

# TERMS AND CONDITIONS

## Shimadzu Medical Systems (Oceania) Pty Ltd (ABN 77 074 306 255)

### 1. INTERPRETATION

In these terms:

- (a) **Business Day** means a weekday on which banks are open for normal banking business in the State or Territory in which the Company's office who is providing the particular Goods and/or Services is located (excluding any public holidays).
- (b) **Business Hours** means the period of 8.30am – 5.00pm on a Business Day.
- (c) **Company** means Shimadzu Medical Systems (Oceania) Pty Ltd (ABN 77 074 306 255), and its successors and assigns.
- (d) **Client** means the entity or person acquiring the Goods and/or Services upon these Terms.
- (e) **Credit Application Form** means the document entitled "Credit Application Form", or any other such similar form provided by the Company to the Client.
- (f) **Equipment** means the General X-ray Systems, Digital Radiography General Systems, Fluoroscopy Systems, Mobile X-ray Systems, Cardiac Systems, OPG Systems, Mammography Systems, CR Systems and/or Laser Imagers (as applicable), or any other similar devices, which are acquired by the Client from the Company.
- (g) **Goods** means the goods sold to the Client by the Company, and includes (without limitation) the Equipment and consumables and small ex-warehouse goods in relation to the Equipment or otherwise.
- (h) **GST** has the meaning given to that term in the GST Law.
- (i) **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (j) **Handover Date** means the date specified in the document entitled "Customer Acceptance Form", or any other such similar form which details the Client's acceptance of the Goods and/or Services.
- (k) **Insolvency Event** means one or more of the following events:
  - (i) an application is made, or a resolution is passed, to wind-up the Client;
  - (ii) a controller or administrator is appointed in respect of the Client or any of its assets;
  - (iii) the Client suffers or commits an act of bankruptcy within the meaning of the Bankruptcy Act 1966 (Cth);
  - (iv) the Client dies, ceases to be of full legal capacity or becomes incapable of managing its own affairs for any reason; or
  - (v) the Client is unable to pay its debts as and when they become due and payable.
- (l) **Installation Services** means the provision of the installation services pursuant to these Terms (including, without limitation, clause 5).
- (m) **Maintenance Services** means the provision of the maintenance services pursuant to these Terms (including, without limitation, clause 6).
- (n) **Premises** means the address(es) of the Client at which the Goods and/or Services are to be provided to the Client, as nominated by the Client prior to the Company providing the Goods and/or Services and as accepted by the Company.
- (o) **Prepared Site** means:
  - (i) all works to provide any service utilities or appropriate building structure(s) as required for the provision of the Installation Services, including (without limitation) electrical power outlets and/or supply, data terminations, water outlets, drains, compressed air line, gas supplies, appropriate floor or ceiling or wall support structure and radiation shielding; and
  - (ii) the finishing of all necessary works, including (without limitation) painting, flooring, polishing, cabinetry and joinery, glazing, site clean and rubbish removal,

have been completed by the Client at the Premises (at the Client's expense) so that the Company can provide the Installation Services, and as considered acceptable by the Company (acting reasonably).

- (p) **Remote Maintenance Services** means the process by which the Company electronically logs into the Equipment via a computer device so as to diagnose any faults with the Equipment with a view to rectifying the faults remotely (to the extent possible).
- (q) **Services** means the Installation Services, the Maintenance Services and/or the Remote Maintenance Services (as applicable).
- (r) **State** means the State of New South Wales in the Commonwealth of Australia.
- (s) **Terms** means the Company's standard terms and conditions of sale and supply as set out in this document (or any written variations to this document), unless the context otherwise requires.

### 2. GENERAL

- (a) The Company agrees to sell and the Client agrees to purchase the Goods and/or the Services in accordance with these Terms.
- (b) These Terms shall apply to all Goods and/or Services sold by the Company to the Client unless otherwise agreed in writing by a duly authorised representative of the Company.
- (c) These Terms are deemed to be incorporated into all contracts for the sale of Goods and/or Services by the Company to the Client, and will prevail over any inconsistent terms in any document of the Client unless otherwise agreed by the Company in writing.
- (d) If the Client places an order with the Company for Goods and/or Services, enters into a contract with the Company, the Goods and/or Services are delivered or provided to the Client, or the Client makes any payment, the Client is taken to have accepted these Terms.

