

Philips Standard Terms and Conditions of Sale (Rev. 0)

The products and services listed in the quotation are offered by Philips Healthcare, a division of Philips Electronics North America Corporation (Philips) only under the terms and conditions described below (Terms and Conditions of Sale or Agreement).

1. Price; Taxes.

The purchase price stated in the quotation does not include applicable sales, excise, use, other taxes, or government surcharges in effect or later levied. Customer shall provide Philips with an appropriate exemption certificate reasonably in advance of the date the product is available for delivery, otherwise, Philips shall invoice Customer for those taxes, and Government surcharges are non-exempt under law. Customer shall pay those taxes in accordance with the terms of the invoice. Customer is defined as a legal entity its affiliates and or subsidiaries who purchase product(s), and take title of the purchased product(s) from Philips.

2. Cancellation.

Philips' cancellation policies are set forth in the applicable Product Specific Schedule attached to these Terms and Conditions of Sale.

3. Payment Terms.

3.1 Unless otherwise specified in the quotation, Philips will invoice Customer, and Customer will immediately pay such invoice based on the date of invoice for each product in accordance with the payment terms set forth in the applicable Product Specific Schedule attached to these Terms and Conditions of Sale.

3.2 Philips may make partial or early shipments and Customer will immediately pay such invoice based on the date of invoice for each product in accordance with the payment terms set forth in the quotation.

3.3 Orders are subject to Philips' on-going credit review and approval.

3.4 Customer shall pay interest on any amount not paid when due at the annual rate of twelve percent (12%) or at the maximum rate permitted by applicable law, whichever is lower. If Customer fails to pay any amount when due, in addition to any other rights or remedies available to Philips at law or in equity, Philips may discontinue the performance of services, discontinue the delivery of the product, or deduct the unpaid amount from any amounts otherwise owed to Customer by Philips under any agreement with Customer. In any action initiated to enforce the terms of the quotation following a Customer default or product cancellation under an order arising from the quotation, Philips shall be entitled to recover as part of its damages all costs and expenses, including reasonable attorneys' fees, in connection with such action.

3.5 Payment Method. Payments may be made by check, ACH or wire. Philips does not accept transaction fees for wire transfers.

3.6 Credit Cards. Philips, at its discretion, will accept credit card on payments with a value of \$10,000 or less, that are made on or before invoice due date.

4. Trade-In.

If Customer will be trading-in any equipment (Trade-In), then:

4.1 Customer represents and warrants that Customer has good and marketable title to such Trade-In;

4.2 Title to the Trade-In shall pass from Customer to Philips upon Philips making the new equipment available to Customer for first patient use. Removal of the Trade-In from Customer's site shall occur no later than the date Philips makes the new product available for first patient use, unless otherwise agreed in writing between Philips and the Customer;

4.3 Notwithstanding anything to the contrary in any Business Associate Addendum (BAA), Customer represents and warrants that Customer has removed or de-identified all Protected Health Information (PHI) from the Trade-In equipment as of the date the equipment is removed and will otherwise comply with all applicable privacy laws. To the extent Customer has not done so, Customer agrees to reimburse Philips for any out-of-pocket costs Philips incurs to remove or de-identify PHI from the Trade-In.

4.4 Customer will ensure that the Trade-In is clean and sanitized and that all potentially infected materials and biological fluids are removed prior to its de-installation and removal.

4.5 If (a) the condition of the Trade-In is not substantially the same when Philips removes the Trade-In (ordinary wear and tear excepted) as it was when Philips quoted the Trade-In value; or, (b) Customer delays the removal of the Trade-In, then Philips may reduce the price quoted for such Trade-In or cancel the Trade-In and Customer will pay the adjustment amount within thirty (30) days from the date of invoice.

4.6 If Philips does not receive timely possession of the Trade-In, Philips will, at its option, either charge Customer the amount of the Trade-in allowance and cancel the trade-in, re-value the trade-in allowance accordingly, and/or charge Customer a rental fee of 10% of the trade-in allowance per month or partial month until the trade-in is available for removal. Customer will pay any invoiced allowance adjustment or rental fee within thirty (30) days from the invoice date.

4.7 Evidence that Customer intends to trade in an asset as part of the purchase or lease of any product(s) shall be in the form of, but not limited to: (a) receiving a trade in quote and/or authorization from Philips on the value of the asset to be traded in; (b) providing Philips with serial numbers of assets to be traded in; and/or, (c) providing Philips with a de-installation date to remove an existing asset in order to install Philips quoted equipment.

5. Leases.

If Customer desires to convert the purchase of any product to a lease, Customer will arrange for the lease agreement and all other related documentation to be reviewed and approved by Philips not later than ninety (90) days prior to the date of the availability for delivery of major components of the product. The Customer is responsible for converting the transaction to a lease, and is required to secure the leasing company's approval of all of these Terms and Conditions of Sale. No product will be delivered to the Customer until Philips has received copies of the fully executed lease documents and has approved the same.

