

TERMS AND CONDITIONS OF SALE MEDICAL EQUIPMENT

1. Each quotation provided by FUJIFILM Medical Systems U.S.A., Inc., Endoscopy Division (the “Seller”), together with the Terms and Conditions of Sale provided herein and the Limited Warranty, is referred to herein as the “Contract.” Each product referred to in the Contract is referred to below as a “Product.” The Contract contains the entire and exclusive agreement between Seller and the purchaser of the Product (the “Buyer”) regarding the sale and purchase of each Product. If any term, condition or other provision contained in any schedule, exhibit, or other document provided by the Buyer is in any way inconsistent with or creates an ambiguity concerning the terms of the Contract, the terms of the Contract shall control. No addition to, or waiver, alteration, or modification of the Contract shall be valid unless made in writing signed by an authorized representative of each party specifically referring to the Contract. Any issuance of a purchase order or any other definite and timely act or expression of acceptance on the part of Buyer shall constitute acceptance of the terms of the Contract.
2. No Contract shall exist except upon Buyer’s acceptance of Seller’s offer to sell the Product upon the terms and conditions set forth in the Contract, and no purchase order that does not conform with the terms of the Contract shall be deemed an acceptance of the Contract as to such non-conforming terms without the express written consent of Seller. Any additional or different terms contained in Buyer’s purchase order, shipping papers or other documents relating to this transaction are rejected and null and void and of no effect with respect to the Contract, unless expressly approved by Seller in writing. The Contract cannot be cancelled except with Seller’s prior written consent.
3. All sales are final. No Product may be returned to Seller without prior written authorization of Seller. Shipping charges on all authorized returns are the sole obligation of Buyer. In the event Seller authorizes a return, a restocking charge of twenty percent (20%) of the invoice price of any Products accepted for return by Seller for exchange or credit shall be applied by Seller.
4. Seller may offer to Buyer certain rebates or discounts from time to time. These discounts and/or rebates will be disclosed on Seller’s applicable price quotation and/or invoice. If Buyer receives reimbursement from Medicare, Medicaid or any other state or federal program, Buyer must fully and accurately disclose and report the cost of Products, including such rebates and discounts to state and federal governments in its cost report or other reporting mechanisms.
5. If Seller or its authorized service provider loans Seller’s equipment to Buyer during the period that Buyer’s equipment is being repaired, and such repair is not covered under Seller’s warranty or an equipment repair service agreement between Buyer and Seller, the value of such loan may be subject to public disclosure by Seller or Buyer under applicable laws and regulations. If required, Seller and/or Buyer will report the value of such loan in accordance with applicable law.
6. Payment for the full amount of each invoice shall be made to Seller, addressed as indicated on each invoice, payable in United States currency, in accordance with the terms outlined in the invoice. All invoices, which are not paid within thirty (30) days shall be subject to interest at the lesser of 1.25% per month, or the maximum amount allowed by applicable law, from the date of the invoice until it is paid. Acceptance by Seller of bank draft, check, or other media of payment is subject to immediate collection of the full-face amount thereof.
7. If Buyer breaches any of its obligations under the Contract or any other contractual obligation in favor of Seller, Seller may, in Seller’s sole discretion, (a) choose to defer any or all further shipments of Product or other performance under the Contract until Buyer cures its breach, or (b) by delivery of written notice to Buyer describing the breach, immediately terminate the Contract and any other contractual obligation to Buyer related thereto; provided that Buyer shall have ten (10) days after receipt of such written notice to reinstate the Contract by curing such breach. In the event of a termination, all outstanding payment obligations or other indebtedness of Buyer to Seller due under the Contract shall be due and payable no later than fifteen (15) days after delivery of notice of termination, subject to the right of reinstatement.

8. Any date of shipment stated on the invoice for any shipment of Products pursuant to the Contract is approximate only and is based on Seller's production or inventory at the date hereof, and the times stated are subject to Seller's receipt of all necessary information from Buyer to permit timely delivery of Product. Seller's ability to ship Product may be affected in case of an act of force majeure, such as an act of God, war, sabotage, accidents, riots, fire, explosion, flood, strike, lockout, injunction, inability to obtain fuel, power, raw materials, labor, containers or transportation facilities, accident, breakage of machinery or apparatus, national defense requirements, or any other cause beyond the control of Seller. Seller shall have no liability for the failure to ship or deliver any Product in the event of such force majeure and Seller's obligation to complete the delivery of such Product shall be suspended during such force majeure event and for a reasonable period of time thereafter. Buyer is not relieved from accepting shipment at the agreed price, and according to this Contract, when such force majeure event is ended. If shipment is in installments, delay in the shipment of any installment shall not relieve Buyer of its obligation to accept any remaining shipments. During any shortage of Products, Seller may apportion and allocate Products among itself and its subsidiaries, affiliates and customers as Seller deems fit in its sole discretion. Seller reserves the right to cancel, without liability, any order, the shipment of which is or may be delayed by reason of any cause or causes beyond its control as aforesaid.

