

GENERAL TERMS AND CONDITIONS – ZOLL MEDICAL DEUTSCHLAND GmbH

1. SCOPE. These terms and conditions apply to all - also future – deliveries of equipment (including a license to use certain software) and accessories (hereinafter together referred to as "Equipment") of Zoll Medical Deutschland GmbH (hereinafter referred to as "ZOLL"), even if they are not expressly referred to. Contradictory terms and conditions of the customer are only effective if and insofar as ZOLL accepts them in writing for the respective conclusion of the contract.

2. ACCEPTANCE. ZOLL's quotations are subject to change without notice. If the binding nature of a quotation is agreed in individual cases, it shall end three (3) months after the date of the quotation, unless otherwise expressly agreed in writing. Customer places its order on basis of ZOLL's quotation. ZOLL will inform Customer whether it accepts or rejects the order. ZOLL's order confirmation is the basis for the respective contract with regard to price, quantity, delivery time, delivery possibility, delivery conditions etc. ZOLL's contractual obligations are conclusively determined by the order confirmation and these terms and conditions (hereinafter referred to as the "Contract").

If no order confirmation is received by the time of delivery, the invoice shall be deemed to be the order confirmation. The content of the Contract is then determined by ZOLL's order confirmation.

3. SPECIFICATIONS. ZOLL's Equipment description (manufacturer's specification) shall be deemed agreed as the quality of the Equipment. Public statements (e.g. advertising) do not constitute a statement of the quality of the Equipment if and insofar as they contradict ZOLL's Equipment description (manufacturer's specification). In the event of contradictions within ZOLL's own statements, the presentation on ZOLL's website <http://www.zollmedical.de> shall be decisive. Unless otherwise stated, ZOLL does not give any independent guarantees in the legal sense (*selbständige Garantien*). IN PARTICULAR ZOLL EXPRESSLY DISCLAIMS ALL INDEPENDENT GUARANTEES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. PRICES, TAXES & FEES. ZOLL's prices are in Euro, EXW (Incoterms 2020) and exclusive for costs of packaging, except as otherwise expressly agreed upon. For domestic deliveries the statutory value added tax valid on the day of delivery is added. Costs arising outside Germany as well as taxes, fees, customs duties, costs of acceptance and similar are not included.

Unless otherwise stated, there are no shipping costs for order volumes of >= EUR 1,200 for circulation Equipment and for order volumes of >= EUR 400 for resuscitation Equipment. Shipping costs may apply in case of express delivery, appointment delivery and in case of order volumes below the thresholds set out in this Section. All such shipping costs and their exact amount are included in ZOLL's quotations.

5. TERMS OF PAYMENT. Unless otherwise stated, payment by Customer is due thirty (30) days after the ship date appearing on ZOLL's invoice. The customer is in default if this payment deadline is exceeded. A reminder is not required for this. From the time of default, the interest on arrears shall be nine (9) percentage points above the base rate of the European Central Bank.

The Customer may only offset against undisputed or legally established counterclaims; otherwise offsetting is excluded. The Customer shall only be entitled to exercise a right of retention due to claims other than claims for subsequent performance if his counterclaims have been legally established or are undisputed. His right of retention from claims for subsequent performance is limited to the simple value of the subsequent performance.

6. CREDIT APPROVAL. All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL. ZOLL may at any time decline to make any shipment or delivery except upon receipt of payment or security or upon terms regarding credit or security satisfactory to ZOLL.

7. RETENTION OF TITLE. ZOLL retains title to the Equipment until receipt of all payments in full. In case of breach of contract by Customer including, without limitation, default in payment, ZOLL is entitled to take possession of the Equipment. Customer shall handle the Equipment with due care, maintain suitable insurance for the Equipment and, to the extent necessary, service and maintain the Equipment. As long as the purchase price has not been completely paid, Customer shall immediately inform ZOLL in writing if the Equipment become subject to rights of third persons or other encumbrances. Customer may resell the Equipment subject to the above retention of title only in the course of his regular business. For this case, Customer hereby assigns all claims arising out of such resale, whether the Equipment have been processed or not, to ZOLL. Notwithstanding ZOLL's right to claim direct payment Customer shall be entitled to receive the payment on the assigned claims. To this end, ZOLL agrees to not demand payment on the assigned claims to the extent Customer complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings. Insofar as the above securities exceed the secured claim by more than ten percent (10 %), ZOLL is obligated, upon its election, to release such securities upon Customer's request.

