1. General

1.1 With regard to all business relations of GBO pertaining to the supply of goods or services (both hereinafter referred to as “Deliverables”) by GBO, the present GTC shall exclusively apply. If there are any conflicts between the applicable Incoterms and the GTC, the Incoterms shall prevail. In any event, GBO’s performance of its obligations shall not be considered as having been contravened. Deviations from these GTC intended by the Client shall only be valid if written, in the Incoterms especially, and if any purchase orders ordered by the Client are based on these GTC ("Purchase Orders"), contracts with the Client, and all transactions between the Client and GBO entered into in the future, even if these GTC are not expressly agreed to in writing or by e-mail.

1.2 All general sale offers (including price lists) by GBO are deemed an invitation to the Client to place a Purchase Order and shall be subject to confirmation by GBO in order to be binding and shall not obligate GBO to make delivery. Client’s Purchase Orders and any contracts with Subject to these GTC shall become effective upon written confirmation or upon delivery of the Deliverables by GBO.

1.3 Any agreements shall only become binding upon GBO once they have been concluded in writing. E-mails shall also be deemed to fulfill the written-form requirement. Agreements made face-to-face or via telephone and correspondence made with GBO’s representatives face-to-face or in writing only become binding for GBO when it has been confirmed to them in writing.

2. Machinery, equipment and tools, as well as manufacturing resources, are the property of GBO, even if the Client has made a cost contribution thereto and the proposals and designs regarding the Deliverables to be manufactured originate from the Client.

3. Invoices, brochures, instructions for use, user manuals, and other product information provided by GBO ("Instructions") must be strictly followed. The instructions for use define a field of application for the Deliverables ("Intended Use"). Without prior written consent of GBO, the Deliverables may not be used and/or handled outside the Intended Use and/or other Instructions. Furthermore, the Deliverables must not be combined with other products and/or substances. GBO hereby expressly warns against the use and/or handling of the Deliverables and/or combination with other products and/or substances without prior written consent of GBO. The Client is obliged to strictly adhere to the content of the documents made available to it and may not amend them. Insofar as a contractual territory is agreed, the Deliverables may only be used within the agreed territory. The Client shall inform all further buyers (customers) or users accordingly. GBO shall not be responsible and does not assume any liability in the event of any incorrect and/or insufficient information contained in technical documents, product descriptions, sales brochures, instruction manuals, or any other documents prepared by the Client, which are in any manner provided or made available to the customer or user. The same shall also apply if GBO shall have authorized or given its consent to such documents, because such authorization or consent shall be limited merely to the layout and compliance with corporate identity and shall not pertain to content.

