



## TERMS AND CONDITIONS OF SALE AND SERVICE

The following Terms and Conditions of Sale and Service (“Terms”) govern the Sale of Products and Support and the license of Software by Advanced Imaging Research Inc. dba SREE MEDICAL SYSTEMS and its subsidiaries (“SREE”), unless modified by a separate written agreement between SREE and the Customer. SREE reserves the right to correct any typographical or clerical errors in Prices, Specifications or acknowledgements.

### 1. DEFINITIONS

- a. “Delivery” means the date when SREE places the Product(s) at Customer or Customer’s representative’s disposal at the location specified in the quotation or order acknowledgement or when Product(s) have been handed over to the charge of the carrier.
- b. “Product(s)” means any hardware sold or Software licensed under these Terms. “Custom Products” means Products manufactured or configured to meet Customer requirements.
- c. “Software” means one or more computer programs in object code format, whether stand-alone or bundled with other Products, and related documentation provided to Customer under these Terms.
- d. “Specifications” means specified technical documentation about Products, which is published by SREE in effect on the date SREE ships Customer’s order.
- e. “Support” means any standard service such as hardware maintenance and repair, Software updates and maintenance; Product troubleshooting, hardware or software installation or training. “Custom Support” means Support adapted to meet Customer requirements.

### 2. PRODUCT(S) or SERVICE(S) SUBJECT TO SALE

The Product(s) or Service(s) subject to this Sale shall be limited to those described in the Offer. They do not include, and Customer assumes responsibility for a) safety equipment used with the Product(s) or Service(s) or by Customer’s employees or any third parties in handling or working with the Product(s); and b) signs, plaques, and training related to the proper use of the Product(s).

### 3. OPERATING DIRECTIONS

- a. Customer shall comply with and require its agents and employees to comply with all directions, safety notices, warnings, and other instructions furnished by SREE and its third party suppliers, and shall use and require its agents and employees to use reasonable care in the use of the Product(s).
- b. SREE SHALL HAVE NO OBLIGATION OR LIABILITY FOR ANY FAILURE OF CUSTOMER TO OBSERVE THE PROVISIONS OF THIS SECTION, OR FOR ANY INJURY OR DAMAGE CAUSED, IN WHOLE OR PART, BY CUSTOMER’S FAILURE TO COMPLY WITH APPLICABLE FEDERAL, STATE, OR LOCAL SAFETY REQUIREMENTS.

### 4. PRICES

- a. Prices are subject to change without prior notification.
- b. Prices are in U.S. Dollars and valid for the period indicated on the quotation. Support prices, except for prepaid and Custom Support may be changed by SREE upon 60 days written notice.
- c. Prices do not include shipping and handling charges, any charges or taxes (value added, sales, excise, use, ad valorem, etc.) or any export or import custom duties or associated docking charges etc which will be payable by Customer in addition to the purchase price if applicable. Estimates of shipping and handling charges or taxes and the like if provided to Customer and exceeded will be invoiced to the Customer.
- d. If SREE is legally obligated to collect any taxes for Products or Services provided to Customer, such taxes will be invoiced to and paid by Customer within 7 days of receipt of invoice. If exemption from taxes is claimed, Customer must provide a Certificate of Exemption.

### 5. ORDERS AND RETURNS

- a. All orders are subject to acceptance by SREE. Product orders must specify Delivery within 180 days from order date.
- b. Customer may cancel orders for Products (except Custom Products) prior to shipment to the charge specified on the Quotation (or “Offer”). Cancellation of orders for Products or rescheduling shipment for Products will be subject to SREE’s approval. Product returns must be authorized by SREE and are subject to SREE’s return/refurbishment charges.
- e. Orders for Custom Products can neither be cancelled nor returned. Rescheduling shipment of Custom Products is possible to within a reasonable period and limited to but not exceeding 60 days from the approximate date of Custom Product Delivery. Custom products once en-route cannot be rescheduled.

f. Cancellation of a Support order will be subject to applicable charges. Information regarding applicable Support cancellation charges is available upon request. See Section 10 for details.

