

GENERAL TERMS AND CONDITIONS OF SALE OF RADIOMETER Canada L.P.

1- GENERAL PROVISIONS

The object of these General Terms and Conditions of Sale (the “**Terms and Conditions**”) is to define the conditions under which the company RADIOMETER Canada L.P., 7075 Financial Dr Mississauga, ON Canada L5N 6V8 (hereinafter the “**Company**”) provides to the customer, a professional buyer, (hereinafter the “**Customer**”), the solutions defined below and provided by the Company. The Customer and the Company are referred to individually as the “**Party**” or collectively as the “**Parties**”. Any order of Solutions implies unconditional acceptance by the Customer and its full commitment to these Terms and Conditions of Sale, which shall take precedence over any other document of the Customer, and in particular over all general terms and conditions of purchase. The invalidity of a contractual clause shall not result in the invalidity of these Terms and Conditions. The applicable Terms and Conditions of Sale are those in effect on the date of the order placed by the Customer.

2- DEFINITION OF MARKETED SOLUTIONS

The term “**Solutions**” refers to all the Products and Services provided by the Company.

The term “**Products**” refers to all the marketed instruments (analyzers, monitors, electrodes), consumables, reagents and software.

The term “**Service**” refers to all the training, hotline, and maintenance provided by the Company.

The term “**Software**” refers to any software provided by the Company whether offered as a stand-alone product or embedded into other instruments.

3- CONTRACTUAL DOCUMENTS

The sale agreement for the Solutions between the Company and the Customer (the “**Agreement**”) consists of the following elements:

- the special conditions, being the document containing the commercial terms (“**Special Conditions**”); and
- these Terms and Conditions.

In case of divergence or contradiction between the provisions of one or more contractual documents, the order of priority shall be that established in the list above. No amendment to the Special Conditions shall be binding on the Parties unless set out in writing and signed by authorized representatives of each of the Parties.

4- ORDERS

4.1 Final nature of the order

Orders are binding on the Customer if received at the following email address: ramesrvctr@radiometeramerica.com unless rejected by the Company.

4.2 Cancellation policy

Once the orders are firm and definite, any request for cancellation for whatever reason (except in case of Force Majeure), if accepted by the Company, shall be subject to a cancellation fee under the following conditions:

- a cancellation fee of 30% of the price of the order will be applied to orders relating to the Product and Software;
- a cancellation fee of 30% of the current price in effect on the date of the order for Agreements for provision and lease; and
- Any consumable orders already shipped are non-returnable unless agreed by the Company in its absolute discretion (in such case, a restocking fee may be charged).

5- PRICE

5.1. Sale price

The sale price of the Solutions is stated in the Agreement. The prices are exclusive of federal, provincial or local tax, handling fees, and shipping costs. The shipping costs and handling fees, excluding federal, provincial or local taxes, shall be invoiced at a flat rate as per the Company’s price list valid at the time of the order. Please note that the aforementioned prices can be reviewed each year.

5.2. Change in price

The Company reserves the right to amend its prices annually.

6- PAYMENT OF PRICE

6.1. Due date

The terms of payment are fixed at 30 days from the invoice date. Payment may be made by ACH, EFT, wire or check. Wire transfer instructions will be confirmed in writing and not by email. Payments are not subject to setoff or recoupment for any present or future claim Customer may have. Any sum not paid by the deadline shall, without prior notification, result in statutory interest according to the applicable rate in effect at the time of the payment default. In case of default, the Company is entitled to suspend delivery of the Solutions.

6.2. Retention of title clause

The transfer of ownership of Products is suspended until complete payment of the price and other charges for them by the Customer. By express agreement, the Company can enforce the rights that it has under this retention of title clause for any receivables over all Products in the Customer’s possession, the latter generally being presumed to be those that are unpaid, and the Company can take them back or claim them in compensation for all unpaid invoices, without prejudice to its right to rescind the sales in progress. In the event that a procedure for legal redress or liquidation of Customer’s assets is opened, the orders in progress will be automatically canceled and the Company reserves the right to claim the Products in stock. This clause does not preclude the risk relating to the Products being transferred to the Customer according to the applicable incoterm.

7- DELIVERY

7.1. Definition

Orders are subject to FOB destination Incoterm®2020, unless otherwise specified in the Special Conditions. However, for instruments, transfer of risk take place upon customer acceptance. The Company reserves the right to fulfill the order through partial deliveries, and / or through suitable alternative items. The Company shall be free to use sub-contractors in performing its obligations under the Agreement.

