

These terms and conditions of sale ("**Terms**") apply to the purchase of life science products by the buyer (hereafter referred to as "**Customer**", "**you**", and "**your**") from **GE Healthcare Limited** (Company Number 815483) trading as GE Healthcare (hereafter referred to as "**GEHC**", "**we**", "**us**" and "**our**") in response to the attached written quotation presented to you by GEHC ("**Quotation**"). Depending on the products you are purchasing, additional terms and conditions may also apply. In these Terms, the terms "GE" refers to the related bodies corporate of GEHC.

## 1. QUOTATION AND AGREEMENT

1.1 All Quotations issued by GEHC for the supply of Products will 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.

1.2 Your purchase of GEHC Products in response to the Quotation is governed by the terms of any order confirmation we may send you in response to receiving your purchase order or signed Quotation, ("**Order Confirmation**"), these Terms and any additional terms referenced in the Quotation (together, the "**Agreement**"). Any other terms and conditions submitted by you on any purchase order are hereby expressly excluded. In the event of a conflict between the terms of the Quotation and these Terms, the terms of the Quotation will prevail to the extent of the inconsistency.

1.3 All Order Confirmations are subject to: (a) our on-going credit review and approval; and (b) our on-going determination that you and the proposed order are in compliance with all applicable laws and regulations as well as GEHC's compliance policies, including but not limited to export/import control, and anti-money laundering laws and regulations, as applicable. If we determine in good faith at any time that there are credit and/or compliance issues with the Order Confirmation that have not been satisfactorily addressed, we may, without recourse by you against us, cancel any Order Confirmation upon written notice to you.

## 2. PRICES

The prices for the Products and/or Services are as stated in the written Quotation. Quoted prices are exclusive of goods and services tax ("**GST**"). GST will be separately stated on our invoice(s) to you. You must pay us any GST that may be levied or assessed against us in relation to the supply of the Products and/or Services. If we pay any GST you agree to reimburse us the amount of such GST on demand.

## 3. PAYMENT

3.1 The payment terms are stated in the written Quotation. In the absence of any such statement, you must pay us in New Zealand Dollars 100% of the total price of the Products and/or Services within 30 days from the date of delivery of the Products and/or supply of the Services.

3.2 If you: (a) do not pay for a Product or pay an invoice by

the due date; or (b) assign any of your property for the benefit of your creditors, enter into or threaten to enter into bankruptcy, receivership, liquidation, voluntary administration, or any other type of insolvency regime, and a Product has not been paid for in full, at the time, then GEHC may, upon 14 days written notice to you: (i) suspend deliveries and/or cancel any of its outstanding obligations under the Agreement; (ii) charge you interest at the lower of: an annual rate equal to twelve (12) % or any applicable maximum statutory rate on all unpaid amounts calculated and compounded on a daily basis until the actual date of payment, as well as charge you for all collection costs and legal fees incurred by GEHC in connection with the late payment; (iii) enter any premises occupied by you to remove and repossess the Product, including detaching the Product from any other product to which they may be attached or by detaching the Product from any land to which it may be fixed; and/or (iv) enter any premises occupied by you to temporarily disable the Product so that it becomes non-operational.

## 4. CHANGES, RETURNS AND CANCELLATIONS

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 the prior written consent of GEHC.

4.3 If you cancel an order without our prior written consent within 60 days before the mutually agreed scheduled delivery date, you will pay us a cancellation charge of 20% of the total price of the Products ordered under the Quotation or Order Confirmation. We will retain as a credit toward the cancellation charge any payments we have received up to the amount of the cancellation charge. In addition, in the event of any cancellation for Products requiring site evaluation services by us or our representatives, you will pay our reasonable charges for such site evaluation services performed prior to cancellation.

## 5. DELIVERY AND DELAYS IN PERFORMANCE

5.1 Delivery dates are approximate. Time for delivery will not be of the essence of these Terms and your purchase of the Products. We are not liable for delays in performance of any of our obligations under these Terms (including delivery). Partial delivery is permitted, if applicable.