## **6. SHIPMENTS AND RISK OF LOSS, DELIVERY and INSPECTION**

- a. SREE shall at its own discretion select the method and carrier for delivery of all Product(s) and will make reasonable efforts to meet Customer's Delivery requirements. If SREE is unable to meet Customer's Delivery requirements, alternative arrangements may be agreed.
- b. All shipments are per Incoterm FCA, SREE Medical facility Cleveland, Ohio.
- c. Title to hardware Products and risk of loss and damage passes to Customer upon delivery by SREE to carrier and any claims and losses or damages shall be made by Customer directly with carrier.
- d. Any shipment, delivery, or performance date stated in the Quotation or Offer or other contract document is approximate only and does not constitute any guarantee of shipment, delivery, or performance on any particular date. The Customer must make inspection of delivered goods and claims for any omissions or shortages within 96 hours after receipt of the applicable shipment.

## **7. INSTALLATIONS AND ACCEPTANCE**

- a. For Products with installation included in the purchase price, acceptance by Customer occurs upon completion of installation by SREE. Installation is complete when the Product passes SREE's or its agents and subcontractors or SREE approved third parties or third party OEM's installation and test procedures for which SREE is responsible.
- b. If Customer schedules or delays installation by SREE or its agents or subcontractors more than 15 days after Delivery, Customer acceptance of the Product(s) will occur on the 16<sup>th</sup> day after Delivery.
- c. Any form of acceptance by Customer shall result in the purchase of the Product(s) or Service(s) at the price specified in the Quotation. Customer shall be deemed to have accepted any of SREE's Terms to which Customer has not specifically objected. Customer shall be required to set forth each objection to SREE's Terms in writing, signed and dated by Customer and delivered to SREE prior to or contemporaneous with Customer's form of acceptance. SREE's failure to object to provisions in any communication from Customer (including, without limitation, penalty clauses of any kind), shall not be a waiver of SREE's Terms, nor an acceptance by SREE of any such provisions. Any terms in Customer's document of acceptance, which are different from or additional to SREE's Terms, are hereby rejected unless specifically accepted by SREE in a separate document signed by both Customer and SREE, regardless of whether such other terms would materially alter the terms hereof. No course of dealing, custom or usage, which is contrary to SREE's Terms, shall apply.

## **8. PAYMENT**

- a. All payments shall be made in U.S. Currency.
- b. Payment terms are subject to SREE credit approval. Customer will furnish sufficient information to enable SREE to assess Customer's creditworthiness. SREE may, in its discretion, require full or partial payment in advance. Payment is due net 30 days from date of invoice. Invoices for contractual Support will be issued ninety (90) days in advance of the Support period. SREE may change credit or payment terms at any time should Customer's financial condition or previous payment record so warrant.
- c. SREE may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other SREE agreement, if after 10 days of written notice; the failure has not been resolved.
- d. Payment shall not prejudice claims on account of omissions or shortages in shipment, but no such claim will be allowed unless made within 96 hours after receipt of the applicable shipment by Customer.
- e. Delayed or delinquent payment from the due date may result in an interest of 1.5% per month (or the highest rate permitted by applicable laws, if lower) on the unpaid balance charged to the Customer. SREE solely reserves the right to charge this interest to the Customer.

## **9. WARRANTY**

- a. Product warranty information is available with products (such as the operating manual), on quotations or upon request. The warranty period begins on acceptance for all Products that need SREE installation.
- b. For Products that do not need SREE installation, warranty period begins upon delivery of the Product to the Customer. Customer may receive a different warranty when the product is purchased as part of a MR system.
- c. SREE warrants SREE hardware Products against defects in materials and workmanship, and further warrants that such Products conform to Specifications.
- d. SREE warrants that Software will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the hardware designated by SREE. SREE further warrants that SREE owned Software will substantially conform to Specifications. SREE does not warrant that Software will operate in hardware and Software combinations selected by Customer, or meet requirements specified by Customer.
- e. SREE does not warrant that the operation of Products will be uninterrupted or error free.
- f. If SREE receives notice of defects or non-conformance as defined in Sections 9(b), 9(c) and 9(l) during the warranty period. SREE will, at its option, repair or replace the affected Product(s). Customer will pay expenses for return of such

