



## Equipment and Disposable Products Terms and Conditions

**1. General.** This Agreement applies to all quotations made by or on behalf of Philips for all Equipment and Disposable Products. Customer's acceptance of such quotations is limited to these Terms and Conditions, including all Exhibits attached hereto. This Agreement may be modified or amended only by a written instrument signed by duly authorized representatives of both parties, and additional or different terms or conditions in any communication by Customer (whether in a purchase order or otherwise) are hereby rejected and are null and void, irrespective of the means of acceptance. Philips' failure to object to any additional or different provisions proposed by Customer does not constitute a waiver of these Terms and Conditions, nor constitute acceptance of any such Customer terms and conditions. This Agreement is the final, complete, and exclusive Agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions.

**2. Price/Taxes.** The purchase price stated in the quotation does not include applicable sales, excise, use, or other taxes in effect or later levied. Customer shall provide Philips with an appropriate exemption certificate reasonably in advance of the date the Equipment and/or Disposable Product(s) are available for delivery, otherwise, Philips shall invoice Customer for those taxes, and Customer shall pay those taxes in accordance with the terms of the invoice.

### **3. Purchase Order and Payment Terms.**

**3.1 Disposable Products:** Customer must issue a purchase order for the purchase of Disposable Products. Unless otherwise specified under consignment, Philips will issue an invoice upon shipment of Disposable Products to Customer. Customer will pay each invoice in U.S. dollars in full within thirty (30) days of its receipt of the invoice. 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 delivery of Disposable Products, upon 5 business days' notice, remove the Equipment from Customer's facility(ies) and/or deduct the unpaid amount from any amounts otherwise owed to Philips by Customer under any agreement with Customer.

**3.2 Equipment:** Customer must issue a purchase order for the purchase or rental of the Equipment prior to shipment of the Equipment. Invoices will be issued in accordance with the applicable rental or purchase terms contained in the applicable Exhibit(s) attached hereto.

### **4. Shipment, Title, Risk of Loss.**

**4.1 Disposable Products.** Shipping charges will be prepaid by Philips and invoiced. Disposable Product sales are made F.O.B. Philips' manufacturing facility, and title and risk of loss passes to Customer at the time of Philips' delivery to the carrier. Disposable Products provided on a consignment basis in accordance with the Consignment Exhibit are shipped F.O.B. destination and risk of loss, but not title, passes to Customer at the time of delivery to Customer. Customer grants Philips a security interest in the Disposable Products for the unpaid balance of the purchase price.

**4.2 Equipment:** Shipment of Equipment is FOB origin, unless otherwise specified in the respective Equipment Exhibits. For applicable Equipment, Philips will provide the services of a certified field service engineer ("Certified Field Service Engineer") to perform customary testing procedures promptly following delivery. Philips will provide Customer with written certification that the Equipment is performing in accordance the Equipment's written specifications following satisfactory completion of the field testing (the "Field Certification"). Title to purchased Equipment shall pass to Customer at the time of delivery to Customer. In the instance of rented Equipment, Philips will retain legal title to the Equipment at all times. Notwithstanding Philips' holding legal title, Customer will list Philips as the loss payee in Customer's insurance that insures the Equipment against damage, vandalism, and theft and will provide evidence of this insurance to Philips. Philips may, at its discretion, file a UCC financing statement, for informational purposes, in connection with rented Equipment placed with Customer under this Agreement.

### **5. Limited Warranty.**

**5.1 Disposable Products:** Philips warrants that at the time of shipment, Disposable Products will: (i) comply with the U.S. Federal Food, Drug and Cosmetic Act, if applicable; (ii) have been manufactured, packaged, and stored in compliance with applicable laws, governmental regulations and good manufacturing practices ("GMP"); (iii) be free from defects in material and workmanship when used by the stated "Use By" or "Expiration" date and when package is unopened and undamaged immediately before use. Customer's sole remedy under this warranty is, at Philips' option and expense, the replacement of Product or credit of the purchase price. Philips' obligation under this limited warranty is subject to Customer's compliance with Philips' then-current Return Material Authorization procedures. The foregoing warranty does not apply to products that are or have been: (i) expired; (ii) repaired, altered, modified or reprocessed except by or under the authorization of Philips, (iii) not used or stored in accordance with the



instructions for use supplied by Philips; or (iv) subjected to misuse, negligence or to an accident. EXCEPT FOR THE ABOVE LIMITED WARRANTY, PHILIPS MAKES NO, AND EXPRESSLY DISCLAIMS, ANY OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ITS DISPOSABLE PRODUCTS, INCLUDING WITHOUT LIMITATION NON-INFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. EXCEPT FOR THE ABOVE LIMITED WARRANTY, PHILIPS DOES NOT WARRANT THAT PHILIPS' DISPOSABLE PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS. THIS LIMITED WARRANTY EXTENDS ONLY TO CUSTOMER.

**5.2 Equipment:** Philips will provide the limited warranties for Equipment as is specified in each respective Equipment-specific Exhibit.