6. Security Interest.

By signing the quotation or issuing a purchase order for the products described, Customer hereby grants to Philips a purchase money security interest in the products until all payments have been made. Philips may file a financing statement for such security interest and Customer shall sign any financing statements or other documents necessary to perfect Philips' security interests in the products. Where permitted by applicable law, Customer's signature on the quotation or on a purchase order issued as a result of the quotation gives Philips the right to sign on Customer's behalf and file any financing statement or other documents to perfect Philips' security interest in the product.

7. Shipment and Risk of Loss.

7.1 Delivery terms are stated in the applicable Product Specific Schedule attached to these Terms and Conditions of Sale.

7.2 Except as otherwise stated in the applicable Product Specific Schedule, title to any product (excluding software), and risk of loss or damage shall pass to the Customer F.O.B. destination. Customer shall obtain and pay for insurance covering such risks at destination.

8. Site Preparation and Installation.

8.1 **Site Access.** Customer shall provide Philips full and free access to the installation site and a suitable safe space for the storage of the products before installation. Customer shall ensure, at no charge to Philips, that there are no obstacles preventing Philips from moving the product from the entrance of the Customer's premises to the installation site.

8.2 Site Preparation and Installation.

(a) Customer Responsibility. Customer shall be responsible, at its expense, for rigging, the removal of partitions or other obstacles, installation of safety switch or breaker, and restoration work. The products will be installed during normal working hours. Except where Philips has agreed in writing to provide construction services for a fee pursuant to a construction agreement and scope of work signed by Customer, Customer shall be responsible, at its expense, for the preparation of the installation site where the product will be installed including any required structural alterations. Customer shall provide any and all plumbing, carpentry work, conduit, wiring including communications and/or computer wiring, network equipment, power supply, surge suppression and power conditioning (except to the extent they are expressly included in the quotation), fire protection and environmental controls, ground fault and isolation system, and other fixtures and utilities required to properly attach, install, and use the product. Site preparation shall be in compliance with all applicable laws, including all safety, electrical, and building codes relevant to the product and its installation and use. The sufficiency of any installation site plans shall be the responsibility of Customer. Customer, at its expense, shall obtain all permits and licenses required by federal, state, or local authorities in connection with the installation and operation of the product, including any certificate of need and zoning variances.

(b) Unless otherwise specified by Philips, Customer shall advise Philips of site conditions at or near the location where equipment is installed five (5) days prior to the mutually agreed upon delivery date. The update shall include but not limited to the following:

(i) Hazardous Materials. Asbestos and other hazardous materials that could adversely affect the installation or pose a health or safety risk to Philips' personnel, and Customer shall ensure that those conditions are corrected and hazardous materials removed, and that the site is fully prepared and available to Philips before installation work begins. Customer represents and warrants that an asbestos survey of the facility has been performed to determine the presence, location, quantity and condition of asbestos containing materials (ACM) or presumed asbestos containing materials (PACM) at the facility; and the facility and/or work area does not contain any ACM or PACM or the facility and/or work area contains ACM or PACM, such material has been encapsulated or enclosed in accordance with applicable laws and the work will not disturb any such materials.

(ii) Construction. All construction work in technical and operator room(s) is finished including but not limited to the responsibilities identified in 8.2 (a).

(c) Delays. If site preparation is not on schedule five (5) days prior to the mutually agreed upon delivery date or as otherwise specified by Philips, Philips and Customer will conduct an evaluation of the site and establish a revised installation schedule.

In the event that installation is delayed by Customer within five (5) days prior to the mutually agreed upon delivery date or after the start of installation, Customer will be responsible for: (i) storage and fees for the preservation and life support of the equipment to ensure high quality and long life of system(s); and, (ii) Costs associated with rescheduling and coordination for all resources and third party providers, including travel costs for split delivery and installation directly related to the delay in installation. If during installation Philips discovers hazardous materials (i.e. asbestos, etc.) all installation activities will stop and Customer will remove and dispose of the hazardous materials. Once the issue giving rise to the delay has been rectified and the site meets the criteria set forth in this Section 8, Philips and Customer will conduct an evaluation of the site and establish a new installation schedule.

(d) Philips Responsibility. Unless additional professional services are purchased separately (including turnkey) and/or professional services are set forth in a statement of work or project implementation plan under the agreement for the product purchased hereunder. Philips role upon delivery will solely be to unpack the product, construct applicable pads (if required for certain products), and connect the product to a safety switch or breaker to be installed by the Customer, and calibrate and test the product.

8.3 PHILIPS MAKES NO WARRANTY AND ASSUMES NO LIABILITY FOR THE FITNESS OR ADEQUACY OF THE SITE IN WHICH THE PRODUCT IS TO BE INSTALLED OR USED. EXCEPT OTHERWISE PROHIBITED BY STATE LAW OR STATE CONSTITUTION, CUSTOMER SHALL INDEMNIFY DEFEND, AND HOLD HARMLESS PHILIPS AND ITS AFFILIATES AGAINST ANY COSTS, LOSSES, EXPENSES, PHYSICAL PROPERTY DAMAGE, AND/OR THIRD PARTY CLAIMS, INCLUDING SUBROGATION CLAIMS, COLLECTIVELY ALL THE FOREGOING ARISING FROM OR RELATING TO CUSTOMER'S SITE PREPARATION RESPONSIBILITIES.

