

## Terms and Conditions of Sale - Australia and New Zealand

### 1. Definitions

1.1. The provisions of the Privacy Act 1988 (as amended) apply to any information collected by Canon Medical. Please review Canon Medical's Privacy Statement at [www.anz.medical.canon](http://www.anz.medical.canon)

### 1.2. Wherever used herein:

1. "Agreement" means the attached Investment Proposal Summary, the final agreed Equipment Schedule and these Terms and Conditions of Sale;
  2. "Installation" means the earlier of completion of the first clinical case; or acceptance by the Customer or the Customer's agent; or release by Canon Medical for the Customer's use;
  3. "Customer" means the person or persons named in the attached Investment Proposal Summary;
  4. "Equipment" means the goods as ordered and referred to in the attached Investment Proposal Summary and any future Investment Proposal Summary and any other purchase;
  5. "Estimated Delivery Date" means the date, agreed to by Canon Medical, on which the Customer requests that the delivery will be made (as specified in the attached Investment Proposal Summary);
  6. "Estimated Installation Date" means the date by which the Equipment is to be installed and commissioned (an estimate of the Installation Date is specified in the attached Investment Proposal Summary);
  7. "Purchase Price" means the price referred to in the attached Investment Proposal Summary which price shall be subject to increase or decrease in accordance with Clause 3.3 hereof, together with any statutory charges applicable to the transaction;
  8. "Installation Address" means the location referred to in the attached Investment Proposal Summary;
  9. "Canon Medical" means Canon Medical Systems ANZ Pty Limited, ABN 73 612 054 707, its successors and assigns;
  10. "PPSA" means the Personal Property Securities Act 2009 (Cth), or in NZ, the Personal Property Securities Act (1999), their respective regulations, or any amendment or re-enactment of those Acts;
  11. "Warranty Period" means the period specified in Clause 9 hereof.
- 1.3. Unless the context otherwise requires, words importing one gender shall include all other genders, the singular shall include the plural and vice versa, and the word "person" shall include any corporation, firm or partnership.
- 1.4. Headings to clauses are included for reference only and shall not influence the interpretation of these Terms and Conditions of Sale.

### 2. Sale and Purchase

- 2.1. Canon Medical agrees to sell to the Customer and the Customer agrees to purchase from Canon Medical the Equipment at the Purchase Price and to confirm in writing to Canon Medical, six (6) weeks prior to the Estimated Delivery Date, the Customer's Company Name (if different to that in the attached Investment Proposal Summary) and the requested date of delivery.
- 2.2. If Canon Medical, at its discretion, consents to a cancellation, Canon Medical may charge a cancellation fee to cover costs incurred in connection with the cancellation. The fee shall be:
  1. if cancellation occurs prior to shipment from the manufacturer - up to 10% of the total value of the order;
  2. if the cancellation occurs after shipment from the manufacturer - up to 80% of the total value of the order.
- 2.3. If any goods are to be sold or transferred to Canon Medical by way of trade-in or otherwise, the Customer warrants that it is the sole legal and beneficial owner of those goods free from all liens, charges, encumbrances and third-party interests and that the goods are not leased or rented to or from any other party.
- 2.4. It is a condition precedent that the Customer shall:
  1. notify Canon Medical immediately in writing of any delay whereby the installation site will not be available to Canon Medical on the estimated Delivery date;
  2. agree to store, at Customer's own expense and risk, the Equipment until the installation site is made available to Canon Medical; and
  3. immediately pay Canon Medical the full Purchase Price as detailed in the attached Investment Proposal Summary.