4. Terms of delivery

4.1 In General, delivery is performed using Incoterms (Incoterms 2020):

- Collection (by GBO)
- EX Works
- DAP + contractually agreed destination
- DDP
- FREIGHT-CH: For an order value of up to CHF 300.00, a transport/shipping surcharge of CHF 25.00 will be charged to the Client.
- For an order value of CHF 300.00 or more, a transport/shipping charge of CHF 15.00 will be charged to the Client.
- In case of express delivery, a transport/shipping surcharge of CHF 100.00 will be charged.
- GBO may deliver, for reasons of packaging, up to 2% (two per cent) more or less of the quantity ordered without being in breach of contract. In such event, the quantity actually delivered shall be charged.
- In case GBO does not deliver in time, the Client must set a reasonable cure period for the delivery in writing. In case GBO has defaulted on the extended cure period, the Client may cancel the contract subject to these GTC. During the duration of force majeure events (e.g. COVID 19 pandemic), statements of GBO about delivery dates as well as dates in general, forecasts and lead times are not binding. GBO is only liable for default based on gross negligence or willful misconduct. If the Client refuses acceptance on the due date, in particular if the Incoterms DAP are applied to the delivery, the Client shall inform GBO in question. GBO shall not appear from the contractual partner at the agreed delivery time, it shall nevertheless make full payment of the purchase price. In such instances, GBO stores the Deliverables at the risk and expense of the Client; at the Client’s request, GBO shall invoice the Deliverables at the Client’s expense. Upon Client’s failure to accept the Deliverables within 14 (fourteen) days of GBO’s offering, GBO is entitled to rescind the contract or claim damages for non-fulfillment.
- In the event that GBO shall for a temporary period or over the long term find it impossible to fulfill its duty of performance (e.g. due to external events of GBO, such as GBO’s bankruptcy, takeovers, strikes, lock-out or industrial disputes, epidemics, pandemics, natural catastrophes, interruption of production in GBO’s factories or at the facilities of GBO’s suppliers, or supplies of raw materials, or in case of insufficient GBO’s own procurement, in the event of import or export restrictions, or other sovereign measures not attributable to GBO (force majeure) and beyond the control of GBO, the delivery period shall be automatically extended to a period which may be considered reasonable under the circumstances. Delays in performance of GBO resulting from the COVID 19 pandemic shall be qualified as acts of force majeure. If such disruption shall last for longer than 14 (fourteen) days, both parties shall be entitled to cancel the contract subject to these GTC. In this event, the Client shall not be entitled to claim damages and GBO is discharged from its duty to perform.
- GBO shall be entitled to make partial deliveries and render partial services as far as GBO reasonably expects such failure to be temporary.
- In case of imminent consequences under civil or criminal law due to the delivery of the Deliverables, the Client has a right to suspend delivery. OTHER CLAIMS OF THE CLIENT TO CANCEL THEM COMPLETELY. In such cases, the Client shall not be entitled to claim damages.
- GBO is not bound to any future delivery obligation due to the one-time or continuous delivery of Deliverables to the Client. 3. Transfer of risk

The risk of loss passes to the Client according to the Incoterms individually agreed upon. The transfer of risk to the Client in the event of delivery to the third party following the risk has passed to the Client the Client shall not release the Client from its obligation to pay the purchase price. If dispatch or shipment is delayed for reasons for which the Client is responsible, the risk of loss shall pass to the Client from the date of notification to the Client. Risk of loss shall also pass to the Client if the Deliverables are made available to the Client and the Client unjustifiably refuses acceptance. Any storage expenses incurred after the risk of loss has passed shall be payable by the Client.

5. Retention of title

5.1 In case of transactions involving more than two parties, a written agreement on the applicable Incoterm clause has to be concluded.

Irrespective of the agreed Incoterm clause, the respective transport costs related to the delivery of the Deliverables, GBO is entitled to suspend delivery. In the event of payment default, GBO shall be entitled without setting a further extension of time to withdraw from any contract subject to these GTC and to claim the Deliverables as well as, if the Client fails to comply with the above procedures, to assign the same to third parties in order to repossess the Deliverables.

The Client shall not be entitled to use or lend the Deliverables as collateral.

5.2 If the title to the goods is held by GBO is mixed, combined or integrated with other items, the Client shall assign its rights of ownership or co-ownership in the new item to GBO and the Client is to safeguard in favour of GBO with due commercial care. The Client may sell the Deliverables to which title is held by GBO only in the context of regular business transactions, and provided it is not in payment arrears. The Client hereby assigns to GBO its purchase-price claims against its customers arising from resale and shall enter the requisite endorsement of validity in its accounts or on its invoices and take all steps to ensure that such assignment is legally valid.

Furthermore, in the event of any insolvency proceedings, GBO shall be entitled to notify the Client's end customer at any time. Consent to resale, processing or combining shall automatically lapse as soon as any insolvent proceedings are instituted in respect of the Client. GBO undertakes not to register the Deliverables as an asset. The Client hereby waives any claims of GBO in connection with any required technical documents, product descriptions, sales brochures, instruction manuals, or any other documents prepared by the Client, which are in any manner provided or made available to the customer or user. The same shall also apply if GBO has authorized or given its consent to such documents, because such authorization or consent shall be limited merely to the layout and compliance with corporate identity and shall not pertain to content.

5.5 The Client shall be liable for all additional tax payments resulting from incorrect information provided by the Client.

5.6 GBO shall not be liable for future tax/legal changes; taxes and duties resulting from such tax/legal changes shall be borne by the Client. The Client must ensure that these taxes are duly reported and paid.