8.4 **Local Labor.** If local labor conditions, including but not limited to a requirement to utilize union labor, require the use of non-Philips employees to participate in the installation of the product, then such participation of non-Philips employees shall be at Customer's expense. In such case, Philips will provide engineering supervision during the installation.

8.5 **Remote Services Network (RSN).** Customer will (a) provide Philips with a secure location at Customer's premises to store one Philips Remote Services Network router and provide full and free access to this router, (or a Customer-owned router acceptable to Philips) for connection to the equipment and to Customer's network; or (c) provide Philips with outbound internet access over SSL; at all times during the warranty period provide full and free access to the equipment and the Customer network for Philips' use in remote servicing of the product, remote assistance to personnel that operate the products, updating the products software, transmitting automated status notifications from the product and regular uploading of products data files (such as but not limited to error logs and utilization data for improvement of Philips products and services and aggregation into services). Customer's failure to provide such access will constitute Customer's waiver of the scheduled planned maintenance service and will void support or warranty coverage of product malfunctions until such time as planned maintenance service is completed or RSN access is provided. Customer agrees to pay Philips at the prevailing demand service rates for all time spent by Philips service personnel waiting for access to the products.

9. Product Warranty.

9.1 (a) If a separate product warranty prints as part of the quotation, that product warranty applies to your purchase and is incorporated herein; otherwise Section 9.2-9.7 shall apply unless the product is identified under 9.1 (b). (b) For Monitoring and Analytics (MA) & Therapeutic Care (TC) Portfolio, Emergency Care & Resuscitation (ECR) Capital, and Monitoring and Analytics (MA) & Medical Supplies and Consumables (MS) Portfolio, the product warranty document can be found at: <http://www.usa.philips.com/healthcare/about/terms-conditions> or can be provided upon request.

9.2 **Hardware/Systems.** Philips warrants to Customer that the Philips equipment (including its operating software) will perform in substantial compliance with its performance specifications, in the documentation accompanying the products, for a period of twelve (12) months beginning upon availability for first patient use.

9.3 **Stand-alone Licensed Software.** For a period of ninety (90) days from the date Philips makes Stand-alone Licensed Software available for first patient use, such Stand-alone Licensed Software shall substantially conform to the technical user manual that ships with the Stand-alone Licensed Software. "Stand-alone Licensed Software" means sales of Licensed Software without a contemporaneous purchase of a server for the Licensed Software. If Philips is not the installer of the Stand-alone Licensed Software, the foregoing warranty period shall commence upon shipment.

9.4 If the start of the installation is delayed for any reason beyond the control of Philips for more than thirty (30) days following the date that Philips notifies Customer that the major components of the product are available for delivery, the warranty period begins on the thirty-first (31st) day following that date.

9.5 Philips' sole obligations and Customer's exclusive remedy under any product warranty are limited, at Philips' option, to the repair or the replacement of the product or a portion thereof within thirty (30) days after receipt of written notice of such material breach from Customer (Product Warranty Cure Period) or, upon expiration of the Product Warranty Cure Period, to a refund of a portion of the purchase price paid by the Customer, upon Customer's request. Any refund will be paid, to the Customer when the product is returned to Philips. Warranty service outside of normal working hours (i.e. 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding Philips' observed holidays), will be subject to payment by Customer at Philips' standard service rates.

9.6 This warranty is subject to the following conditions: the product: (a) is to be installed by authorized Philips representatives (or is to be installed in accordance with all Philips installation instructions by personnel trained by Philips); (b) is to be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with Philips' written instructions and for the purpose for which the products were intended; and, (c) is to be maintained and in strict compliance with all recommended and scheduled maintenance instructions provided with the product and Customer is to notify Philips immediately if the product at any time fails to meet its printed performance specifications. Philips' obligations under any product warranty do not apply to any product defects resulting from improper or inadequate maintenance or calibration by the Customer or its agents; Customer or third party supplied interfaces, supplies, or software including without limitation loading of operating system patches to the Licensed Software and/or upgrades to anti-virus software running in connection with the Licensed Software without prior approval by Philips; use or operation of the product other than in accordance with Philips' applicable product specifications and written instructions; abuse, negligence, accident, loss, or damage in transit; improper site preparation; unauthorized maintenance or modifications to the product; or viruses or similar software interference resulting from connection of the product to a network. Philips does not provide a warranty for any third party products furnished to Customer by Philips under the quotation; however, Philips shall use reasonable efforts to extend to Customer the third party warranty for the product. The obligations of Philips described herein and in the applicable product-specific warranty document are Philips' only obligations and Customer's sole and exclusive remedy for a breach of a product warranty.