### 3. Payment Terms

- 3.1. Unless otherwise agreed to in writing by Canon Medical, the Customer shall pay to Canon Medical the full Purchase Price on delivery of the Equipment or part thereof.
- 3.2. Payment shall be made to Canon Medical in currency stated on the Investment Proposal Summary page by electronic funds transfer to Canon Medical's nominated bank account, or as Canon Medical may direct to the Customer in writing.
- 3.3. The Purchase Price shall be the price stated in the Investment Proposal Summary provided that, where Canon Medical acquires the Equipment from a third party and the price of the Equipment to Canon Medical is calculated in, or is subject

to increases or decreases in the value of, a currency other than Australian Dollars, Canon Medical may at any time increase or decrease the Purchase Price to the extent that the cost to Canon Medical of supplying the Equipment to the Customer is increased or decreased as a result of a change, between the date hereof and the Estimated Delivery Date, in the rate of exchange at which the currency can be purchased with Australian dollars. Any such increase or decrease in the Purchase Price shall be in the same proportion as the change in the relevant rate.

### 4. Risk

- 4.1. Risk of loss and damage to the Equipment shall pass to the Customer at the Installation Address at the time when the Equipment has been physically delivered to the Installation Address. The Customer shall confirm delivery of the Equipment by signing and returning a copy of the Delivery Notice accompanying the Equipment to Canon Medical.
- 4.2. Any Equipment returned to Canon Medical shall remain at the Customer's risk until received by Canon Medical (unless the Equipment is returned by a means specifically agreed in writing by Canon Medical).

### 5. Delivery of Equipment

- 5.1. Canon Medical shall deliver the Equipment to the Customer at the Installation Address (and where relevant, install the Equipment there).
- 5.2. Canon Medical shall make every reasonable effort to deliver the Equipment on or before the Estimated Delivery Date and/or install the Equipment on or before the date specified in the attached Investment Proposal Summary but Canon Medical will incur no liability whatsoever for any failure to do so.

### 6. Installation of Equipment

- 6.1. Where required Canon Medical will undertake the installation of the Equipment at the Installation Address. Installation shall be deemed complete as defined in clause 12.1.2, whereupon, the Customer shall sign Canon Medical's Record of Installation.
- 6.2. The parties agree that where Canon Medical is required to remove installation waste from the Customer's premises, title to such installation waste is deemed to vest with Canon Medical.

### 7. Title

- 7.1. Canon Medical retains title to the Equipment until the Customer pays Canon Medical in full for:
  1. the Equipment;
  2. all other Equipment supplied by Canon Medical; and
  3. all other amounts owed to Canon Medical.
- 7.2. The Customer acknowledges that:
  1. this Agreement creates a purchase money security interest in the Equipment and in all other Equipment supplied by Canon Medical and the proceeds of the Equipment ("Security Interest") without the need for any further action by any party; and
  2. Canon Medical may perfect its Security Interest in the Equipment by registering the Security Interest on the Personal Property Securities Register in accordance with the PPSA.
- 7.3. The Customer waives its right to receive notice of verification statements in relation to the registration of Canon Medical's Security Interest.
- 7.4. As long as Canon Medical retains title to and a Security Interest in the Equipment:
  1. Canon Medical may, at any time, terminate any contract or Agreement relating to the Equipment without notice to the Customer and may take possession of the Equipment.
  2. The Customer must make the Equipment available at any time for inspection by Canon Medical or its agents.
  3. The Customer authorises Canon Medical by its servants or agents to enter any premises owned, leased or otherwise occupied by the Customer by reasonable force to inspect or obtain possession of the Equipment.
  4. If the Customer disposes of or sells any of the Equipment, the Customer holds the proceeds on trust for Canon Medical and must immediately pay that amount to Canon Medical.

### 8. Retention of Title in New Zealand

- 8.1. Until payment is received in full for all products and inventory and all other amounts owed to Canon Medical, the Customer grants to Canon Medical a purchase money security interest in all present and after acquired Canon Medical products and inventory from time to time supplied by Canon Medical (as the secured party) (whether by bailment, sale, hire, lease, consignment or otherwise) to the debtor Customer and all the proceeds from the sale, hire, lease, consignment or otherwise of such products and inventory. Canon Medical may perfect its security interest in such products and inventory by registering a Purchase Money's Security Interest financing statement with the Personal Property Securities Register. This clause shall constitute a security agreement for the purposes of the Personal Property Securities Act 1999. The Customer waives the right to receive a copy of a verification statement.