5.7 GBO shall be at free to transmit invoices either by post or electronically (e.g. via email).

5.8 Within the framework of an ongoing business relationship, GBO reserves the right to raise the price of the Deliverables as is necessary based on general price changes beyond GBO’s control (such as exchange-rate fluctuations, currency regulations, customs changes, a significant rise in costs of materials and manufacture).

5.9 Invoice amounts shall be paid within 30 (thirty) days from date of invoice by way of transfer to GBO’s account. The amount due is due and payable immediately on the date of invoice and the Client hereby waives any claims of GBO if the Client fails to pay within the agreed period.

5.10 In case of termination of the contract governed by these GTC and concluded between GBO and the Client, GBO agrees to continue to supply Client with Deliverables under the same conditions as in the course of an ongoing contractual relationship in order for the Client to fulfill its mandatory contractual obligations arising from transactions with third parties for a maximum of six (6) months from the effective date of termination. BUT ONLY UPON ADVANCE PAYMENT AND ONLY IF ALL PREVIOUS AND OTHER CLAIMS OF GBO HAVE BEEN SATISFIED and GBO has not exercised an extraordinary right of termination. Client acknowledges and agrees that it will not be supplied with any Deliverables if Client is not in compliance with the terms of this obligation. GBO hereby waives any claims of damages if GBO does not supply Client with Deliverables according to this provision.

5.11 Payments shall only be effected by bank transfer to the bank account designated by GBO. Payments by bill of exchange or cheque will not be accepted as fulfilment of the payment obligation.
5.12 All payments shall be made at Client’s risk and expense. Client’s payment obligation is personal, unconditional and in due time credited to GBO’s account.

5.13 Retention or offsetting by the Client based on any counterclaims whatsoever is prohibited.

5.14 In the event of payment default and/or deterioration in the Client’s credit rating, notwithstanding any further rights of GBO, GBO shall be entitled, at its discretion, to: (i) cancel the contract subject to these GTC or suspend further deliveries to the Client; (ii) shorten the Client’s payment period; (iii) demand payment in advance; (iv) request security in the value of the delivery; or (v) charge default interests in the sum of 12 (twelve) per annum provided GBO does not incur higher costs for obtaining credit. Furthermore, the defaulting Client shall bear all expenses related to the collection and recovery of the outstanding invoices.

6. Intellectual property

The Client acknowledges that the Deliverables are the intellectual property of GBO. GBO reserves all rights, in particular rights of ownership, in respect of (i) the Deliverables; (ii) manufacturing processes; (iii) filling and utilization processes; (iv) know how, inventions and industrial property rights; and (v) intellectual property that is inextricably linked to the Deliverable property rights. Unless separately agreed in writing for a clearly defined use, GBO does not grant any rights or licenses to the intellectual property of GBO. The Client shall not be entitled to use trademarks of GBO to describe its own products, unless specifically approved.

7. Warranty

7.1 Unless otherwise agreed in writing, the Deliverables shall conform with a contract subject to these GTC if: (i) it is suitable for a particular purpose of which GBO is expressly notified upon conclusion of contract and GBO has confirmed the same in writing; (ii) it possesses the features of an article which GBO or the Client have presented by way of sample or specimen; (iii) it is identical with the deliverable article which the Client knew or should have known of such a defect or material breach.

7.2 GBO shall not be liable for any use of the Deliverables outside of the Intended Use and/or other Instructions.

7.3 The Client must immediately, upon delivery inspect the Deliverables or have it inspected. The Client has no claim for damages for non-conforming Deliverables if it fails to notify GBO immediately after having discovered the nature of the contractual breach. The Client shall notify GBO within 3 (three) months after delivery about a non-conformity or defect or otherwise forfeit its rights.

7.4 In case of delivery of non-conforming Deliverables, the Client shall provide GBO a reasonable cure period to fulfill its duties.