9.7 THE WARRANTIES SET FORTH HEREIN AND IN PHILIPS' WARRANTY DOCUMENT WITH RESPECT TO A PRODUCT (INCLUDING THE SOFTWARE PROVIDED WITH THE PRODUCT) ARE THE ONLY WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE PRODUCT, THE SOFTWARE, AND THE TRANSACTIONS CONTEMPLATED BY THE QUOTATION, AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Philips may use refurbished parts in the manufacture of the products, which are subject to the same quality control procedures and warranties as for new products.

10. Philips Proprietary Service Materials.

Any Philips maintenance or service software and documentation provided with the product and/or located at Customer's premises is intended solely to assist Philips and its authorized agents to install and to test the products or to assist Philips

and its authorized agents to maintain and to service the products under warranty or a separate support agreement with Customer. Customer agrees to restrict access to such software and documentation to Philips' employees and those of Philips' authorized agents only and to permit Philips to remove its Proprietary Service Materials upon request.

11. Patent Infringement Claims.

11.1 Philips shall indemnify, defend, and hold harmless Customer against any new claim that a Philips product provided in the quotation infringes, misappropriates, or violates any third party intellectual property right, whether patent, copyright, trademark, or trade secret, provided that Customer: (a) provides Philips prompt written notice of the claim; (b) grants Philips full and complete information and assistance necessary for Philips to defend, settle, or avoid the claim; and (c) gives Philips sole control of the defense or settlement of the claim.

11.2 The provisions of this section shall not apply if the product is sold or transferred.

11.3 If (a) a Philips product is found or believed by Philips to infringe a valid patent or copyright; or, (b) Customer has been enjoined from using the Philips product pursuant to an injunction issued by a court of competent jurisdiction, Philips may, at its option: (i) procure the right for Customer to use the product; (ii) replace or modify the product to avoid infringement; or (iii) refund to Customer a portion of the product purchase price upon the return of the original product. Philips shall have no obligation for any claim of infringement arising from: Philips' compliance with Customer's designs, specifications, or instructions; Philips' use of technical information or technology supplied by Customer; modifications to the product by Customer or its agents; use of the product other than in accordance with the product specifications or applicable written product instructions; use of the product with any other product not sold by Philips to customer and the Philips product in and of itself is not infringing; if infringement would have been avoided by the use of a current unaltered release of the products; or use of the Philips Product after Philips has advised Customer, in writing, to stop use of the Philips Product in view of the claimed infringement. The terms in this section state Philips' entire obligation and liability for claims of infringement, and Customer's sole remedy in the event of a claim of infringement.

12. Limitation of Liability.

THE TOTAL LIABILITY, IF ANY, OF PHILIPS AND ITS AFFILIATES FOR ALL DAMAGES AND BASED ON ALL CLAIMS, WHETHER ARISING OR RELATING TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING FROM A PRODUCT, LICENSED SOFTWARE, AND/OR SERVICE IS LIMITED TO THE PRICE PAID HEREUNDER FOR THE PRODUCT, LICENSED SOFTWARE, OR SERVICE GIVING RISE TO THE LIABILITY.

THIS LIMITATION SHALL NOT APPLY TO:

- (a) THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT;
 - (b) CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY PHILIPS NEGLIGENCE OR PROVEN PRODUCT DEFECT;
 - (c) OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS UNAUTHORIZED DISCLOSURE OF PHI;
- and,
- (d) FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS UNAUTHORIZED DISCLOSURE OF PHI AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES.

13. Disclaimer.

IN NO EVENT SHALL PHILIPS OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT.

14. Confidentiality.

Each party shall maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing party, its customers, employees, and/or its patients, and the quotation and its terms, including the pricing terms under which Customer has agreed to purchase the products. Each party shall use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but in no event less than a reasonable amount of care. Each party shall disclose such confidential information only to its employees having a need to know such information to perform the transactions contemplated by the quotation. The disclosing party maintains exclusive ownership of the confidential information which it discloses to the receiving party, and a receiving party shall be responsible for the breach of these confidentiality terms by any of its representatives or other person to whom it may disclose the confidential information. The obligation to maintain the confidentiality of such information shall not extend to information that (a) is or becomes generally available to the public without violation of these Terms and Conditions of Sale or any other obligation of confidentiality or (b) is lawfully obtained by the receiving Party from a third party without any breach of confidentiality or violation of law. Notwithstanding the foregoing, in the event that the receiving party is required by law to disclose any confidential information to a court, government department/ agency or regulatory body, the receiving party may so disclose, provided that it shall, to the extent permitted by applicable law, first inform the disclosing party of the request or requirement for disclosure to allow an opportunity for the disclosing party to apply for an order to prohibit or restrict such disclosure. Moreover, nothing set forth herein shall prohibit Customer from disclosing confidential information required by state or federal open records laws, to the extent disclosed in compliance with the rules and procedures applicable thereto,

including notifying Philips and providing Philips an opportunity to argue certain information may be exempt as a trade secret, if applicable thereunder.

15. Compliance with Laws & Privacy.

15.1 Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the quotation, including, but not limited to, those relating to affirmative action, fair employment practices, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Health care providers are reminded that if the purchase includes a discount or loan, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR 1001.952[h]).