5.2 If you request a later delivery date more than 45 days after the mutually agreed scheduled delivery date, we may, at our option, deliver the Products to a storage facility at your expense. If you fail to schedule a delivery date with us within 60 days after receiving notice from us that the Products are ready for delivery, we may, at our option, cancel your order upon written notice to you and charge you a cancellation fee equal to 20% of the total price of the Products, the subject of the cancelled order.



## 6. TRANSPORTATION, TITLE AND RISK OF LOSS

6.1 Unless otherwise specified in the Quotation, we are responsible for payment of freight for delivery the Products to you at the designated point of delivery.

6.2 Title and ownership to each Product will remain with us until you have paid us 100% of the purchase price for the Product. For the avoidance of doubt, a Product does not form part of any of your property, whether as a fixture or otherwise until the total purchase price for the Product has been paid in full by you to GEHC.

6.3 Risk of damage to or loss of the Product will pass to you upon delivery of the Product to you at the designated point of delivery.

6.4 The Customer 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 Product or refund the purchase price of any undelivered Products.

6.5 Until title and ownership of a Product passes to you, you must: (a) hold the Product as fiduciary for GEHC; (b) store the Product separately from your other assets, and mark the Product to identify it as the property of GEHC; (c) fully insure the Product against any and all loss or damage.

6.6 Title to or other ownership interest in any software licensed to you under the Agreement will remain with us at all times.

6.7 If a Product is used for clinical or diagnostic purposes, you shall keep adequate written records of the identity of any person or entity to whom the Product is transferred and of the location of such Product and shall procure that any purchaser of such Product is subject to the same requirement in respect of any onward sales.

## 7. INSTALLATION

7.1 We are not responsible for installation and assembly of a Product unless specified in the Quotation in which case you must comply with the requirements of this clause 7. You are responsible for making the place where the Product will be located ready for installation in accordance with our written specifications or recommendations and all applicable laws. Installation of a Product will not begin until your responsibilities have been completed. If you do not properly complete these responsibilities, there may be delays in delivery of the Products. We will assemble a Product and connect them to electrical outlets provided by you. You have to pay and be responsible for any non-GEHC employees whom you use or direct us to use for installation or assembly (as the case may be).

7.2 Following installation, where applicable, GEHC will proceed with final testing using GEHC's published 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 will be conclusive evidence of such compliance and installation of the Product will be deemed to be complete and in compliance with GEHC's obligations under the Agreement.

## 8. ACCEPTANCE OF PRODUCTS

Subject to clause 6.4, you will be deemed to have accepted a Product on the earlier of: (a) if GEHC assembles the Product, five days after the date we notify you that we have completed installation and the Product is operating in accordance with our published specifications; or (b) if assembly is delayed for thirty (30) days or more after the date of delivery for a reason beyond GEHC's reasonable control, the thirtieth day after the date of delivery; or (c) the date the end user of the Product first uses the Product for operational use; or (d) if the Product does not require installation, on the date of delivery.

## 9. USE OF PRODUCTS

9.1 You acknowledge that the Products are or may be subject to regulation by the Australian Therapeutic Goods Administration ("TGA"), the New Zealand Medicines and Medical Devices Safety Authority ("Medsafe"), U.S. Food and Drug Administration ("FDA") and any other regulation that may be applicable in the countries where the end-users of the Products are located. You agree not to use or permit the Products to be used in any manner that does not comply with all such applicable regulations. Further, you represent you will re-sell the Products to end-users who intend to use the Products for diagnostic purposes only and that you do not intend to re-sell the Products to any other party for any other purposes.

9.2 With respect to certain Products, use restrictions are a condition of the purchase which you must satisfy by strictly abiding by the restriction set out in GEHC's catalogue and/or on the Product and/or accompanying documentation. You are solely liable to ensure compliance with any regulatory requirements related to your use of the Products, including obtaining all government licenses, permits and approvals needed for installation and use of the Products. You hereby indemnify GEHC from and against any and all claims, damages, losses, and any other liability of whatever nature that GEHC may suffer or incur as a result of your breach of this clause 9.

