

GENERAL TERMS AND CONDITIONS

LEICA MICROSYSTEMS PTY LTD

ACN 078 483 459 ABN 63 078 483 459
Suite 2, Level 3, Building A, 11 Talavera Road
Macquarie Park NSW 2113
Australia

1. Scope

- 1.1. All products are sold and Maintenance Services are provided by Leica Biosystems Division of Leica Microsystems Pty Ltd. ("Leica") to the Customer upon these Terms and Conditions. If there is any inconsistency between the provisions of any Leica quote or tender response and these Terms and Conditions, the quote or tender response will apply to the extent of the inconsistency.
- 1.2. Unless Leica otherwise agrees in writing, none of Leica's quotes are contractual offers and all quotes lapse after 30 days or the lesser period specified in the quote.
- 1.3. No orders submitted by the Customer will bind Leica until accepted by Leica in writing and Leica may accept any order in whole or in part.
- 1.4. All specifications, illustrations, drawings, data, dimensions and weights in respect of products are believed to be accurate but are given for the Customer's information only. To the extent permitted by law, they do not form part of the contract of supply and must not be relied on.

2. Product price

- 2.1. In the case of imported products, prices are calculated by Leica on the basis of exchange rates selected by Leica from time to time. All Leica quotes will include the exchange rate (if any) used to calculate prices specified in those quotes. If an imported product is:
 - (a) delivered to Leica or its agent in Australia after the date of Leica's latest quote to the Customer in relation to that product; and
 - (b) the exchange rate used for the quote differs by more than 2% from the spot rate quoted by the Commonwealth Bank of Australia ("CBA") for conversion of Australian dollars into the relevant currency as at the date Leica or its agent, at Leica's election, took delivery of that product in Australia (and Leica will inform the Customer of the relevant date if the Customer so requests),

either Leica or the Customer may revise 75% of the quoted price by the same percentage change in rate.

- 2.2. All Leica quotes based on LMS Shop are calculated in the relevant local currency or Euros as specified. PEX Price List.
- 2.3. All prices exclude freight charges to the Customer's premises. A freight charge, based on distance and weight of the complete packaged materials will be added to each invoice to cover packaging, handling, transport and insurance. Any transport requirements by the Customer outside of Leica's standard transport procedures will attract an additional charge to the Customer. Unless otherwise agreed in writing, delivery by airfreight, express delivery or courier at the Customer's request will be charged to the Customer at cost. If the Customer wishes to use its own carrier, the Customer must pay all freight and insurance costs ex-Leica's store and must indemnify Leica and keep Leica indemnified from and against any claims, demands, losses and/or liabilities arising in respect of the transportation of products by the Customer's carrier.

3. Maintenance Charges

- 3.1 Maintenance Charges are payable by the Customer to Leica yearly in advance and are not refundable.

- 3.2 Maintenance Charges are based on the capacity of the System and no reduction in the use or availability of the Maintained Products for whatever reason shall decrease the Maintenance Charges payable.
- 3.3 The price for consumables used in the provision of Maintenance Services is not included in the Maintenance Charges and must be paid by the Customer unless otherwise agreed in writing.
- 3.4 After the provision of the Maintenance Services has commenced, Leica may from time to time revise the Maintenance Charges by notice to the Customer at least ninety (90) days before the variation comes into effect.
- 3.5 If at any time Leica determines that the work required in providing the Maintenance Services results from activities other than normal usage of the System as defined in the operator's manual or other than from fair wear and tear, or the Customer requests work outside the Principal Period of Maintenance, Leica may impose charges for such work over and above the Maintenance Charges and is not obliged to undertake such work until the Customer has accepted the additional charges.

4. Quoted amounts

- 4.1 Prices and Maintenance Charges are listed or quoted by Leica in Australian dollars unless specified otherwise and, subject to paragraph 1.2, may be varied without notice.
- 4.2 Unless Leica states otherwise in writing, all prices, charges and other amounts identified in these Terms and Conditions or any Leica quote, offer or tender response as payable by the Customer do not include goods and services tax ("GST") or other government taxes and duties which will be determined by Leica and added to the invoice. If GST applies, Leica's invoice will be in the form of a tax invoice. GST will not be added if the Customer satisfies Leica that it is exempt. Tax and duties paid by Leica are not refundable to the Customer. The Customer will on demand reimburse Leica any amounts so paid.