15.2 In the course of providing project implementation related services and/or warranty services to Customer, hereunder, it may be necessary for Philips to have access to, view and/or download computer files from the products that might contain Personal Data. "Personal Data" means information about an identifiable individual, and includes any information that is "personal information" or "personal health information" within the meaning of any applicable privacy law. Personal Data can include both personal health information (i.e. images, heart monitor data, and medical record number) and non-health information (i.e., date of birth, gender). Philips will process Personal Data only to the extent necessary to perform and/or fulfill its project implementation related service, warranty service and/or warranty obligations hereunder. Customer further acknowledges and agrees that all telephone conversations between Philips and Customer may, in Philips discretion, be recorded.

15.3 It is Customer's responsibility to notify Philips if any portion of the order is funded under the American Reinvestment and Recovery Act (ARRA). To ensure compliance with the ARRA regulation, Customer shall include a clause stating that the order is funded under ARRA on its purchase order or other document issued by Customer.

15.4 Product Safety and Other Complaints. Customer will report immediately to Philips any event of which Customer becomes aware that suggests that any services or products provided by Philips, for any reason: (a) may have caused or contributed to a death or serious injury, or (b) have malfunctioned where and such malfunctions would be likely to cause or contribute to a death or serious injury if the malfunction were to occur again. Additionally, Customer will also report to Philips complaints it receives from its personnel and patients or any other person regarding the identity, quality, performance, reliability, safety, effectiveness, labels or instructions for use of the services or products provided by Philips. Philips shall be solely responsible for submitting any filings or reports to any governmental authorities with respect to the Philips products and services provided by Philips hereunder, unless otherwise required by law.

16. Excluded Provider.

As of the date of the sale of this product, Philips represents and warrants that Philips, its employees and subcontractors, are not debarred, excluded, suspended or otherwise ineligible to participate in a federal or state health care program, nor have they been convicted of any health care related crime for the products and services provided under these Terms and Conditions of Sale (Excluded Provider). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors providing services hereunder have become an Excluded Provider under a federal or state healthcare program, whereupon Customer shall provide Philips with a reasonable opportunity to discuss and attempt to resolve in good faith with Customer any Customer related concerns in relation thereto, and/or will give Philips a reasonable opportunity to dispute its, or its employee's or subcontractor's, designation as an Excluded Provider. In the event that the Parties are unable to resolve any such Customer concerns of the applicable party's designation as an Excluded Provider, then Customer may terminate this order by express written notice for products and services not yet shipped or rendered prior to a date of exclusion

17. Omnibus Reconciliation Act (OMNI) Social Security (PL96-499, Public Law)

Philips and Customer shall comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and it's implementing regulations (42 CFR, Part 420). Philips agrees that until the expiration of four (4) years after furnishing services or products pursuant to these Terms and Conditions of Sale, Philips shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, these Terms and Conditions of Sale and the books, documents and records of Philips that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Philips further agrees that if Philips carries out any of the duties of these Terms and Conditions of Sale through a subcontract with a value or cost of ten-thousand U.S. dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs. This paragraph relating to the retention and production of documents is included because of possible application of Section 1861(v) (1) (1) of the Social Security Act (42 U.S.C. 1395x (v) (1) (I) (1989)), as amended from time to time to these Terms and Conditions of Sale. If Section 1861(v) (1) (1) should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.

18. General Terms.

The following additional terms shall be applicable to the purchase of a product:

18.1 **Force Majeure.** Each party shall be excused from performing its obligations (except for payment obligations) arising from any delay or default caused by events beyond its reasonable control including, but not limited to, acts of God, acts of third parties, acts of any civil or military authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government

act, regulation or mandatory direction, request, shortage of labor, materials or manufacturing facilities. For clarity, Customer requests shall not be considered 'government' requests under this section 17.1.

18.2 **Bankruptcy.** If Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Philips may cancel any unfulfilled obligations, or suspend performance; however, Customer's financial obligations to Philips shall remain in effect.

18.3 **Assignment.** Customer may not assign any rights or obligations in connection with the transactions contemplated by the quotation without the prior written consent of Philips, which consent shall not be unreasonably withheld, and any attempted assignment without such consent shall be of no force or effect.

18.4 **Export Controls.** Customer shall assume sole responsibility for obtaining any required export authorizations in connection with Customer's export of the products from the country of delivery.

18.5 **Governing Law.** All transactions contemplated by the quotation shall be governed by the laws of the state where the equipment will be installed, without regard to that state's choice of law principles, and expressly excluding application of the Uniform Computer Information Transactions Act (UCITA), in any form. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, IT'S SUCCESSORS' AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.

18.6 **Entire Agreement.** These Terms and Conditions of Sale, the terms and conditions set forth in the quotation and the applicable Philips' product-specific warranty constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation, and supersede any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation. The pricing in the quotation is based upon the terms and conditions in the quotation. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and shall not apply to the transactions contemplated by the quotation.

18.7 **Headings.** The headings in the quotation are intended for convenience only and shall not be used to interpret the quotation.