8. Vigilance Reporting System for Distributors of Medical Devices (applicable only if the Client is also a BGO dealer)

8.1 The Client is aware that GBO is under a duty to be able to trace individual Deliverables including those sold to the Client’s customers (users). The Client shall be under a duty to keep records enabling GBO to trace individual Deliverables sold to the Client. The Client shall be under a duty to retain such records for a period of 25 (twenty-five) years, commencing from the date of delivery to the Client’s customer. The Client must ensure that the Vigilance Reporting System for Distributors of Medical Devices (Vigilance System) is used to take all the necessary steps supporting GBO to identify at all times the location of individual Deliverables or the customers of such Deliverable. Such obligation is not affected by the termination of the contract subject to these GTC with the Client. GBO shall initiate a product recall if there is a risk that the use of the Deliverables could result in death, serious bodily injury or impairment of health of a user.

9. Vigilance Recall System for Medical Devices (applicable only if the Client is also a BGO Dealer1)

9.1 The Client is aware that GBO is under a duty to be able to trace individual Deliverables including those sold to the Client’s customers (users). The Client shall be under a duty to keep records enabling GBO to trace individual Deliverables sold to the Client. The Client shall be under a duty to retain such records for a period of 25 (twenty-five) years, commencing from the date of delivery to the Client’s customer. The Client must ensure that the Vigilance Reporting System for Distributors of Medical Devices (Vigilance System) is used to take all the necessary steps supporting GBO to identify at all times the location of individual Deliverables or the customers of such Deliverable. Such obligation is not affected by the termination of the contract subject to these GTC with the Client.

9.2 GBO shall initiate a product recall if there is a risk that the use of the Deliverables could result in death, serious bodily injury or impairment of health of a user.

9.3 The Client shall be responsible for informing its customers of relevant recall procedures as provided by GBO.

9.4 The Client’s customer shall confirm the receipt and acknowledge the information provided via fax or email to the Client within a period of 10 (ten) days. Otherwise, the customer must be informed again by the Client.

9.5 The Client shall collect such confirmations and deliver the same to GBO.

10. Liability

10.1 GBO shall be liable for its own fault and for the fault of its vicarious agents. Liability based on minor negligence shall be precluded unless the legal grounds therefor are statutory provisions, whereby an increased CHF 20'000.- shall be limited to the purchase price of the Deliverables or – in so far as this shall not be possible on the basis of statutory provisions – a maximum of the total deductible insurance liability, whereby in any case the latter shall not be possible on the basis of statutory provisions – a maximum of the total deductible insurance liability.

10.2 GBO’s liability in relation to the Client in respect of all claims under any contract subject to these GTC is limited to the actual damage sustained by the Client. If nothing else is agreed upon, the Client agrees to the limit of liability in Section 10.1, to be limited to the purchase price of the Deliverables or – in so far as this shall not be possible on the basis of statutory provisions – a maximum of the total deductible insurance liability, whereby in any case the latter shall not be possible on the basis of statutory provisions – a maximum of the total deductible insurance liability.

10.3 Under no circumstances shall GBO be liable (whether on the basis of contractual liability, liability in tort or other liability) for: (i) loss of profits; and/or (ii) indirect losses or consequential losses (in particular losses of earnings) (d) damages to contracts if they result from the Client’s own default changes to the Deliverables or/and the instructions concerning the Deliverables (e.g., Instructions), which deviate from the Intended Use and/or other Instructions, irrespective of whether or not the Client is aware of such deviation.

10.4 If GBO produces Deliverables in accordance with specifications, drawings, specimens or other documents provided by the Client which infringe rights, in particular intellectual property rights, of third parties, the Client shall indemnify and hold harmless GBO and its representatives in full. The Client shall also indemnify and hold harmless GBO and its representatives – especially in case of infringement of intellectual property rights of third parties in full if the Client makes changes to the Deliverables or/and the Instructions concerning the Deliverables (e.g., Instructions), which deviate from the Intended Use and/or other Instructions and/or in case of an indirect infringement of property rights on the part of GBO caused by actions of or by the use of the Client. At GBO’s request, the Client shall advance payments for anticipated reasonable attorney’s fees and legal costs of preparation, defense, investigation and proceedings. The liability of the Client shall also include the costs for any court or arbitral dispute settlement attempts and in any case reasonable costs of legal representation.

11. Confidentiality

11.1 All information disclosed by GBO within the framework of a contract subject to these GTC shall be deemed confidential unless, at the time of disclosure, it is expressly identified as non-confidential or, by its nature, is clearly non-confidential. All rights in the confidential information shall be reserved to GBO and title thereto shall continue to be held by GBO.