8. WARRANTY. (a) ZOLL warrants to the Customer that the Equipment fulfill the specifications set out in Section 3 in the time of transfer of risk. Claims arising from defects are subject to a limitation period of one (1) year after transfer of risk, unless the liability relates to injury to life, body or health. (b) Claims of the Customer based on a defect of the Equipment require that the Customer fulfills its duty to inspect the Equipment without undue delay and to timely notify ZOLL of defects. The Customer shall notify ZOLL in writing of any visible defects within ten (10) working days of receipt of the Equipment. The Customer shall inform ZOLL in writing of hidden defects without undue delay, but in any case within ten (10) working days after discovery. (c) In the event of a defective Equipment, the Customer shall only be entitled to a claim for subsequent performance (elimination of the defect within a reasonable period or subsequent delivery free of defects, at ZOLL's discretion). The Customer shall only be entitled to further statutory rights (withdrawal or reduction, compensation for damages or reimbursement of expenses) if the subsequent performance has failed or is unreasonable. The same shall apply if ZOLL seriously and finally refuses subsequent performance, unless ZOLL refuses because subsequent performance would only involve disproportionate costs for ZOLL. A subsequent performance shall only be deemed to have failed if ZOLL has made three (3) unsuccessful attempts of subsequent performance. ZOLL shall only be liable for loss of profit and other financial losses if the Customer is entitled to claim damages instead of the entire performance (*Schadensersatz statt der ganzen Leistung*). In addition, the limitations of liability in accordance with Section 11 of these terms and conditions shall apply. (d) ZOLL shall not be responsible for any Equipment defect or failure of the Equipment to fulfill any specifications, or any other nonconformance of the Equipment caused by or attributable to (i) any modification of the Equipment by the Customer, unless such modification is made with the prior written approval of ZOLL; (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified by ZOLL; (iii) any misuse or abuse of the Equipment; (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL; or (v) installation or wiring of the Equipment other than in accordance with ZOLL's instructions. (e) The warranty does not cover items subject to normal wear and burnout during use, including but not limited to normal wear and burnout during use of lamps, fuses, batteries, cables and accessories.

9. SOFTWARE LICENSE. (a) All software (the "Software" which term shall include firmware) included as part of the Equipment is licensed to Customer pursuant to a non-exclusive limited license on the terms hereinafter set forth. (b) Customer may not copy, distribute, modify, translate or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained therein. (c) All rights in the Software remain the property of ZOLL and Customer shall have no right or interest therein except as expressly provided herein. (d) Customer's right to use the Software may be terminated by ZOLL in the event of any failure to comply with terms of these terms and conditions. (e) Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment and may not retain any copies of the Software following such transfer. (f) ZOLL warrants that the read-only memory or other media on which the Software is recorded will be free from defects in materials and workmanship for the period and on terms set forth in Section 8. (g) Customer understands that the Software is a complex and sophisticated software product and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet Customer's requirements. Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media so that it correctly reproduces the Software. This License applies only to ZOLL Software.

10. DELAYS IN DELIVERY. ZOLL shall not be liable for any delay in the delivery of any part of the Equipment if such delay is due to any cause beyond the control of the ZOLL including, but not limited to acts of God, fires, epidemics, pandemics, floods, riots, wars, sabotage, labour disputes, governmental actions, inability to obtain materials, components, manufacturing facilities or transportation or any other cause beyond the control of ZOLL. In addition ZOLL shall not be liable for any delay in delivery caused by failure of Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay ZOLL may allocate available Equipment among its Customers on any reasonable and equitable basis. The delivery dates set forth in the order confirmation are approximate only and ZOLL shall not be liable for or shall the Contract be breached by, any delivery by ZOLL within a reasonable time after such dates.

11. LIMITATIONS OF LIABILITY. ZOLL SHALL BE FULLY LIABLE FOR DAMAGES IN THE EVENT OF INTENT OR GROSS NEGLIGENCE. IN THE EVENT OF SLIGHT NEGLIGENCE (*LEICHTE FAHRLÄSSIGKEIT*); ZOLL SHALL ONLY BE LIABLE FOR DAMAGES RESULTING FROM INJURY TO LIFE, BODY AND HEALTH AS WELL AS FOR DAMAGES RESULTING FROM BREACH OF AN ESSENTIAL CONTRACTUAL OBLIGATION (I.E. AN OBLIGATION THE FULFILLMENT OF WHICH IS ESSENTIAL FOR THE PROPER PERFORMANCE OF THE CONTRACT AND THE OBSERVANCE OF WHICH THE OTHER PARTY MAY REGULARLY RELY ON). IN THE EVENT OF A BREACH OF AN ESSENTIAL CONTRACTUAL OBLIGATION, ZOLL'S CUMULATIVE LIABILITY SHALL BE LIMITED TO THE FORESEEABLE, TYPICALLY OCCURRING DAMAGES. THE PARTIES AGREE THAT THE AMOUNT OF THE FORESEEABLE, TYPICALLY OCCURRING DAMAGES DOES NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO ZOLL FOR THE EQUIPMENT IN THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST AROSE. IN THE EVENT THAT THE CLAIM FIRST AROSE BEFORE A PERIOD OF TWELVE (12) CONTRACTUAL MONTHS HAS PASSED, THE AMOUNT PAID TO ZOLL UNTIL THE RESPECTIVE DATE HAS TO BE PROJECTED TO A PERIOD OF TWELVE (12) MONTHS. THE LIMITATIONS OF LIABILITY SET OUT HEREIN SHALL ALSO APPLY TO ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING FROM OR IN RELATION TO ANY DELIVERIES OR CONTRACTS BASED ON THESE TERMS AND CONDITIONS. THE LIMITATIONS OF LIABILITY SET OUT HEREIN SHALL ALSO APPLY TO DAMAGES RESULTING FROM A BREACH OF DUTY BY VICARIOUS AGENTS OR LEGAL REPRESENTATIVES OF ZOLL. LIABILITY ACCORDING TO THE GERMAN PRODUCT LIABILITY ACT, IN CASE OF MALICIOUSLY CONCEALED DEFECTS AS WELL AS IN CASE OF AN ACCEPTED QUALITY GUARANTEE FOR EQUIPMENT REMAINS UNAFFECTED.

