any Third Party and it shall neither be permitted to copy them - not even for Customer's own purposes apart from a backup copy - nor to duplicate them in any other way without the prior written consent of **avateramedical**.
2. If software is included in the products supplied, Customer shall be granted a license for the use of the software for each individual product together with this product and for the duration of its technical life. Any reverse engineering of software and its modification or removal from the product shall not be permitted.
3. Source programs shall not be provided; a separate written agreement shall be required for making them available.

### X. Safety Instructions

1. Customer agrees to use the item delivered only within the framework of the restrictions specified in the Instructions of Use and to instruct its users and auxiliary staff diligently in using and operating the item delivered. Declarations of conformity shall be provided at cost price by **avateramedical** and only as far their originals must still be kept by **avateramedical**.

### XI. Violation of Intellectual Property

1. If any claims from industrial property rights or copyrights are raised with respect to products delivered by **avateramedical** that are used as defined in the contract, **avateramedical** shall verify these claims and, at your option and expenses, either obtain a right of use for the product, modify the product in such a way that no property or copyrights are violated or replace the product. This shall be conditional on the fact that Customer informs **avateramedical** immediately in writing of such claims raised by a Third Party and any defense measures and out-of-court settlements shall be reserved to **avateramedical**.
2. Should an economically reasonable use of the product/service provided by **avateramedical** be no longer possible in this case, it shall be deemed to have been agreed that **avateramedical**, at its discretion, may either modify the product/service in such a way that the legal defect is remedied, replace the product or take back the product/service and reimburse the purchase

price paid to **avateramedical**, deducting a certain amount according to the age of the product/service.

3. Customer shall not be entitled to any further claims for violation of property or copyrights as far as no material contractual obligations were violated and no other contractual obligations were violated deliberately or by gross negligence. **avateramedical** shall have no obligations if the infringement of rights was caused by the fact that the product/service provided by **avateramedical** was not used as specified in the offer of **avateramedical** or was used together with other products/services that had not been delivered by **avateramedical**.

### XII. Further Liability

1. Claims for damages on the part of Customer, irrespective of the legal cause, in particular for positive breach of an obligation, for violation of obligations during the contract negotiations and for tortuous act shall be excluded. This shall not apply if liability is mandatory, e.g. under the German Product Liability Act, or in cases of gross negligence, the lack of warranted properties or the violation of material contractual obligations.
2. Furthermore, the exclusion of liability shall not apply to any damage from injury to life, limb or health resulting from negligent violation of Seller or from deliberate or negligent violation of an obligation of a legal representative or authorized agent of Seller.



3. Unless deliberate action or gross negligence is involved, the damages to be paid for violation of material contractual obligations shall, however, be limited to the damage that is foreseeable and typical for this kind of contract. The preceding provisions do not change the burden of proof to the detriment of Customer.

### **XIII. Confidentiality**

1. Unless anything else has been agreed in writing, the information submitted to **avateramedical** in connection with orders shall not be confidential unless confidentiality is evident.

### **XIV. Place of Performance, Legal Venue and Applicable Law**

1. The place of performance for deliveries shall be Supplier's plant in case of deliveries ex works and the warehouse of **avateramedical** for all other deliveries.
2. The legal venue for all disputes arising in connection with this contract shall be, at the discretion of **avateramedical**, either the registered place of business of **avateramedical** or the place of business of Customer; the legal venue for any proceedings instituted by Customer shall be exclusively the registered place of business of **avateramedical**. Statutory provisions concerning exclusive competences shall remain unaffected.
3. All legal relations between **avateramedical** and Customer shall be governed by the law of the Federal Republic of Germany. The UN Convention on the International Sale of Goods (CISG) shall not apply.