

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

The products and services listed in the quotation are offered by Philips Neuro (a.k.a. Electrical Geodesics, Inc.), a Philips company, wholly owned subsidiary of Koninklijke Philips N.V., only under the terms and conditions described below (the "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 Neuro with an appropriate exemption certificate reasonably in advance of the date the product is available for delivery, otherwise, Philips Neuro shall invoice Customer for those taxes, as well as any government surcharges, and 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 Neuro.

2. Cancellation.

Philips Neuro 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 or sales proposal, Philips Neuro 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 Neuro 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 Neuro's 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 Neuro at law or in equity, Philips Neuro 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 Neuro 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 Neuro 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 Credit Card. Philips Neuro, at its discretion, will accept a credit card for payment on orders with a net value of \$50,000 or less.

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 Neuro upon Philips Neuro making the new equipment available to Customer at training or assembly visit. Removal of the Trade-In from Customer's site shall occur no later than the date Philips Neuro makes the new product available at training or assembly visit, unless otherwise agreed in writing between Philips Neuro 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 Neuro for any out-of-pocket costs Philips Neuro 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 Neuro removes the Trade-In (ordinary wear and tear excepted) as it was when Philips Neuro quoted the Trade-In value; or, (b) Customer delays the removal of the Trade-In, then Philips Neuro 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 Neuro does not receive timely possession of the Trade-In, Philips Neuro 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 Neuro on the value of the asset to be traded in; (b) providing Philips Neuro with serial numbers of assets to be traded in; and/or, (c) providing Philips Neuro with a de-installation date to remove an existing asset in order to install Philips Neuro 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 Neuro 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 Neuro 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 Neuro a purchase money security interest in the products until all payments have been made. Philips Neuro may file a financing statement for such security interest and Customer shall sign any financing statements or other documents necessary to perfect Philips Neuro's 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 Neuro the right to sign on Customer's behalf and file any financing statement or other documents to perfect Philips Neuro's 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 Neuro 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 Neuro, that there are no obstacles preventing Philips Neuro 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 Neuro 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 Neuro, Customer shall advise Philips Neuro 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 Neuro's 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 Neuro 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 Neuro, Philips Neuro 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 Neuro 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 Neuro and Customer will conduct an evaluation of the site and establish a new installation schedule.

(d) Philips Neuro 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 Neuro 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 Neuro 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 Neuro 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 Neuro employees to participate in the installation of the product, then such participation of non-Philips Neuro employees shall be at Customer's expense. In such case, Philips Neuro will provide engineering supervision during the installation.

8.5 **Remote Services Network ("RSN").** If applicable, customer will (a) provide Philips Neuro with a secure location at Customer's premises to store one Philips Neuro remote services network router and provide full and free access to this router, (or a Customer-owned router acceptable to Philips Neuro) for connection to the equipment and to Customer's network; or (c) provide Philips Neuro 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 Neuro' 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 Neuro 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 Neuro at the prevailing demand service rates for all time spent by Philips Neuro 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.

9.2 **Hardware/Systems.** Philips Neuro warrants to Customer that the Philips Neuro equipment (including its operating software) will perform in substantial compliance with its performance specifications, in the documentation accompanying the products, for a period of 12 months following equipment training or assembly visit

9.3 **Stand-alone Licensed Software.** For a period of ninety (90) days from the date Philips Neuro makes Stand-alone Licensed Software available for first use, such Stand-alone Licensed Software shall substantially conform to the technical user manual that is provided 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 Neuro 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 Neuro for more than thirty (30) days following the date that Philips Neuro 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 Neuro' sole obligations and Customer's exclusive remedy under any product warranty are limited, at Philips Neuro' 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 Neuro. Warranty service outside of normal working hours (i.e. 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding Philips Neuro' observed holidays), will be subject to payment by Customer at Philips Neuro' standard service rates.

9.6 This warranty is subject to the following conditions: the product: (a) is to be installed by authorized Philips Neuro representatives (or is to be installed in accordance with all Philips Neuro installation instructions by personnel trained by Philips Neuro); (b) is to be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with Philips Neuro' 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 Neuro immediately if the product at any time fails to meet its printed performance specifications. Philips Neuro' 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 Neuro; use or operation of the product other than in accordance with Philips Neuro' 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 Neuro does not provide a warranty for any third party products furnished to Customer by Philips Neuro under the quotation; however, Philips Neuro shall use reasonable efforts to extend to Customer the third party warranty for the product. The obligations of Philips Neuro described herein and in the applicable product-specific warranty document are Philips Neuro' 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 Neuro' WARRANTY DOCUMENT WITH RESPECT TO A PRODUCT (INCLUDING THE SOFTWARE PROVIDED WITH THE PRODUCT) ARE THE ONLY WARRANTIES MADE BY Philips Neuro 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 Neuro 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 Neuro Proprietary Service Materials.

Any Philips Neuro maintenance or service software and documentation provided with the product and/or located at Customer's premises is intended solely to assist Philips Neuro and its authorized agents to install and to test the products or to assist Philips Neuro 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 Neuro' employees and those of Philips Neuro' authorized agents only and to permit Philips Neuro to remove its Proprietary Service Materials upon request.

