

General Conditions of Sale of Leica Microsystems (SEA) Pte Ltd

Generally

1. Scope

These General Conditions of Sale and Supply shall apply to all products sold by Leica Biosystems Division of Leica Microsystems (SEA) Pte Ltd, Singapore, hereinafter designated as Vendor. They shall be deemed an integral part of all contracts of sale and software-licence agreements entered into by the customer, hereinafter designated as Purchaser.

1.2 Price

1.2.1 Vendor shall sell the products at the relevant prices set forth in the pricelist applicable for the time being.

1.2.2 Vendor shall have the right to alter price lists at any time, subject to two calendar months prior notice in writing.

1.2.3 Vendor shall have the right to alter the prices of orders already accepted, if its material, labour, or operating costs change.

1.3 Effective date and scope of contract

Regardless of whether an order is given orally or in writing, no contract shall be deemed to exist and no order deemed valid unless and until Vendor has confirmed its acceptance thereof either in writing or by conclusive action, such as the immediate delivery of the products ordered. The scope of Vendor's duty to supply the products shall be as set forth in Vendor's confirmation of the order.

2. Terms of supply

2.1. Extent of delivery

As far as possible, Vendor shall supply the whole of the order as a single delivery. Purchaser hereby agrees to accept part deliveries. If Purchaser intends to refuse part deliveries, it shall expressly declare its refusal in its order.

2.2 Delivery dates

Vendor hereby undertakes to do all in its power to observe the delivery dates it has itself established either orally or in writing. Vendor's failure to observe the delivery dates agreed shall entitle Purchaser to withdraw from the contract only if delivery has still not been made after a reasonable period of grace. Purchaser shall not be entitled to claim damages for non-delivery. Vendor shall be released from its duty to observe agreed delivery dates if Purchaser is in default in meeting its contractual obligations or requires changes to the products after Vendor's confirmation of the order.

2.3 Force majeure

In the event of force majeure, Vendor shall be released from its duty to observe agreed delivery dates and Purchaser shall not have the right to withdraw from the contract and/or claim damages. Cases of force majeure shall include (but not necessarily be limited to) unforeseeable events in manufacturing or distribution caused by delivery delays by suppliers; boycotts, lock-outs, or strikes at Leica's own plants, the plants of suppliers, or at transport establishments; or due to war, civil disorder, or mobilization.

2.4 Delivery, transfer of risk, insurance

2.4.1 Due performance of delivery shall be deemed made in full and possession and risk shall pass to Purchaser when the products are ready for dispatch at Vendor's works.

2.4.2 Except as expressly otherwise agreed, Vendor shall act on Purchaser's behalf in dispatching the products and shall obtain insurance cover at Purchaser's charge for normal transport risks.

2.5 Acceptance of returned products

Vendor shall not be required to accept products returned by Purchaser, but may do so as an exception, subject to its prior agreement in writing. Always provided that returned products were dispatched by Vendor no more than four calendar months earlier, acceptance shall be strictly limited to undamaged brand-new standard products in their original packing, i.e. products not modified at Purchaser's request. Products returned without Vendor's prior agreement will be sent back at Purchaser's risk and charge.

3. Payment of purchase price

3.1 Prices

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Unless expressly otherwise agreed, all prices for products shall be deemed ex works, in the currency, as set forth in the price lists applicable for the time being, exclusive of packing and discounts. Purchaser shall bear all other charges, such as (but not necessarily limited to) charges for freight and insurance; export, transit, import, and other permits; certificates, taxes, fees, duties, dues, and custom charges. Prices for repairs and alterations shall be deemed ex works or from the nearest service workshop.

3.2 Conditions of payment

3.2.1 The conditions of payment as set forth in Vendor's confirmation of order shall apply to all payments.

3.2.2 Unless expressly otherwise agreed, Purchaser shall make all payments in respective currency, free of deductions of any kind, such as (but not necessarily limited to) discounts, expenses, taxes and dues. Purchaser shall transfer payments to the bank account designated in Vendor's invoice.