9. All taxes assessed to any order of Product are the responsibility of Buyer whether or not invoiced, including, but not limited to, local and regional sales taxes and personal property tax, or if applicable, Buyer is to provide Seller with a valid tax exemption certificate. In the event that Buyer either fails to pay the tax or other charges as agreed above or fails to provide a valid exemption certificate, Buyer agrees to indemnify, defend and hold Seller and its affiliates harmless from any liability, cost and expense Seller incurs by reason of Buyer's failure, including without limitation, reasonable attorneys' fees and expenses.

10. EXCEPT FOR THE LIMITED WARRANTY ATTACHED HERETO AS EXHIBIT A, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS, OR IMPLIED, BY ACT OR LAW, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER MATTER WITH RESPECT TO ANY PRODUCT.

11. SELLER'S TOTAL LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ASSOCIATED WITH THE CONTRACT, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY IS EXPRESSLY LIMITED, AT SELLER'S SOLE DISCRETION, TO EITHER (i) THE REPAIR OR REPLACEMENT OF THE NONCONFORMING PRODUCT, OR (ii) PAYMENT IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE PAID FOR THE SPECIFIC PRODUCT FOR WHICH DAMAGES ARE CLAIMED. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OTHER DAMAGES INCLUDING, WITHOUT LIMITATION, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. If any Product delivered by Seller to Buyer is defective in materials or workmanship, or if Buyer has any other claim against Seller pursuant to the Contract, Buyer shall notify Seller of such nonconforming goods or claim within one (1) year of the delivery of such Product, and Buyer's sole remedy shall be as provided in Section 9 herein. All claims by Buyer shall be made by written notice to Seller, and no offset or deduction from any invoice is permitted. **BUYER'S FAILURE TO GIVE NOTICE TO SELLER OF ANY SUCH CLAIM WITHIN ONE (1) YEAR AFTER THE DATE OF DELIVERY SHALL CONSTITUTE THE UNQUALIFIED ACCEPTANCE OF THE PRODUCT BY THE BUYER AND A WAIVER BY BUYER OF ALL CLAIMS WITH RESPECT THERETO.**

13. Seller shall deliver or cause to be delivered all Products to a carrier FOB Seller's facility for transport to Buyer's place of business or to such other destination as directed in writing. All shipping and transportation costs shall be borne by Buyer. Buyer shall bear all risk of loss with respect to the Product from the moment the Product is delivered to the carrier FOB Seller's facility.

14. In the event Seller authorizes the return of the Product or component part, the Buyer shall reprocess/disinfect such Product and complete Seller's Service/Return Notification. If the Product is not returned with a completed Service/Return Notification, Seller will assume the Product has not been reprocessed/disinfected. Seller shall reprocess/disinfect the Product before commencing repair and invoice the Buyer \$150.00 sterilization fee.

15. Buyer shall be responsible for and pay any and all applicable tariffs, duties and clearance charges imposed by any governmental entity upon the Products and/or any technology sold or otherwise transferred hereunder and shall obtain and pay for any and all export and import licenses or permits necessary for shipment and/or delivery of such Products and/or technology. Buyer acknowledges that the Products and/or any technology sold or otherwise transferred hereunder may be subject to U.S. and other governmental export and import control laws applicable to the purchase, sale, use, export, re-export, import or other transfer (collectively, “transfer”) of such Products and/or technology, in whole or in part, including, without limitation, Export Administration Regulations and Executive Orders and regulations administered by the Office of Foreign Assets Control of the U.S. Department of Treasury (referred to as the “Transfer Laws”). Buyer represents and warrants that it is familiar with the requirements and restrictions of all Transfer Laws, and shall comply with such laws at all times.

16. Except to the extent expressly permitted otherwise by Seller in writing, Buyer agrees not to disclose to any person outside of its employ, nor to use for any purpose other than for its procurement of Products hereunder, any information which is received by Buyer from or on behalf of Seller or its affiliates and which relates to the Products, or which is developed hereunder, until such information is made publicly available by Seller or its affiliate.