### 3. QUOTATION / ACCEPTANCE

- (a) All orders shall constitute an offer and shall be subject to acceptance by the Company. Orders cannot be modified or cancelled after acceptance by the Company except with the prior written consent of the Company.
- (b) A quotation is not an offer by the Company. The Company may withdraw or alter the quotation without notice.
- (c) Unless the Company withdraws it, a quotation is valid for the period stated in it, or if no period is stated, for 30 days after the date of quotation.
- (d) Prior to the Company deciding whether to accept an order, the Client must provide the Company with confirmation as to whether the Client is to pay for the Goods and/or Services itself or via a third party financier.

### 4. GOODS

- (a) If the Client orders Goods, the Client must:
  - (i) in the case of all Goods other than Equipment, inspect the Goods provided by the Company immediately on supply of the Goods to the Client, and must within 5 Business Days after the date of supply the Goods (**Supply Date**) give written notice to the Company of any claim in the event that the Goods are defective, supplied in error, or if there are any discrepancies in the quantity delivered (including providing particulars of the claim); or
  - (ii) in the case of Equipment, inspect the Equipment provided by the Company by the Handover Date, and must within 5 Business Days of the Handover Date give written notice to the Company of any claim in the event that the Equipment is defective, supplied in error, or if there are any discrepancies in the quantity delivered (including providing particulars of the claim).
- (b) If the Client fails to give written notice to the Company pursuant to sub clause (a) above, then to the extent permitted by statute,

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the Goods are deemed to have been accepted by the Client in accordance with the provisions of these Terms.

- (c) The Company will use its best endeavours to fulfil any accepted orders for Goods, however if, due to any cause whatsoever, the Company is not able to supply particular Goods which have been ordered by the Client, the Company may at its absolute discretion:
  - (i) supply to the Client similar goods, which in the opinion of the Company are an appropriate substitute, without prior reference to the Client; or
  - (ii) cancel any order for Goods which in the opinion of the Company are impractical or uneconomic to produce and/or supply.
- (d) The Client may not cancel an order for Goods unless the Company first agrees in writing, and in any event the Company will not agree to cancel an order for Goods unless the Client compensates the Company for all loss and damage arising from the cancellation.
- (e) The Company may immediately cancel any order (in whole or in part) by notice to the Client and resell the Goods if the Client fails to comply with any of its obligations under these Terms or under an agreement for the sale of Goods, or if an Insolvency Event occurs in respect of the Client.
- (f) Upon cancellation of any order for the Goods, the Client must indemnify the Company for any costs and expenses incurred by the Company prior to cancellation and must pay any reasonable cancellation charges fixed by the Company.
- (g) This clause 4 is at all times subject to clause 15 ("Implied Terms").

### 5. INSTALLATION SERVICES

- (a) If the Client orders Installation Services, or the Company otherwise agrees with the Client to provide Installation Services, the Company will provide the Installation Services on these Terms.
- (b) In the case of the Company, or any third party, agreeing to provide Installation Services, the Client must first ensure that the Premises (or any other premises of the Client in which the Equipment is to be installed,) is a Prepared Site. The Company reserves the right to determine whether the Premises (or any other premises of the Client in which the Equipment is to be installed) is a Prepared Site.
- (c) The Company, or any third party, is not obliged to provide the Installation Services to the Client if:
  - (i) the date of the provision of the Installation Services is delayed by the Client; or
  - (ii) the Company considers that the Premises (or any other premises of the Client in which the Equipment is to be installed,) is not a Prepared Site prior to the mutually agreed installation date.
- (d) Subject to clause 5(c), the Installation Services will be provided at the time of delivery of the Equipment or as soon as practicable thereafter, unless otherwise mutually agreed by the Company and the Client.
- (e) If the Client requires any variation of the Installation Services prior to the completion of the Installation Services, the Client must advise the Company in writing, and the Company can choose (in its absolute discretion) whether to accept the variations. The Company will provide to the Client a quotation for the proposed variations and also any time variations required to provide the Installation Services based on the variations required by the Client.
- (f) If the Company considers (acting reasonably) that any special handling equipment is required by the Company in which to provide the Installation Services (including, without limitation, heavy lifting gear for the movement of Equipment to and/or at the Premises (or any other premises of the Client in which the Equipment is to be installed), the cost of hiring or the use of such equipment and any other costs associated with the hire or use of such equipment will be charged to the Client's account.

- (g) If any door, window or wall needs to be removed, or made wider, so that the Company can provide the Installation Services to the Premises (or any other premises of the Client in which the Equipment is to be installed), the associated works are at the sole responsibility of the Client and any associated costs are to be borne by the Client.
- (h) Unless otherwise required by law, any radiation and/or electrical compliance testing following the provision of the Installation Services by the Company is the responsibility of the Client, and any associated costs are to be borne by the Client.