- Product(s). SREE will pay expenses for shipment of repaired or replacement Product(s). If SREE is unable, within a reasonable time, to repair or replace the affected Product(s), Customer will be entitled to a refund of the purchase price upon prompt return of SREE Product(s) to SREE.
- g. SREE warrants that SREE Support will be provided in a professional and workmanlike manner. For ninety (90) days from the date of repair, SREE will replace, at no charge, defective parts used in SREE's repair of Product(s).
  - h. Some newly manufactured SREE Products may contain and SREE Support may use remanufactured parts which are equivalent to new in performance.
  - i. Customer's Product Warranty is non-transferable.
  - j. SREE reserves the right to invalidate Customer's warranty for Products with an on-site warranty, or Products that have been installed by SREE, in the event Customer relocates such Products. Customer's warranty for such Products may be reinstated provided SREE verifies, at Customer's expense, that such Products are in good operating condition.
  - k. The above warranties do not cover defects resulting from improper or inadequate maintenance, installation, repair or calibration performed by Customer or a third party not authorized by SREE; Customer or third party supplied hardware or software, interfacing or supplies; unauthorized modification; improper use or operation outside of the Specifications for the Product; misuse, abuse, negligence, accident, loss of damage in transit, improper operation, modification or misapplication; or improper site preparation.
  - l. Shipping and handling charges including but not limited to taxes, duties etc. of parts, components or Product(s) or parts, components or Product(s) modified per Customers' specification whether manufactured by SREE or a third party shipped to the Customer site is Customer responsibility when the Product is under the OEM's warranty. The appropriate charges will be invoiced to the Customer. OEM shall bear all shipping and handling costs for faulty item(s) requiring replacement covered ONLY under Warranty. Customer shall bear all shipping and handling costs for faulty item(s) requiring replacement outside of the Warranty period.
  - m. THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. SREE SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR DESIGN.
  - n. For Products not manufactured by SREE, SREE will extend to the Customer the same warranty protection SREE receives from the OEM.

## 10. SUPPORT

- a. Customer may order Support from SREE's current Support offering as available. Orders for Support are also subject to the Product specific Support terms and the terms indicated on the quotation and applicable Support agreements.
- b. To be eligible for a Support agreement, Products must be at current specified revision levels and may require SREE's certification, at Customer's expense, that Products are in good operating condition.
- c. Product relocation may result in additional Support charges and modified service response times. Support of Products moved to another location is subject to availability.
- d. Customer is responsible for removing any products not eligible for Support to enable SREE to perform Support services. Additional charges, computed at SREE's standard rates, may be incurred for extra work caused by such products.
- e. Support does not cover any damage, defects or failures caused by:
  - 1. Use of parts not specified for use in SREE's Products or specified by third party suppliers and OEM's;
  - 2. Site conditions that do not conform to SREE's site specifications or that specified by third party suppliers and OEM's;
  - or
  - 3. Neglect, improper use, fire or water damage, electrical disturbances, transportation, work, or modification by non SREE employees or subcontractors, or other causes beyond SREE's control.
- f. Customer is responsible for maintaining a procedure external to the Products to reconstruct lost or altered Customer files, data or programs. Customer will have a representative present when SREE provides Support services at Customer's site. Customer will notify SREE if Products are being used in an environment which poses a potential health hazard to SREE employees or subcontractors. SREE may require Customer to maintain such Products under SREE supervision.
- g. Additional return to SREE Support coverage may be purchased at the time of Product purchase and such coverage will be honored by any SREE authorized repair center. Additional on-site Support coverage may be purchased and such coverage will be limited to the site in which the additional coverage was purchased.
- h. Support will be available on call five days per week during "normal working hours" as requested by the Customer. "Normal working hours" are between 9:00AM and 5:00PM Monday through Friday, excluding public holidays in the State or Territory of installation
- i. Emergency Support, that is Support provided outside normal working hours, are not included. Emergency Support will be furnished at SREE at its then current rates. Travel time and expenses will either be included in this rate or will be invoiced separately to the Customer.
- j. Support Services such as routine Scheduled or unscheduled maintenance, upgrade or testing of equipment generally will be provided by SREE or SREE trained personnel at the Customer site. However, if in the opinion of the service personnel the Product or one or more components needs to be returned to SREE's service center for servicing, then SREE personnel will inform the Customer and shall have the complete discretion of removing the Product or component(s) in question. In most

