

LEICA BIOSYSTEMS TERMS & CONDITIONS OF SALE OF GOODS AND SERVICES

These Terms and Conditions of Sale of Goods & Services (“**Terms**”) apply to the sale of goods and/or services by the Leica Biosystems Division of Leica Microsystems Inc. or its Leica Biosystems corporate affiliates (“**Affiliate**”). The Leica selling entity is hereinafter referred to as “**Leica**” and the buyer is hereinafter referred to as “**Buyer**”. These Terms are the only terms and conditions applicable to the sale or other provision of Leica’s goods and services to Buyer except those that relate to prices, quantities, and delivery schedules, and any other terms included in Leica’s quotation, which terms control in the event of any conflict with these Terms, unless otherwise agreed upon by Leica in a signed writing. Leica rejects any other terms and conditions appearing on, referenced in, or attached to Buyer issued documents. Buyer’s acceptance of Leica’s quote, submission of a purchase order, or acceptance of delivery of goods and/or services, each constitute its acceptance of these Terms.

1. **Prices.**

- a. Prices quoted are exclusive of, and Buyer will pay, shipping and related fees, foreign, federal, state, local excise, sales, use, personal property and any other taxes or duties, except only taxes based on Leica’s income. Any certificates or other evidence of applicable exemptions to such taxes or duties must be provided to Leica prior to invoicing or such taxes or duties will be charged to Buyer; provided, however, if Leica does not collect such items from Buyer and is later requested or required to pay the same to any taxing authority, Buyer shall promptly make payment to Leica or directly to such taxing authority if requested by Leica.
- b. Leica does not represent its prices are equal to or lower than those charged to other customers or comparable to prices offered by a third party.
- c. The parties agree that the pricing in Leica’s quotation properly reflects any and all discounts (including without limitation the value of any discounts, rebates, or other price concessions) and such discounts are intended to reflect discounts or other reductions in price within the meaning of the discount exception to the Federal Anti-Kickback Statute 42 U.S.C. Section 1320a-7b(b)(3)(A). Buyer will properly report and appropriately reflect such discounted prices on cost reports or claims submitted to any state or federal program that provides reimbursement to Buyer for the discounted goods and/or services. Buyer will also retain invoices and other price documentation and make them available to federal and state officials upon request.

2. **Payment; Suspension.**

- a. Leica will submit all invoices in electronic form and payment will be made by Buyer in accordance with the instructions provided on Leica’s invoice. Invoices will be paid within thirty (30) days from Buyer’s receipt of invoice. In the event Buyer’s payments are not paid when due under these Terms, Leica may charge interest at a rate of one and one half percent (1.5%) per month for the period commencing on the due date until the same are paid in full, or the highest interest rate permitted by applicable law, whichever is lower. Leica may require payment in advance due to its risk assessment of Buyer’s financial condition
- b. Payments are not subject to setoff or recoupment for any present or future claim Buyer may have.
- c. If Buyer fails to make payments under these Terms, Leica may immediately repossess all goods not paid in full and may suspend provision of goods and services, and Buyer will pay for any reasonable out-of-pocket expenses incurred by Leica in collecting payments, including without limitation attorneys’ and collections fees.
- d. If Buyer fails to make timely payments or breaches any other material obligation under these Terms and such failure continues for thirty (30) days after receipt of written notice thereof from Leica, or has a receiving order in bankruptcy made against it, makes any arrangement with its creditors, or has a receiver appointed, Leica may without prejudice to its other rights: (i) demand immediate payment of all unpaid accounts; (ii) suspend further deliveries and/or services; (iii) repossess all goods delivered that are not paid in full under these Terms and collect reasonable costs in recovering said goods; (iv) uninstall all software; and/or (v) terminate these Terms.