18.8 **Severability.** If any provision of the quotation is deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired, and shall continue in full force and effect.

18.9 **Notices.** Notices or other communications shall be in writing, and shall be deemed served if delivered personally, or if sent by facsimile transmission, by overnight mail or courier, or by certified mail, return receipt requested and addressed to the party at the address set forth in the quotation.

18.10 **Performance.** The failure of Customer or of Philips at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the sale, delivery, installation, use, or service of similar or dissimilar products or services shall not serve as references in interpreting the terms and conditions of the quotation.

18.11 **Obligations.** Customer's obligations are independent of any other obligations the Customer may have under any other agreement, contract, or account with Philips. Customer will not exercise any right of offset in connection with the terms and conditions in the quotation or in connection with any other agreement, contract, or account with Philips.

18.12 **Additional Terms.**

The Product Specific Schedules listed below are incorporated herein as they apply to the equipment listed in the quotation and their additional terms shall apply solely to Customer's purchase of the products specified therein. If any terms set forth in a Product Specific Schedule conflict with terms set forth in these Terms and Conditions of Sale, the terms set forth in the Product Specific Schedule shall govern.

(a) Schedule 1: Volcano Precision Guidance Therapy (Volcano) Portfolio

LICENSED SOFTWARE

1. License Grant.

1.1 Subject to any usage limitations for the Licensed Software set forth on the product description of the quotation, Philips grants to Customer a nonexclusive and non-transferable right and license to use the computer software package (Licensed Software) in accordance with the terms of the quotation and these Terms and Conditions of Sale. The License shall continue for as long as Customer continues to own the product, except that Philips may terminate the License if Customer is in breach or default of these Terms and Conditions of Sale and/or the quotation. Customer shall return the Licensed Software and any authorized copies thereof to Philips immediately upon expiration or termination of this License.

1.2 The License does not include any right to use the Licensed Software for purposes other than the operation of the product. Customer may make one copy of the Licensed Software in machine-readable form solely for backup purposes. Philips reserves the right to charge for backup copies created by Philips. Except as otherwise provided under section 1.6, Customer may not copy, reproduce, sell, assign, transfer, or sublicense the Licensed Software for any purpose without the prior written consent of Philips. Customer shall reproduce Philips' copyright notice or other identifying legends on such copies or reproductions. Customer will not (and will not allow any third party to) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover the product or Licensed Software by any means whatsoever.

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certain of Philips' rights may be derived from license agreements with third parties, and Customer agrees to preserve the confidentiality of information provided by Philips under such third party license agreements.

1.5 The Licensed Software shall be used only on the product(s) referenced in the quotation.

1.6 Customer may transfer the Licensed Software in connection with sale of the product to a healthcare provider who accepts all of the terms and conditions of this License; provided that Customer is not in breach or default of this License, the Terms and Conditions of Sale, or any payment obligation to Philips.

2. Modifications.

2.1 If Customer modifies the Licensed Software in any manner, all warranties associated with the Licensed Software and the products shall become null and void. If Customer or any of its officers, employees, or agents should devise any revisions, enhancements, additions, modifications, or improvements in the Licensed Software, Customer shall disclose them to Philips, and Philips shall have a non-exclusive royalty-free license to use and to sub-license them.

2.2 The Licensed Software is licensed to Customer on the basis that (a) Customer shall maintain the configuration of the products as they were originally designed and manufactured; and, (b) the product includes only those subsystems and components certified by Philips. The Licensed Software may not perform as intended on systems modified by other than Philips or its authorized agents, or on systems which include subsystems or components not certified by Philips. Philips does not assume any responsibility or liability with respect to unauthorized modification or substitution of subsystems or components.

Schedule 1

Volcano Precision Guidance Therapy Portfolio (“Volcano Products”)

Product Category	Products
Disposables	IVUS Imaging
	Coronary Physiology
	Pullback Device
	Therapeutics
Installed Capital	CORE [®]
	CORE [®] FM
	s5i [®] Imaging System
Mobile Capital	CORE Mobile [®]
	CORE [®] FM Mobile
	s5 [®] Imaging System

1. Prices. Unless stated otherwise on the face of the quotation, the quotation will remain valid for sixty (60) days unless withdrawn or changed by Volcano Corporation (“Volcano”) or one of its affiliates.

2. Payment Terms.

2.1 Quotation. Philips may quote and invoice the Volcano Products in the name of its affiliate, Volcano.

2.2 Payment Terms. Unless otherwise specified in the quotation, Volcano will invoice Customer and Customer will pay such invoice on receipt for each Volcano Product. 100% of the purchase price shall be due thirty (30) days from invoice date.