17. This Contract shall bind and inure to the benefit of the successors and permitted assigns of the respective parties. In order that the parties may fully exercise their rights and perform their obligations arising under the Contract, any provisions of the Contract that are required to ensure such exercise or performance (including any obligation accrued as of the termination date) shall survive the termination of the Contract. Buyer may not assign its rights or delegate its performance in whole or in part under this Contract without the prior written consent of Seller. Any attempt to assign or delegate this Contract without Seller’s written consent shall be void.

18. The Contract shall be construed in accordance with the laws of the State of New York, including its provisions of the Uniform Commercial Code, and without regard to (i) the conflict of laws provisions thereof, (ii) the United Nations Convention on Contracts for the International Sale of Goods, and (iii) the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended. All disputes with respect to the Contract shall be heard exclusively by the courts of New York and the parties agree to the jurisdiction of such courts. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New York for purposes of all legal proceedings arising out of or relating to the Contract or the transactions contemplated hereby, and each of the parties agrees not to commence any legal proceedings relating thereto except in such courts. Each of the parties waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction. The failure of a party to require full or strict performance of any term set forth herein shall not affect the right to require full and strict performance of any term at any time thereafter. Any waiver must be in a writing signed by the waiving party. If any one or more of the provisions of the Contract shall be held to be invalid, illegal, or unenforceable, the other provisions shall not be affected and the Contract shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein. Nothing in the Contract shall be construed as creating any direct or beneficial right in or on behalf of any third party. In the event any party institutes legal proceedings to enforce its respective rights arising out of the Contract, the prevailing party shall be entitled to the award of attorneys’ fees and court costs, plus cost of executing, enforcing and/or collecting any judgment at all trial and appellate levels.

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EXHIBIT A:

FUJIFILM MEDICAL SYSTEMS U.S.A., INC., ENDOSCOPY DIVISION MEDICAL EQUIPMENT LIMITED WARRANTY

FUJIFILM Medical Systems U.S.A., Inc., a New York corporation (“FMSU”) warrants, subject to the terms of this Limited Warranty, to the first retail purchaser or retail lessor (the “Purchaser”) that the enclosed FMSU product (“Product”) is at the time of purchase or lease free from defects in materials and workmanship. This Limited Warranty is exclusively for the benefit of the Purchaser and cannot be transferred or assigned.

The “Warranty Period” for new Products shall be a period of one (1) year and for demonstration or other previously used Products shall be a period of six (6) months, in each case from the date of installation, but in no event more than thirty (30) days after the date of FMSU’s invoice relating to such Products. During the Warranty Period, FMSU will, at its sole and exclusive discretion, either (i) replace or repair any defective or nonconforming Product or component part of the Product or (ii) pay an amount not to exceed the purchase price paid for the specific Product for which damages are claimed. Replacement products or component parts may be either new or refurbished. Such repair or replacement is the exclusive remedy under this Limited Warranty. FMSU may repair or replace the defective or nonconforming Product or component parts any number of times under this Limited Warranty, but such repairs or replacements shall not affect the duration of the Warranty Period.

This Limited Warranty does not apply to any consumable items (i.e., lamps, valves, accessories, etc.). Nor does it apply to computer and other equipment or instruments, distributed but not manufactured by FMSU. Those products are not warranted by FMSU, and carry only such warranties as may be given by their manufacturers. This Limited Warranty is not a service contract; the Purchaser remains responsible for repair costs customarily related to normal daily clinical use of the Product. This Limited Warranty does not apply to damages resulting from shipping, installation, accidents, tampering, vandalism or acts of God.

To the extent permitted by applicable law, the warranties set forth herein are in lieu of, and exclusive of, all other warranties, express or implied. **ALL OTHER WARRANTIES OTHER THAN THOSE SET FORTH ABOVE ARE EXCLUDED. THERE SHALL BE NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** If under applicable law the implied warranties set forth above may not validly be disclaimed or excluded, the duration of such implied warranties is limited to the Warranty Period. **IN NO EVENT SHALL FMSU BE LIABLE FOR ANY OTHER DAMAGES INCLUDING, WITHOUT LIMITATION, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, LOSS OF USE, OR LIABILITIES TO OTHER PARTIES WHETHER IN CONTRACT OR TORT SUSTAINED BY THE PURCHASER OR ANY OTHER PERSON RESULTING FROM THE PURCHASE, LEASE OR USE OF THE PRODUCT OR BY THE NEGLIGENCE OF CUSTOMER EVEN IF FMSU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

PURCHASER RESPONSIBILITIES

To obtain warranty service, the Purchaser must contact FMSU at 1-800-385-4666 during the Warranty Period and promptly after any failure of the Product or component part. The Purchaser shall provide a description of the problem. FMSU will then provide the address of a location to which the Product must be returned freight prepaid by the Purchaser. In the event FMSU authorizes the return of the Product or component part, the Purchaser shall reprocess/disinfect such Product and complete FMSU’s Service/Return Notification. If the Product is not returned with a completed Service/Return Notification, FMSU will assume the Product has not been reprocessed/disinfected. FMSU shall reprocess/disinfect the Product before commencing repair and invoice the Purchaser \$150.00 sterilization fee.