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### 9. Warranty

- 9.1. The Warranty Period shall commence from the date of installation of the Equipment and will be for a period of twelve months from that date, unless otherwise specified in the attached Equipment Schedule.
- 9.2. The Equipment is warranted to be in good and proper working order and condition and free from any defects in material and workmanship other than any defect which has been disclosed by Canon Medical to the Customer prior to the date hereof.
- 9.3. If Canon Medical receives notice in writing from the Customer of any such defect during the Warranty Period, Canon Medical shall, at its option, either repair or replace the Equipment which proves to be defective.
- 9.4. Where clause 2.4 applies, the Warranty Period shall commence upon Canon Medical's receipt of the full purchase price.

### 10. Limitation of Warranty

- 10.1. The Warranty set out in Clause 9.1 shall not apply to defects resulting from:
  1. improper or inadequate maintenance by the Customer;
  2. unauthorised modification or misuse;
  3. operation which does not comply strictly with the manufacturer's instructions; or
  4. operation outside the environmental specifications for the Equipment.
- 10.2. Subject to Clause 10.3 below:
  1. the warranty set out in Clause 9.1 is exclusive and except as provided below no other warranty, whether written or oral, is expressed or implied;
  2. the remedies provided in this Agreement are the Customer's sole and exclusive remedies, and in no event shall Canon Medical be liable for direct, indirect, special, incidental, or consequential damages (including loss of profits) or any economic loss whatsoever. To the extent permitted by law, Canon Medical expressly disclaims any implied warranties as to merchantability, fitness for a particular purpose or compliance with description.
- 10.3. In the event that the supply of the Equipment pursuant to this Agreement is a supply of the Equipment to a consumer as defined in the Australian Consumer Law, the Commerce Act (NZ), the Fair Trading Act (NZ) or any other applicable legislation (the "Act") nothing contained in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy which pursuant to the Act applies to this Agreement provided that to the extent that the Act permits Canon Medical to limit its liability for such a breach shall be limited to: (a) In the case of Equipment supplied pursuant to this Agreement, the payment of the cost of replacing the Equipment or of acquiring equivalent Equipment or the payment of the cost of having the goods repaired; and (b) in the case of services supplied pursuant to this Agreement, the payment of the cost of having the services supplied again.

### 11. Delays in Performance

- 11.1. Canon Medical shall not be liable for any delay in performance hereunder due to any unforeseen circumstances or due to causes beyond its control including, but not limited to, acts of nature, acts of government, labour disputes, delays in delivery or inability to deliver by Canon Medical's suppliers.

### 12. Limitation of Remedies and Liability

- 12.1. It is the Customer's responsibility to ensure that it, its agents and employees and users of the Equipment are authorised to own and use the Equipment and that the site at which the Equipment is to be installed is in all respects, ready and suitable for the installation. Unless otherwise agreed to in writing by Canon Medical, this shall include, without limitation:
  1. ensuring that all permits, authorisations, notifications, licences and approvals are held or have been given;
  2. providing air conditioning capable of meeting the environmental conditions specified by Canon Medical;
  3. carrying out all carpentry, plumbing, painting, electrical, structural and other building work necessary to prepare the site as per Canon Medical's requirements;
  4. providing adequate power supply which shall terminate at a point specified by Canon Medical including main switch and lines in accordance with requirements of local and electrical supply authorities;
  5. where the Equipment emits ionising radiation, ensuring that the building structure which houses the Equipment is furnished with adequate protective material to keep radiation levels in areas of the building adjacent to the location of the Equipment within legally safe limits.
- 12.2. If the Customer is unable to take delivery of the Equipment for installation to proceed on the agreed date, Canon Medical, at its discretion, may require the Customer to prepay up to 100% of the value of the order or may charge the Customer the actual costs incurred in storing and financing the Equipment.
- 12.3. All advice regarding the Equipment and its operation is contained in the manual for the Equipment. Canon Medical and its representatives are not liable for any other advice and the Customer should rely on its own skill and knowledge.