11.2 Nothing in these GTC or in a contract between GBO and the Client shall be interpreted as granting the transferring any rights to confidential information by transferring ownership of the Deliverables.

11.3 No confidential information may be disclosed to third parties without GBO’s prior written consent.

11.4 Publications of the Client in respect of or in connection with Deliverables require GBO’s prior written consent.

11.5 The duty of confidentiality will survive the termination or expiry of a contract subject to these GTC.

12. Compliance (applicable only if the Client is also a GBO Dealer1)

12.1 The Client undertakes at all times during the contractual relationship with GBO to comply with the Greiner Code of Conduct for Suppliers and Business Partners, https://www.gbo.com/fileadmin/user_upload/Downloads/Code_of_Conduct/Code_of_Cond for_Suppliers_and_Business_Partners_EN.pdf, as amended from time to time, all applicable laws and provisions, in particular the US Foreign Corrupt Practices Act of 1977 (as amended), as well as the applicable anti-trust, competition and anti-corruption laws. Neither the Client, nor those vicarious agents acting on behalf of the Client, shall be required to grant any form of improper payment or gifts in either direct or indirect form to third parties, including their employees or employers, or to public officials, representatives of a governmental authority or authority or those of a political party or a candidate of the latter. The Client undertakes that its own vicarious agents/partners shall comply with comparable principles to those of the Greiner Code of Conduct. GBO reserves the right to audit the Client at any time during business hours further to prior written notice to verify compliance to the terms of the said Code of Conduct and all applicable laws and rules.

12.2 In the event of non-compliance, GBO reserves the right to terminate the contract subject to these GTC at any time and with immediate effect through written notice to the Client.

13. Miscellaneous

13.1 The Client grants GBO, as well as all affiliated companies of the Client, the right to name the Client as a reference customer by using first/last name or company name, address and company logo. This right is granted free of charge and is unlimited in time, space and content. The Client can revoke this consent at any time in writing to GBO (e.g. via email). The legality of the naming as reference customer up to the revocation is not affected by the revocation of this consent. GBO will remove the consideration of their localtime.generation as far as economically reasonable and/or technically possible, publications already arranged before receipt of the revocation declaration of the Client.

13.2 The Client is not entitled to make claims which deviate from the Intended Use and/or other Instructions arising out of or in connection with any contract with GBO without GBO’s prior written consent and any assignment in violation of this provision is null and void.

13.3 GBO, as well as all companies which GBO is directly or indirectly associated by way of a holding constituting at least 50 (fifty) 1> over (including sister companies), shall be entitled to undertake offsetting in respect of claims which may or may not be due and payable, whereby the offset of claims against GBO shall be deemed to have taken place for the purpose of committing the respective other party or to give undertakings on behalf of the other party. In the event of termination of the contract, the Client shall not be entitled to any compensation, indemnification, or remuneration of costs of market development or amortized or non-amortized investments. 

13.5 If a provision of these GTC or of any contract subject to these GTC is or becomes illegal, invalid or unenforceable, that part of the agreement may be executed in the light of the remaining provisions.

1>Dealer shall be a deemed natural person or legal entity engaged in the resale of products to third parties, in particular end customers, in its own name and for its own account.
the validity or enforceability of any other provision of these GTC. The invalid provision shall be replaced in good faith with a valid, legal and enforceable provision the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

13.6 These GTC and all contracts subsequently concluded between GBO and the Client shall be subject exclusively to Swiss law. The application of conflict-of-law rules (such as IPRG), UN law on the international sale of goods and comparable international agreements is excluded.

13.7 Exclusive place of jurisdiction for GBO and the Client is agreed as the court in St. Gallen, Switzerland, having subject-matter competence. GBO shall also have the right to institute legal proceedings before a court having competence with regard to the Client or, at GBO’s discretion, before any other court being competent according to any national or international law.

13.8 The Client shall not pass on to customers and/or third parties its access data relating to GBO web portals. In the event of departure of an employee from the Client, GBO shall be immediately notified, and the said employee’s access data must be immediately amended. The Client shall change its passwords at regular intervals.