

GE Healthcare/ Terms and Conditions of Sale / South Africa

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 General Electric Internal Healthcare Division South Africa 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, which is a division of General Electric South Africa (Proprietary) Limited, a private company duly incorporated in the Republic of South Africa;

The *Contract* means this Contract, together with any signed annexures hereto, for the sale and purchase of Products and/or Services between GEHC and the Buyer;

The *Equipment* means all electronic equipment, hardware and other electronic or mechanical items to be supplied by GEHC, but excluding any consumables and spare parts which shall be 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 to be supplied by GEHC to the Buyer in accordance with this Contract; and

The *Services* means all advice given, technical support services and/or any other services performed by GEHC in accordance with the provisions of this Contract; 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 This Contract 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 its entitlement to enforce any such rights at a later date or on the repeated infringement of its rights in terms of this Contract.

2. PRICES AND QUOTATIONS

The price of the Products and/or Services will be GEHC's quoted price, as set out in Annexure 1 hereto 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, payment in full shall be made to GEHC in the currency invoiced, no later than thirty (30) days from the date of invoice.

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 compounded daily and calculated from the date of default until the date of payment (both dates included).

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 in the event that after the Products have been inspected by GEHC they are found to be materially inconsistent with the specifications of the Products ordered by the Buyer, which order is set out in Annexure 2, GEHC shall be entitled to remove the Products and replace them.

5. DELIVERY/INSTALLATION/ACCEPTANCE

5.1 Any term of delivery shall be construed according to the most recently published 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 Partial deliveries shall be permitted. If the Buyer fails to accept delivery of the Products within a reasonable period after receiving notice from GEHC that they are ready for delivery, GEHC may dispose of or store the Products at the Buyer's expense.

5.3 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.

5.4 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.

5.5 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.

5.6 It is recorded that the Equipment may require specific site preparation prior to installation. The Buyer may elect in writing whether it shall be responsible for the preparation of the site or whether GEHC shall be responsible for the site preparation.

5.7 In the event that the Buyer shall have elected that it shall be responsible for the site preparation then GEHC, as set out in Annexure 3:

5.7.1 shall provide the Buyer with its requirements in respect of the site and all equipment and/or power points, adaptors and/or loads that it may require in order to install the Products;

5.7.2 shall specify the nature of the pre-installation work surfaces required for the installation of the equipment, together with any technical specifications of such surfaces; and

5.7.3 shall specify the date on which the site preparation must be completed by the Buyer in order to enable the timeous installation of the Equipment.

5.8 In the event that the Buyer shall not have completed the site preparation in accordance with the instructions of GEHC or shall not have completed the site preparation timeously in accordance with the date provided in terms of Section 5.7.3 above, then any delays that may arise as a direct or indirect result of the failure by the Buyer to prepare the site for the installation of the Equipment by GEHC shall not be construed or actionable as a breach by GEHC to deliver and install the Equipment timeously.

5.9 In the event that the Buyer elects in writing that GEHC shall complete the site preparation then GEHC shall specify those elements of site preparation that are standard for the particular Equipment installation. In the event that the Buyer requires any additional elements to be included in the site preparation to be conducted by GEHC (for example the installation of air conditioners) then the Buyer shall be obliged to specify such additional elements in writing to GEHC, prior to the commencement of the site preparation. It is recorded that the costs of such site preparation are not included in the cost of the Contract and the estimated cost of such site preparation are set out in Annexure 4.

5.10 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 (ii) on the date Buyer first uses the Equipment for operational use, whichever is earlier.

5.11 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.

5.12 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.

6. RISKS AND TITLE

6.1 The risk of loss and damage to the Products shall transfer to Buyer in accordance with agreed delivery terms, and at latest when delivered to buyer's premises or agreed destination.

6.2 Title to the Goods and Equipment shall pass to the Buyer on payment of the amount owing in full.

6.3 In the event that the Buyer (or any subsequent third party buyer thereof) wishes to dispose of the Products for any reason and whether prior to, or after payment shall have been made in full, and in relation to any Equipment used for clinical or diagnostic purposes, the Buyer shall keep notify GEHC of its intention to dispose of the Equipment to any third party, and shall forward the relevant Financial Intelligence Centres Act (FICA) information of the third party to GEHC and the location at which the Equipment shall be installed and shall ensure that:

6.3.1 the installation specifications of GEHC are at all times adhered to; and

6.3.2 that all maintenance contracts are simultaneously assigned to the third party buyer.

7. SERVICES

7.1 Where GEHC is to provide Services, the Buyer shall ensure that adequate and safe facilities exist at its premises and that GEHC is properly

notified of any relevant regulations that may impact on its ability to conduct the Services.

7.2 If the Buyer has purchased a Product or Service including remote access support, the Buyer shall permit GEHC to connect to the Products by remote access as may be beneficial to 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. The data collected by GEHC will be used, during and after the term of this Contract, in accordance with all applicable laws and regulations and in a manner that will maintain confidentiality.

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 automatically 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 writing with the Buyer. 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 shall only carry out the dismantling or re-installation of any Product, where such activity is in the view of GEHC the most efficient manner of addressing the warranty claim.

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 follow GEHC's use restrictions or 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.

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 this Contract shall only apply to the extent allowed according to applicable law.

11. BREACH

In the event that the Buyer is in breach of this Contract as a result of:

- (i) the failure to prepare the site;
- (ii) the failure to make payment of any amount on the due date for payment;
- (iii) the failure to provide GEHC with adequate access to its premises or the Equipment installed for maintenance purposes,

the provisions of Section 14 apply, and without prejudice to any other rights available to GEHC (including the cancellation of the Contract), GEHC shall at its election be entitled to:

- (i) claim full payment of any and all amounts, whether or not the due date for payment shall have arrived;
- (ii) cease any and all maintenance activities (including disconnecting the Equipment); and/or
- (iii) remove the equipment from the premises of the Buyer or any third party buyer.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 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.

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

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. FORCE MAJEURE

16.1 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, national 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.

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

17. 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.

18. 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.

19. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the substantive laws of the country or state where GEHC or 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.

20. PRODUCT – SPECIFIC TERMS AND CONDITIONS

Additional product-specific terms and may be applicable to this sale. These additional terms and conditions are available from the sales offices of GEHC. Only those elements of such additional terms and conditions which relate to the specific product shall take precedence in the event of any inconsistency with this Contract.

21. TRANSLATIONS AND LOCAL VARIATIONS

Translations of this contract 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 this Contract.

22. ENTIRE AGREEMENT

This Contract, together with the Annexures hereto constitute the entire agreement between the parties as to the contents hereof and no representation or undertaking not contained herein shall be of any force and effect. In the event that this Contract is terminated for any reason whatsoever, then any other agreements which are indirectly or directly associated with this Contract (including, without limitation, any maintenance or support services agreements) shall ipso facto terminate.