### 6. MAINTENANCE SERVICES

- (a) If the Client orders Maintenance Services, or the Company otherwise agrees to provide Maintenance Services to the Client, the Company will start providing the Maintenance Services on such date, and in accordance with the agreed terms and on these Terms.
- (b) Subject to this clause 6, if the Company agrees to provide "Preventative Maintenance Services", those services will:
  - (i) include a selected number of routine preventative maintenance visits, by the Company to the Premises (or any other premises of the Client as agreed by the Company), per year as agreed and during Business Hours; and
  - (ii) involve the Company conducting mechanical adjustment, lubrication, routine calibration, minor repairs and electrical checks on the Equipment, to ensure the Equipment is maintained in an industry acceptable state of serviceability, however, for the avoidance of doubt, any Goods required by the Company to provide the "Preventative Maintenance Services" will be at the cost of the Client;
- (c) Subject to this clause 6, if the Company agrees to provide "Comprehensive Services" then:
  - (i) those services will include a selected number of routine preventative maintenance visits by the Company to the Client's Premises (or any other premises of the Client as agreed by the Company), per year as agreed and during Business Hours; and
  - (ii) those services will involve the Company conducting mechanical adjustment, lubrication, routine calibration, minor repairs and electrical checks on the Equipment, to ensure the Equipment is maintained in an industry acceptable state of serviceability;
  - (iii) those services will subject to clause 6(d), involve the Company providing Remote Maintenance Services to the Client (as reasonably required by the Client) during Business Hours; and
  - (iv) the cost of all Goods in providing the maintenance services are included within the provision of the "Comprehensive Services"; or
- (d) Subject to this clause 6, if the Company agrees to provide "Custom Services", those services will be provided to the Client pursuant to these Terms (including, without limitation, this clause 6) and in accordance with the terms agreed.
- (e) If the Company agrees to provide "Remote Maintenance Services", those services will be provided in accordance with the terms agreed and as set out in these Terms, including (without limitation) on the following terms:
  - (i) in the case of the Company agreeing to provide the Remote Maintenance Services the Client must (at all times) ensure that, at the cost of the Client, the Company has absolute and unfettered remote access to the Equipment;
  - (ii) the Company reserves the right to determine whether the Company has absolute and unfettered access to the Equipment, and is under no obligation to provide the Remote Maintenance Services if the Company does not have such access;