- cases, such repairs can be performed at the Customer site. In all cases, necessary steps will be taken to minimize Customer down time by all means reasonably possible by SREE personnel and SREE approved third parties.
- k. SREE and approved third parties will provide the necessary test equipment except the MRI scanner, in order to perform Support under this agreement. The Customer must provide the required MRI scanner, so timely testing, validation verification of our Products and third party suppliers can be carried out in a timely manner.
  - l. Support services and charges commence the 1<sup>st</sup> day after original equipment warranty runs out on SREE's Products and those supplied by third parties or to that specified in writing by the Customer and agreed to by the Customer and SREE or its suppliers by signing the written document.
  - m. One or multiple year Support agreements can be entered in to, by both parties. This agreement can be terminated by either party by giving at least ninety (90) days written notice to the other party prior to the end of each year of operation as defined in Section 10(i) or on the quotation or order acknowledgement. The Support agreement may only be terminated at the end of a year of operation and any termination shall take effect at the end of the then current year of operation
  - n. SREE may increase Support charges from time to time and new charges will be effective from the commencement of the following year of operation. SREE shall invoice the Customer for the following year at the then applicable rates.
  - o. Parts covered by Warranty will be provided free of charge. A charge will be levied for parts not covered by warranty
  - p. Consumables such as but not limited to trolley tires, patient table, mattress, set sealing for the incubator, water tank (bottle), its adapter and feeder assembly, aggregate cover, venture, blower wheel with coupling, I/V pole, support pads and straps, movable hinges, hand ports, doors, belts, coaxial cables, connectors, knobs etc. are excluded.
  - q. Shipping and handling charges including but not limited to taxes, duties etc. of parts or components or Product(s) whether manufactured by SREE or a third party shipped to the Customer site is Customer responsibility under a Support agreement. The appropriate charges will be invoiced to the Customer.
  - r. If one or more Products or one or more parts are in such a condition that it or they can no longer be maintained in a reasonable working order by SREE or SREE's approved third party's service programs, then SREE or its approved third party service agency or agencies may provide the Customer an estimate of reconditioning charges or replacement costs for the Product or parts thereof. Should the equipment requiring such reconditioning not be made available for the reconditioning within sixty (60) days of receipt of SREE's estimate, the relevant equipment shall no longer be maintained under this agreement.

## 11. LICENSES

- a. SREE grants Customer a non-exclusive license to use the Software for internal purposes in accordance with the documentation provided with the software. Such documentation may include license terms provided by SREE and SREE's third party suppliers, which will apply to the use of the Software and take precedence over these license terms. In the absence of documentation specifying the applicable license, Customer is granted the right to use one copy on one machine or instrument, or otherwise indicated on the quotation.
- b. Customer's Software license is transferable upon SREE's receipt of the name, address and location of transferee and payment of any applicable fees to the extent permissible under local laws. Customer will immediately upon transfer deliver all copies of the Software to the transferee. The transferee must agree in writing to SREE's Software license terms. In addition, Customer's license terms will be binding on involuntary transferees, notice to which is hereby given. Customer's license will automatically terminate upon transfer.
- c. The Software is owned and copyrighted by SREE or its third party suppliers. SREE and its third party suppliers retain all right, title and interest in the Software. Third party suppliers may protect their rights in the Software in the event of any violation of these license terms.
- d. Customer will not disassemble or otherwise modify the Software without written authorization from SREE, except as permitted by law. Customer may not copy the Software onto any public or distributed network.
- e. SREE may terminate Customer's license upon notice for breach of these license terms. Customer must destroy all copies of the Software immediately upon notice of termination.
- f. Software and technical data rights granted to the federal government include only those rights customarily provided to end user Customers.