3. **Cancellation, Returns and Exchanges.**

Buyer will not return or exchange shipped goods without a return goods authorization (RGA) number, which shall be provided at Leica’s sole discretion. Goods returned without an RGA number will be returned to Buyer at Buyer’s expense. Goods returned with a RGA number may be subject to a twenty percent (20%) restocking fee to be paid by Buyer at Leica’s sole discretion. Leica will not accept any returns or exchanges of

disposable/consumable goods less than six (6) months prior to the expiration date as identified on the product label. Buyer may cancel non-custom goods that have not been shipped, subject to a ten percent (10%) cancellation fee. Notwithstanding anything to the contrary herein, Buyer will not cancel or return custom goods.

4. **Purchase Money Security Interest.** Until Buyer has paid the entire purchase price, Buyer grants and conveys to Leica and Leica retains, a purchase money security interest in the goods. Upon request by Leica, Buyer will execute any document necessary for Leica to perfect the security interest, and Buyer authorizes Leica to file this document and any appropriate financing statement for purposes of such perfection.

5. **Delivery.**

- a. Delivery terms are FOB Shipping Point (Incoterms 2010) for shipments within and US and Ex Works (Incoterms 2010) prepaid and add for shipments outside of the US, unless otherwise agreed to in writing by Leica. Title and risk of loss or damage to the goods pass to Buyer upon delivery to carrier at the point of shipment. Leica will arrange for an appropriate means of transportation of goods. Buyer will pay all transportation charges incurred after goods are delivered to the carrier unless Leica otherwise agrees in writing. Buyer shall bear any special expenses, including special handling, packaging and additional freight charges if Buyer furnishes special transportation instructions and as mutually agreed to in writing. When "export packing" is required, Buyer shall be responsible for any extra charges such as export duties, licenses, fees and the like.
- b. Goods to be exported are subject to Leica’s ability to obtain export licenses and other necessary papers within a reasonable period. Buyer will furnish all Consular and Customs declarations and will accept and bear all responsibility for penalties resulting from errors or omissions therefrom. Buyer will not re-export goods or any products or items which incorporate goods if such re-export violates local or U.S. export laws.
- c. Delivery dates are approximate and not guaranteed. Leica will not be liable for any damages or costs resulting from delays in delivery.

6. **Acceptance.** Acceptance of the goods and services will occur the earliest of: (i) Buyer’s written acknowledgement of acceptance; (ii) successful completion of any testing agreed upon by the parties in writing; (iii) if the foregoing is inapplicable, upon delivery unless Buyer provides Leica with written notice of rejection within three (3) days after delivery or another period mutually agreed to in writing by the parties. Buyer may reject goods and/or services only if: (a) they do not meet Leica’s published specifications; (b) Buyer provides a detailed writing as to how goods and/or services do not meet specifications; (c), and Buyer provides Leica thirty (30) days or another period mutually agreed to in writing by the parties to correct the same. Notwithstanding the above, equipment repair parts are deemed accepted upon delivery and may be rejected only if the incorrect equipment repair part is delivered.

7. **Installation; Maintenance.** Excluding pathology imaging goods, or as otherwise indicated by Leica, Buyer assumes responsibility for installation of goods. Buyer also assumes responsibility for maintenance of goods and ensuring its site meets all specifications and other criteria identified by Leica as necessary in order to support the goods and services. Leica will make installation, support and maintenance services available at Leica’s then-prevailing rates. Leica has no obligation to install, support or maintain goods not sold or manufactured by Leica or its Affiliates.

8. **Field of Use.** Certain goods are FDA cleared and labeled for specific clinical applications. Unless otherwise labeled, all other goods are intended to be made commercially available “For Research Use Only. Not for use in diagnostic procedures.” Buyer assumes the risk for any claims proximately caused by Buyer using Leica goods beyond their stated field of use. Specific product indications and more information is available at <http://www.LeicaBiosystems.com>.

9. **Rights and Use.** Buyer represents it is buying goods for its own internal use only and not for resale or export.