11. Patent Infringement Claims.

11.1 Philips Neuro shall indemnify, defend, and hold harmless Customer against any new claim that a Philips Neuro 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 Neuro prompt written notice of the claim; (b) grants Philips Neuro full and complete information and assistance necessary for Philips Neuro to defend, settle, or avoid the claim; and (c) gives Philips Neuro 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 Neuro product is found or believed by Philips Neuro to infringe a valid patent or copyright; or, (b) Customer has been enjoined from using the Philips Neuro product pursuant to an injunction issued by a court of competent jurisdiction, Philips Neuro 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 Neuro shall have no obligation for any claim of infringement arising from: Philips Neuro' compliance with Customer's designs, specifications, or instructions; Philips Neuro' 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 Neuro to customer and the Philips Neuro 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 Neuro Product after Philips Neuro has advised Customer, in writing, to stop use of the Philips Neuro Product in view of the claimed infringement. The terms in this section state Philips Neuro' 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 NEURO AND ITS AFFILIATES FOR ALL DAMAGES AND BASED ON ALL CLAIMS, WHETHER ARISING OR RELATING TO FROM 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 Neuro' 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 Neuro NEGLIGENCE OR PROVEN PRODUCT DEFECT;
- (c) OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXENT SUCH NOTICES ARE CAUSED BY Philips Neuro UNAUTHORIZED DISCLOSURE OF PHI; and,
- (d) FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING Philips Neuro 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 Neuro 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 Neuro and providing Philips Neuro 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 Neuro 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 Neuro 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 Neuro and Customer may, in Philips Neuro discretion, be recorded.

15.3 It is Customer's responsibility to notify Philips Neuro 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 Neuro any event of which Customer becomes aware that suggests that any services or products provided by Philips Neuro, 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 Neuro 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 Neuro. Philips Neuro shall be solely responsible for submitting any filings or reports to any governmental authorities with respect to the Philips Neuro products and services provided by Philips Neuro hereunder, unless otherwise required by law.

16. Excluded Provider.

As of the date of the sale of this product, Philips Neuro represents and warrants that Philips Neuro, 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 (an "Excluded Provider"). Philips Neuro shall promptly notify Customer if it becomes aware that Philips Neuro 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 Neuro 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 Neuro 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 Neuro and Customer shall comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). Philips Neuro agrees that until the expiration of four (4) years after furnishing services or products pursuant to these Terms and Conditions of Sale, Philips Neuro 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 Neuro that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Philips Neuro further agrees that if Philips Neuro 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 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 Neuro may cancel any unfulfilled obligations, or suspend performance; however, Customer's financial obligations to Philips Neuro 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 Neuro, 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 Neuro' 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 Neuro 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 Neuro. 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 Neuro.

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: GES 400 Systems (GES 400, 405, 410); MR Conversion, GTEN Beta Conversion; GPS, GeoScan; HCGSNs; GeoSource.

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 Neuro 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 Neuro 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 Neuro immediately upon expiration or termination of this License.

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1.4 Customer agrees that only authorized officers, employees, and agents of Customer will use the Licensed Software or have access to the Licensed Software (or to any part thereof), and that none of Customer's officers, employees, or agents will disclose the Licensed Software, or any portion thereof, or permit the Licensed Software, or any portion thereof, to be used by any person or entity other than those entities identified on the quotation. Customer acknowledges that certain of Philips Neuro' rights may be derived from license agreements with third parties, and Customer agrees to preserve the confidentiality of information provided by Philips Neuro 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 Neuro.

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 Neuro, and Philips Neuro 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, (a) the product includes only those subsystems and components certified by Philips Neuro. The Licensed Software may not perform as intended on systems modified by other than Philips Neuro or its authorized agents, or on systems which include subsystems or components not certified by Philips Neuro. Philips Neuro does not assume any responsibility or liability with respect to unauthorized modification or substitution of subsystems or components.

Schedule 1

GES 400 Systems Portfolio (GES400) and Accessories*

Product Category	Products
GES EEG	GES 400*
	GES 405*
	GES 410 (Non-Medical Product)
	MR Conversion Package (Non-Medical Product)
	GTEN Beta Conversion Package (Non-Medical Product)
Sensor Digitization	HCGSNs*
	GPS* GeoScan (Non-Medical Product))
GeoSource	
	GeoSource 2.0*
	GeoSource Basic (Non-Medical Product)
	GeoSource Intermediate (Non-Medical Product)
	GeoSource Advanced (Non-Medical Product))

* Note: specific country clearance, if applicable, will be addresses in the sales order

1. Definitions

- 1.1 **Medical Device:** an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is: recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them, intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes. The term "device" does not include software functions excluded pursuant to section 520(o). [FFDCA Sect 201(h)]
- 1.2 **Non-Medical Products:** Products that do not meet the above definition of a medical device including devices that are considered custom devices [FFDCA 520(b)], research use only [21CFR809(2)(i)], investigation use only humanitarian use devices, and export-only medical devices, as these are variants of medical devices.