5. Payment

- 5.1 Unless Leica agrees otherwise in writing, where:
- (a) a credit account has been approved by Leica, accounts are payable in Australian dollars (or other agreed currency) in full within 30 days from date of invoice, unless a shorter settlement period is specified in the relevant Quote; or
 - (b) a credit account has not been approved by Leica, full prepayment in Australian dollars must be made in cash, or another form of payment acceptable by Leica, before shipment of the goods to the Customer (or on delivery, if agreed in writing by Leica).
- 5.2 The Customer must not make any deduction from payments due to Leica in respect of any set-off or counter-claim unless Leica agrees in writing.
- 5.3 Default in Payment. If Customer fails to make any payment to Leica on the relevant payment due date, Leica shall be entitled to charge for a late payment interest at the discount rate charge by Commonwealth Bank of Australia plus two percent (2%) per annum or the highest rate allowed by law, whichever is higher, on overdue accounts. Upon default, without prejudice and in addition to such other rights Leica may have under this Agreement and any applicable laws, Leica shall be entitled to (i) suspension of the supply of all Products and/or Services not fully paid for by the Customer and (ii) reimbursement of all out-of-pocket and consequential expenses incurred by Leica in collecting any payments (plus the applicable interests) due, including (but not limited to) any attorneys' fees and collections fees. In addition, Leica shall have the right to demand advance payment for future orders or to require irrevocable and confirmed letters of credit to be opened. For the avoidance of doubt, Leica will not be liable to the Customer for any losses and damages suffered by the Customer arising out of the suspension due to the Customer's default.
- 5.4 Unless otherwise specified by Leica in writing, all payments due to Leica will be made to Leica at the address shown on the front page of these Terms and Conditions/Quote.

6. Delivery and Force Majeure

- 6.1 Leica will make reasonable efforts to adhere to quoted, requested or agreed delivery dates. However, Leica will not be liable for any failure to deliver products on or by these dates nor for any loss or damage suffered in connection with such failure.
- 6.2 If the Customer uses its own carrier, delivery of the products will be ex-Leica's store.
- 6.3 Leica will not be liable for any loss or damage in respect of any failure or delay in performance of its obligations under these Terms and Conditions if that failure or delay is due in whole or in part to any cause beyond its reasonable control (including, without limitation, acts of God, fire, storm, flood, earthquake, power supply disturbances, blackouts, natural disasters, pandemic, strikes, lockouts, labour disputes, riots, acts of war, governmental regulation imposed after the fact, delays in transit, shortage of materials or machinery, delays in delivery or shipment on the part of manufacturers, suppliers or agents). In such an event:
- (a) Leica may extend the quoted, requested or agreed delivery dates or deliver part of an order or suspend delivery during that period of delay or may cancel the order; and
 - (b) any other obligations of Leica will be suspended to the extent that, and for the period during which, Leica is unable to perform them as a result of the event, and such non-performance will not be a breach of these Terms and Conditions.

7. Risk and Title

- 7.1 Risk in the products passes to the Customer on delivery to the Customer or its carrier, even if the Customer has not signed an acknowledgement of receipt or paid the full invoiced price for the products.
- 7.2 Leica retains title to all products supplied by it to the Customer until Leica has received payment in full of all sums due in connection with the supply of all products by Leica to the Customer, in cleared funds, after which:
- (a) The Customer may sell or otherwise dispose of the products in the ordinary course of its business.
 - (b) The Customer must insure the products against all usual risks to full replacement value until ownership passes to the Customer. Any insurance monies received by the Customer in respect of the products owned by Leica, shall be held on trust for Leica.
 - (c) The Customer must use its best endeavours to keep each delivery of products from Leica separate and clearly identified as Leica's property. If Customer processes or commingles the products into other property, Leica takes title to that other property as well.
 - (d) If Customer disposes of the products before payment of the full purchase price to Leica, it does so as Leica's fiduciary agent and the sale proceeds of such disposal are the property of Leica and are held on trust by the Customer for Leica.
- 7.3 If payment for any product is overdue, Leica is entitled, without prejudice to any of its other rights and remedies, to repossess products owned by Leica and to enter into any premises upon which these products are stored, without notice, for this purpose. Leica will not be liable to the Customer for any loss or damage suffered by the Customer and the Customer must indemnify Leica against any claims or demands made against Leica by third parties in connection with Leica's exercise of its rights under this paragraph 7.3.
- 7.4 If Leica exercises its rights under paragraph 7.3 and partial payment for the product has already been made, Leica will refund to the Customer the amount paid less any interest calculated under paragraph 5.3(a), costs incurred by Leica in exercising its rights under paragraph 7.3 and any amount recoverable under the indemnity given in paragraph 7.3.
- 7.5 The Customer acknowledges and agrees that:
- (a) if a term used in this clause 7.5 has a particular meaning in the PPSA, it has the same meaning in this clause;