The Purchaser must train operators in the safe and proper use of the Product consistent with the Operation Manual provided by FMSU.

WARRANTY NULLIFICATION

This Limited Warranty is void and of no effect if the Product or any component part is modified or altered, is subjected to misuse, abuse, or lack of reasonable care, or repairs available under this Limited Warranty are made by persons not authorized by FMSU. For purposes of this Limited Warranty, “misuse” shall mean misapplication, improper or excessive use of the Product that results in damage or failure of the Product, for example using the equipment in a manner other than its intended use as recommended and marketed by FMSU, “abuse” shall mean mistreatment that results in damage to the Product, for example dropping the Product resulting in broken parts, cracks, fluid leaks or poor image quality (CHA damage), crushing the insertion tube or light guide tube, flooding the equipment due to lack of leak testing, and “lack of reasonable care” shall mean that the Product is not being used in a manner that a reasonable person would use the Product, for example failure to leak test before cleaning and disinfection of the Product after each and every procedure, damage related to the improper use of Automated Endoscope Reprocessor (“AER”), failure to remove the Product from the AER in a timely manner after disinfection cycle completion or failure to use the Product in accordance with the Operation Manual provided by FMSU.

OTHER CONDITIONS

No agent, employee, representative, distributor or dealer of FMSU is authorized to change, modify or alter this Limited Warranty in any manner whatsoever, or to make any additional warranties regarding FMSU products. Accordingly, any statements or representations regarding FMSU products not specifically contained in this Limited Warranty shall be void and of no effect and should not be relied upon by any purchaser unless such statement or representation is in writing and signed by the President of FMSU.

No claim for breach of warranty, or any other claim, in tort, contract, or otherwise, arising out of or related to FMSU products, may be commenced more than ONE (1) year following the delivery date of the Product or the accrual of the claim, whichever occurs first. All disputes with respect to this Limited Warranty shall be heard exclusively by the courts of New York and the parties agree to the jurisdiction of such courts. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New York for purposes of all legal proceedings arising out of or relating to this Limited Warranty or the transactions contemplated hereby, and each of the parties agrees not to commence any legal proceedings relating thereto except in such courts. Each of the parties waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction. In no event shall FMSU be liable for any breach of warranty in any amount exceeding the purchase price paid of the Product.

The limitations of liability and other provisions of this Limited Warranty shall inure to the benefit of FMSU, its assigns or successors.

SOME STATES MAY NOT RECOGNIZE A DISCLAIMER OR LIMITATION OF WARRANTIES AND/OR LIMITATION OF LIABILITY SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO THE PURCHASER. THE PURCHASER MAY ALSO HAVE DIFFERENT AND/OR ADDITIONAL RIGHTS AND REMEDIES THAT VARY FROM STATE TO STATE. IF ANY IMPLIED WARRANTIES APPLY AS A MATTER OF LAW, THEY ARE LIMITED IN DURATION TO THE LENGTH OF THIS WARRANTY. FMSU DOES NOT WARRANT THE PRODUCTS WITH RESPECT TO THIRD PARTY SOFTWARE PROGRAMS OR THAT THE PRODUCTS WILL MEET THE PURCHASER'S REQUIREMENTS.

SAFETY NOTICE

PROPER MAINTENANCE AND REPAIR ARE ESSENTIAL TO THE SAFE AND RELIABLE OPERATION OF THE PRODUCT. SERVICE AND MAINTENANCE PROCEDURES RECOMMENDED BY FMSU ARE DESCRIBED IN THE OPERATION MANUAL. SOME OF THESE OPERATIONS MAY REQUIRE THE USE OF SPECIAL TOOLS OR DEVICES, WHICH SHOULD ONLY BE USED BY TRAINED PERSONNEL WHEN AND AS RECOMMENDED IN THE OPERATION MANUAL. THE INSTRUCTIONS CONTAINED IN THE OPERATION MANUAL ARE NOT INTENDED AS A SUBSTITUTE FOR TRAINING AND EXPERIENCE IN THE PROPER AND SAFE USE OF THE PRODUCT.

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