12. PATENT INDEMNITY. ZOLL shall at its own expense defend any suit that may be instituted against the Customer for alleged infringement of any intellectual property rights related to the parts of the Equipment or the Software sold by ZOLL, provided that (i) such alleged infringement consists only in the use of such Equipment or the Software by itself and not as a part of or in combination with any other devices or parts, (ii) the Customer gives ZOLL immediate notice in writing of any such suit and permits ZOLL through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL all requested information, assistance and authority at ZOLL's expense, to enable ZOLL to defend such suit.

In the case of a final award of damages for infringement in any such suit, ZOLL will pay such award, but it shall not be responsible for any settlement made without its written consent.

Section 12 states ZOLL's total responsibility and liability, and the Customer's sole remedy for any actual or alleged infringement of any patent by the Equipment or the Software or any part thereof provided hereunder. The limitations of liability set out in Section 11 shall apply to any potential indirect, special, or consequential damages resulting from any such infringement.

13. CLAIMS FOR SHORTAGE. Each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL of any shortage in any shipment within ten (10) days of receipt of the Equipment. If no such shortage is reported within a ten (10) day's period, the shipment shall be conclusively deemed to have been complete.

14. RETURNS AND CANCELLATION. (a) The Customer shall obtain authorization from ZOLL prior to returning any of the Equipment in case that (i) the Equipment are new and undamaged, (ii) the Customer can prove that the Equipment have been stored by the Customer in an appropriate way and (iii) shelf life of sterile Equipment is still at least eighty percent (80%) of the ex-works shelf life (= time period between the production date and the expiry date of the Equipment as set out on the packaging). (b) If the Customer receives authorization from ZOLL to return Equipment for credit, the Customer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than EUR 50.00 per Equipment. (c) Any such change in delivery caused by the Customer that causes a delivery date greater than six (6) months from the Customer's original order date shall constitute a new order for the affected Equipment in determining the appropriate list price. This Section 14 does not apply to the return of defective Equipment. The warranty claims in this regard are set out in Section 8 above.

15. DATA PROTECTION ZOLL's Privacy Policy including, but not limited to, information on the personal data collected as required under Art. 13 GDPR can be found [here](https://www.zoll.com/de/profil/datenschutz) <https://www.zoll.com/de/profil/datenschutz>.

16. APPLICABLE LAW AND VENUE. These terms and conditions and any deliveries based on these terms and conditions shall be governed by the laws of the Federal Republic of Germany without regard to any choice of law provisions thereof and excluding the Convention on Contracts for the International Sale of Goods. Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with any deliveries on basis of these terms / conditions shall be Cologne, Germany.

17. COMPLIANCE WITH LAWS. (a) ZOLL represents that all goods and services delivered pursuant to the Contract will be produced and supplied in compliance with all applicable state and federal laws and regulations. (b) The Customer shall be responsible for compliance with any federal, state and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder, and will obtain any permits required for such installation and use.

18. NON-WAIVER OF DEFAULT. In the event of any default by Customer, ZOLL may decline to make further shipments or render any further warranty or other services without in any way affecting its right under such order. If despite any default by Customer, ZOLL elects to continue to make shipments its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL's legal remedies regarding any such default. No claim or right arising out of a breach of the Contract by Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL.

19. ASSIGNMENT. Any Contracts based on these terms and conditions may not be assigned by Customer without the prior written consent of ZOLL, and any assignment without such consent shall be null and void.

20. GENERAL. Collateral agreements, reservations, amendments or supplements to any Contract based on these terms and conditions including these terms and conditions require ZOLL's written confirmation to be valid. This also applies to an agreement to change this condition.

Should any provision of these terms and conditions in whole or in part be invalid or unenforceable or later lose its legal validity or enforceability, this shall not affect the validity of the remaining provisions of these terms and conditions. The same applies if it should turn out that these terms and conditions contain a loophole. In order to replace the invalid or unenforceable provisions or to fill the gap, an appropriate provision shall apply which comes closest to what the parties would have wanted or would have wanted according to the meaning and purpose of these terms and conditions, if they had considered this point when concluding these terms and conditions or when subsequently adding a provision.