## 10. LIMITED WARRANTIES

10.1 Warranties for all Products and/or Services supplied by us to you under the Agreement are set out in the attached warranty card. Except as provided in the attached warranty card and to the extent permitted by law, all other warranties, representations, terms and conditions (statutory, express, implied or otherwise), including but not limited to guarantees of acceptable quality, condition or description, fitness for any specified purpose, system integration or data accuracy are hereby expressly excluded and will not apply to anything supplied to you under the Agreement.

10.2 Notwithstanding clause 10.2, if GEHC breaches any warranty representation, term or condition that is implied by law and is not capable of being excluded, restricted or modified by contract, the parties agree that GEHC's liability will be limited to, at GEHC's discretion: (a) resupply the non-conforming Products and/or Services; (b) paying the cost of such resupply; (c) paying the cost of having the non-conforming Products repaired or non-conforming Services resupplied (as the case may be); or (d) refund to you the price paid by you to us for the non-conforming Product and/or Services. You acknowledge and agree that you will not be entitled to a refund or credit of the purchase price of the Product and/or Services in any other circumstances.



## 11. LIMITATION OF LIABILITY

To the extent permitted by law, you agree that: (a) the total liability of GEHC and your exclusive remedy for any and all claims arising out of or related to the Agreement, your purchase and use of the Products and/or Services, regardless of the form of the action, will be limited to 100% of the total price of the Product and/or Services paid by you to us, the subject matter of the claim; and (b) GEHC will under no circumstances be liable to you for any loss of profit, loss of revenue, loss of data, loss of use of Products, loss of or damage to goodwill or reputation loss of business opportunity, business interruption or any indirect, consequential, punitive, incidental, special or exemplary damages (arising directly or indirectly).

## 12. INTELLECTUAL PROPERTY

You acknowledge that, unless otherwise agreed in writing, all intellectual property rights attaching to GEHC or GE branded Products are and will remain the property of GEHC or GE (as the case may be).

## 13. CONFIDENTIAL INFORMATION AND PRIVACY

13.1 GEHC will treat patient information as confidential. In addition, each party (the "Receiving Party") will treat the other party's written, proprietary business information as confidential for a period of 3 years from the date of receipt by the receiving party as long as it is marked as confidential and/or proprietary prior to its disclosure and is not otherwise available to the Receiving Party from a lawful source. Notwithstanding the foregoing, either party may disclose the other party's confidential information to: (a) its Personnel on a need to know basis for the purpose of performing its obligations under the Agreement; (b) if required by law, in which case such the Receiving Party will so notify the other party as soon as practicable and in any event prior to such party making such required disclosure. For the purpose of this clause 13, GEHC's pricelist for the Products and/or Services and these Terms will be considered as confidential information of GEHC.

13.2 Each party must comply, and must ensure that their respective Personnel comply, with all applicable Privacy Law as they apply to that party.

13.3 If any Personal Information is provided or otherwise made available to GEHC or its Personnel by the Customer or its Personnel, the Customer represents and warrants to GEHC that the Customer has procured and obtained all necessary individual consents (as required by all applicable Privacy Law) to enable and permit GEHC and its Personnel to collect, store, use, disclose or otherwise deal with the Personal Information solely for the purpose of fulfilling its obligations to Customer as anticipated under the Agreement.

## 14. DATA ACCESS

You agree to permit us to connect to the Products, or to otherwise access data related to the Products, to allow us to gather, aggregate, compile, and use Products and resource usage data in various ways including quality initiatives,

benchmarking and reporting services. The data collected by us will be used, during and after the expiration or termination of the Agreement, in a manner that will maintain patient and customer level confidentiality.

## 15. END OF PRODUCT LIFE

The future availability of service support, whether under a service contract or on an hourly-billed basis, and spare parts for the Products will be subject to our end of product life programs.