## **6. Returns.**

**6.1 Disposable Product Returns:** Prior approval by Philips is required to return Disposable Products for credit or exchange. Such approval may be requested by contacting Philips Customer Service as specified on the attached Contact Information sheet. Disposable Products may be returned due to: (i) damage prior to receipt by Customer or failure to conform to the specifications, in which case, Philips shall credit Customer for the amount of the return shipping fees; (ii) incorrect Disposable Product(s) received, in which case Philips will issue a call tag and provide a return shipping label for Disposable Product; or (iii) incorrect Disposable Product(s) ordered, in which case Customer must report such incorrect order to Philips within fifteen (15) days of Customer's receipt of Disposable Product(s).

**6.2** In the instance of any return, Philips may require a new or revised purchase order for the replacement order.

**6.3** Except in the instance of 6.1(i) above, Disposable Products will only be considered for exchange or credit if the item is in its original packaging, with no visible marks or damage, and the sterile packaging remains uncompromised. No credit or exchange will be issued for items returned in unsaleable condition. Unless otherwise explicitly agreed to in this Agreement or an Exhibit, Philips does not accept returns of excess inventory, for stock rotation, or other exchange programs.

**6.4** Upon approval of the request to return, which approval will not be unreasonably withheld, Philips will issue a Return Material Authorization (RMA) number. The RMA number must be included on all returned Disposable Product shipping cartons (do not write this number directly on the product package).

**6.5 Equipment Returns:** The return policies and procedures for Equipment will be specified in each respective Equipment Exhibit.

**7. Equipment Maintenance and Support Services.** Philips will provide Customer with the Equipment maintenance and support services provided in each respective Equipment Exhibit.

**8. Notices.** Notices or other communications shall be in writing, and shall be deemed served if delivered personally, by overnight mail or courier, or by certified mail, return receipt requested and addressed to the party at the address set forth on the first page of this Agreement.

**9. 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 any civil or military authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, terrorism, national emergency, strikes, subcontractors or suppliers, pandemics, epidemics, viral outbreaks, or by any other cause not within the control of the party whose performance is interfered with which, by the exercise of reasonable diligence, such party is unable to prevent, whether of the class or causes enumerated above or not. For the sake of clarity, any supply chain disruption due to COVID-19 shall be considered a force majeure event.

**10. Assignment.** Customer may not assign any rights or obligations in connection with the transactions contemplated by this Agreement 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. Notwithstanding the foregoing, either party may assign its interest in this Agreement to any entity directly or indirectly controlled by the assigning party, or to any successor by merger or sale of substantially all of its assets. The provisions of this Agreement will inure to the benefit of the permitted assigns and successors in interest of the assigning party. Customer acknowledges and agrees that Philips may appoint its affiliates to perform some or all of its functions or obligations under this Agreement, provided however, that Philips shall remain responsible for performance by its affiliates.

**11. Compliance with Law.** 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 this Agreement, 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. Each party represents and warrants to the other party that it is not excluded from participation in any Federal Health Care Program or debarred, suspended, or otherwise excluded from participating in any other federal procurement program or activity. In the event of a party's breach of this Section 11, the non-breaching party may terminate this Agreement immediately without further penalty or liability.

**12. Discounts.** The parties acknowledge that the prices under this Agreement may reflect discounts, rebates, or other reductions in price (collectively, "discounts"), and it is their intention that such discounts shall be administered consistent with the discount exception to the federal anti-kickback statute (42 USC 1320a-7b(B)(3)(A)) and the related regulatory discount safe harbor (42 CFR 1001.952(h)). Philips will reflect when a discount applies on invoices or alternative documents, and Customer may request additional documentation of purchases and discounts hereunder as necessary to facilitate appropriate reporting. To the extent and as required by applicable law, regulations, or other contractual obligations, it is Customer's responsibility to appropriately report or reflect such discounts, including any bundled discounts, on cost reports or claims submitted to third party payors, including but not limited to federal or state health care programs. Further, Customer will retain documentation provided by Philips relating to purchases and discounts hereunder and make it available to federal or state health care program representatives upon request.

**13. Governing Law.** All transactions contemplated by this Agreement shall be governed by the laws of the state where the Customer is located, without regard to that state's choice of law principles, without regard to provisions on the conflicts of laws or to the UN Convention of Contracts for the International Sale of Goods 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.

**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 this Agreement and its terms, including the pricing terms. 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 this Agreement. The disclosing party maintains exclusive ownership of the confidential information which it discloses to the receiving party. 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 this Agreement 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.

**15. Indemnity.** Philips will indemnify and defend Customer against any third party claim, action, or suit against Customer ("Claim"), including judgments, settlements and reasonable attorney's fees resulting from such Claim, to the extent such Claim directly arises from: (i) bodily injury (including death) and (ii) tangible property damage (representing the actual cost to repair or replace physical property damage) and to the extent such injuries or damages under clauses (i) and (ii) are caused by Philips' negligent acts or omissions or by a proven Product defect in a Philips Product covered in this Agreement.

