General Terms and Conditions of Sale and Delivery

1. Scope of Application

1.1. These General Terms and Conditions of Sale and Delivery shall be applicable for all business relations between AIRSKIN GmbH, FN 633792y, (hereinafter referred to as "**AIRSKIN**") and contracting parties (end-user or acknowledged re-seller) (hereinafter referred to as the "**Customer**" and, together with AIRSKIN, as the "**Parties**"). AIRSKIN provides all sales and deliveries of Products to the Customer subject (a) to these General Terms and Conditions, irrespective of whether a reference is made thereto in the individual case, and (b) to any written agreements between the Parties.

1.2. The Customer accepts these General Terms and Conditions at the latest with the submission of his contractual declaration (*"Willenserklärung"*) to AIRSKIN. Any general terms and conditions of the Customer shall not be a part of the Agreement. This applies, in particular, even if AIRSKIN does not expressly contradict the Customer's general terms and conditions or renders a service without any reservation, whilst being aware of the Customer's differing, contrary, or supplementary general terms and conditions.

2. Definitions

2.1. In these General Terms and Conditions the following terms shall have the meanings hereunder assigned to them:

a) "**Agreement**": the contract in writing between the Parties concerning delivery and performance of Products, and all appendices, including agreed upon amendments and additions in writing to said documents;

b) "**Contract Price**": the payment to be made for the Products;

c) "**Documents**": in particular manuals, illustrations, construction plans, drawings, calculations, and examples;

d) "**Information**": knowledge, expertise and data contained within Documents;

e) "**Product**": the machinery, apparatus, materials, articles, documentation, software and other products to be supplied by AIRSKIN under the Agreement;

f) "**Software**" means computer applications software which is (i) licensed by AIRSKIN to customers (end-users acquiring Products from AIRSKIN or appointed reseller), (ii) AIRSKIN-branded, and (iii) covered by a user manual created by AIRSKIN, either as standalone document or integrated in another documentation. "Software" excludes computer software developed, owned or licensed by any party other than AIRSKIN.

3. Conclusion of Agreement

3.1. All offers made by AIRSKIN shall be subject to changes and without any obligation (*"Angebot außer obligo"*). A Customer's order, which does not specify a deadline, shall be binding on the Customer for 30 (thirty) days.

3.2. Agreements with AIRSKIN shall only be entered into by means of an order confirmation in writing or acceptance from AIRSKIN in writing (*"schriftlich"*).

3.3. Deviations in an order confirmation in writing or the Documents referenced therein from the previous correspondence of the Parties shall be deemed to be approved, if the Customer does not expressly object to the deviation within a reasonable period of time, at the latest within 7 (seven) days from receipt of the order confirmation in writing.

4. Products

The Products are exclusively determined by the Information provided in the order confirmation in writing and the Documents referenced therein. AIRSKIN does not provide for any maintenance, service or similar works, if not agreed upon in writing.

5. Intellectual Property Rights and Confidentiality

5.1. AIRSKIN retains all property rights and all protective rights and copyrights, Software to all Documents and Products, as well as all Information contained within them or otherwise provided by the Customer. Even if a delivery of a Product is carried out on the basis of the Customer's specifications or if the Customer makes any contribution otherwise to it, the exploitation and usage rights shall be assigned to AIRSKIN fully and exclusively. The transmission of Documents and Information to third parties and any use, which extends beyond the specific Agreement, shall be prohibited without the prior express written permission of AIRSKIN.

5.2. The Customer must maintain confidentiality with regard to all of AIRSKIN's business Information and expertise known or otherwise obtained, even after termination of the business relationship, as far as such Information is not a matter of public knowledge and does not relate to Information legitimately obtained by the Customer from third parties.

5.3. AIRSKIN grans to Distributor the nonexclusive, revocable, non-transferable right and license to install, read into memory, execute, display and use the Software in relation to the Products. Customer has no rights, title or interests in or on the Software and all rights are reserved with AIRSKIN (including source code an object code) and all related documentation, user manuals, technical instructions, copyrights, rights to create deviations or enhancements thereof, rights to licence to third parties, and all other rights of ownership and use.