## 16. FORCE MAJEURE

GEHC will not be liable to you for the non-performance of any of its obligations under the Agreement 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, acts or threats of terrorism, plant breakdown, computer or other equipment failure and inability to obtain material or equipment. If such a delay occurs, we may extend the performance of our obligation for a period of time equal to the delay. If an event of force majeure exceeds 30 days GEHC may cancel your order without any liability to you.

## 17. SOFTWARE LICENSE

17.1 Unless a separate software license agreement has been concluded concerning the Software, the Customer is hereby granted a non-exclusive, non-transferable and non-sublicensable license to use the Software solely in object code format and solely for its own internal business purposes subject to the terms of this clause 17.

17.2 You must not: (a) use the Software for purposes other than those for which it was designed; (b) grant, assign, transfer, or otherwise make available to third parties any right whatsoever in the Software; (c) copy or reproduce the Software (except for one copy for back-up purposes); (d) alter or modify the Software; or (e) reverse engineer, decompile, disassemble or create any derivative works based upon the Software.

## 18. GENERAL MATTERS

18.1 The Agreement is the complete and exclusive statement of the terms of the arrangement between you and GEHC regarding its subject matter. No prior proposals, statements, course of dealing, or usage of the trade will form a part of Agreement. For the avoidance of doubt, any terms and conditions stated or attached to your purchase order or trade terms will not be deemed to be incorporated as a part of this Agreement and is hereby expressly excluded.

18.2 If any clause or part of any clause in the Agreement in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from the Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.



18.3 The Agreement will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

18.4 GEHC may assign its rights and benefits under the Agreement (in whole or in part) to any related bodies corporate without your consent. You may not assign any of your rights or benefits under the Agreement without the prior written consent of GEHC (which will not be unreasonably withheld)

18.5 GEHC can hire a subcontractor or use any of its related bodies corporate to perform any of our obligations under the Agreement.

18.6 The Agreement may not be varied except by a later written document executed by you and GEHC.

18.7 Clauses 2, 3, 6, 10 to 13 and clause 18 of these Terms will survive termination of the Agreement.

## 19. DEFINITION

In these Terms, unless the context clearly indicates otherwise:

**Personal Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Personnel** means, with respect to a party, any officer, employee, agent or contractor of that party.

**Privacy Laws** means any privacy legislation which binds a party including the Health Information Privacy Code 1994 and the Privacy Act 1993 and any and all other relevant privacy law and regulations.

**Products** means any life science equipment, hardware, Software, other electronic or mechanical items, any consumables, equipment spare parts, or Software agreed to be supplied by GEHC to you under these Terms.

**Services** mean any services performed by GEHC to you under the Agreement.

**Software** means any firmware, software or data compilations: (a) identified in the Quotation; or (b) provided to you by GEHC in connection with installation or operation of the Equipment. For the avoidance of doubt, Software does 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.



## WARRANTY CARD – LIFE SCIENCE PRODUCTS

### COVERED PRODUCTS AND EXCLUDED PRODUCTS

#### Covered Products

These warranties cover the following equipment and products supplied by GEHC:

- Life Science systems
- Equipment spare parts
- Consumables

#### Excluded Products

These warranties do not cover the following equipment and products:

- Third party equipment (provided with the manufacturer's warranties, if any, GEHC is permitted to pass on to Customer; otherwise, provided AS IS).
- Accessories and supplies

#### Scope and Duration of Warranties

**Product Warranties:** GEHC warrants to Customer that the Covered Products listed in GEHC's Quotation (of GEHC's own manufacture) will: (1) be free from defects in material, workmanship under normal usage; and (2) conform to GEHC's published Covered Product specifications in effect on the date of shipment of the Covered Product. GEHC's published Covered Product specifications are available on request.

**Patent and Copyright Warranty:** GEHC warrants to Customer that when they are delivered, the Covered Products will not be subject to any valid patent or copyright infringement claim.