**15.1** Philips will have no indemnity or defense obligation for any Claim that arises from: (i) the negligent act or omission, or willful misconduct of Customer; (ii) Disposable Products that are or have been expired, repaired, altered, modified or reprocessed except by or under authorization from Philips; (iii) Disposable Products not used or stored in accordance with the instructions for use; (iv) Disposable Products that have been modified by Philips in accordance with Customer-provided specifications or instructions; or (v) third party products.



**15.2** Customer will indemnify and defend Philips against any third-party Claim to the extent the Claim directly arises from Section 15.1 (i), (ii), (iii), (iv), or (v) above.

**15.3** The obligations of the indemnifying party are conditioned on the following: (a) indemnified party notifies indemnifying party of Claim in writing within thirty (30) days of the indemnified party being made aware of the Claim; (b) the indemnified party gives indemnifying party sole authority and control of the defense or settlement of the Claim with counsel of the indemnifying party's choice; and (c) indemnified party provides all information and assistance requested by the indemnifying party to handle the defense or settlement of the Claim.

**16. Limitation of Liability.** THE TOTAL LIABILITY, IF ANY, OF PHILIPS AND ITS AFFILIATES FOR ALL DAMAGES AND BASED ON ALL CLAIMS, WHETHER ARISING 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 AND SERVICE. THIS LIMITATION SHALL NOT APPLY TO: (i) CLAIMS FOR WHICH PHILIPS HAS AN OBLIGATION TO INDEMNIFY CUSTOMER FOR BODILY INJURY (INCLUDING DEATH); (ii) 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 OR EQUIPMENT DEFECT; (iii) 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, (iv) 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.

**17. Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PHILIPS, ITS AFFILIATES AND/OR ITS SUPPLIERS BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, EQUIPMENT OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, UNFORESEEABLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LICENSED SOFTWARE, AND/OR SERVICE HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), EVEN IF PHILIPS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS.

**18. Termination.** Notwithstanding anything to the contrary under this Agreement, after the Initial Term, either party may terminate this Agreement for convenience upon thirty (30)-days' written notice to the other party. Philips may also terminate this Agreement as follows: (i) upon Customer's material breach of this Agreement, in which case, Philips shall notify Customer in writing, identifying the breach, and Customer will have fifteen (15) days following such notice to remedy the breach. If the Customer fails to remedy the breach during that period, Philips may by written notice terminate this Agreement; or (ii) immediately upon the appointment of a receiver for the Customer, assignment for the benefit of creditors by Customer, or commencement of any voluntary or involuntary proceedings under any bankruptcy or insolvency laws against the Customer. Upon termination, Philips shall have the right to cancel future deliveries of Disposable Products and/or Equipment and Customer shall provide Philips access to its facilities during normal business hours; Customer shall cooperate with Philips for the immediate removal of all rented Equipment.

**19. Equipment Log File Access.** Customer agrees that Philips may periodically remotely connect to Philips equipment and collect and use information from the system log file for Philips' own business purposes (including, but not limited to, for data analytics activities, to facilitate and advise on continued and sustained use of Philips' or its affiliates' products and services, for research, product and service development and improvement (including the development of new offerings), substantiation of marketing claims and for benchmarking purposes). The system log file does not contain any protected health information (within the meaning of the HIPAA Privacy Rule) or any information that is capable of identifying an individual.

**20. Resale.** Customer represents and warrants that the Equipment and Disposable Products are being acquired solely for the Customer's own use at the Customer facility(ies) listed on Exhibit B. Customer shall not resell the Equipment or Disposable Products.

**21. PHI Deletion.** If Equipment is rented under this Agreement, Customer agrees to delete all data collected on the Equipment (with Philips' reasonable instructions) including specifically any and all data constituting Protected Health Information as that term is defined in 45 CFR 164.502(d) prior to returning the Equipment to Philips at the expiration of any rental term under this Agreement.

**22. Miscellaneous.** Customer shall report to Philips any problems with Philips' products or use thereof of which



Customer becomes aware. No failure or delay (in whole or in part) by either party to exercise any right or remedy hereunder operates as a waiver thereof or effect any other right or remedy. All rights and remedies hereunder are cumulative and are not exclusive of any other rights or remedies provided hereunder or by law. The waiver of one breach or default or any delay in exercising any rights does not constitute a waiver of any subsequent breach or default. Neither party hereto is deemed an agent of the other party. If any of these Terms and Conditions are held to be invalid under any statute or rule of law, they are, to that extent, deemed omitted and the remaining provisions shall continue in full force and effect. Philips owns and retains all patent rights, copyrights, trademarks, trade secrets and all other intellectual property rights in and to its Equipment or Disposable Products. Philips reserves all rights and no licenses are granted by Philips to Customer under this Agreement, whether by implication, estoppel or otherwise. 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.