2.3 Purchase Orders. Customer must submit separate and unique purchase orders for the Volcano Products on this Schedule to:

Volcano Customer Service:
Volcano Corporation
2870 Kilgore Road
Rancho Cordova,
CA 95670 USA
Tel: (800) 228-4728 (916) 638-8008
Fax: (916) 638-8812
email cs@volcanocorp.com

2.4 Invoices. Unless otherwise specified in the quotation, Volcano will issue an invoice(s) for the Volcano Products and Philips will issue a separate invoice for the Products listed on all other Schedules identified. Volcano will invoice Customer, and Customer will immediately pay such invoice for each Product in accordance with the payment terms set forth in the applicable schedule attached to the Terms and Conditions of Sale and remit payment to the locations stated in each invoice.

2.5 Credit Approval. Payment terms are subject to credit approval.

2.6 Services. If any, shall be invoiced and paid as set forth on the quotation for such services.

3. Shipment. Volcano will use reasonable efforts to ship the Volcano Product to the Customer by the mutually agreed upon shipment date. Volcano will ship the Disposables F.O.B. Origin, pre-paid, and added to invoice, according to Volcano’s standard commercial practices; Volcano will ship all Installed Capital and Mobile Capital (collectively, “Capital Products”) as per Volcano’s quotation or as mutually agreed. Volcano may charge a shipping fee.

4. Acceptance. For Disposables, acceptance occurs upon shipment. For Installed Capital Products, acceptance occurs upon Products’ availability for first patient use. For Mobile Capital Products, acceptance occurs upon shipment.

5. Installation. For Installed Capital, installation is included in the purchase price and Volcano will perform such installation. If Customer schedules or delays installation by Volcano more than thirty (30) days after delivery, Customer’s acceptance of the Installed Capital will automatically occur on the thirty-first (31st) day after delivery.

6. Returns.

6.1 Requests to return Disposables for credit or exchange must be submitted in writing to Volcano Customer Service at customerservice@volcanocorp.com for prior approval. Volcano may require a new or revised purchase order for the correct Disposable. Except as described in Section 6.2, Volcano will accept the following for return:

- (a) Disposables that are damaged prior to receipt by Customer or do not conform with the Documentation – Volcano shall credit Customer for the amount of the return shipping fees.
- (b) Incorrect Disposables Received – Volcano will issue a call tag and send return shipping label for any Disposable that is routed incorrectly.
- (c) Wrong Disposables Ordered – must be reported within fifteen (15) days of receipt.

6.2 Disposables will be considered for exchange or credit only if the item is in its original packaging, with no visible marks or damage (unless the item was damaged prior to receipt by Customer), and the sterile packaging is unopened. Unless the item was damaged prior to receipt by Customer, items returned that are not acceptable for resale will be scrapped and credit will not be issued. Volcano does not accept returns of excess inventory, for stock rotation, or other exchange programs.

6.3 Process. Upon approval of the request to return, which approval will not be unreasonably withheld, Volcano will issue a Return Material Authorization (RMA). Customer must include this RMA number on all returned Disposable shipping cartons (do not write this number directly on the product package). Except as provided above, returns must be shipped, freight paid to:

Volcano Corporation
Attn: RMA# xxxxxx
2870 Kilgore Road
Rancho Cordova, CA 95670

7. Product Warranty.

7.1 Capital Products Limited Warranty.

- (a) Subject to the conditions and limitations on liability stated herein, Volcano warrants that the Capital Product (inclusive of its operating software, exclusive of any Stand-alone Licensed Software identified as such in the quotation) (the "System") as so delivered, shall materially conform to Volcano's then current specifications for the System, for a period of one (1) year from the date of delivery. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY IS LIMITED TO SYSTEM REPAIR, REPLACEMENT OR, IF REPLACEMENT IS INADEQUATE AS A REMEDY OR, IN THE OPINION OF VOLCANO, IMPRACTICAL, TO REFUND OF THE PRICE PAID FOR THE SYSTEM. VOLCANO DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SYSTEM OR WRITTEN MATERIALS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. Buyer understands that Volcano is not responsible for and will have no liability for any items or any services provided by any persons other than Volcano.
- (b) The warranty in Section 7.1 does not apply if:
 - (i) The System is operated in a manner that does not conform with the specifications and prescriptions in the Operator's Manual, and/or supplements.
 - (ii) The System is not maintained in accordance with procedures in the Operator's Manual, and/or supplements.
 - (iii) The System is repaired, altered, or modified in any way, except by Volcano authorized personnel or with Volcano authorization.
 - (iv) If you want to return the System or components of the System under this warranty, contact Volcano Technical Support for instructions and issuance of a Return Material Authorization. Volcano will not accept the System or components for warranty purposes unless Volcano authorized the return.
 - (v) System parts or components repaired or replaced under warranty bear the same warranty expiration date as the original equipment, or ninety (90) days, whichever is longer. Consumable parts (including data disks and batteries) are warranted only against defects in materials and workmanship. System parts purchased outside the original warranty period are warranted for a period of ninety (90) days, subject to all of the restrictions contained in this Limited Warranty. Use of unauthorized replacement parts may void the warranty. In all cases, Volcano will be the sole judge as to what constitutes warrantable damage.