- (b) its purchase of products pursuant to these Terms and Conditions constitutes a Security Agreement for the purposes of the PPSA;
 - (c) it grants a Security Interest to Leica in all products (and their proceeds) previously supplied by Leica to the Customer (if any) and in all future products (and their proceeds) supplied by Leica to the Customer;
 - (d) Leica may register its Security Interest in the products (and their proceeds) as a Purchase Money Security Interest on the Register; and
 - (e) it must execute all documents and do such further acts and things and provide such further information as may be required by Leica to enable Leica to register the Security Interest on the Register.
- 7.6 Where the PPSA applies to action taken by Leica in relation to the products, the Customer waives its right to receive any notices required under section 95, 118, 121, 130, 132, 135 and 157 of the PPSA.

8. Inspection and Return of Products and Cancellation of Orders

- 8.1 The Customer must inspect the products immediately on delivery. Without limiting Leica's right to dispute such a claim, any claim for damaged or short or wrong delivery must be made in writing and received by Leica within seven working days of delivery. Otherwise, the Customer will be deemed to have accepted the products and, to the extent permitted by law, the products will be deemed to be free of any defects which would be apparent on reasonable examination. Allegedly damaged or wrongly delivered products must not be returned to Leica until requested and must be made available for inspection by Leica or its representative. To the extent permitted by law, if Leica is satisfied that products are damaged (other than as a result of transit by the Customer's carrier) or that there has been wrong or short delivery (including non-delivery) of products, Leica will issue a written approval for the return of the products or acknowledgement of a wrong, short or non-delivery where applicable ("Returns Authorisation") and at its option will replace these products or refund or credit any portion of the invoiced price attributable to these products.
- 8.2 Subject to paragraphs 8.1 and 9.1, products may only be returned to Leica for credit or a credit given for undelivered products:
- (a) with, and in accordance with the terms of, a Returns Authorisation;
 - (b) after a Returns Authorisation number has been issued; and
 - (c) if applicable, so long as the products are received by Leica in their original and resaleable condition in which they were delivered.
- 8.3 Where products are returned for credit, unless the error was due to shipment not being in accordance with the relevant Purchase Order, a handling and restocking charge of 15% of the total invoiced price (excluding GST) will be charged and deducted from the credit. If Leica requires products to be returned by its nominated carrier it will bear the cost. Otherwise, Leica will not be responsible for any expense in connection with the return of products.
- 8.4 A request for cancellation of any order by the Customer must be notified to Leica in writing no later than seven days prior to any quoted, requested or agreed delivery date and must be agreed to by Leica. If Leica agrees to the cancellation, a cancellation fee of 10% of the total invoiced price (excluding GST) of the order cancelled will be payable by the Customer at Leica's option.

9. Warranty

- 9.1 Subject to paragraphs 9.2, 9.3 and 9.4, Leica will repair or replace, at its option, the products or any parts of the products which it ascertains are defective or unserviceable due to poor materials, faulty design or deficient manufacture during the Warranty Period. A product repaired or replaced under this express warranty will be warranted only for the remainder of the original Warranty Period.
- 9.2 This express warranty does not cover:

- (a) damage to any product during shipment;
- (b) any product that is repaired or altered by the Customer or any third party other than with Leica's prior written consent;
- (c) any product that fails or is damaged as a result of fair wear and tear, improper storage, operation or maintenance, operation under abnormal or unsuitable conditions, misuse, neglect, abuse, accident or act of God;
- (d) accessories or consumables such as fuses, bulbs and batteries; and
- (e) any shipment and/or travelling expenses; or
- (f) any batteries.