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- (iii) all costs (both of the Company and of the Client) associated with obtaining internet access and/or VPN access to the Equipment is at the cost of the Client; and
  - (iv) other than as expressly provided in these Terms, the Company, its employees and/or agents shall not be liable for any loss or damage (including any consequential loss or damage, which includes, without limitation, loss of profits and loss of revenue) arising as a result of any failure to provide the Remote Maintenance Services due to a telecommunications and / or network fault or failure.
- (f) Notwithstanding anything to the contrary in this clause 6, but subject at all times to clause 15, if:
- (i) the Equipment requires maintenance services and/or the supply of any Goods by virtue of the Client failing to comply with clause 7 of these Terms; or
  - (ii) the Client requires any maintenance services and/or the supply of any Goods outside of those Services / Goods pursuant to sub-clause (b), (c) or (d) above, the Company may (in its absolute discretion) decide whether to provide those services and/or Goods to the Client. If the Company does provide those services and/or Goods, the Company may charge the Client an additional fee. The additional fee will be as determined by the Company in its absolute discretion and may include, without limitation, the cost of any Goods, freight and/or handling fees, labour fees, travel and accommodation fees and any other out of pocket expenses of the Company.
- (g) Notwithstanding anything to the contrary in this clause 6, the Client:
- (i) acknowledges that Occupational Health & Safety Requirements prohibit the employees and agents of the Company from providing the Maintenance Services alone;
  - (ii) agrees that it will ensure that a minimum of one staff member of the Client must remain on the Premises (or any other premises in which the Company is providing the Maintenance Services) at all times when the Maintenance Services are being provided and that staff member must be able to render assistance to the relevant employee and/or agent of the Company in the event of a workplace accident of the employee and/or agent;
  - (iii) agrees that in the event that the Client cannot comply with clause 6(g)(ii) above, the Client must give the Company a minimum of 10 Business Days prior written notice (prior to scheduled date of the provision of the Maintenance Services) to:
    - (A) postpone the scheduled date of the provision of the Maintenance Services to a date mutually agreed between the Company and the Client when the Client can comply with clause 6(g)(ii) above; or
    - (B) otherwise to enable the Company arrange for a second employee and/or agent of the Company to attend the provision of the Maintenance Services. If the Company does provide this service, the Company may charge the Client an additional fee. The additional fee will be as determined by the Company in its absolute discretion (and may include, without limitation, administrative costs, labour fees, travel and accommodation fees and any other out of pocket expenses of the Company); and
  - (iv) agrees that in the event that:
    - (A) the Client fails to comply with clause 6(g)(ii), and does not otherwise notify the Company pursuant to clause 6(g)(iii), the Company may charge the Client an additional fee for frustrated delivery of the Maintenance Services; or
    - (B) the Client fails to comply with clause 6(g)(iii), the Company will postpone the scheduled date of the provision of the Maintenance Services to another date, and the Company may charge the Client a fee in relation to the postponement of the provision of the Maintenance Service, and the additional fee will be as determined by the Company in its absolute discretion (and may include, without limitation, administrative costs, labour fees, travel and accommodation fees and any other out of pocket expenses of the Company).
- (h) Notwithstanding anything to the contrary in this clause 6, the Company will not be required to provide the Maintenance Services if there is a force majeure event pursuant to clause 14.
- (i) Notwithstanding anything to the contrary in this clause 6, and subject to clause 7, unless otherwise agreed by the Company in writing, the date and time for the provision of the Services by the Company is left to the absolute discretion of the Company, however the Company will provide the Client with advance notice as to the date and time for the provision of the Services.
- (j) This clause 6 is at all times subject to clause 15 ("Implied Terms").
- ## 7. TERMS OF SERVICES / DELIVERY
- (a) In relation to the Company providing the Goods and/or Services the Client must:
- (i) keep the Goods in good condition, except for ordinary wear and tear;
  - (ii) keep and use the Goods only at the Premises or at such other location as may be agreed by the Company and the Client in writing;
  - (iii) ensure that the Goods are only operated by persons who are appropriately trained to use the Goods;
  - (iv) not make any additions or replacements to the Goods without the Company's prior written consent, and only then upon such conditions as required by the Company;
  - (v) immediately report to the Company any damage to, or loss of, or malfunction to the Goods;
  - (vi) not undertake installation, unauthorised modification or servicing of the Goods other than that which is deemed "normal user maintenance" as specified in the operations manual(s) in respect of the Goods provided by the Company to the Client;
  - (vii) ensure that the Goods are used in accordance with the relevant manufacturers' operators instruction manual and any other associated manuals in relation to the Goods;
  - (viii) not operate the Goods after notification by the Company that a condition exists which constitutes a hazard and that condition has not been rectified by the Company, until otherwise notified by the Company;
  - (ix) ensure that its employees, agents, contractors, and any of its related bodies corporate and their employees, agents and contractors, which perform obligations imposed by the Company by these Terms, do so strictly in accordance with these Terms;
  - (x) not do, or omit to do, any act which may be considered by the Company to be prejudicial to the proper functioning or condition of the Goods; and
  - (xi) comply with all other reasonable instructions of the Company as notified to the Client from time to time.
- (b) In relation to the Company providing the Services and/or supplying the Goods, the Client must provide the Company with access to the Premises and the Goods for the purpose of supplying the Goods and/or providing the Services at such times as is reasonably required by the Company, and for this purpose the Client must ensure that the Premises is a safe working environment for the Company, its employees and agents to supply the Goods and/or provide the Services.
- (c) Where the Company provides Maintenance Services, the Company shall ensure all technicians provided are suitably qualified and comply with all radiation licensing requirements in the State or Territory that the services are being performed. If the Company does not comply with this clause, the Client may terminate its agreement with the Company.