7.2. Delivery deadline

The delivery deadlines scheduled when ordering are only given as an indication and any delays do not give the Customer the right to cancel the sale, to refuse the Solutions or to claim damages.

7.3. Place of delivery

The Solutions shall be delivered to the address indicated by the Customer under the Special Conditions of the Agreement.

7.4. Methods of delivery

The Company shall carry out the shipments. No Products can be sent back without the consent of the Company.

In addition, in order to allow the Company to assert its rights, both with regard to the carriers and the insurance companies:

- upon receiving the Solutions, any damage or shortage must be reported by the Customer by email credit@radiometeramerica.com within 48 hours of the delivery;
- if the damage is apparent when the Solutions are received, any objections from the Customer must be made immediately;
- if the damage concerns defective consumables, the Customer must report this to the Company within a maximum of 48 hours after generation of the error report.

If these provisions are not observed, any claim concerning the Solutions delivered will be rejected, the Customer thereby being presumed to have renounced any legal recourse.

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7.5. Customer Acceptance

Product's installation shall only be performed at the request of the Customer. A pre-installation meeting will be organized with the Company's personnel in order to define all the prerequisites of each of the Parties. The Company and the Customer undertake to honor the points that are discussed. In case of non-compliance with the prerequisites mentioned in the report, the Company reserves the right to defer installation of the Solution. The Company will contact the Customer to agree on a delivery date and commissioning of the Solution. The Solution described in the Special Conditions will be delivered and installed by the Company at the address of the Customer communicated in the Special Conditions. The costs incurred for assembly, installation, and commissioning, of the Solution (except consumables), and in accordance with the Agreement will be borne by the Company. In cases of provision or lease of instruments, the place and, if applicable, the premises inside which instruments will be installed must have the necessary features to permit the operation, protection, and maintenance of the Solution under proper conditions so that the Company is exempted from all responsibility with regard to third parties as the owner of instruments. The Customer is not authorized to make any modification to instruments nor to move them (including within the same establishment) without prior written authorization from the Company. Performance must be carried out by the Company and will be subject to a separate quote.

8- ASSIGNMENT

Customer may not assign, pledge, encumber, sublease or transfer this Agreement, any rights or obligations under this Agreement or any other information relating to the pricing and structure of this transaction without the Company's prior written consent.

9- CONTRACT DURATION

The duration of the Agreement is set in the Special Conditions. However, please note that upon expiry of the term, if the contracting parties continue to perform the obligations, the Agreement will be tacitly renewed on the same terms, for successive further periods of one (1) year, unless notice of termination is served by one of the Parties to the other (by email to the Company at ramesrvctr@radiometeramerica.com, and in writing to the Customer's registered address) three (3) months prior the term of the renewed period.

10- CONFIDENTIALITY

The Agreement is confidential and proprietary. The receiving party of confidential information shall, keep in confidence all of the confidential information received by it. The receiving party shall take reasonable steps to prevent unauthorized disclosure or use of the confidential information provided and to prevent it from falling into the public domain or into the possession of unauthorized persons. The receiving party shall not disclose confidential information it received to any person or entity other than its officers, employees and consultants who need access to such confidential information in order to affect the intent of this Agreement and who have entered into confidentiality agreements sufficient to enable the compliance with this section. Notwithstanding the foregoing, in no event shall confidential information be disclosed to third parties. The receiving party will not have an obligation to protect any confidential information which: (i) is or becomes publicly available other than as a result of an act or failure to act by the receiving party; (ii) is lawfully obtained, directly or indirectly, from a non-party which was under no obligation of confidentiality; or (iii) is required by law to be disclosed. Any use or disclosure of this information for any purpose other than that for which it has been provided may cause substantial competitive harm to the Company and is prohibited.

11- LEASE AGREEMENT

11.1 Instruments' ownership

In case of lease of the Solution, the instruments are and shall remain the exclusive property of the Company for the entire duration of the Agreement, no other right being conferred on the Customer in this regard by virtue of these Terms and Conditions.