9.3 No products may be returned to Leica for service under this express warranty without a Returns Authorisation or without a Returns Authorisation number being issued. All requests to Leica for a Returns Authorisation must include the product name and serial number, details of proof of purchase and a description of the alleged defect.

9.4 All products returned to Leica for service under this express warranty must be returned within the Warranty Period and in accordance with all other terms of the Returns Authorisation.

10. Maintenance Services

10.1 Leica will provide the Maintenance Services in relation to the Maintained Products during the Principal Period of Maintenance.

10.2 When preventative maintenance (other than the use of Remote Diagnostic Facility) is to be undertaken, the Maintenance Services in relation to the Maintained Products will be carried out during Business Hours.

10.3 When the Customer informs Leica that a Maintained Product is faulty, Leica will:

- (a) attempt to diagnose and correct the fault by the use of telephone advice; and
- (b) if the fault is not cleared through the use of telephone advice, attend the Maintenance Site within the relevant Response Time to undertake diagnosis, repair or replacement to clear the defined fault.

10.4 In the event that the fault is cleared by the replacement of a faulty item and the replacing item is not new, any existing warranty rights relating to the replaced item will apply to the replacing item for the remaining period of the Warranty Period.

10.5 Items replaced as a result of the activities outlined in paragraphs 10.2 and/or 10.3 become the property of Leica.

11. Excluded Services

11.1 The Customer acknowledges and agrees that Leica is not obliged in any way to maintain or repair any item:

- (a) other than the Maintained Products;
- (b) which has been operated (without Leica's written consent) in a manner not in accordance with the manuals or documentation supplied with the Maintained Products;
- (c) which has suffered physical damage through the Customer's misuse;
- (d) which has been operated (without Leica's prior written consent) outside its technical or environmental specifications;
- (e) which has been damaged by electromagnetic, electrostatic or radio frequency interference, or power disturbances, however derived; or
- (f) which has suffered damage by being operated with consumable supplies or accessories not approved by Leica or the relevant equipment supplier; or
- (g) which has changes or alterations in specifications made without Leica's consent; or
- (h) which has been altered, modified, tampered or maintained by a third party without Leica's consent; or
- (i) which has been reinstalled, relocated and/or has had software / products removed by a third party without Leica's consent; and/or
- (j) that is no longer functioning properly due to customer's refusal to accept and/or update

any required new software releases and/or hardware upgrades.

11.2 Unless otherwise stated in these Terms and Conditions, the Customer acknowledges and agrees that Leica is under no obligation to provide the following:

- (a) Maintenance Services outside the Principal Period of Maintenance;
- (b) the latest version of operating software;
- (c) design support for the System comprising hardware and software;
- (d) modification of the Maintained Products for whatever reason;
- (e) refurbishment of the Maintained Products; and/or
- (f) installation of additional equipment or accessories or the removal or relocation of any equipment or accessories (including the Maintained Products).

11.3 Unless otherwise stated in these Terms and Conditions, the Customer acknowledges and agrees that Leica is under no obligation to provide or replace any of the following items:

- (a) wiring and cabling external to the System;
- (b) peripheral equipment not forming part of the System;
- (c) operating supplies, accessories or paint; and/or
- (d) materials for the purposes of refurbishing the Maintained Products.

11.4 In the event that the Customer requests Leica to undertake maintenance or repair of items excluded from maintenance under paragraph 11.1, and Leica agrees to do so, Leica will charge the Customer for the work undertaken, these charges being in addition to Maintenance Charges.

11.5 In the event that the Customer requests Leica to provide any or all of the services to deal with any of the matters specified in paragraphs 11.2 or 11.3, the appropriate charges will be negotiated for such of the services that Leica may, at its discretion, agree to supply.