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- (d) All delivery dates and times for the supply of the Goods and/or provision of the Services are only an estimate. Subject at all times to clause 15 ("Implied Terms"), the Company is not liable to the Client for any loss or damage (including consequential loss or damages) arising from late delivery.
- (e) Where the Client does not accept delivery of Goods and/or allow the supply of Services when the Goods are ready for delivery and/or when the Services are to be provided by the Company, the Company may charge the Client an additional fee. The additional fee will be as determined by the Company in its absolute discretion (and may include, without limitation, freight and/or handling fees, storage costs, double handling costs, labour fees, travel and accommodation fees and any other out of pocket expenses of the Company).
- (f) The Company may, in its absolute discretion, charge the Client for any frustrated delivery to deliver the Goods and/or provide the Services to cover the Company's costs of attempted delivery of the Goods and/or the Services.
- (g) The Company will not be responsible for any disruption of a network, software or equipment of the Client caused by the Company providing the Goods and/or Services.
- (h) The Client releases the Company from responsibility for any damages suffered by the Client, or the Client's agents, or employees or agents entering the Client's Premises or any other premises of the Client and delivering the Goods and/or providing the Services.
- (i) The Client indemnifies the Company against any loss or damage suffered by the Company or as a result of the Company becoming liable to any third party (directly or indirectly) as a result of the Company or its employees or agents entering the Premises or any other premises of the Client and delivering the Goods and/or providing the Services.
- (j) This clause 7 is at all times subject to clause 15 ("Implied Terms").
- (i) subject to subclause (ii) below, within 30 days from the date of the invoice; or
- (ii) for Goods other than the Equipment, within 30 days from delivery.
- (f) The Company reserves the right to vary the terms of payment and to require additional security at any time prior to delivery of the Goods and/or Services if:
  - (i) pursuant to clause 3(d), the Client is not obtaining finance for the Goods on terms acceptable to the Company (acting reasonably); or
  - (ii) the creditworthiness of the Client becomes, in the Company's opinion, unsatisfactory, in which the case the Company may request appropriate security from the Client on terms acceptable to the Company, including (without limitation):
    - (iii) the Client providing a deposit for the Goods and/or Services to be acquired by the Client;
    - (iv) the directors of the Client providing a personal guarantee in respect of the obligations of the Client; and/or
    - (v) the Client providing a bank guarantee for the total amount of the Goods and/or Services to be acquired by the Client.
- (g) The time for payment of the Goods and/or Services is of the essence, and all payments must be made on or before the due date as a condition precedent to future deliveries of Goods and/or the provision of Services under these Terms.
- (h) The Company may require immediate payment of all amounts outstanding (whether or not then due and payable):
  - (i) if the Client does not comply with any one or more of its obligations under these Terms;
  - (ii) if the Company considers that the creditworthiness of the Client has become unsatisfactory; or
  - (iii) if one or more Insolvency Events occur.

### 8. PRICES AND PAYMENT

- (a) Subject to clause 3 and this clause 8, the price for the Goods and the Services will be the price specified in the quotation provided by the Company to the Client, unless otherwise specified.
- (b) The Company may (in its absolute discretion) offer a price concession or discount on the price for any Goods and/or Services, however such price concession or discount that the Company provides to the Client is conditional on the Client's full compliance with these Terms (including, without limitation, the Client paying for the Goods and/or Services in accordance with clause 8(d)). If the Client does not comply with these Terms the price concession or discount offered by the Company will not apply and the full price will apply.
- (c) Prices quoted are those ruling at the date of issue of quotation and are subject to adjustment (including a proportional adjustment for fixed costs and profit) for any variation in:
  - (i) the cost of labour, material or transport;
  - (ii) exchange rates, customs duty, freight or insurance;
  - (iii) suppliers' prices;
  - (iv) the amount of work required to produce the Goods and/or supply the Services due to a variation in the Goods and/or Services approved by the parties; and
  - (v) any other changes affecting the cost of production and/or supply.
- (d) If the Client has been granted credit facilities by the Company pursuant to the Credit Application Form, the price of the Goods and/or Services is due and payable in accordance with the terms and conditions of the Company in respect to the provision of the credit facilities as set out in the Credit Application Form or as otherwise notified by the Company to the Client.
- (e) Unless otherwise agreed in writing by the Company, or stated in these Terms (including, without limitation, subclause (d) above), the Client must pay for the Goods and Services:

### 9. GST

- (a) GST on price
  - (i) Unless otherwise stated, the prices stated in these Terms are GST exclusive.
  - (ii) In addition to the price for the Goods and Services, the Client must pay to the Company an amount equal to any GST the Client must pay for any supply by the Company under these Terms or under any agreement for the sale of Goods and Services.
  - (iii) The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the price for the Goods and/or Services.
  - (iv) The Client indemnifies the Company for any loss that the Company may incur as a result of the incorrect payment or non payment of any GST and associated fees or penalties.
  - (v) If the Company becomes liable for any penalties or interest as a result of a late payment of GST, where that late payment is as a direct result of a failure of another party to comply with the terms of this clause 9, the Client shall pay to the Company an additional amount on demand equal to the amount of those penalties and interest.
- (b) GST on claims
  - (i) If a payment to satisfy a claim or a right to claim under or in connection with these Terms gives rise to a liability to pay GST, the payer must pay, and indemnify the payee on demand against the amount of that GST.
  - (ii) If a party has a claim under or in connection with these Terms for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).
  - (iii) If a party has a claim under or in connection with these Terms whose amount depends on actual or estimated

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revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

- (c) This clause 9 is at all times subject to clause 15 ("Implied Terms").

