

UNIVERSAL INSTRUMENT SERVICES LIMITED

TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In these Terms and Conditions, the following definitions and rules of interpretation apply:

Business Day:	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Charges:	the sums payable for the Services;
Conditions:	these Terms and Conditions;
Contract:	the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions;
Customer:	the person or firm who purchases Services from the Supplier;
Customer Materials:	all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services;
Equipment:	the equipment belonging to the Customer from time to time which forms the subject-matter of the Services;
Services:	the services and any ancillary services to be supplied to the Customer under the Contract;
Supplier:	Universal Instrument Services Limited incorporated and registered in England and Wales (CRN: 01554448); and
Order:	the Customer's order for Services as set out in the Customer's purchase order form or request for the supply of Services.

1.2 The expression "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and a reference to a party includes its successors or permitted assigns;

1.3 The expression "**company**" includes any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular and a reference to one gender includes a reference to the other genders.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended, re-enacted or replaced from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.6 A reference to "**writing**" includes email and the expression "**written**" shall be construed accordingly.

1.7 Any words following the terms "**including**", "**include**", "**in particular**", or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions. Each Order shall be the subject of a separate Contract.

2.2 The Supplier will accept the Order either by doing so in writing or by making arrangements with the Customer to provide the Services.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks at any time to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer in accordance with the Contract. In supplying the Services, the Supplier shall:

3.1.1 supply the Services with reasonable care and skill and in accordance with any manuals, instructions or recommendations issued by the Supplier or manufacturer;

3.1.2 ensure that all goods, materials, equipment and instruments used in providing the Services are of satisfactory quality and are fit for purpose;

3.1.3 supply the Services in conditions appropriate for the supply of Services;

3.1.4 at its discretion, perform any necessary minor repairs forming part of the Services to the Equipment; and

3.1.5 comply with all applicable laws, statutes and regulations in force from time to time.

3.2 The Supplier shall not be liable for any failure of the Services to comply with the warranty contained in Clause 3.1 if the failure arises as a result of the Customer not having complied with any instruction or recommendation issued by the Supplier or manufacturer.

3.3 If, during the supply of Services, the Supplier discovers damage to the Equipment requiring significant repairs which do not form part of the Services, the Customer will be notified as soon as reasonably practicable.

3.4 If the Supplier gives any such notification in accordance with Clause 3.3, if required to do so by the Customer, the Supplier will provide the Customer with an estimate of the costs of repair or rectification, including the cost of providing such replacement parts. The Supplier will not perform any additional work without first obtaining express written instructions from the Customer.

3.5 Once the Services have been carried out, the Supplier will provide the Customer with an engineer's report which sets out the state and condition of the Equipment which is being returned to the Customer. The Customer shall ensure that the information contained within the report is complete and accurate before accepting the return of the Equipment.

3.6 One calibration certificate will be issued to the Customer once the Services have been completed. The calibration test results will be displayed on the certificate which are correct as at the time of testing.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall ensure that the terms of the Order are complete and accurate and provide, in a timely manner, such information as the Supplier may reasonably require relating to the Equipment and any fault or defect reported, and ensure that it is accurate and complete in all material respects.

4.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed due to any reason beyond its reasonable control, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the duration of the delay caused by the Customer.

4.3 Upon receipt of the calibration certificate, the Customer must check the values, the respective tolerances and any other relevant information contained therein. The Customer acknowledges and agrees that it is the sole responsibility of the Customer to:

4.3.1 ensure that the Equipment is in a fit and satisfactory condition for its intended use before accepting such Equipment; and

4.3.2 put the Equipment back into serviceable use, if required.

- 4.4 The Supplier will not calibrate medical instruments that come into direct contact with patients. It is the sole responsibility of the Customer to ensure that no such items are presented to the Supplier for calibration.
- 4.5 The Customer is solely responsible for the removal, restoration and programming (as applicable) of all instruments, probes and sensors following calibration.
- 4.6 The Customer acknowledges that the Supplier is not be responsible for the installation or set up of instruments, leads, probes and sensors following calibration and shall not be held liable for any damage caused whatsoever by any disconnecting and reconnecting of instruments, leads, probes and sensors. The Customer agrees that any installation or reconnection of the Equipment (or any part thereof) falls outside the scope of the Services.

5. CHARGES AND PAYMENT

- 5.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges.
- 5.2 The Charges exclude Value Added Tax (“**VAT**”), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 5.3 The Customer shall pay each invoice due and submitted to it by the Supplier, within 30 days of receipt, in full and in cleared funds to a bank account nominated in writing by the Supplier. Time for payment shall be of the essence of the Contract.
- 5.4 All amounts due under the Contract from the Customer to the Supplier shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. LIMITATION OF LIABILITY

- 6.1 Nothing in the Contract shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 6.2 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.3 Subject to Clause 6.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 6.3.1 loss of profits;
 - 6.3.2 loss of sales or business;
 - 6.3.3 loss of agreements or contracts;
 - 6.3.4 loss of anticipated savings;
 - 6.3.5 loss of use or corruption of software, data or information;
 - 6.3.6 loss of damage to goodwill; and
 - 6.3.7 any indirect or consequential loss.
- 6.4 Subject to clause 6.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the Charges paid by the Customer under the Contract.
- 6.5 This clause 6 shall survive termination of the Contract.

7. TERMINATION

- 7.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving notice to the other if the other:
- 7.1.1 commits a material breach under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice to do so;
 - 7.1.2 becomes insolvent or unable to pay its debts, or enters into any composition or arrangement with its creditors;
 - 7.1.3 being a company, enters into administration or receivership, or is the subject of an application for winding-up (except for the purposes of reconstruction or amalgamation) or, being an individual, is adjudged bankrupt;
 - 7.1.4 ceases to carry on, or in the reasonable opinion of the terminating party is likely to cease to carry on, the whole or a substantial part of its business;
 - 7.1.5 being an individual, dies or for reason of mental or physical incapacity becomes incapable, in the reasonable opinion of the terminating party, of fulfilling its obligations under the Contract; or
 - 7.1.6 if any event or circumstance analogous to any of the above arises or occurs with respect to the other party in any jurisdiction.
- 7.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 7.3 On termination or expiry of the Contract:
- 7.3.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services performed but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and
 - 7.3.2 the Supplier shall on request return the Equipment and any of the Customer Materials not used up in the provision of the Services.
- 7.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

8. GENERAL

- 8.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 8.2 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 8.3 A person who is not a party to the Contract shall not have any right to enforce its terms.
- 8.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by the Supplier or on the Supplier's behalf which is not expressly set out in the Contract, provided that nothing in this Clause 8.4 shall exclude or limit the liability of each party for fraud or fraudulent misrepresentation.

- 8.5 A waiver of any right or remedy under the Contract or law shall not be deemed a waiver of any subsequent breach or default, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 8.6 No variation of the Contract shall be effective unless it is agreed in writing and signed by an authorised representative of each of the parties, save that the Supplier reserves the right to update these Conditions as it sees fit from time to time.
- 8.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 8.8 Any notice or other communication given to a party under or in connection with the Contract shall be:
- 8.8.1 shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address notified to it from time to time; and
- 8.8.2 shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission,
- save that this clause 8.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 8.9 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 8.10 Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).