7.2 Disposables.

- a. In addition to the warranties stated herein, Volcano may provide additional disposable product-specific warranties that are set forth in (a) separate Volcano warranty documents and available at the [website](http://www.volcanocorp.com/products/product-ifus.php) (<http://www.volcanocorp.com/products/product-ifus.php>) and (b) each disposable's instructions for use ("IFU"), both of these limited warranties are hereby collectively incorporated herein by reference (the "Limited Warranties").
- b. Disposables indicated as intended for single patient use in the applicable Intended Uses (as defined below) are warranted for single patient use prior to the expiration date specified on the package labeling. Disposables indicated as reusable in the applicable Intended Uses are warranted for the number of uses indicated prior to the expiration date specified on the package labeling. The foregoing warranties apply only in favor of the Customer specifically identified in the applicable purchase documents. If any Disposable is found upon examination by Volcano to be defective during the warranty period, Volcano will either, at Volcano's option and as Customer's SOLE REMEDY, repair or replace the defective Disposable.

- c. The limited warranties set forth or referenced herein do not apply or extend to, and shall be void with respect to, any Disposable:
- (i) used in breach of these Terms and Conditions;
 - (ii) not used in compliance with the Intended Uses or IFUs or in conformance with the specifications accompanying the Disposable;
 - (iii) used with equipment, hardware, software or accessory not supplied or expressly authorized by Volcano; or
 - (iv) that has been subjected to (1) physical abuse, misuse, abnormal use, tampering, unusual physical stress, or improper shipping, storage, or handling, (2) use by unauthorized, inadequately trained, or untrained operators, (3) use after defect or malfunction has been detected, (4) modification, disassembly, reassembly, processing, reprocessing, repackaging, or sterilization by anyone other than Volcano or a third party designated by Volcano, unless pre-approved in writing by Volcano, or (5) negligence, accidents, or acts of nature. In addition, Volcano makes no warranty with respect to, and shall have no liability for, Customer's performance of any test, process or procedure using any Disposable. In the event of a conflict between the provisions of these Terms and Conditions and the provisions of a Limited Warranty, the provisions of these Terms and Conditions shall govern.
- d. Limited Use. Customer acknowledges and agrees that:
- (i) Notwithstanding the use of the terms "buyer," "purchaser," "seller," "buy," "purchase," "sell" or other similar terms in the Agreement or any other document provided by either party to the other party, or any other provision of the Agreement or any such document to the contrary, all Disposables supplied by Volcano to Customer are licensed, not sold. Subject to the terms and conditions of this Section d, Volcano grants to Customer a non-exclusive, non-sublicensable, non-transferable, limited license under Volcano's patents, trade secrets, and proprietary technology/information (the "Volcano Intellectual Property") solely to use Disposables for the intended uses expressly set forth in the respective IFUs and approved or cleared labeling for such Disposables (collectively, the "Intended Uses").
 - (ii) Unless expressly provided otherwise in the Intended Uses, the Disposables are designated for single patient use only and are licensed to Customer under the Volcano Intellectual Property to be used on a single patient only.
 - (iii) There is no license, implied or otherwise, that would allow use of the Disposables, by Customer or any third party (1) beyond their intended single use (or, in the case of Disposables indicated as "reusable" in the applicable Intended Uses, beyond the number of uses indicated) or (2) after their expiration date.
 - (iv) Except with Volcano's prior written consent, Customer shall not: (1) use any Disposable for any use or purpose other than its Intended Uses; (2) process, reprocess, use or reuse, repackage or resterilize any Disposable that has already been used with a patient, any reusable Disposable that has already been used the number of times indicated in the Intended Uses, or any Disposable that has reached or passed its expiration date (or have, encourage, solicit, or permit any third party to do any of the foregoing on behalf of the Customer, such third party, or any other third party); or (3) purchase or otherwise acquire reprocessed, reused, repackaged, or resterilized Disposables from any party other than Volcano (or Volcano's authorized representatives).
 - (v) After a single use of a single-use Disposable, the indicated number of uses of a reusable Disposable, or expiration of a Disposable, Customer shall send such Disposable to a hazardous waste disposal center for destruction or disposal in accordance with applicable laws, rules and regulations.
 - (vi) Use of any Disposable in violation of the provisions of this limited license shall constitute a material breach of the Agreement and render null and void all Volcano representations and warranties regarding such Disposable. Upon any such violation: (1) all Disposables pricing discounts granted to Customer shall automatically cease and the purchase price for all such Disposables shall thereafter automatically become their full respective list prices and (2) Volcano may pursue any and all remedies that may be available to it at law or in equity with respect to such violation.
 - (vii) Customer shall not permit the Disposables to be used by anyone other than Customer's qualified and trained personnel. Customer shall not modify, or cause or permit any third party to modify, Disposables without Volcano's prior written authorization, which authorization may be withheld at Volcano's sole discretion. Disposables may not be used for any tests, processes, procedures, or any other use for which such Disposables are not intended or cleared by the Food and Drug Administration, or in any manner inconsistent with the IFUs or labeling.

7.3 EXCEPT FOR THE FOREGOING, THE SYSTEM AND THE DISPOSABLES ARE EACH WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF FITNESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

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