**10. WARRANTY, LIMITATION OF LIABILITY AND INDEMNITY**

(a) Guarantees

The Company's Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Client is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable damage. The Client is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. This warranty against defects is given in addition to other rights and remedies of the consumer under law.

(b) Warranty

Subject to clause 10(c), any defect in workmanship or materials of the Goods which occurs:

- (i) in the case of Equipment, within 12 months from the Handover Date; or
- (ii) in the case of Goods (other than Equipment) within 12 months of the Supply Date (as defined in clause 4(a)(i)), will be replaced or repaired by the Company (in the Company's absolute discretion) free of charge, provided that:
- (iii) to claim the warranty, the Client must notify the Company at the address listed below in clause 10(d) within the date specified in clause 10(b)(i); and
- (iv) if the Company requires the Goods to be returned to the Company, the Goods are returned at the Client's expenses; or
- (v) in the case of Goods installed at the Premises (or any other premises of the Client), the Company may charge the Client a fee for all out of pocket expenses (including, without limitation, travel expenses), and a labour fee in respect of any travelling time by the employees/agents of the Company in attending the Premises.

(c) Exclusion

The warranty provided by the Company pursuant to this clause 10(b) and any other express warranty given by the Company, does not apply to:

- (i) any consumable goods as determined by the Company (including, without limitation, electronic tubes, lamps, seals, check valves, illumination sources, items wholly or partly of glass, silica or ceramic material, thermocouples, batteries, electrical elements, films and chemicals); and
- (ii) any Goods that have already been repaired or replaced by the Company pursuant to clause 10(a); or
- (iii) the repair of any fault or the replacement of any defective part in the Goods directly or indirectly resulting from:
  - (A) any negligence or malpractice of the Client or any third party;
  - (B) any action or inaction of the Client or any third party (including, without limitation, any fire, flood, war, explosion, shortage of power, strikes, or due a telecommunications and / or network fault or failure);
  - (C) any act of God (including, without limitation, any flood, fire, lightning strike); or
  - (D) the Client or any third party failing to use or operate the Goods in accordance with these Terms (including, without limitation, clause 7).

(d) Provider of warranty

The warranty given by the Company in this clause 10(a) is given by Shimadzu Medical Systems (Oceania) Pty Ltd (ABN 77 074

306 255), of Unit E, 10-16 South Street, Rydalmere, NSW 2116. Ph: (02) 9898-2444 Email: info.medical@shimadzu.com.au

(e) Remedies

Subject to this clause 10 and so far as may be permitted by law the liability of the Company and its employees and/or agents for a breach of a Non-Excluded Guarantee in relation to the supply of goods or services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption shall, at the Company's option, be limited to:

- (i) in the case of goods:
  - (A) the replacement of the goods or the supply of equivalent goods; or
  - (B) the repair of the goods; or
  - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (D) the payment of the cost of having the goods repaired; or
- (ii) in the case of services:
  - (A) the supply of the services again; or
  - (B) the payment of the cost of having the services supplied again.

(f) Exclusion of liability

Other than as provided for in this clause 10, the Company, its employees and/or agents shall not be liable for any loss or damage (including any consequential loss or damage, which includes, without limitation, loss of profits and loss of revenue) of any kind whatsoever, even if due to the negligence of the Company, its employees and/or agents.

(g) Reliance on skill or judgment

Subject to clause 15 ("Implied Terms"), the Client acknowledges that the Client does not rely on the skill or judgment of the Company as to whether or not the Goods and/or Services are fit for any particular purpose.

(h) Indemnity

Subject to clause 15 ("Implied Terms"), the Client indemnifies the Company from every liability, loss, damage, cost and/or expense directly or indirectly incurred or suffered by the Company caused by or contributed to or by any of the following:

- (i) the Company complying with any instruction of the Client about the Goods and/or Services;
- (ii) the Client's, or any third party associated with the Client, failure to:
  - (A) adequately provide or display safety markings or safety information on or with the Goods and/or the Services;
  - (B) comply with any law about the Goods and/or the Services they use (for example, their sale, marketing, labelling or marking);
  - (C) take any reasonable precaution to bring to the attention of any potential users of the Goods and/or the Services any dangers associated with Goods and/or the Services;
  - (D) take any reasonable precaution to detect any matters in relation to which the Company may become liable in any way (for example, under the Australian Consumer Law);
  - (E) provide correct information to the Company; and
  - (F) immediately advise the Company (in writing) of any changes to the information provided to the Company;
- (iii) the Client making any statement about the Goods and/or the Services (for example, about their performance or characteristics) without the Company's written approval;

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- (iv) the use or operation of the Goods and/or the Services by the Client or any third party; and
- (v) any negligence or breach of duty by the Client or any third party or any breach by the Client or any third party of these Terms.