11.2 Insurance

For the entire duration of the Agreement in case of leasing, the Customer undertakes to assume all the risks relating to instruments and in particular all risk of damages, total or partial loss, accident for whatever cause, including in case of unexpected circumstances, Force Majeure as well as those relating to civil responsibility resulting from the possession or use of instruments in the presence of third parties. To this end, the Customer must insure instruments at its own cost against all risk of loss for its total replacement value and must assume the entirety of the risks from loss or damages whatever the cause, from the date of signing the Agreement until its end, whether these risks are covered or not by the insurance taken out. The occurrence of a loss or some kind of damage to instruments shall not release the Customer from its obligations mentioned in this Agreement. In the insurance policies mentioned, the Company will be mentioned as a beneficiary of the compensation.

The Company may request the Customer to produce a certificate of insurance evidencing that the insurance premiums relating to the insurance taken out have been paid. The Customer is required to request reimbursement of the damages that must be paid by the insurance company, if applicable, in accordance with the insurance ceiling mentioned in the policy and taking into account any exclusions of risks. If instruments are damaged, the Customer is obliged to inform the Company as soon as reasonably possible (and always within a maximum of seven (7) days), as well as the insurance company within the deadlines indicated in the policy and must exempt the Company from all responsibility resulting from the aforementioned damage.

11.3 Instruments' return at the end of the lease term

At the end of the lease or provision of a Solution by the Company, the Customer is obliged to ensure that the components of the Solution have not undergone any modification or removal and are in a state of normal wear. If components of the Solution are lacking, then the Company reserves the right to invoice them to the Customer at the rate in effect at the time of return.

12- FORCE MAJEURE

Except for payment of the price hereunder, neither Party shall be liable for any delay or failure to perform under the Agreement due to causes beyond a Party's reasonable control, such as (but not limited to) acts of God, war or other hostility, acts of terrorism, civil disorder, the elements, flood, fire, pandemics or epidemics, shortage of supplies, infrastructures or transportation, power failure, equipment failure, industrial or labor dispute, embargo, law, rule, regulation or action by any governmental authority, national, regional or global emergency ("Force Majeure Event"). The party affected by the delay may: (a) extend the time for performance for the duration of the Force Majeure Event, or (b) cancel all or any part of the unperformed part of this Agreement if such Force Majeure Event lasts longer than sixty (60) days. In the event of any such delay or failure to perform, the Company shall have additional time within which to perform the Company's obligations under the Agreement as may be reasonably necessary under the circumstances. Despite anything to the contrary in the Agreement, the Company may apportion Product subject to a shortage in any manner the Company considers equitable. If a Force Majeure Event affects the Company's ability to meet its obligations at the agreed upon pricing, or the Company's costs are otherwise increased as a result of such Force Majeure Event, the Company may increase pricing accordingly upon written notice to Customer.

13- WARRANTY

13.1 Warranty

The Company warrants that instruments are free from defects for a period of 12 months (i) from customer acceptance date (IVW installation, verification, warranty). In case of a valid warranty claim, the Company will at its own discretion and as Customer's sole remedy either repair, replace or reimburse the price paid for the instruments. Repaired instruments are subject to the original warranty period, i.e. the warranty period is not extended as a result of the repair or replacement. The Customer is obliged to use and protect the Solution with all reasonable care and attention, including that necessary according to the recommendations of the Company. The Company reserves the right to retain any replacement part. However, replacement of parts damaged (other than by the Company's negligence) are excluded from the warranty.

13.2 Software license

Software is licensed, not sold. Customer is granted a non-exclusive, non-transferable license to use Software solely for its intended purpose. The Company does not warrant that the Software will be error-free or uninterrupted. All copyrights, other intellectual property and other rights in relation to the Software shall as

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between the Parties remain the Company's exclusive property. Customer shall not reproduce, reverse engineer, de-compile or otherwise modify the Software. THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

14- LIMITATION OF LIABILITY

IN NO EVENT WILL THE COMPANY BE LIABLE FOR SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, THIRD PARTY OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION THOSE BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER LEGAL, EQUITABLE OR STATUTORY CLAIM, CAUSE OF ACTION OR LEGAL THEORY. IN ANY EVENT OF LIABILITY, THE COMPANY'S LIABILITY SHALL BE LIMITED TO ACTUAL DAMAGES TO THE EXTENT DIRECTLY AND SOLELY CAUSED BY THE COMPANY'S MATERIAL BREACH. EXCEPT AS OTHERWISE PROHIBITED BY LAW, THE COMPANY'S MAXIMUM LIABILITY HEREUNDER REGARDLESS OF LEGAL THEORY WILL NOT EXCEED THE PRICE OF THE COMPANY'S SOLUTIONS GIVING RISE TO THE CLAIM. For the purposes of this Section, any liability associated with the failure to meet or complete the applicable annual commitments shall be deemed to be direct damages and, whether considered lost profits or otherwise, shall not be barred under this Section. This Section will survive the termination or expiration of this Agreement.