12. Responsibility of the Customer

12.1 The Customer must:

- (a) nominate an appropriate person as a contact person for matters relating to the Maintenance Services and inform Leica of the nominated person's authority to act for the Customer;
- (b) ensure where possible that Leica's vehicles have access to parking on the Maintenance Site;
- (c) ensure that Leica's maintenance personnel have free and safe access to the Maintained Products at all times during the Principal Period of Maintenance;
- (d) ensure that Leica's maintenance personnel have timely and free and safe access to the Maintained Products should the Customer request services outside the Principal Period of Maintenance;
- (e) provide to Leica's maintenance personnel, without expense to Leica, adequate space, light, electric power sockets and access to a telephone;
- (f) make available on request the services of any person who operates the Maintained Products at the Maintenance Site;
- (g) notify Leica immediately when the Customer ceases to be in possession of the Maintained Products at the Maintenance Site; and
- (h) take all necessary precautions to protect the Maintained Products from physical, environmental and electromagnetic or electrostatic damage.

12.2 The Customer must not carry out, or cause to be carried out by other persons, modifications or adjustments to the Maintained Products without Leica's prior consent in writing.

13. De-identification of Personal Data

13.1. The Customer acknowledges that Leica would not require access to any Personal Data, including patients' Personal Data, at any time in performance of its obligations under this Agreement. Where applicable, in the event any data is required to remedy technical issues and/or performance of the products ("Permitted Purposes"), the Customer agrees that prior to

providing or granting access to such data to Leica, the Customer shall be responsible to ensure all Personal Data in such data, if any, are De-Identified and Coded to ensure that the identity of the individual to whom the data pertains is not identifiable to and is not traceable by Leica and/or Leica's Personnel. The Customer further represents that it has established policies and procedures in place to prevent the release of individuals' Personal Data and is responsible for informing and ensuring its employees to comply with the Customer's obligations in this clause. The Customer shall fully indemnify Leica and its affiliates against any and all claims, losses or damages arising from or related to non-compliance of this clause including but not limited to costs on a solicitor/attorney-client basis.

For the purpose of this clause,

- (a) "Personal Data" means any information, data and/or opinion relating to and about an identified or reasonably identifiable natural person;
- (b) "De-Identified" means the identity of the individuals is not known to and ensure data is not traceable by Leica and/or Leica's Personnel; and
- (c) "Coded" means that a number, letter, symbol, or combination thereof (i.e. the code) has replaced identifying individual information (such as name or national registered identification number); and
- (d) "Leica's Personnel" means employees, agent and/or contractor of Leica associated with the performance of its obligations under this Agreement.

14. Term of the Maintenance Services

14.1 Subject to Leica's right to terminate the Maintenance Services pursuant to paragraph 14.3(d), Leica will provide the Maintenance Services from the Commencement Date for a minimum period of twelve months. The term for the provision of Maintenance Services will be automatically renewed each twelve months unless otherwise agreed.

14.2 The Customer may terminate the Maintenance Services by notifying Leica in writing ninety (90) days in advance of the proposed termination date, provided that such termination may only take effect after the minimum twelve month term specified in paragraph 14.1 has expired.

14.3 In the event that the Customer:

- (a) fails to pay the Maintenance Charges within 14 days after the payment falls due;
- (b) modifies or adjusts or causes to be modified or adjusted the Maintained Products and Leica does not consent to, or approve of, the modifications or adjustment;
- (c) is otherwise in breach of these Terms and Conditions and fails to rectify such breach within seven (7) days of being given written notice by Leica of the breach requiring its rectification,

Leica may, at its option:

- (d) terminate the Maintenance Services by written notice to the Customer: or
- (e) without affecting its rights under paragraph 14.3(d), give notice to the Customer that Leica will not perform its obligations under these Terms and Conditions unless and until the breach is rectified and may refuse to so perform its obligations under these Terms and Conditions.

14.4 Leica has the right to terminate the Maintenance Services immediately by giving the Customer notice in writing if the Customer becomes bankrupt or insolvent or if a receiver, administrator or liquidator takes possession of, or any encumbrance is taken over, any material part of the Customer's assets, or Customer suffers any equivalent of the foregoing.