### 11. RISK AND TITLE

- (a) The risk in the Goods shall pass to the Purchaser immediately upon delivery of the Goods by the Company (unless otherwise agreed by the Company in writing).
- (b) Title in the Goods shall not pass to the Client until:
  - (i) the Client has discharged all outstanding indebtedness to the Company in respect of the Goods or any other amounts owing to the Company; and  

the Client has met all other obligations due by the Client to the Company in respect of these terms and all other contracts between the Company and the Client, and until the above obligations have been satisfied, the Client acknowledges and agrees that:
  - (ii) the Goods supplied are held by the Client as bailee for the Company;
  - (iii) the Client must store the Goods supplied in such a way that it is clear that they are the property of the Company;
  - (iv) the Client hereby irrevocably gives the Company, its agents and servants, leave and licence without the necessity of giving any notice to enter on and into any premises occupied by the Client to search for and remove any of the Goods supplied to or in which the Company has property as aforesaid without in any way being liable to the Client or any person or company claiming through the Client and if the Goods or any of them are wholly or partially attached to or incorporated in any other goods, the Company may where practical disconnect or sever in any way whatsoever as may be necessary to remove the Goods;
  - (v) if the Goods are sold, the Client acknowledges that such a sale is by the Client as bailee for and on behalf of the Company and the Client must hold the proceeds of such a sale in a separate account on trust for the Company and identified as such in the books of the Client;
  - (vi) the Client must not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
  - (vii) the Company may issue proceeding to recover all outstanding indebtedness to the Company in respect of the Goods or any other amounts owing to the Company notwithstanding that ownership may have passed to the Client.
- (c) For the purposes of subclause (b) above, the Client authorises the Company to register a security interest as defined by the Personal Properties Securities Act 2009 (**PPSA**) in respect of the credit, goods and services supplied pursuant to these Terms or any other contract between the Company and the Client. The Client agrees to execute all documents necessary to create a security interest in the PPSA register and to pay all fees associated with such registration.

### 12. TERM AND TERMINATION

- (a) The Services will be provided by the Company to or for the benefit of the Client as agreed and in accordance with these Terms.
- (b) The Company may terminate its agreement with the Client in accordance with these Terms (including, without limitation, pursuant to clause 13 and 14).
- (c) The Client may terminate its agreement with the Company in accordance with clause 7(c).

### 13. DEFAULT

- (a) If the Client defaults in the payment of monies on the basis set out in these Terms the Client must pay to the Company interest

on any of the amounts owing due and payable, but unpaid (including interest payable under this claim but unpaid), from and including the due date for payment to the date of actual payment (as well as before judgement) and the rate of interest will be 2% above the Westpac 90 day bank bill rate as published in the Australian Financial Review, calculated with reference with the successive periods of 30 days commencing on the day following the due date for payment. Interest accrues from day to day and may be compounded by the Company at 30 day intervals; and

- (b) If the Client fails to comply with these Terms (including, without limitation, a failure to pay monies on the basis set out in these Terms):
  - (i) the Client must pay to the Company all expenses, including (without limitation) legal expenses and all debt collection agency costs incurred by the Company in enforcing its rights under these Terms;
  - (ii) the Company may state in any notice to the Client that, unless the default is remedied, all money owing under these Terms which is not yet due for payment is now due, and if the notice of the Company is not complied with then that money becomes due; and
  - (iii) the Company may immediately terminate these Terms.
- (c) If the Client is affected by an Insolvency Event, the Company may immediately terminate this agreement.
- (d) If the Company terminates these Terms in accordance with this clause 13 or as otherwise provided in these Terms, the Company may, without prejudice to any other rights or remedies available to the Company, immediately cease providing the Services to the Client and cease delivering of the Goods to the Client and sell or otherwise dispose of the Goods and apply the proceeds of the sale to any overdue amount.

