

TERMS AND CONDITIONS OF SALE

Impath Networks Canada Corporation, a federal corporation under the laws of Canada with offices at 42 Payzant Avenue, Suite 100, Halifax, Nova Scotia, Canada B3B 1Z6 ("Impath Networks") agrees to sell Products to Customer on the following terms and conditions of sale.

ORDERS

All sales by Impath Networks of any hardware or parts thereof ("Equipment") and licenses of any software and accompanying documentation ("Software") to Customer shall be governed by these terms and conditions. The Equipment and Software collectively shall be known as the "Products". All orders must be in writing and are subject to Impath Networks' acceptance. Authorization to cancel or change orders may be obtained in writing only in accordance with Impath Networks' then current policies and procedures.

1. PRICING AND TAXES

Prices are set forth in the attached quotation. Prices are exclusive of, and Customer is responsible for, all applicable sales taxes, import or export duties, licenses, fees, excises and tariffs. Impath Networks will invoice Customer, and Customer promises to pay, for all such applicable amounts except to the extent excused in an exemption certificate delivered to Impath Networks prior to invoice.

2. TERMS OF PAYMENT

All Products will be invoiced upon shipment. Payment is due in United States dollars, at Ottawa Canada, on or before thirty (30) days from the invoice date. All late payments shall be charged interest calculated on a daily basis from the date of shipment until it is paid in full, at the lesser of the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law.

3. SECURITY INTEREST

Impath Networks reserves a security interest in the Products and in the proceeds thereof until payment is made in full. If Customer fails to pay any amount when due, Impath Networks shall have the right to repossess and remove all or any part of the Products from Customer. Any repossession or removal shall be without prejudice to any other remedy of Impath Networks hereunder, at law or in equity. Customer agrees, from time to time, to execute financing statements and other instruments reasonably requested by Impath Networks to transfer, create, secure, perfect and enforce this security interest.

4. DELIVERY

4.1. Delivery is F.O.B. Impath Networks' facility. All risk of ownership shall pass to Customer upon delivery of Products by Impath Networks to a carrier at Impath Networks' facility.

4.2. Customer must specify in its order, the shipping destination and the requested shipment date. Shipping dates will be set by Impath Networks in a commercially reasonable manner. Impath Networks will use reasonable efforts to meet scheduled delivery dates. Impath Networks may make partial shipments, which will be invoiced and paid when due pursuant to Section 3 herein. Impath Networks will select the carrier and prepay the transportation charges to the destination. The transportation charges, insurance, handling and other costs associated with the conveyance of Products will be charged to Customer. Impath Networks is not responsible for damages or delays caused by the carrier. It is Customer's responsibility to obtain insurance and to file and handle any claim against the carrier or insurance company.

5. LIMITED WARRANTY AND DISCLAIMER

5.1. Impath Networks warrants to Customer that, subject to the terms and conditions of this Agreement:

- (i) the Equipment will operate without material defects in materials and workmanship under normal use, service and repair for a period of twelve (12) months from the date of original shipment; and
- (ii) the Software will operate substantially in accordance with its documentation for a period of twelve (12) months from the date of original shipment.

5.2. Impath Networks' sole responsibility and Customer's sole remedy for breach of Subsection 6.1 is for Impath Networks to repair or replace, at its option, any Products which, upon Impath Networks' determination, are in breach of the foregoing limited warranties during the applicable warranty period. Products that are repaired or replaced by Impath Networks are warranted against material defects in materials and workmanship for the longer of ninety (90) days or the time to expiry of the Product's initial warranty period. Return of Products is accepted

only for warranty and maintenance purposes and only if previously authorized by issuance of a Return Maintenance Authorization ("RMA") issued by Impath Networks' Customer Support department. The RMA will identify the Products to be returned as well as the date on which the return was authorized. The Products must be returned within thirty (30) days of the issuance of the RMA. Freight and other related costs must be prepaid by Customer. Products must be returned in their original or other packaging that avoids damage to the Products. Such damage is not covered by this warranty. Customer assumes all risk of loss and damage for such Products until accepted by Impath Networks. No freight-collect shipments will be accepted by Impath Networks unless previously authorized in writing by Impath Networks. For repairs completed under warranty, Impath Networks will return items with freight prepaid. Any and all costs for shipping will be invoiced to Customer.

5.3. 'Advance Replacement' will be considered upon request by the Customer. If it is reported that the Product has failed during installation or was Dead On Arrival (DOA), and if the Product is under warranty, the recommendation/decision to send an advance replacement is made by Impath Networks during the information gathering on the reported failure. If Impath Networks' customer support team determines that the issue is not a configuration related problem or system related problem, an RMA number is issued and the advance replacement is shipped as soon as possible and invoiced. The customer is expected to send in the reported failed Product within thirty (days). Once received, Impath Networks will evaluate and determine if the failure is covered under warranty, a credit note will be issued to cancel the invoice.