15. Limitation of liability

15.1 To the maximum extent permitted by law, Leica will not be liable, nor will there be any remedy against Leica, for any indirect or consequential loss, damage, costs or expenses or for any loss of profit, loss of data, loss of business opportunity, revenue or goodwill, howsoever caused and

whether or not Leica has been advised of the possibility of such loss, including without limitation any liability of the Customer to any other person, or injury or harm whether on a contractual, tortious (including without limitation, negligence) or statutory basis or otherwise.

15.2 Except as expressly provided in these Terms and Conditions and as required by any Prescribed Terms:

- (a) all terms, conditions, guarantees and warranties expressed or implied by law, or otherwise relating to the performance of Leica's obligations under, or any goods or services supplied by Leica in connection with, these Terms and Conditions are excluded; and
- (b) the maximum aggregate liability of Leica under or in connection with these Terms and Conditions or their subject matter, whether in contract, tort (including negligence), equity, under statute or on any other basis, is limited to an amount equal to the cost of the goods or services the subject of the relevant claim.

15.3 Leica's liability (if any) under these Terms and Conditions for any loss and/or damage incurred by the Customer and/or any third party will be reduced proportionately to the extent that any fault, negligent act, or omission of the Customer (or its subcontractor, agent, or personnel) and/or third party contributed to those loss, damage, expense, or liability.

15.4 Where any Prescribed Terms apply, the liability of Leica, its officers, directors, employees, agents and related bodies corporate to the Customer for a breach of a Prescribed Term is limited to the maximum extent permitted by law, and in the case of Prescribed Terms under the Australian Consumer Law, to at Leica's option:

- (a) in the case of goods: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and
- (b) in the case of services (including Maintenance Services): the supply of the services again; or the payment of the cost of having the services supplied again.

16. Infringement of Property Rights

16.1 Nothing in these Terms and Conditions confers or is deemed to confer on the Customer any licence, right or other interest in any intellectual or other property or rights comprised in the products or in any designs, drawings or specification relating to the products, which at all times, as between Leica and the Customer, are vested in Leica.

16.2 With the exception of any pre-existing intellectual property rights or any open source software, all intellectual property rights in any material created in the performance of its obligations under these Terms and Conditions vests in, or is hereby transferred or assigned to, Leica immediately upon creation.

If the Customer becomes aware of any infringement or potential infringement of any of Leica's intellectual property or other rights in the products or if the Customer becomes aware of any claim by a third party that a product supplied by Leica infringes the intellectual property or other rights of that third party, it will immediately notify Leica of the infringement or potential infringement or claim and will give every assistance to Leica that Leica may reasonably require in relation to the matter.

17. Indemnity

17.1 The Customer must indemnify and keep indemnified Leica, its officers, employees and other contractors or agents from and against all actions, proceedings, claims and demands whatsoever which may be brought or made against it, them or any of them by any person in respect of or arising out of:

- (a) any fault, negligence, wrongful act or omission of the Customer or any of its servants, employees or agents; or
- (b) death or injury to persons or any loss or damage to property arising out of the Customer's use of any goods or services supplied or provided under these Terms and

Conditions, except to the extent caused by any deliberate act of Leica or any of its servants, employees or agents.

18. Miscellaneous

18.1 These Terms and Conditions:

- (a) subject to clause 1.1, constitute the entire agreement between the Customer and Leica as to its subject matter and supersede all of Leica's previous general terms and conditions and all prior understandings, agreements, negotiations, representations, commitments, whether written or oral;
- (b) may only be varied in writing signed by authorised representatives of the Customer and Leica; and
- (c) are to be governed by, and construed in accordance with, the laws of the State of New South Wales, and the parties submit to the exclusive jurisdiction of the courts of this State.

18.2 Unless Leica agrees otherwise in writing, Leica will not be bound by provisions inconsistent with these Terms and Conditions that appear in any acknowledgement by Customer, purchase order (including any Purchase Order) or in any other communication between Leica and the Customer.

18.3 If any provision of these Terms and Conditions is invalid, void or unenforceable, the remaining provisions of these Terms and Conditions will remain in full force and effect.

18.4 No waiver of or failure to exercise any rights under these Terms and Conditions by either the Customer or Leica will constitute a waiver of those rights unless the waiver is made expressly in writing.