### 14. FORCE MAJEURE

- (a) The Company is not liable for any failure to comply with these Terms or any agreement for the sale of Goods and/or Services if the failure (directly or indirectly) arises by virtue of a Force Majeure Event. If such circumstances occur, the performance of the Company's obligations in accordance with these Terms will be suspended for so long as the Force Majeure Event continues or prevails.
- (b) For the purpose of this clause 14, a "Force Majeure Event" is an event that is taken to be beyond the Company's reasonable control, including (without limitation) strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, act of God or any order or direction of any local, state or federal government, government authority or instrumentality.
- (c) The Company is not obliged to remedy such circumstances in respect of a Force Majeure Event.
- (d) If a Force Majeure Event continues for more than 30 days, the Company may terminate these Terms by giving 5 Business Days written notice to the Client.
- (e) Nothing in this clause 14 releases the Client from any obligations to pay the Company in accordance with these Terms, or otherwise comply with these Terms.

### 15. IMPLIED TERMS

- (a) It is acknowledged by the Company that, under applicable State, Territory and Commonwealth law(s) (including, without limitation, the Competition and Consumer Act ("**Competition and Consumer Act**")), certain statutory implied guarantees and warranties (including, without limitation, the statutory guarantees under the Competition and Consumer Act) will be implied into these Terms ("**Non- Excluded Guarantees**").
- (b) The Company further acknowledges that nothing in these Terms purports to modify or exclude the Non-Excluded Guarantees.
- (c) Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under any contract with the Client or

**TERMS AND CONDITIONS**  
**Shimadzu Medical Systems (Oceania) Pty Ltd (ABN 77 074 306 255)**

these Terms. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.

**16. SUBCONTRACTING**

The Company reserves the right to subcontract the provision of the Services and the production, manufacture or supply of the whole or any part of the Goods or any other materials or services provided by the Company to the Client.

**17. PRIVACY / CREDIT REPORTING**

- (a) The Company will collect information in relation to the Client for the purpose of providing the Goods and Services to the Client in accordance with these Terms, in accordance with the laws relating to the collection and disclosure of personal information under the Privacy Act 1998 (Cth) as amended from time to time.
- (b) Where the Goods are supplied to the Client on credit the Client irrevocably authorises the Company, its employees and agents to make such inquiries as the Company deems necessary to investigate the credit worthiness of the Client from time to time including (without limiting) the making of inquiries of persons nominated as trade referees, the bankers of the Client, or any other credit providers or credit reporting agencies (the **Information Sources**) and the Client hereby authorises the Information Sources to disclose to the Company such information concerning the Client which is requested by the Company.

**18. NOTICES**

- (a) Any demand, notice, consent, approval or other communication under this agreement (**Notice**) may be made or given by a party or the solicitor for that party provided that it is in legible writing, signed and either delivered in person, posted to, or left at, the addressee's address for service, or sent by fact to the addressee's address for service.
- (b) If the Notice is delivered in person, or by being left at the addressee's address for service, it is regarded as given to the addressee upon delivery. If the Notice is sent by post it is taken to have been received two (2) Business Days from and including the date of posting by ordinary prepaid post. If the Notice is sent by fax it is taken to have been received when legibly received by the addressee, with receipt being evidenced by a report generated by the sender's machine confirming uninterrupted transmission.
- (c) A person's address for service are those set out in the order or such other document provided from time to time. If the person is a company, the person's address for service shall also be the registered address of the company.

**19. GOVERNING LAW**

- (a) These Terms shall be governed by and construed in accordance with the laws in force in the State.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State, and any court that may hear appeals from any of those courts, for any proceedings in connection with these Terms, and waives any right it might have to claim that those courts are an inconvenient forum.

**20. WAIVER**

- (a) A right of the Company may only be waived in writing, signed by the Company.
- (b) No other conduct of the Company (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- (c) A waiver of a right by the Company on one or more occasions does not operate as a waiver of that right if it arises again.
- (d) The exercise of a right by the Company does not prevent any further exercise of that right or of any other right.

**21. THE COMPANY'S RIGHTS**

Any right that the Company may have under these Terms is in addition to, and does not replace or limit, any other right that the Company may have.

**22. SEVERABILITY**

Any provision of these Terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these Terms enforceable, unless this would materially change the intended effect of the Terms.

**23. ASSIGNMENT**

The Client must not assign its benefits or obligations under these Terms without the prior written consent of the Company in writing. The Company may assign its rights and obligations under these Terms to another person without the consent of the Client.

**24. VARIATION**

The Company is entitled to vary these Terms at any time by giving the Client 14 days prior written notice.

**25. ENTIRE AGREEMENT**

These Terms constitute the entire agreement between the Company and the Client and supersedes all prior representations, contracts, statements and understandings, whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Client may seek to impose.

<i>Acceptance</i>	
I .....being an authorised representative of	
.....	
Accept these terms and conditions.	
Signature:.....	Date:.....