5.4. The foregoing limited warranties shall not apply to any Products that have been used other than in accordance with the documentation for such Products, for defects due to improper installation, handling or storage, insufficient maintenance, inappropriate operation, improper exposure to weather elements, modification for use in applications not authorized by Impath Networks, unauthorized attempts to service or repair, or for Products or components thereof such as fuses and bulbs that are normally consumed in operation or have a normal life shorter than the above warranty period or such causes not attributable to Impath Networks.

5.5. The limited warranties in this Section 6 are the only warranties of Impath Networks and Customer's sole remedy therefore and are in lieu of any and all other warranties and conditions, statutory, express or implied, including without limitation warranties as to merchantability, non-infringement and fitness for purpose. Products not manufactured by Impath Networks will carry the warranty of the original manufacturer only. Impath Networks disclaims all warranties for such products and makes no warranty, express, implied or otherwise, with respect to such products, including warranties of merchantable and fitness for purpose.

6. PROPRIETARY INFORMATION

Proprietary Information shall only be used only by employees of Customer for the purpose of operating the Products and shall not be disclosed to third parties without the prior written consent of Impath Networks. For the purpose of this Agreement "Proprietary Information" means Software and documentation (including manuals) and other information confidential to Impath Networks and/or its licensors.

7. LICENSE

Impath Networks hereby grants to Customer, and Customer hereby accepts from Impath Networks a non-transferable, non-exclusive right and license to use Software solely with the Equipment originally designated by Impath Networks for use with the Software. All ownership rights in the Software are retained by Impath Networks and its suppliers. Customer has no rights to the Software source code(s). Customer agrees that (i) except for one back-up copy, it will not copy the Software; (ii) it will not modify, decompile, disassemble, translate or reverse engineer the Software; and (iii) it will retain all proprietary and copyright notices of Impath Networks and its suppliers in and on the Products. The Software is the proprietary, trade secret and copyrighted property of Impath Networks and its suppliers. This license will automatically terminate upon Customer's breach of any of the provisions of this license or this Agreement.

8. INTELLECTUAL PROPERTY INDEMNIFICATION

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- 8.1. Impath Networks will pay all damages, costs and expenses (including reasonable attorney's fees) finally awarded by a court of competent jurisdiction in any action brought against Customer to the extent it is based on a claim by a third party that the Equipment purchased or licensed from Impath Networks infringes any United States or Canadian patent, copyright or trade secret or that the Software infringes any United States or Canadian copyright or trade secret. This indemnity is made provided Customer (i) notifies Impath Networks promptly in writing of the action; (ii) provides Impath Networks with reasonable information and assistance for the defense or settlement of the action; and (iii) grants Impath Networks sole authority and control of the defense or settlement of the action. Customer shall have no authority to settle any action on Impath Networks' behalf, and no costs or expenses shall be incurred for the account of Impath Networks without Impath Networks' prior written consent.
- 8.2. Should the Products become, or, in Impath Networks' opinion, be likely to become the subject of a claim of such an infringement, Impath Networks may, at its option and expense, either (i) procure for Customer the right to continue to use the Products; or (ii) replace or modify the Products to make them non-infringing. If neither of the foregoing alternatives is reasonably available, Impath Networks may, at its option, accept the return of the Products (or the infringing part thereof) and refund to Customer the purchase price or license fee paid, less a reasonable allowance for use based upon a five-year, straight-line, no-salvage-value depreciation schedule.
- 8.3. Impath Networks shall have no liability to the extent that the infringement or claim thereof is based upon (i) use of the Products in combination with other products, devices or software which are not furnished to Customer by Impath Networks, including those products, devices or software incorporated by Customer and believed by Impath Networks to add substantial value to the Product; (ii) modification of the Products by a party other than Impath Networks; (iii) use of the Products as part of any infringing process; or (iv) use of other than a current, unaltered release of Software, if such infringement would have been avoided by use of the current unaltered release. Also, the above indemnification obligations do not apply to, and Impath Networks specifically disclaims all indemnification obligations concerning software identified in Impath Networks' price list as furnished.
- 8.4. Customer shall indemnify and hold Impath Networks harmless from and against any liability, damages, loss, claim or expense incurred by Impath Networks based upon a claim that Impath Networks' manufacture, sale or license of Products to Customer and modified or combined with any equipment, software or device not supplied by Impath Networks, infringes any third party right where such infringement is caused in whole or in part, by such modification or combination.
- 8.5. This Section 9 states Impath Networks' entire liability and Customer's sole and exclusive remedy concerning infringements or alleged infringements by the Products or any part of them or their use or operation.