6. Payment and Terms of Payment

6.1. All prices quoted by AIRSKIN are in Euros and are subject to Value Added Tax. The information in price lists is provided for general information purposes only and is non-binding.

6.2. The payment terms are, if not provided otherwise in an offer, as follows: 100 % of the Contract Price as down payment, within 2 (two) weeks after placing the order against invoice;

6.3. All charges, fees and taxes originating from payment transactions outside of Austria as well as confirmation charges shall be borne by the Customer.

6.4. Payment to third parties will not be accepted by AIRSKIN as reduction of debts.

The Customer shall have no right of retention whatsoever.

6.5. The Customer shall only be entitled to offset claims against AIRSKIN (*"Aufrechnung"*), which have been legally determined (*"rechtskräftig festgestellt"*) or which have been expressly acknowledged (*"konstitutiv anerkannt"*) in writing by AIRSKIN.

7. Delivery

7.1. AIRSKIN delivers all Products ex works AIRSKIN Vienna (Incoterms 2010).

7.2. Delivery periods and deadlines shall only bind AIRSKIN, if that was expressly confirmed in writing.

7.3. Should delays occur in deliveries or service provision due to events beyond the sphere of influence of AIRSKIN, in particular due to force majeure, official measures, confiscation, natural disasters, unrest or war, transport interruptions, operational disruptions, industrial action, or where deliveries to AIRSKIN have failed to occur or occurred in breach of contract, then the delivery deadlines shall be extended accordingly (delivery deadlines for the provision of services also shall be extended). Should a delivery/service provision be delayed due to events such as these by more than the duration of the original delivery period (or the period between the order confirmation and the delivery deadline), then each Party shall be entitled, within 14 days from the end of this extension period, to withdraw from the part of the delivery affected by the delay by means of an express written statement.

8. Warranty ("Gewährleistung")

8.1. Statements and commitments by AIRSKIN, in particular with regard to promised characteristics, shall not serve as guarantees (*"Garantiezusagen"*) or warranties (*"Gewährleistungszusagen"*) in any legal sense, unless expressly agreed otherwise in writing.

8.2. Particular properties, characteristics, and possible uses ("*besonders bedungene Eigenschaften"*) of the Products shall be confirmed by express agreement in writing. In

particular, AIRSKIN does not guarantee or warrant particular use ability, unless expressly confirmed in writing.

8.3. If AIRSKIN warrants characteristics pursuant to an agreement according to clause 8.1, the warranty period shall be 6 (six) months from the receipt of the Product by the Customer.

8.4. The period for ensuring supply of spare parts shall be 60 (sixty) months from the receipt of the Product by the Customer.

8.5. In any case, AIRSKIN assumes no guarantee or warranty for cables, plugs, jacks and cinches.

8.6. In any case, guarantee and warranty shall be excluded for defects caused by the material or instructions provided by the Customer for the manufacturing of the Products.

8.7. In the event of a claim under a warranty, AIRSKIN shall provide, at its discretion, either a remedy of the defect (*"Verbesserung"*) or a replacement of the defect Product (*"Austausch"*) within a reasonable period of time. Replaced Products shall become the property of AIRSKIN and be returned to AIRSKIN. Should AIRSKIN fail to carry out remedy or replacement within a reasonable period of time or should remedy and replacement prove impossible, then the Customer may, at his/her own discretion, request a price reduction or, provided it is not simply a minor defect ("*geringfügiger Mangel*"), cancelation of the Agreement (*"Wandlung"*). In the case of agreements where partial deliveries are agreed, the right of cancelation shall be restricted to those partial deliveries which have not been duly executed. The Customer renounces his right of cancelation if sells, modifies or otherwise treats the Products in the knowledge of their defectiveness.

8.8. The presumption according to § 924 of the Austrian Civil Code (*"Allgemeines bürgerliches Gesetzbuch"* – **"ABGB"**) is hereby excluded.