3.2.3 Purchaser shall not be entitled to withhold payment on the grounds of any complaint or other claim.

3.2.4 Purchaser shall not set off any payment due against any counter claim.

3.3 Default of payment

Upon expiry of the agreed date of payment, Purchaser shall be deemed in default. All consequential costs due to default shall be at Purchaser's charge, invoiced in Singapore currency, including interest at the discount rate charged by the HSBC plus three percent per annum. In the event of default of payment, Vendor shall have the right to demand advance payment for future orders or to require irrevocable and confirmed letters of credit to be opened, and to withhold delivery of products not yet consigned.

4. Retention of title, grant of security interest

4.1 The products shall remain Vendor's property until the purchase price and any subsidiary claims are paid in full, inclusive of all charges due on the redemption and/or clearance of drafts, bills of exchange, and/or cheques accepted in payment. If the law in Purchaser's country does not recognize retention of title, Vendor shall be entitled to assert and claim all other available property rights in its products.

4.2 Until payment in full of the purchase price, Purchaser shall not pledge the products, assign or transfer them as security, or otherwise charge them with the rights of any third party, but may sell them in the ordinary course of business.

4.3 While Vendor retains title or has a security interest in the products supplied, Purchaser shall maintain them at its own charge and keep them adequately covered by insurance against loss or damage by theft, fire, water, and other risks, and upon Vendor's demand shall produce proof of such insurance. Purchaser hereby expressly assigns to Vendor its rights against insurer.

4.4 Purchaser hereby undertakes to render all necessary assistance in all measures necessary to protect and secure Vendor's property, in particular (but not necessarily limited to) in dealing with any formalities that may have to be completed to secure and register retention of title and/or the grant of security interest, as the case may be.

5. Warranty, liability

5.1 Warranty

5.1.1 Duty to notify defects:

Within seven calendar days of acceptance of the products, Purchaser shall notify Vendor of any recognizable defects and shall specify the type of defect found.

5.1.2 Duty to notify transport damage:

Immediately upon receipt of the consignment Purchaser shall notify Vendor in writing of any loss or damage sustained by the products during transport. In the event of transport damage, Purchaser shall act strictly in accordance with the insurer's general conditions. Purchaser shall immediately bring any externally visible damage or irregularities to the notice of the rail, postal, or other carrier, and call upon the carrier to inspect the damage or irregularity found, certify it in writing, and state the probable cause thereof. If the carrier refuses to inspect and certify the damage, Purchaser shall refuse acceptance of the consignment.

Immediately upon delivery, Purchaser shall unpack the products; if it finds any damage, it shall leave the products in the packing in the state in which they were found, forthwith notify the carrier responsible of its liability both orally and by registered mail, and call upon the carrier to inspect and assess the damage.

5.1.3 Claims on account of wrong delivery:

No claim on account of wrong delivery or wrong quantities shall be entertained unless made in writing immediately upon discovery, but in any case not later than one calendar month after the date of the invoice.

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5.1.4 Scope of warranty:

For its own products, Vendor grants the warranty set forth in its General Conditions of Warranty and applicable at the time of the order. The General Conditions of Warranty shall be deemed an integral part of these General Conditions of Sale and Supply.

Leica reserves the right to use refurbished material for all repairs of equipment in and out of warranty. The refurbished Spares have full functionality according to specifications. Warranty of refurbished items is not limited compared to new items.

5.2 Liability

5.2.1 Vendor shall be liable for delivery according to contract only within the limits of its obligations under warranty. Any further liability for direct and/or indirect loss or damage, such as (but not limited to) loss of profit and/or any third-party claim that may arise out of non-performance of Vendor's duties under the contract, or out of the use, operation, or unserviceability of the products supplied by Vendor, is hereby expressly excluded, inclusive of any liability for consequential damages.

5.2.2 The limitations of liability as set forth above shall not apply to gross negligence by Vendor, nor where the law of the land requires otherwise.

6. Product liability

Purchaser shall ensure that a user manual in the country's official language(s) is supplied with each product and that the end user's attention is drawn to the manual and to its observance. As far as permissible under the law of the land, Vendor hereby expressly excludes any liability whatsoever in the event of Purchaser's failure to observe the above condition.

7. Technical alterations and technical documents

7.1 Vendor reserves the right to alter the specifications and design of its products in the light of technical development. Descriptions and illustrations, technical and performance data published in technical documents, such as (but not necessarily limited to) specifications, drawings, photographs, and brochures, shall not be deemed binding and are subject to change without notice.

