

# GE Healthcare/ Terms and Conditions of Sale / United Kingdom & Ireland

## 1. GENERAL

### 1.1 In these Terms and Conditions:

The *Buyer* means the person, firm, company or other organization who or which has ordered Products and/or Services from GEHC;

GEHC means the GE Healthcare group company referred to in the final written offer, quotation or order acknowledgement or, if none, the GE Healthcare company making the supply;

The *Contract* means the contract for the sale and purchase of Products and/or Services between GEHC and the Buyer as may be further evidenced by GEHC's final written offer, quotation or order acknowledgement and no prior proposals, statements, representations or conditions will be binding on either party;

The *Equipment* means all electronic equipment, hardware and other electronic or mechanical items agreed to be supplied by GEHC, excluding any consumables and spare parts sold separately;

The *Goods* means all items agreed to be supplied by GEHC other than the Equipment and Software;

The *Products* means any Goods, Equipment or Software agreed to be supplied by GEHC; and

The *Services* means all advice given and services performed by GEHC; and

The *Software* means any firmware, software or data compilations (i) identified in the Contract or (ii) provided to Buyer by GEHC in connection with installation or operation of the Equipment. For the avoidance of doubt, Software shall not include any "open source" firmware, software or data compilations, as any such "open source" firmware, software or data compilations will be subject to the terms and conditions set out in the relevant "open source" license.

1.2 These Terms and Conditions shall be incorporated into the Contract and shall apply to the exclusion of any conditions of the Buyer. These Terms and Conditions may not be varied or waived except with the express written agreement of GEHC. The failure of GEHC to enforce its rights under the Contract at any time, for any period of time, shall not be construed as a waiver of any such rights.

## 2. PRICES AND QUOTATIONS

The price of the Products and/or Services will be GEHC's quoted price, inclusive of any duties, but exclusive of value added or other taxes. All quotations issued by GEHC for the supply of Products and/or Services shall remain open for acceptance for the period stated in the quotation or, if none is stated, for sixty (60) days. In all other cases, prices payable are those currently in effect in GEHC's then current pricelist, which may include charges for handling, freight, packaging, insurance and minimum orders.

## 3. PAYMENT

3.1 Unless otherwise agreed in writing, the Buyer shall make payment to GEHC in full, without any set-off or deduction:

- (i) no later than thirty (30) days from the date of invoice, in the currency invoiced;
- (ii) solely via electronic funds transfer originating from, or cheque drawn on, Buyer's account held in the country of Buyer's principal place of business.

3.2 In the event of late payment, GEHC reserves the right:

- (i) to suspend deliveries and/or cancel any of its outstanding obligations; and
- (ii) to charge interest at the lower of (a) an annual rate equal to twelve (12) % and (b) any applicable maximum statutory rate on all unpaid amounts calculated on a day to day basis until the actual date of payment.

## 4. CHANGES AND RETURNS

4.1 GEHC reserves the right, subject to prior written notice, to make any change in the specification of the Products, which does not materially affect the installation, performance or price thereof.

4.2 Products may only be returned with prior authorization from GEHC.

## 5. DELIVERY/INSTALLATION/ACCEPTANCE

5.1 Any term of delivery shall be construed according to the latest edition of Incoterms. If no other term of delivery has been specified in the Contract the Products will be delivered CIP to Buyer's premises or to the agreed destination.

5.2 GEHC will use all reasonable endeavours to avoid delay in delivery on the notified delivery dates. Failure to deliver by the specified date will not be a sufficient cause for cancellation, nor will GEHC be liable for any loss or damage due to delay in delivery.

5.3 The Buyer shall notify GEHC in writing within five (5) working days of delivery of any short delivery or defects reasonably discoverable on careful examination. GEHC's sole obligation shall be, at its option, to replace or repair any defective Products or refund the purchase price of any undelivered Products.

5.4 Where delivery of any Product requires an export license or other authorization before shipment, GEHC shall not be responsible for any delay in delivery due to delay in, or refusal of, such license or authorization.

