

## "TERMS CONDITIONS"

**EQUIPMENT:** Vendor will provide Customer with one (1) copy of any applicable operator's manual. Service manuals or additional operator manuals shall not be provided without additional charge unless specifically stated. Customer understands and acknowledges that all Equipment is manufactured by third parties and is sold by Vendor acting as either a distributor or a manufacturer representative. Customer further acknowledges and agrees that this Agreement is not binding upon Vendor until approved by the Manager of Vendors Central Office or another authorized officer of Vendor, or, with respect to Equipment for which Vendor acts as a manufacturer representative, an authorized officer of the manufacturer.

**PAYMENT:** Terms are net 30 days from the Customer's receipt of a proper invoice. Amounts payable to Vendor are payable in full without setoff or deduction, for applicable taxes or otherwise.. Interest, if any, on late payments shall be governed by Md. Code Ann. State Fin. & Proc. § 15-101 et seq. Customer may not cancel or refuse delivery of any order for custom-made Equipment, sound room, SLM's, computers, or special order items. For cancellation or refusal to accept an order for other types of instrumentation (e.g. Audiometer, Immittance, OAE, ENG, ABR, H.A. Analyzer units), Customer must pay a service charge equal to 20% of the total price for the canceled or refused items. In addition, Customer is additionally responsible for all charges associated with such cancellation or refusal including, but not limited to, removal, insurance, and shipping.

**WARRANTIES: *Manufacturer Warranties:*** Vendor makes no representations or warranties, express or implied, concerning the Equipment. Vendor shall provide for Customer to receive any and all manufacturer's warranties in connection with the Equipment and all rights to make claim for breach of warranty that are or may be available with respect to the Equipment, to the extent allowed by the manufacturer. The provisions of any manufacturer's agreement with Vendor setting out the manufacturer's warranty and service responsibilities together with all limitations thereon and exclusions therefrom are incorporated into and made a part of this Agreement. **Within ninety (90) days of delivery for clinical instrumentation, Vendor will provide, in addition to the manufacturer's warranty, free warranty services on-site without additional charge to Customer. After such ninety (90) day period, Customer must pay Vendor's standard travel rates for such on-site warranty services. *No Other Warranties:*** No representation or other affirmation of fact, including but not limited to statements regarding capacity, suitability for use, or performance of any Equipment, shall be or be deemed to be a warranty or representation by Vendor for any purpose, nor give rise to any liability or obligation of Vendor whatsoever. Vendor makes no express or implied warranties of any kind, including those of merchantability and fitness for a particular purpose, and expressly disclaims the same.

**DELIVERY/INSTALLATION:** Customer will pay all installation, set-up, insurance and shipping charges (F.O.B.Destination), and such charges are not included in the Purchase Price unless specifically stated. Delivery dates are approximate and any delivery schedule is estimated only and presented in good faith by Vendor. Vendor will not assume any liability, consequential or otherwise, for any delay or failure to deliver all or any part of the Equipment. Customer shall be responsible for all necessary site preparations prior to and during the installation of the Equipment in accordance with Vendor and/or applicable manufacturer instructions. Such site preparations may include, but are not limited to, provision of electric power, HVAC requirements, accessibility to site, and the provision of sufficient flooring for the Equipment. Customer shall bear any costs or penalties incurred by Vendor as a result of Customer's failure to provide adequate facilities and site preparations for installation at time of delivery as per Vendor or manufacturer instructions or as a result of Customer's failure to accept delivery of the Equipment.

**TITLE AND SECURITY INTEREST:** The title and the risk of loss shall pass to Customer on delivery. Customer hereby grants to Vendor a security interest in the Equipment to secure any portion of the Purchase Price. A copy of this Agreement may be filed on behalf of Vendor with appropriate state authorities at any time after signature by Customer as a financing statement in order to protect Vendor's security interest in the Equipment. Until such time as the Purchase Price and all other charges specified herein are paid in full, Customer shall: (a) maintain the Equipment in good operating condition; (b) keep the Equipment free from liens and encumbrances; (c) not permit use of the equipment in any manner likely to be injurious to the Equipment; (d) not remove or permit removal of the Equipment from its original location or make or permit any alterations without the prior consent of Vendor; (e) keep Vendor advised of the location of the Equipment and permit Vendor to inspect the Equipment at all reasonable times; and (f) procure and maintain self insurance. in accordance with Md. Code Ann., State Fin. & Proc. § 9-105(c).

**WAIVER:** Failure of Vendor to enforce the breach of any portion of this Agreement by Customer from time to time shall not constitute a waiver of such right in respect to the same or any other breach.

**LIMITATIONS OF LIABILITY:** VENDOR SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LIABILITY, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY, INCIDENTALLY OR CONSEQUENTIALLY BY ANY EQUIPMENT, BY AN INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN. NOTHING IN THIS AGREEMENT OR OTHERWISE SHALL BE CONSTRUED TO IMPOSE LIABILITY ON VENDOR FOR ACTS OR OMISSIONS OF ANY MANUFACTURER. VENDOR SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN SHIPMENT, INSTALLATION, OR FURNISHING OF EQUIPMENT OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT AND UNDER NO LEGAL THEORY (TORT, CONTRACT OR OTHERWISE), SHALL (A) VENDOR BE LIABLE FOR LOSS OF PROFITS, INDIRECT, SPECIAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT OR USE OF THE EQUIPMENT, (B) THE LIABILITY OF VENDOR EXCEED THE AMOUNTS PAID TO VENDOR BY CUSTOMER HEREUNDER, OR (C) ANY CAUSE OF ACTION BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER SUCH CAUSE OF ACTION HAS ACCRUED.

**GENERAL:** This Agreement is to be governed by and construed under the laws of the State of Maryland, without regard to any conflict of laws provision thereof. All titles and captions contained in this Agreement are for the convenience of reference only and shall not be used in the interpretation or construction of this Agreement. Neither this Agreement, nor any interest herein, shall be assigned by Customer without the express written consent of Vendor. This Agreement contains the entire agreement between Customer and Vendor with respect to the subject matter of this Agreement. All prior arrangements or understandings are superseded by this Agreement. Customer may submit a purchase order to Vendor but Customer explicitly acknowledges that any purchase order is for the administrative convenience of Customer only. VENDOR HEREBY OBJECTS TO AND REJECTS ANY AND ALL DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS CONTAINED IN ANY ORDER SUBMITTED TO VENDOR BY OR ON BEHALF OF CUSTOMER. This Agreement may be modified or amended only in a written agreement signed by each party hereto specifically stating that they have agreed to amend this Agreement.