### 13. Default

- 13.1. Except as may be prohibited by applicable law, in the event of any insolvency or inability to pay debts as they become due by the Customer, voluntary or involuntary bankruptcy/liquidation proceedings against the Customer, or the appointment of a receiver or assignee for the benefit of creditors, Canon Medical may elect to cancel any of its unfulfilled obligations hereunder.

### 14. Legal Costs

- 14.1. Canon Medical and the Customer shall each pay their own legal costs and expenses incurred in connection with the completion and execution of this Agreement.

### 15. Duty

- 15.1. The Customer shall, in addition to the Purchase Price, pay all stamp duty, sales tax, Goods and Services Tax (GST) and other impost charged or levied in respect of or in relation to this Agreement, the Equipment or the delivery, sale or supply thereof.

### 16. Notices

- 16.1. Any required notices shall be given in writing at the address of each party stated overleaf or to such other addresses as either may substitute by written notice to the other.

### 17. Assignment

- 17.1. This Agreement shall be binding upon and personal to the parties hereto and the Customer shall not assign this Agreement or any part hereof without the prior written consent of Canon Medical. Canon Medical may, upon written notice to the Customer but without the Customer's consent, assign this Agreement, including all rights and obligations hereunder, at any time to any of its affiliates or to any entity acquiring substantially all, or any significant portion, of Canon Medical's business to which this Agreement relates. Subject to any restrictions herein contained, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

### 18. General

- 18.1. Canon Medical shall not be liable for the discontinuation of the manufacture of the Equipment or for any changes, modifications or improvements which may be made at any time in the specification, construction or design of the Equipment. Where the Equipment has been changed, modified, improved or discontinued the Customer shall accept any such changed, modified, improved or replacement Equipment in fulfillment of the Agreement between the parties.
- 18.2. This Agreement constitutes the entire agreement between the parties and shall supersede and void any other written limited warranty by Canon Medical attached to or included with the Equipment, any proposal or prior agreement, oral or written and any other communications between Canon Medical and the Customer.
- 18.3. No change or modification of any of the terms and conditions herein shall be valid or binding on either party unless in writing and signed by an authorised representative of each party.
- 18.4. Canon Medical's failure to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.
- 18.5. Where the Customer is a corporation the Customer warrants that the person executing this Agreement on behalf of the Customer has been duly authorised to do so by resolution of the Board of Directors of the Customer and the person so executing this Agreement warrants that he has the authority to execute this Agreement on behalf of the Customer.
- 18.6. The Customer warrants that, except as disclosed in writing to Canon Medical prior to commencement of installation and/or maintenance service, the site is and will be free of all hazardous substances and will constitute a safe working place for the purpose of the installation and/or maintenance service by Canon Medical, its employees, agents and contractors.
- 18.7. The Customer hereby authorise Canon Medical to prepare a Recipient Created Tax Invoice where there is a trade in of equipment referred to in the attached Investment Proposal Summary.
- 18.8. Clause 4, Clause 5, Clause 6 and Clause 9 shall not apply to sales of Second-Hand Equipment or to Equipment being delivered to a site outside Australia or New Zealand. Canon Medical's Terms and Conditions of Sale – Second-Hand Equipment and/or Terms and Conditions of Sale - Overseas shall apply.
19. **Strategic Products**
- 19.1. The Customer acknowledges that Products and their technologies marked with a "#" symbol in any Canon Medical agreement or on the face of any Canon Medical invoice, are classified as Strategic Products under Export Control Laws and regulations and as such should not be exported without the appropriate Governmental authority.
20. **Governing Law**
- 20.1. This Agreement shall be governed by and construed in accordance with the law for the time being in force in the place in which this Agreement is executed by the Customer and the parties hereto submit to the jurisdiction of the courts of that place in respect of all matters arising hereunder or relating hereto.