5.5 Where the Equipment requires installation, the Buyer shall, at its own cost, be responsible for preparing and maintaining the installation site in accordance with GEHC's pre-installation requirements (such as specifications for power quality/grounding, temperature and/or humidity) and other instructions provided by GEHC. Installation will not begin unless such responsibilities are completed.

5.6 Partial deliveries and related invoicing shall be permitted. If the Buyer fails to accept delivery of the Products within a reasonable period after receiving notice from GEHC that they (or any part of these) are ready for delivery, or if delivery is delayed for reasons attributable to the Buyer (e.g. due to failure by the Buyer to comply with the pre-installation requirements set out in Section 5.5), GEHC may dispose of or store the Products at the Buyer's risk and expense.

5.7 Following installation, and where applicable, GEHC will proceed with final testing using GEHC's published performance specifications and using its standard instruments and procedures. Upon the satisfactory completion of such final testing demonstrating compliance with the above specifications (with any

permitted variations/tolerances) GEHC may issue a Test Certificate which shall be conclusive evidence of such compliance and thereupon installation of the Equipment shall be deemed to be complete and in compliance with GEHC's obligations under the Contract. In any event Buyer agrees that the Equipment is accepted (i) seven (7) days after the date on which GEHC notifies Buyer that final testing was successfully completed, or issues the Test Certificate or (ii) on the date Buyer first uses the Equipment for operational use, whichever is earlier. For partial deliveries this Section applies to each item of Equipment

5.8 Buyer, at its reasonable request, shall be entitled to be present at and to witness the testing and shall not be entitled to raise any objection to testing carried out, or to the results thereof, if Buyer failed to attend when advised that testing was to take place.

5.9 Where Products are supplied by GEHC in returnable containers, these must be returned at the Buyer's expense and in good condition, if requested by GEHC. Title to these containers shall remain with GEHC at all times, but they shall be held at the risk of the Buyer until returned to GEHC. Failure by the Buyer to comply with the above provision shall entitle GEHC to invoice the Buyer for the full replacement value of the containers.

5.10 Buyer shall obtain all necessary permits, licenses or approvals to receive and operate any radiation emitting equipment.

## 6. RISK AND TITLE

6.1 The risks of loss of and damage to the Products shall transfer to Buyer in accordance with agreed delivery term. Full title to the Goods and Equipment shall pass to the Buyer on full payment. In case of non-payment by the Buyer, GEHC, without prejudice and in addition to any rights it has under Section 3.2 or otherwise, may take back all or part of the Goods and Equipment and dispose of these in any way it sees fit with a view to mitigating the consequences of the non-payment by Buyer (to avoid doubt all depreciation, de-installation and other costs will be borne by Buyer.)

6.2 In relation to any Equipment used for clinical or diagnostic purposes, the Buyer shall keep adequate written records of the identity of any person or entity to whom the Equipment is transferred and of the location of such Equipment and shall procure that any purchaser of such Equipment is subject to the same requirement in respect of any onward sales.

## 7. SERVICES

7.1 GEHC is under no obligation to provide Services unless Buyer ensures adequate and safe facilities exist at its premises and that GEHC is properly notified of any hazardous conditions, relevant regulations and safety procedures. In particular, Buyer shall be responsible for taking all necessary actions prior to GEHC performing the installation/Services to remove and/or remediate any hazardous conditions or materials from the Equipment or service area. If any risks can result from the co-activities between GEHC, Buyer (and/or any third party) in the work area, such risks shall be addressed through a mutually agreed safety coordination plan.

7.2 If the Buyer has purchased a Product or Service including remote access support, the Buyer will permit GEHC to connect to the Products by remote access and maintain such connection as required by GEHC for the performance of maintenance or repair activities as part of GEHC's warranty obligations or otherwise. This may include automatic software downloads and proactive monitoring and access to performance data related to the products, to gather and use products and resource usage data in various ways such as product development, quality initiatives, benchmarking and reporting services. If remote access is not provided, GEHC reserves the right to charge the Buyer for onsite support at GEHC's then current pricelist.