2. Payment Terms

Unless otherwise specified in the quotation or sales proposal, Philips Neuro will invoice Customer and Customer will pay such invoice based on the date of the invoice for each product as follows:

US and Canada: 100% shall be due within thirty (30) days from the invoice date.

All other countries: Irrevocable Letter of Credit Against Shipping Documents or Prepayment

3. Cancellation

The quotation is subject to change or withdrawal prior to written acceptance by Customer. All purchase orders issued by Customer are subject to acceptance by Philips Neuro. If Customer cancels an order prior to product shipment, Customer shall pay a cancellation charge of fifteen percent (15%) of the net order price. Orders are non-cancellable for Products shipped.

4. Delivery

4.1 Philips Neuro will use reasonable efforts to ship the product to the Customer (a) within ninety (90) days after acceptance of the order by Philips Neuro, or b) as otherwise agreed in writing. Philips Neuro will ship the Product according to Philips Neuro' standard commercial practices. Philips Neuro will deliver the equipment during normal working hours, 8:00 – 5:00 PM, in the time zone where the Customer is located. Philips Neuro may make partial shipments.

4.2 Prior to the shipment of any Product, Philips Neuro may change the construction or the design of the Product without notice to the Customer so long as the function, footprint, and performance of the Product are not substantially altered.

4.3 If Customer requests a delay in the delivery, then Philips Neuro will place the Product in storage and the unpaid portion of the purchase price shall be due. In addition, Customer will reimburse Philips Neuro for all storage fees, transportation expenses, and related costs incurred by Philips Neuro from date of invoice.

5. Customer Installation Obligations

Deployment, site preparation and installation are Customer's responsibility. Customer shall be in compliance with all governmental codes relevant to the Product and its installation and use.

6. Additional Terms Related to Sales of the GES 400 Systems

6.1 Authorized Use. The Geodesic EEG System(s) included in this proposal, including the Geodesic Sensor Nets and HydroCel Geodesic Sensor Nets, are sold as Medical Devices in the U.S. and have been certified as compliant with the European Union Medical Device Directive. Some Net Station Analysis features and other products included in this proposal are for scientific research purposes, unless otherwise noted. You will be solely responsible for the proper and safe conduct of your scientific research studies. All use of these products must be in compliance with appropriate human subject procedures, as they exist within your institution and will be your obligation.

6.2 Warranty Disclaimer and Support

6.2.a. Limited Warranty. Philips Neuro warrants that the Philips Neuro Manufactured Equipment/Software described in the attached proposal, when delivered, properly installed, and used in accordance with Philips Neuro's instructions, will conform to Philips Neuro's most current version of the published specifications for such Equipment/Software or to those specifications in effect as of the date the Equipment/Software was received by Customer for a period of twelve (12) months from the date of equipment training or assembly visit. Equipment or Software manufactured or developed by a company other than Philips Neuro shall be sold only with the warranty and support provided by the original manufacturer. No additional warranty or support is offered by Philips Neuro. As Philips Neuro's sole responsibility and Customer's exclusive remedy in the event of any material nonconformity, Philips Neuro shall, at its option, make a reasonable effort to repair or replace the Equipment/Software so it is conforming or shall reimburse Customer's purchase price for the pertinent parts of the Equipment/Software. In addition to the restrictions and exclusions in Section 9.6 of the Standard Terms and Condition of Sale, the foregoing warranty shall not apply to Equipment that has been modified or altered. If the installation of the Equipment by a certified Philips Neuro Support Engineer is delayed by the Customer more than three (3) months after the date the Equipment was delivered to the Customer, such warranty will begin on the last day of the third month after the Equipment was delivered to the Customer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, Philips Neuro MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE SYSTEM, THE DESIGN OR CONDITION OF THE EQUIPMENT OR SOFTWARE, OR ANY OUTPUT BASED ON THE USE OF THE SYSTEM. Philips Neuro SPECIFICALLY DISCLAIMS, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EQUIPMENT MANUFACTURED BY COMPANIES OTHER THAN Philips Neuro WILL BE WARRANTED AND SUPPORTED ONLY TO THE EXTENT WARRANTED AND SUPPORTED BY THE ORIGINAL MANUFACTURER

6.2.b. Warranty Repairs. If, during the first year warranty period, any Equipment/Software component fails to conform to the warranty in Section 6.2.a, that component will be replaced or repaired by Philips Neuro. For warranty-covered repair work, if possible, a loaner component will be provided if the anticipated repair period is in excess of two weeks. Shipping expenses, incident to repairs, and loaner equipment will be paid by the Customer. If a loaner component cannot be provided, the Customer's warranty will be extended an additional two days for every day their system is not operational.

6.3 Support After the Warranty Year. Support for products will be offered in accordance with the then current support policies.

6.4 Training. Customer training is available for purchase separately. The amount of training offered may vary by Product.

7. Relationship to Service Agreement

Customer will be offered a service agreement at an additional cost covering Equipment repairs and service outside the warranty period. Repairs on a parts and labor basis are also available.

8. No Acceptance Varying Terms

No acceptance shall be valid that purports to vary these terms unless agreed to by Philips Neuro in writing.