15- EXPORT CONTROL

Customer acknowledges that the Products may be subject to restrictions under export control laws and regulations and undertakes not to sell or make available Products to a third party without the Company's prior written consent.

16- RESALE AND THIRD-PARTY USE

Customer agrees to: (i) use the Solutions solely for its own use and not sell or redistribute the Solutions to a third party; (ii) maintain, use, and store the Solutions as provided in their manuals or labeling; and (iii) not misuse or abuse the Solutions. If Customer breaches the foregoing, the Company may: (a) void, eliminate and/or refuse to continue to make available to Customer any volume or other type of discount, rebate or preferential payment term; (b) cancel the Order; and/or (c) refuse to accept any further Orders from Customer. This provision does not apply to the Company's authorized third party contractors, including distributors and OEMs.

17- COMPLIANCE WITH LAWS AND REGULATIONS

- (a) Notwithstanding any other provision of this Agreement to the contrary, each Party will retain responsibility for its compliance with all applicable laws and regulations relating to its respective business and facilities and the provision of services to third parties, including applicable export laws, regulations and orders. In performing their respective obligations under this Agreement, neither Party will be required to undertake any activity that would violate any applicable laws or regulations. Both Parties further agree to immediately provide written notice of any suspected violations of law or other questionable conduct occurring with regard to the Agreement, involving either Party or their respective agents or employees.
- (b) The Parties acknowledge and agree that there is no requirement under this Agreement or any other agreement or arrangement between Customer and Company that either Party refer any patient to the other Party for products or services. The Parties acknowledge and agree that no payment under this Agreement is in return for the referral of patients or for the purchasing, leasing or ordering of any products or supplies. The terms and conditions of this Agreement represent the result of arms-length negotiations between unaffiliated parties and no terms or payments have been determined in a manner which takes into account the volume or value or business generated or to be generated between the Parties.

18- MISCELLANEOUS

- (a) ENTIRE AGREEMENT. This Agreement and all Exhibits attached hereto constitute the entire understanding and agreement between the Company and Customer concerning the subject matter hereof and supersedes all prior or contemporaneous negotiations, agreements and understandings, whether oral, in writing, or established by the course of dealing of the parties, concerning the subject matter hereof, including, but not limited to, all prior agreements between the Company and Customer.
- (b) MODIFICATION AND WAIVER. No modification of this Agreement or waiver of any of the provisions herein shall be effective unless in writing and signed by a duly authorized representative of both parties. No waiver of a specific provision shall be deemed a waiver of any other provision not specifically described therein.
- (c) SEVERABILITY. If any part of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable, or, if it cannot be so amended without materially altering the intention of the Parties, hereto, it shall be stricken, and the remainder of this Agreement shall remain in full force and effect.
- (d) AUTHORIZATION. Each of the persons executing this Agreement on behalf of a corporation or other legal entity personally warrants and represents that they do have the requisite and necessary approval and authority to execute this Agreement on behalf of the corporation or other legal entity on whose behalf that person signed. This Agreement is not valid unless and until an authorized representative of each party has signed it.
- (e) COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.
- (f) DISPUTE RESOLUTION. Prior to the initiation of formal litigation resolution procedures, the parties will first attempt to resolve any dispute, controversy or claim arising out of, relating to, involving or having any connection with this Agreement or otherwise related to the Products, including any question regarding the validity, interpretation, scope, performance, or enforceability of this dispute resolution provision (a "Dispute") informally, as follows: within 30 days of a written request of a Dispute, a Vice President (or a delegate) from each party will personally attempt to resolve a Dispute with each other. If these officers do not resolve the Dispute within 30 days, the Dispute may be submitted to mediation if both Customer and the Company agree, or submitted to a court for resolution. The provision of this Section will not be construed to prevent a party from seeking a temporary restraining order or injunctive or other equitable relief with respect to a breach (or attempted breach) of this Agreement by the other party.
- (g) HEADINGS The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provision hereof.

19- GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the province in which Customer is located, excluding its choice of law provisions.