10. **Representations and Warranties.** Buyer represents and warrants that it has all necessary legal power and authority to agree and comply with these Terms. Leica warrants the goods and services in accordance with its standard Leica Biosystems Warranty Policy, available at

<https://leica.app.box.com/v/warranty-policy> incorporated herein by this reference. 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. No employee or agent of Leica, other than an officer of Leica by way of a signed writing, is authorized to make any warranty in addition to the foregoing. Notwithstanding anything to the contrary in these Terms, in no event shall Leica be responsible for any failure to perform in accordance with the requirements of these Terms to the extent such failure results from: (i) the acts or omissions of Buyer or any agent, vendor or contractor of Buyer; or (ii) a Force Majeure Event as defined under these Terms.

11. **Proprietary Rights.** Leica and its licensors will retain all intellectual property rights to its goods and services, including without limitation, designs, drawings, patterns, plans, specifications, technology, technical data, software and information, technical processes and business methods, whether patentable or not, arising from the sale or other provision of goods and/or services to Buyer. Buyer will not enforce against Leica or Leica's customers any patent rights that include any system, process or business method utilizing or otherwise relating to goods and/or services acquired from Leica. Leica will not provide any data, other than installation and specification data, unless it is expressly agreed upon by the parties in writing. The parties will separately negotiate rights and price for such data.
12. **Software.** Leica grants to Buyer a non-transferable, non-sublicenseable, and non-exclusive license to use software contained, pre-loaded, pre-installed, or embedded in the goods ("Firmware"), only as necessary to operate the goods in compliance with accompanying documentation. Nothing contained herein will be construed to grant Buyer any right to use or exploit Leica software in its stand-alone form separate and apart from the goods. All other software is provided to Buyer pursuant to the Leica Biosystems Software Licensing Agreement available at www.leicabiosystems.com/LBS_SLA ("SLA") or Leica's Software as a Service Agreement available at www.leicabiosystems.com/LBS_SaaS ("SaaS"), depending on whether the software is provided on a license or subscription basis. Both documents are incorporated herein by reference.
13. **Professional Services.** Specific terms for certain professional services, which may include IT services, configuration services, compliance services, slide scanning and hosting, purchased by Buyer may be found at <https://leica.app.box.com/v/ServiceTermsandConditions> and are incorporated herein by this reference
14. **Compliance with Laws.**
 - a. The parties will comply with all applicable federal, state or local laws, orders, regulations and/or ordinances, including without limitation anti-bribery, anti-corruption, import/export, privacy and anti-kickback laws. Leica will identify any discounts or rebates provided to Buyer to enable Buyer to satisfy its obligations to accurately report such discounts and rebates under the Anti-Kickback Statute.
 - b. To the extent the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") applies to Leica and its goods and services, Leica will treat any individually identifiable information that constitutes "Protected Health Information" ("PHI") as defined in HIPAA as confidential. Buyer will use reasonable efforts not to disclose to Leica or its Affiliates any PHI except on a need to know basis and will de-identify any PHI in any goods returned or otherwise provided to Leica or its Affiliates, and indemnify, defend, and hold Leica and its Affiliates harmless from any liabilities in connection with any such PHI.
15. **Limitations of Liability.** EXCEPT AS OTHERWISE REQUIRED BY LAW, IN NO EVENT WILL LEICA BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR BUSINESS INTERRUPTION OR LOSS OF PROFITS) BASED UPON BREACH OF ANY WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF LEICA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT OF LIABILITY, LEICA'S MAXIMUM LIABILITY HEREUNDER WILL NOT EXCEED THE PRICE OF THE GOODS OR SERVICES FURNISHED BY LEICA GIVING RISE TO THE FIRST CLAIM. Leica's rights and remedies in these Terms are in addition to, and not in lieu of, any other rights or remedies Leica may have at law or in equity.
16. **Confidentiality.** "Confidential Information" means any confidential or proprietary information that a party ("Discloser") discloses to the other party ("Recipient") hereunder. Confidential information does not include any information that (i) is already in Recipient's possession without obligation of confidence; (ii) is independently developed by Recipient as shown by