9. TRADEMARKS; TRADE NAMES & COPYRIGHT NOTICES

Customer acknowledges that no right, interest, ownership or privilege of use, of any trade dress, trade name, trademarks, logos, service mark or other mark, identification or name of Impath Networks, its parent or its subsidiaries, or their suppliers is accorded Customer. Customer agrees not to remove, deface or obscure any trademark or copyright notices of Impath Networks contained on the Product.

10. LIMITATION OF DAMAGES

- 10.1. The entire cumulative liability of Impath Networks, and Customer's exclusive remedy, for damages from any claim related to or arising out of this Agreement, its making, performance or interpretation, regardless of the form of action, whether in contract or tort, shall not exceed the actual amount paid to Impath Networks for the Products or Service which is the subject matter or directly related to the claim.
- 10.2. IN NO EVENT SHALL IMPATH NETWORKS OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, REVENUE AND GOODWILL, LOSS OF BUSINESS, LOSS OF USE OR DATA OR INTERRUPTION OF SERVICE) OR ANY COSTS OF

SUBSTITUTE PRODUCT ARISING OUT OF, OR RELATED TO THE PRODUCTS, WHETHER LIABILITY IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY (EXPRESS, IMPLIED OR OTHERWISE) OR OTHERWISE, AND WHETHER ASSERTED IN CONTRACT, TORT (INCLUDING STRICT PRODUCT LIABILITY) OR OTHERWISE, AND IRRESPECTIVE OF WHETHER IMPATH NETWORKS HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS.

11. CUSTOMER'S DEFAULT

In addition to all other remedies Impath Networks may have at law or equity, Impath Networks may terminate any agreement it has with Customer and cancel any unfiled order upon notice to Customer in the event that: (a) Customer defaults in any payment to Impath Networks and such default continues un-remedied for a period of ten (10) days; (b) Customer fails to perform any other obligation, warranty, duty or responsibility or is in default with respect to any term or condition undertaken by Customer hereunder or under any other agreement with Impath Networks in which these terms and conditions are incorporated by reference, and such failure or default continues un-remedied for a period of twenty (20) days after written notice thereof to Customer by Impath Networks; (c) Customer is liquidated or dissolved; (d) an assignment is made of Customer's business for the benefit of creditors; (e) a receiver, or similar officer, is appointed to take charge of a substantial part of Customer's assets; (f) Customer is unable to pay its debts as they mature; or (g) the filing of any petition in bankruptcy by or against Customer, which remains un-discharged for thirty (30) days. If applicable law allows a trustee in bankruptcy or Customer to affirm its agreement with Impath Networks and perform Customer's obligations, then said trustee or Customer shall cure all outstanding defaults within the period determined by the bankruptcy court and provide Impath Networks such adequate assurances as may be necessary to ensure Customer's continued performance.

12. MISCELLANEOUS

- 12.1. Neither party shall be liable for delay in performance or for non-performance (except for monies due) occasioned by causes beyond its reasonable control, including, but not limited to acts of God, fire, flood, earthquake, unusually severe weather, war, government action, accident, labor trouble, shortages or inability to obtain materials, equipment or transportation.
- 12.2. Customer shall not export, re-export or trans-ship the Products (including documentation thereto) to any country, person, or entity subject to Canadian or U.S. export restrictions, even if otherwise permitted by subsequent authorization from Impath Networks, except as shall be permitted by the terms of any export and import licenses and the laws and regulations in effect from time to time in Canada or the United States. Customer acknowledges its awareness of such regulations and agrees that, when requested by Impath Networks, Customer shall give written assurances of its compliance with such licenses, laws and regulations and against such export, re-export or transshipment.
- 12.3. For Software and accompanying documentation delivered to an agency or instrumentality of the United States Government, Distributor shall identify the Software as "commercial computer software" and "commercial computer software documentation" and, as specified in FAR 12.212 or DFARS 227.7202, and their successors, as applicable, shall restrict the Government's rights to use, reproduce or disclose such Software and accompanying documentation in accordance with the terms of Impath Networks' then-current standard end user license agreement.
- 12.4. Customer may not assign any of its rights related to this Agreement without Impath Networks' prior written consent.
- 12.5. The terms and conditions set forth herein supersede and replace any and all written or oral representations previously existing between the parties with respect to the subject matter of this Agreement. Any term or condition set forth herein or in any purchase order, which is in addition to or inconsistent with any term or condition of this Agreement, shall have no force or effect. This transaction shall be deemed to have been entered into and shall be governed by and construed under the laws of the Province of Nova Scotia, Canada, excluding its conflict of law rules. Each party consents to the jurisdiction of, and venue in, the courts in the Province of Nova Scotia, Canada.