18.5 All notices or communications required to be given to Leica pursuant to these Terms and Conditions will be in writing and delivered to the address shown on the front page of these Terms and Conditions/Quote. All notices or communications to be given to the Customer shall be delivered to the Maintenance Site or as otherwise notified by the Customer to Leica in writing.

18.6 Leica may sub-contract the supply or delivery of the products and/or the Maintenance Services at its discretion.

18.7 Any error or omission in the PEX Price List, invoices or other documents or information issued by Leica is subject to correction without any liability on the part of Leica.

18.8 Customer may not assign its rights or delegate its obligations under these Terms and Conditions either in whole or in part without the prior written consent of Leica, which it may decide to grant or not in its absolute discretion.

18.9 Leica and the Customer are independent contractors and nothing in these Terms and Conditions is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other. Neither party shall have the authority to act in the name of or on behalf of the other, or otherwise to bind the other in any way.

18.10 The rule of construction that in the event of any uncertainty in any provision in any agreement, such agreement shall, in construing/interpreting the uncertainty, be construed or interpreted against the drafter of such agreement, shall not be applicable to this Agreement.

19. Interpretation and Definitions

19.1 In these Terms and Conditions:

- (a) "\$" and "dollar" refer to Australian currency;
- (b) the singular includes the plural and vice versa;
- (c) reference to a right or obligation of any two or more persons is to be taken as conferring that right or their assuming that obligation, as the case may be, severally; and
- (d) the word "person" includes a company, firm or other legal entity.

19.2 In these Terms and Conditions, unless the context otherwise requires:

- (a) “**Australian Consumer Law**” means the Australian Consumer Law at Schedule 2 of the Competition and Consumer Act 2010 (Cth).
- (b) “**Business Hours**” means the hours from 9:00am to 5:00pm (AEST or AEDT as applicable) on weekdays (excluding public holidays in New South Wales).
- (c) “**Commencement Date**” means the date specified as such in the relevant Quote or as otherwise agreed in writing by Leica.
- (d) “**Customer**” means the person who submits a Purchase Order.
- (e) “**SFDC**” means Leica Microsystems Quoting System, software used by Leica for issuing quotes from time to time.
- (f) “**Maintenance Charges**” means the charges to be paid by the Customer to Leica for Maintenance Services as set out in the relevant Quote.
- (g) “**Maintenance Services**” means the preventative, diagnostic, repair or replacement activities to be carried out by Leica.
- (h) “**Maintenance Site**” means the address at which Maintained Products are located as specified in the relevant Purchase Order or is otherwise notified in writing by Customer to Leica.
- (i) “**Maintained Products**” means the products for which the Customer requires Maintenance Services as specified in the relevant Purchase Order.
- (j) “**PEX Price List**” means Standard Leica Price List.
- (k) “**PPSA**” means the *Personal Property Securities Act 2009* (Cth).
- (l) “**Prescribed Terms**” means terms, conditions, guarantees and warranties implied or expressly included by law into some contracts for the supply of goods or services and which the law expressly provides may not be excluded, restricted or modified or may be excluded, restricted or modified only to a limited extent.
- (m) “**Principal Period of Maintenance**” means the defined hours and days during which Leica will supply Maintenance Services as specified in the relevant Quote or as otherwise agreed in writing by Leica.
- (n) “**Purchase Order**” means an order submitted to Leica for products and/or Maintenance Services, to the extent that such order has been accepted by Leica.
- (o) “**Remote Diagnostic Facility**” means the use of a diagnostic facility from a remote personal computer connected to the System.
- (p) “**Response Time**” means the period of time starting from when the Customer requests Maintenance Services within which Leica is required to commence the diagnostic process (by accessing the relevant Maintained Product via a Remote Diagnostic Facility or by the arrival of a customer service engineer at the Maintenance Site), as specified in the relevant Quote or as otherwise agreed in writing by Leica.
- (q) “**Quote**” means the written quote issued by Leica to the Customer in relation to products and/or Maintenance Services based on which a Purchase Order is issued.
- (r) “**System**” means equipment and software relating to the operation of the Maintained Products.
- (s) “**Warranty Period**” means, in relation to a product, the period of 12 months from the date of delivery of the product to the Customer, or such other period specified in the relevant Quote.

(December 2023 Version)