8.9. The Customer shall not be entitled to the right of recourse according to § 933b ABGB.

9. Defect Complaints ("Mängelrüge")

9.1. The Customer must make any defect complaints with regard to the Products under the Agreement without delay to AIRSKIN expressly in writing. Obvious defects ("*offene Mängel*") shall be reported within three working days from receipt of the Products and concealed defects (*"versteckte Mängel"*) at the latest within three working days of their discoverability. In the case of partial and successive deliveries, a separate complaint shall be made for each delivery subject to a defect. A defect complaint will be considered delayed in any event, even if the deadlines stated above are met, if AIRSKIN is no longer able to inspect the rejected Products (e.g. due to their destruction or use). From the time of discoverability of the defect,

any sale, processing, or treatment of the affected Products requires prior written approval of AIRSKIN to avoid the loss of the Customer's claims.

9.2. The Customer must ensure that the defect complaint is actually received by AIRSKIN. The mere return of Products shall not constitute a defect complaint.

9.3. In the absence of a timely and otherwise proper defect complaint, claims for warranty, compensation on account of the defect itself and due to an error ("*Irrtum*") as to the non-defective nature of the Products, shall be excluded (§ 377 para. 2 Austrian Commercial Code [*"Unternehmensgesetzbuch"*]).

10. Liability

10.1. AIRSKIN shall only be liable in the case of intent or gross negligence ("*grobe Fahrlässigkeit*").

10.2. The burden of proof for the presence of gross negligence rests with the Customer.

10.3. The liability of AIRSKIN for return, assembly, and removal costs, consequential damages, indirect damages, financial losses, in particular loss of profit etc., and claims from third parties against the Customer, shall be excluded.

11. Reservation of Property Rights ("Eigentumsvorbehalt")

11.1. AIRSKIN reserves the right of ownership in a Product sold until full payment has been made for all claims resulting from the purchase contract/contract for the Product in question (**"Secured Claims"**).

11.2. Prior to full payment of the Secured Claims, the Products subject to the reservation of property rights may not be sold, pledged nor assigned by way of security to third parties. The Customer shall notify AIRSKIN immediately in writing if and insofar as any third party lays claim to Products belonging to AIRSKIN by, e.g., attempting to seize them.

11.3. In the event, that the Customer's behavior is in breach of this Agreement, in particular in the case of non-payment of the due purchase price, AIRSKIN shall be entitled, in accordance with the statutory provisions, to withdraw from this Agreement and to reclaim the Products. Should the Customer fail to make payment of the purchase price, then AIRSKIN may only assert such rights if AIRSKIN has unsuccessfully set the Customer a reasonable deadline for payment or if the setting of such a period is legally superfluous according to the statutory provisions.

12. Place of Performance, Jurisdiction, and Applicable Law

12.1. The place of performance for both Parties shall be Vienna, Austria.

12.2. The exclusive place of jurisdiction for all disputes arising of and in connection with these General Terms and Conditions, including those relating to the conclusion of an Agreement and its validity, shall be Vienna, Austria.

12.3. These General Terms and Conditions are subject to Austrian substantive law with the exclusion of UN Convention on Contracts for the International Sale of Goods ("CISG").

13. Interpretation, Amendment, Communication, and Severability Clause

13.1. Terms to which a German translation has been added (even if only once), shall (always) be interpreted as having the meaning assigned to them by the German translation.

13.2. No amendment to or waiver under these General Terms and Conditions and/or under an Agreement will be effective unless it is in writing in the meaning of § 886 ABGB (therefore excluding e-mail and telefax correspondence).

13.3. All notices and other communication to be given under or by reason of this Agreement shall be in text form (including, without limitation, e-mail and telefax correspondence).

13.4. If any of the provisions of these General Terms and Conditions are ineffective, invalid or unenforceable, this shall not affect the effectiveness, validity or enforceability of the remaining provisions. In cases such as this, the relevant provision shall be replaced by another provision which comes as close as possible to the economic effect of the original provision, but which is neither ineffective, invalid, nor unenforceable.