7.3 Buyer shall be responsible for proper management, storage, and disposal of all Service and/or installation-related waste, unless otherwise agreed in writing or GEHC is legally required to take back the materials. Unless the relevant mandatory national legislation provides otherwise, or unless otherwise agreed in writing, GEHC's obligation to take back electrical and electronic equipment waste (WEEE) does not include creation of physical access to the equipment; de-installation; decoupling; disinfecting; craning/lifting; transportation to a ground level loading area or -ramp; packing; or any related similar activities; and Buyer agrees to perform such activities at its own cost as and when required.

7.4 When required by GEHC, Buyer shall make available at least one (1) suitably qualified person who can ensure the safety of GEHC personnel at all times during installation/performance of the Services. If no such person is made available, GEHC reserves the right to charge Buyer at GEHC's then current pricelist for an additional GEHC person to be present.

## 8. RESTRICTED USE

8.1 With respect to certain Products, use restrictions are a condition of the purchase which Buyer must satisfy by strictly abiding by the restriction as set forth in GEHC's catalogue and/or on the Product and/or accompanying documentation. Buyer is solely liable to ensure compliance with any regulatory requirements related to the Buyer's use of the Products. Any warranty granted by GEHC to the Buyer shall be deemed void if any Products covered by such warranty are used for any purpose not permitted hereunder. In addition, the Buyer shall indemnify GEHC and hold GEHC harmless from and against any and all claims, damages, losses, costs, expenses and other liability of whatever nature that GEHC suffers or incurs by reason of any such unintended use.

8.2 With respect to Products regulatory approved for clinical and medical treatment and diagnostic use, any decisions relating to such treatment and use shall be at the risk of the Buyer and the respective healthcare providers.

## 9. GENERAL WARRANTY

9.1 Section 9.2-9.5 shall apply in the event no other specific warranty has been agreed in the Contract. As regards any Products covered by a warranty issued by a third party manufacturer, such warranty terms shall apply to the exclusion of Section 9.2-9.5.

**9.2. Goods** - GEHC warrants that its Goods meet GEHC's specifications at the time of delivery. All warranty claims on Goods must be made in writing within ninety (90) days of receipt of the Goods. GEHC's sole liability and Buyer's exclusive remedy for a breach of this warranty is limited to repair, replacement or refund at the sole option of GEHC.

**9.3. Equipment** - GEHC's Equipment of its own manufacture is warranted from date of delivery or GEHC completing any agreed installation works, if later, to be free of defects in workmanship or materials under normal usage for a period of one (1) year and any claim shall be submitted in writing within such period. GEHC's sole liability and Buyer's exclusive remedy for a breach of this warranty is limited to repair, replacement or refund at the sole option of GEHC. Such repairs or replacement will not extend the warranty period.

**9.4. Software** - GEHC warrants, for a period which is the longer of:

- (i) three (3) months from the date of delivery or;
- (ii) in the event the Software is intended to be installed and run on GEHC's Equipment of its own manufacture, twelve (12) months from the date of delivery, that the Software substantially conforms to its published specifications and that the media on which the Software resides will be free from defects in materials and workmanship under normal use and any claim shall be submitted in writing within such period. GEHC does not warrant that the Software is error free or that Buyer will be able to operate the Software without problems or interruptions. GEHC's sole liability and Buyer's exclusive remedy in the event of breach of this warranty is limited to repair, replacement or refund, at the sole option of GEHC.

**9.5. Services** - GEHC warrants that all Services will be carried out with reasonable care and skill. GEHC's sole liability for breach of this warranty shall be at its option to give credit for or re-perform the Services in question. This warranty shall only extend for a period of ninety (90) days after the completion of the Services and any claim shall be submitted in writing within such period.

**9.6** To the maximum extent permitted by applicable law GEHC hereby expressly disclaims, and Buyer hereby expressly waives, any warranty regarding results obtained through the use of the Products, including without limitation any claim of inaccurate, invalid, or incomplete results. All other warranties, representations, terms and conditions (statutory, express, implied or otherwise) as to quality, condition, description, merchantability, fitness for purpose or non-infringement (except for the implied warranty of title) are hereby expressly excluded.