## 12. INTELLECTUAL PROPERTY CLAIMS

- a. SREE will defend or settle any claim against Customer that Products (excluding Custom Products) delivered under these. Terms infringe an intellectual property right in the North American Continent (Canada, U.S.A., Mexico) where the Products are sold, provided Customer promptly notifies SREE in writing, and cooperates with and provides control of the defense or settlement to SREE, to the extent legally permissible.
- b. In the event of an infringement claim under Section 12(a), SREE will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely, SREE may, at its option, modify the Product, procure any necessary license, or replace it. If SREE determines that none of these alternatives is reasonably available, SREE will refund Customer's purchase price upon return of the Product.
- c. SREE has no obligation for any claim of infringement arising from:
  - 1) SREE's compliance with, or use of, Customer's designs, specifications, instructions or technical information;

- 2) Product modifications by Customer or a third party;
  - 3) Product use prohibited by Specifications or related application notes; or
  - 4) Use of the Product with products not supplied or approved for use with SREE's or third party suppliers.
- d. These terms state SREE's entire liability for claims of intellectual property infringement

### **13. LIMITATION OF LIABILITY AND REMEDIES**

- a. In no event will SREE, its subcontractors or third party suppliers be liable for special, incidental, indirect or consequential damages (including downtime costs, loss of data, restoration costs, lost profits, or cost of cover) regardless of whether such claims are based on contract, tort, warranty or any other legal theory, even if advised of the possibility of such damages. This exclusion is independent of any remedy set forth in these Terms.
- b. SREE's liability to make warranty refunds under Section 9 to the Customer is limited to the purchase price of the Product.
- c. The limitations set forth in Sections 13(a) and 13(b) above will not apply to infringement claims under Section 12, or to damages for bodily injury or death.
- d. The remedies in these Terms are Customer's sole and exclusive remedies.

### **14. GENERAL**

- a. SREE will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.
- b. Customer may not assign or transfer a Support agreement without SREE's prior written consent. Any attempted assignment or transfer without such content will be void. As conditions to such content; (i) the assignee or transferee must agree in writing to the applicable SREE Support terms; (ii) SREE may require that all Products included within a Support agreement are in good operating condition; and (iii) SREE may impose applicable charges in connection with the assignment or transfer. Customer may not assume a Support agreement in connection with any bankruptcy proceedings without SREE's written consent.
- c. If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel unfulfilled obligations.
- d. SREE will store and use any of Customer's Personal Data for SREE's or third party suppliers' use strictly for business purposes only (such as the handling of orders, advertising campaigns or market research). Customer represents and SREE acknowledges Customer's representation that consent from individual data subjects has been obtained or is not needed.
- e. Customer who exports, re-exports, transfers or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable U.S. and other laws and regulations, and for obtaining required export and import authorizations. Customer will comply with U.S. and other laws and regulations prohibiting transfers, exports and imports to certain end-users and destinations or for certain end-uses, unless written authorization is obtained from the appropriate government. SREE may suspend performance if Customer is in violation of applicable laws or regulations.
- f. The laws of the State of Ohio will govern disputes arising in connection with these Terms. All actions or proceedings under or relating to this agreement will be resolved in Cuyahoga County's court: provided, however that in SREE's discretion such an action may be heard in some place designated by if necessary to acquire jurisdiction over third persons so that the dispute can be resolved in one action. Customer hereby agrees to appear in any such action, consents to the jurisdiction of such courts and waives any objections it might have as to venue in any such court.
- g. Provisions herein which by their nature extend beyond the termination of any sale or license or Products or Support will remain in effect until fulfilled.
- h. Neither party's failure to exercise any of its rights under these Terms will be deemed a waiver of forfeiture of those rights.
- i. To the extent that any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.
- j. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.
- k. Products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance or direct operation of a nuclear facility. Customer is solely liable if Products or Support purchases by Customer are used for these applications. Customer will indemnify and hold SREE harmless from all loss, damage, expense or liability in connection with such use.
- l. These Terms constitute the entire agreement between SREE and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. Customer's purchase of license of Products and Support will constitute Customer's acceptance of these Terms, which may not be changed except by an amendment signed by an authorized representative of each party.