**Services:** GEHC warrants that all Services will be carried out with reasonable care and skill.

**Warranty Period:** The warranty period for all warranties listed above, except the warranty of title and the Patent and Copyright Warranty, is limited in time as follows:

12 months

- Life Science systems

90 days

- Equipment spare parts
- Consumables

If GEHC does not assemble the Covered Products, the warranty period begins on the date the Covered Products are delivered to Customer. If GEHC assembles the Covered Products, the warranty period begins on the earlier of: (1) five days after the date GEHC notifies Customer that GEHC has completed assembly and the Covered Products are operating in accordance with GEHC's published Covered Product specifications; or (2) the date Customer first uses the Covered Products for operational use. If assembly is delayed for thirty (30) days or more after the date of delivery for a reason beyond GEHC's reasonable control, the warranty period will begin on the thirtieth day after the date of delivery.

The warranty period for any Covered Product or part furnished to Customer without a pro rata charge as a warranty remedy will be the remaining portion of the warranty period applicable to the repaired or replaced Covered Product. The warranty period for any replacement Covered Product or part furnished to Customer with a pro rata charge as a warranty remedy will be the full period of the warranty applicable to the replacement Covered Product.

**Warranty Exclusions** These warranties are exclusive and in lieu of all other warranties, whether written, oral, expressed, implied or statutory. Except as provided in this warranty card and to the extent permitted by law, all other warranties, representations, terms and conditions (statutory, express, implied or otherwise), including but not limited to guarantees of acceptable quality, condition or description, fitness for any specified purpose, system integration or data accuracy are hereby expressly excluded.

Notwithstanding the foregoing, if a warranty or condition is implied by law which may not be excluded, restricted or modified by contract, then GEHC's liability for any breach of such an implied warranty is limited to either, at GEHC's option, (a) in the case of supply of Product: (i) resupply or repair of the relevant Product; (ii) payment for the repair of the relevant Product; or (iii) refund of the cost paid for the relevant Product; and (b) in the case of supply of services, (i) resupply of the relevant service; (ii) payment for the resupply of the relevant service; or (iii) refund of the cost paid for the relevant service.

The warranties do not cover:

- A.** Any defect or deficiency (including failure to conform to GEHC's published Covered Product specifications) which results, in whole or in part, from: (1) any improper storage, handling, use or maintenance of the Covered Products, or any alteration, extraordinary use, repair or service of the Covered Products, by anyone other than GEHC; (2) failure to follow any of GEHC's written instructions or recommendations; (3) using or combining the Covered Products with any item or data except as specified in the Covered Product specifications or using or combining the Covered Products with any item or data that does not properly and unambiguously exchange data with the Covered Products in accordance with the Covered Products' specifications; (4) any of Customer's designs, specifications or instructions; (5) any failure to use the Covered Products in accordance with their specifications, including upper and lower date limits; and (6) any cause external to the Covered Products as furnished by GEHC or beyond GEHC's reasonable control, including, but not limited to, power failure caused by storms or otherwise, failure to keep Customer's site clean and free of dust, sand and other particles or debris;
- B.** The payment or reimbursement of any facility costs arising from repair or replacement of the Covered Products or parts;
- C.** Covered Products installed outside Australia or New Zealand, as applicable.

#### Exclusive Warranty Remedies

**Product Warranties:** If Customer notifies GEHC of Customer's warranty claim within the warranty period and makes the Covered Product available for service, GEHC will at GEHC's option, either repair or replace (with new or exchange replacement parts) the non-conforming Covered Product or parts of the Covered Product.

Warranty service will be performed without charge from 8:30 am to 5:00 pm, Monday-Friday, excluding GEHC holidays (local site time), and outside those hours at GEHC's then prevailing service rates and subject to the availability of personnel.

**Patent and Copyright Warranty:** GEHC will defend or settle any suit against Customer to the extent it is based on an infringement claim that would be a breach of the Patent and Copyright warranty, provided GEHC receives prompt written notice of the claim, Customer's cooperation in its defense or settlement, and complete and exclusive control over its defense or settlement. If a court of competent jurisdiction renders a final judgment that the infringement claim is valid, GEHC will pay all damages and costs awarded against Customer due to the breach.