**9.7** Unless expressly agreed, GEHC is not obliged to carry out dismantling or re-installation of any Product in connection with any warranty claims.

#### **10. LIMITATION OF LIABILITY**

**10.1** GEHC shall have no liability under the warranties contained in Section 9 in respect of any defect in the Products arising from: specifications or materials supplied by the Buyer; fair wear and tear; wilful damage or negligence of the Buyer or its employees or agents; abnormal working conditions at the Buyer's premises; failure to maintain the site in accordance with GEHC's pre-installation requirements; failure to comply with user manual, GEHC's use restrictions or other instructions (whether oral or in writing); misuse or alteration or repair of the Products without GEHC's approval; or if the Buyer is in breach of its payment obligations under this Contract. If any of the exclusions set out in this Section 10.1 apply, GEHC reserves the right to charge the Buyer for repairing such defect at GEHC's then current pricelist.

**10.2** Subject to any express obligation to indemnify, neither party shall be liable for any indirect or consequential, or punitive damages of any kind from any cause arising out of the sale, installation, use or inability to use any Product or Service, nor for, without limitation, loss of profits, goodwill or business interruption.

**10.3** The total liability of GEHC arising under or in connection with the Contract, including for any breach of contractual obligations and/or any misrepresentation, misstatement or tortious act or omission (including without limitation, negligence and liability for infringement of any third party intellectual property rights) shall be limited to damages in an amount equal to the amount paid to GEHC under the Contract.

**10.4** The exclusion of liability in these Terms and Conditions shall only apply to the extent allowed according to applicable law.

#### **11. INTELLECTUAL PROPERTY RIGHTS**

**11.1** Where the Buyer supplies designs, drawings, and specifications to GEHC to enable it to manufacture non-standard or custom made Products, the Buyer warrants that such manufacture will not infringe the intellectual property rights of any third party.

**11.2** All intellectual property rights in the Products and/or Services shall at all times remain vested in GEHC or its licensors.

#### **12. DATA PROTECTION**

**12.1** The Buyer and GEHC shall comply with data protection laws applicable to their respective processing of personal data under the Contract.

**12.2** Where GEHC may process patient personal data stored in Equipment or Software when performing the Services, the following provisions shall apply:

- (i) Buyer has the sole and exclusive authority to determine the purposes and means of the processing of patient personal data by GEHC. GEHC shall process such personal data only for the purposes of providing the Services in accordance with the Buyer's instructions.
- (ii) Buyer shall endeavour to limit the disclosure of patient personal data to GEHC to that reasonably necessary to perform the Services.
- (iii) GEHC shall keep patient personal data confidential and shall implement technical and organizational measures to protect it against accidental, unlawful or unauthorized destruction, loss, alteration, disclosure or access.

**12.3** Prior to returning any Equipment to GEHC, Buyer shall decontaminate it and ensure that all personal data, including but not limited to patient personal

data stored in such Equipment is deleted. The Buyer acknowledges that, in any case, all data and settings stored in the returned Equipment may be deleted by GEHC.

**12.4** Prior to and during the Contract, the Buyer may provide GEHC with personal data relating to its personnel or other individuals involved in the use of the Products or Services. The Buyer consents to the processing of this personal data by GEHC, its affiliates and their respective suppliers, and shall, to the extent legally required, provide appropriate notice to each individual or obtain requisite consent to such processing of his or her personal data for the following specific purposes: (i) performing the Contract; (ii) providing information about GEHC products and services; (iii) transferring personal data as specified in Section 12.5; and (iv) satisfying legal or regulatory requirements.

**12.5** GEHC may transfer personal data relating to patients, the Buyer's personnel or other individuals involved in the use of Products and Services to recipients located in countries outside of the European Economic Area and to the extent the Buyer is the data controller of such data, the Buyer will (1) provide appropriate notice to the relevant individuals, (2) obtain any requisite consent, (3) provide individuals with applicable choices with respect to the use, disclosure or other processing of their personal data, and (4) provide individuals with the opportunity to exercise their right to access their personal data. GEHC has taken steps to provide adequate protection with respect to personal data sent outside of the European Economic Area, and will, upon request of the Buyer, negotiate regarding the applicability of any further data processing or data transfer agreement as may be required to support the lawful transfer of personal data.