7.2 Technical documents shall remain Vendor's property and Purchaser shall return them upon demand. Without Vendor's prior agreement in writing they shall not be copied, duplicated, or made accessible to any third party in any manner whatsoever. In particular, they shall not be used for the purpose of making any instrument or components thereof. They may be used for the purposes of installation, maintenance, and operation only to the extent that they have been designated therefor by Vendor.

8. Software

Vendor shall grant Purchaser an irrevocable non-exclusive licence to use any software and releases of new versions of programs for computers, microprocessors, and other data processing and control equipment, which may be supplied either with the products or at any later date, upon the terms and conditions as set forth in the software-licence agreement. This software shall remain the property of Vendor or its licensor, as the case may be, and shall be used exclusively for Vendor's instruments. Without Vendor's prior agreement in writing, Purchaser shall not copy or otherwise duplicate any part of said software.

9. Requirements applicable to installation site

Purchaser shall draw Vendor's attention to all local laws, bylaws, regulations, and other requirements that may govern the delivery, assembly, installation, and/or operation of Vendor's products, and to any regulations in connection therewith on the prevention of sickness and accident prevention. The products will be supplied with only those safety devices that are agreed in writing.

10. Use of trademarks, identifying marks, and of display and publicity material

Purchaser shall use Vendor's trade marks, particularly the trade mark Leica, strictly in accordance with the terms and conditions set forth in the separate agreements in connection therewith.

11. De-identification of Personal Data

The Purchaser acknowledges that Vendor would not require access to any Personal Data, including

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patients' Personal Data, at any time in performance of its obligations under this contract. Where applicable, in the event any data is required to remedy technical issues and/or performance of the products ("Permitted Purposes"), the Purchaser agrees that prior to providing or granting access to such data to Vendor, the Purchaser shall be responsible to ensure all Personal Data in such data, if any, are De-Identified and Coded to ensure that the identity of the individual to whom the data pertains is not identifiable to and is not traceable by Vendor and/or Vendor's Personnel. The Purchaser further represents that it has established policies and procedures in place to prevent the release of individuals' Personal Data and is responsible for informing and ensuring its employees to comply with the Purchaser's obligations in this provision. The Purchaser shall fully indemnify Vendor and its affiliates against any and all claims, losses or damages arising from or related to non-compliance of this provision including but not limited to costs on a solicitor/attorney-client basis.

For the purpose of this provision,

- (a) "Personal Data" means any information relating to an identified or identifiable natural person;
- (b) "De-Identified" means the identity of the individuals is not known to and ensure data is not traceable by Vendor and/or Vendor's Personnel; and
- (c) "Coded" means that a number, letter, symbol, or combination thereof (i.e. the code) has replaced identifying individual information (such as name or national registered identification number); and
- (d) "Vendor's Personnel" means employees, agent and/or contractor of Vendor associated with the performance of its obligations under this contract.

12. Suspension of deliveries

If Purchaser's sales prove unsatisfactory or if it suspends payments, is subject to a court order of settlement and/or if bankruptcy proceedings are instituted against it, or if it gives up or transfers its business, Vendor shall be entitled, without prejudice to any other or more extensive rights, to suspend further deliveries without regard to any orders still pending.

13. Applicable law and jurisdiction

13.1 This contract shall be governed by and interpreted in accordance with Singapore law.

13.2 The legal venue for Vendor and Purchaser shall be Vendor's registered office, but notwithstanding this provision Vendor shall also be entitled to call upon the courts competent at Purchaser's registered office.

14. Final provisions

14.1 Other terms and conditions

Vendor does not recognize any other terms and conditions as valid. Purchaser hereby expressly waives the right to apply its own terms of business.

14.2 Severability

The invalidity or unenforceability of any part of the present General Conditions of Sale and Supply and of any contract between the parties which refers thereto shall not affect the validity of the remaining terms and conditions thereof.

14.3 Alterations

No alterations, additions, or deletions to these General Conditions of Sale and Supply shall be valid or enforceable at law unless set forth in writing and agreed by Vendor.