- Recipient's records; (iii) becomes publicly available without breach of these Terms; (iv) Recipient otherwise received legally from a third party without obligation of confidence; (v) Discloser authorizes in writing to be disclosed; or (vi) must be disclosed pursuant to a court or government agency order or rule, provided that before disclosing any Confidential Information, Recipient, to the extent permissible by law, provides reasonable notice of such order or rule giving Discloser opportunity to object to or limit such disclosure. Recipient will exercise reasonable care to protect Confidential Information from unauthorized disclosure, which care shall not be less than Recipient exercises to protect its own confidential information. Recipient will use the Confidential Information solely for purposes of these Terms and will disclose the Confidential Information only to its employees or agents who need to know such information and are contractually required to comply with these obligations of confidentiality. Notwithstanding any other provision in these Terms, Discloser may seek provisional remedies in a court of competent jurisdiction, with or without notice, to enforce these obligations. Recipient's duty to hold Confidential Information in confidence expires five (5) years from receipt of such Confidential Information.
17. **Force Majeure.** Except for Buyer's payment obligations, neither party shall be liable for delays in performance, in whole or in part, or any loss, damage, cost or expense, resulting from causes beyond its reasonable control, such as natural disasters, fire, strikes, epidemics, embargos, acts of government or other civil or military authority, war, riots, delays in transportation, difficulties in obtaining labor, materials, manufacturing facilities or transportation, or other similar causes ("Force Majeure Event"). In such event, the party delayed shall promptly give notice to the other party. The party affected by the delay may: (i) extend the time for performance for the duration of the Force Majeure Event, or (ii) cancel all or any part of the unperformed part of this agreement if such Force Majeure Event lasts longer than sixty (60) days. If a Force Majeure Event affects Leica's ability to meet its obligations at the agreed upon pricing, or Leica's costs are otherwise increased as a result of such Force Majeure Event, Leica may increase pricing upon written notice to Buyer.
 18. **Governing Law; Venue.** These Terms are governed by and construed in accordance with the laws of the state of New York, excluding its conflicts of law rules. The parties consent to the sole and exclusive venue and jurisdiction of the federal and state courts situated in or having jurisdiction over the State of New York. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Any action by Buyer for loss or damage arising from or related to the goods and/or services must be commenced within the earlier of one (1) year from the date of delivery or occurrence of the event, or such claim will be forever barred. If Leica substantially prevails in any legal dispute, Buyer shall pay all reasonable costs incurred by Leica, including but not limited to collection costs, attorneys' fees and costs of legal action.
 19. **Assignment.** Neither party may assign these Terms or any rights or obligations hereunder without the prior written consent of the other party, provided Leica may assign this agreement to an Affiliate. Any attempted assignment of this agreement or rights or obligations hereunder in violation of the foregoing will be null and void.
 20. **Notices.** All notices must be sent to the attention of the General Counsel at the address in Leica's quotation and delivered via certified mail, return receipt requested, or a nationally recognized overnight delivery service with signature of the recipient required. Notices shall be deemed effective upon receipt.
 21. **Entire Agreement; Modifications; Waiver; Survival.** These Terms and any Leica quote are the entire agreement between the parties, there being no other promises, terms, conditions, or obligations, referring to the subject matter not contained or referred to herein. If any provision of these Terms, to any extent, is declared invalid or unenforceable, the remainder of these Terms will not be affected thereby and will continue to be valid and enforceable to the fullest extent permitted by law. Any modifications hereto must be in writing and signed by both parties. Leica's failure to strictly enforce any of these terms shall not be considered a waiver of any of its rights hereunder. The termination or expiration of this agreement will not affect the survival and continuing validity of any provision which expressly or by implication is intended to continue in force after such termination or expiration.