**12.6** The Buyer agrees that GEHC may process certain de-identified and/or aggregated data for the purposes described in Section 7.2.

#### **13. HEALTH AND SAFETY**

The Buyer shall ensure that:

- (i) the Products (provided such Products comply with its specifications) are suitable and safe for the Buyer's intended use;
- (ii) the Products are handled in a safe manner.
- (iii) containers, packaging, labelling, equipment and vehicles, where provided by the Buyer, comply with all relevant national and international safety regulations.

#### **14. INDEMNITIES**

Except where a claim arises as a direct result of the negligence or breach of contract of GEHC, the Buyer shall indemnify GEHC in respect of any claim which may be made against GEHC:

- (i) arising in connection with the Buyer's unintended use of the Products;
- (ii) alleging that the Buyer's use of the Products infringes the intellectual property rights of any third party.

#### **15. INSOLVENCY**

In the event that the Buyer becomes insolvent or applies for bankruptcy or, being a company, goes into liquidation (other than for the purposes of reconstruction or amalgamation), GEHC shall be entitled immediately to terminate the Contract without notice and without prejudice to any other rights of GEHC hereunder.

#### **16. ASSIGNMENT - SUBCONTRACTING**

GEHC may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any third party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete GEHC's assignment or novation. GEHC may subcontract portions of the work, so long as GEHC remains responsible for it. The delegation or assignment by Buyer of any or all of its rights or obligations under the Contract without GEHC's prior written consent (which consent shall not be unreasonably withheld) shall be void.

#### **17. FORCE MAJEURE**

**17.1** A party shall not be liable in respect of the non-performance of any of its obligations to the extent such performance is prevented by any circumstances beyond its reasonable control including but not limited to, strikes, lock outs or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, acts or threats of terrorism, plant breakdown, computer or other equipment failure and inability to obtain equipment.

**17.2** If an event of force majeure exceeds one (1) month a Party may cancel the Contract without liability.

#### **18. SOFTWARE LICENSE**

Unless a separate software license agreement has been concluded concerning the Software, the Buyer is hereby granted a non-exclusive license to use the Software solely in object code format and solely for its own internal business purposes subject to the terms contained herein. The Buyer shall not (i) use the Software for purposes other than those for which it was designed; (ii) use the Software in connection with other manufacturers' products unless such connectivity is authorized in the Product documentation; (iii) grant, assign, transfer, or otherwise make available to third parties any right whatsoever in the Software; (iv) disclose to third parties any information contained in the Software; (v) copy or reproduce the Software (except for one copy for back-up purposes or as may otherwise be permitted by applicable law); (vi) alter or modify the Software; or (vii) reverse engineer, decompile, disassemble or create any derivative works based upon the Software except as expressly permitted by mandatory law.

#### **19. EXPORT CONTROL**

The Buyer undertakes not to re-export the Products without the requisite export license from the relevant body of the United Nations or other similar international organization, the United States Government, the country of origin

or the original country of export. The requirement to obtain a license may vary depending on the country of destination, the end user, the end use and other factors. Upon request from GEHC the Buyer shall furnish GEHC with copies of all documents relating to such re-export.

**20. GOVERNING LAW**

This Contract shall be governed by and construed in accordance with the substantive laws of the country or state where the GE Healthcare group company (or relevant branch) office referred to in the Contract is situated and the parties hereby submit to the non-exclusive jurisdiction of the courts of that country or state.

**21. PRODUCT-SPECIFIC TERMS AND CONDITIONS**

Additional terms and conditions govern the sale of certain Products and Services. These additional terms and conditions are available from the sales offices of GEHC and shall take precedence in the event of any inconsistency with these Terms and Conditions.

**22. TRANSLATIONS AND LOCAL VARIATIONS**

Translations of these terms and conditions are available from the sales offices of GEHC. In some territories, local variations to these Terms and Conditions may apply. If so, such variations shall take precedence in the event of any inconsistency with these Terms and Conditions.