



TERMS AND CONDITIONS OF RENTAL

DEFINITIONS

For any Rental, the following Terms and Conditions of Rental (“Terms and Conditions”) shall have the following meanings ascribed thereto:

“Acceptance Date” means, the date Customer shall have actually accepted the Equipment subject to such Rental or shall be deemed to have accepted the Equipment subject to such Rental in accordance with Section 3.

“Equipment Location” means the address at which such Equipment is shipped and installed, as specified in the applicable Rental. Customer shall not move the Equipment from the Equipment Location without the prior written consent of Olympus.

“Supplier” means the Seller and the manufacturer or licensor of Equipment collectively, or where the context requires, any of them.

“Taxes” means any and all taxes, duties, charges, fees, levies or other assessments imposed by any taxing authority, including, without limitation, value-added, excise, withholding, personal property, real estate, sale, use, ad valorem, license, Rental, service, stamp, transfer, customs, duties, alternative, add-on, minimum, estimated and franchise taxes (including any interest, penalties or additions attributable to or imposed on or with respect to any such assessment).

“Term” means the term thereof as specified in the Rental (as defined herein).

1. PURPOSE

The purpose of these Terms and Conditions of Rental (“Terms and Conditions”) is to set forth the general terms and conditions upon which Olympus shall rent to Customer and Customer shall rent from Olympus items of equipment (collectively, “Equipment”). The rental of Equipment under these Terms and Conditions is referred to herein as the “Rental”.

2. TERM

The Term of the Rental shall begin on the Acceptance Date of the Equipment and shall continue for the period described in the Rental quote.

3. SELECTION AND ACCEPTANCE OF EQUIPMENT

Customer acknowledges, represents and warrants that it has selected the Equipment and has relied on its own skill and experience in selecting Equipment suitable to its particular needs and purposes. Upon receipt of the Equipment, Customer shall inspect the Equipment to confirm that it conforms to Supplier’s published specifications and, if undisputed, accept the Equipment. Shipping and installation costs are Customer’s responsibility. Olympus shall not be liable for specific performance under a Rental.

4. BILLING AND PAYMENTS

As payment (“Periodic Rental Payment”) for the Equipment under the Rental, Customer agrees to pay the amounts specified in the applicable Rental quote on the due dates specified in the applicable invoice(s). All undisputed Periodic Rental Payments and other amounts due hereunder shall be made by Customer unconditionally without defense, counterclaim, or offset of any kind for any reason whatsoever. The expiration or earlier termination of the Rental shall not release Customer from its obligation to pay any amount owed to Olympus hereunder (including without limitation the Periodic Rental Payments) or operate to discharge any liability or obligation to Olympus incurred by Customer prior to, contemporaneous with, or after the expiration or termination date of the Rental. Olympus shall have the right to charge an administration fee of up to five percent (5%) of the delinquent undisputed amount due to cover the additional administrative burden, overhead and internal costs of collection.

5. TITLE

The Equipment is and shall remain the sole personal property of Olympus. No right, title or interest in the Equipment shall pass to Customer other than those rights expressly set forth in the Rental. Customer shall, at its expense, protect and defend Olympus's title to the Equipment and shall at all times keep the Equipment free from any legal process and/ or encumbrances whatsoever, including but not limited to liens, attachments, levies and executions, and Customer shall give Olympus immediate written notice thereof and shall indemnify Olympus for any loss caused by the failure of Customer to take action as provided herein. Olympus shall have the right, upon reasonable advance notice and during normal business hours, to enter upon the premises where the Equipment is located for the purpose of confirming its existence, condition, and proper maintenance. In the event of early Rental termination or Customer's failure to meet its requirements under the Rental, all Equipment must be returned to Olympus. Failure to return such Equipment will result in Customer being responsible for their cost at the lesser of Olympus's then-current list price or Customer's contract price, and shall be invoiced by Olympus to Customer.

6. REPRESENTATIONS, WARRANTIES & COVENANTS OF CUSTOMER

Customer represents, warrants, and/or covenants to Olympus that: (a) the Equipment will be used only: (i) by Customer, in the manner for which it was intended, (iii) in accordance with all applicable manuals and instructions, and (iv) in compliance with all applicable laws and regulations; (b) it has the authority to enter into the Rental; (c) the person executing the Rental on behalf of Customer has been duly authorized and has all required corporate approvals; (d) by entering into the Rental, Customer is not in violation of any laws or agreements applicable to Customer; (e) Customer's obligations under the Rental are absolute and shall continue in full force and effect regardless of the inability of Customer to use the Equipment for any reason; (f) Customer shall, at Customer's own cost and expense, maintain the Equipment in good repair, operating condition, and working order (ordinary wear and tear excepted), including but not limited to the performance of reprocessing, cleaning, and maintenance procedures described in the manufacturer's instruction manuals; and (g) Customer shall not modify, alter, or add to the Equipment (other than the use of normal operating accessories or controls) without the prior written consent of Olympus.

7. TAXES

Customer acknowledges and agrees that all applicable Taxes related to the Equipment and/or the Rental shall be paid by Customer. Olympus shall report and pay all license and registrations fees and Taxes now or hereafter imposed or assessed by any governmental body, agency or taxing authority upon the purchase, ownership, shipping, installation, leasing, rental, use or sale of the Equipment, the Periodic Rental Payments or other charges payable hereunder, or otherwise upon or in connection with the Rental, whether assessed on Olympus or Customer.

8. RISK OF LOSS

In the event any condemnation, taking, loss, destruction, theft or damage beyond repair of the Equipment (collectively, a "Casualty Loss") shall occur, the insurance proceeds (referenced in Section 10) shall be paid to Olympus so that the Equipment can be replaced and, provided that Customer is not otherwise in default under the Rental, the Rental shall continue in full force without any abatement of the Periodic Rental Payment with such replacement equipment there-after being deemed to be Equipment rented thereunder. In the event of any repairable damage to any Equipment, the Rental shall continue with respect to such Equipment without any abatement of the Periodic Rental Payment and Customer shall at its expense promptly cause such Equipment to be repaired to the condition it is required to be maintained in pursuant to Section 7. Customer shall notify Olympus, in writing, of any Casualty Loss or repairable damage to any Equipment as soon as reasonably practicable after the date of any such occurrence.

9. INSURANCE

Customer shall, at its cost, maintain in force, at all times from shipment of the Equipment until its return to Olympus, property damage and risk insurance and liability with such coverage, from such insurance carriers and in such amounts as shall be satisfactory to Olympus. The Equipment must be insured against all risks that are customarily insured against on the type of equipment rented hereunder. Customer shall, upon request, deliver to Olympus evidence satisfactory to Olympus of such insurance coverage.

10. DEFAULT

Any of the following events or conditions shall constitute an event of default by Customer under the Rental: (a) Olympus has not received any Periodic Rental Payment or other payment due under the Rental, in full, within ten days after its due date; or (b) Customer becomes insolvent, is liquidated or dissolved, stops doing business or assigns its rights or property for the benefit of creditors, and such actions or proceedings are not dismissed within sixty (60) days after commencement of such actions or proceedings; or (c) a petition is filed by or against Customer under any section or chapter of the United States Bankruptcy Code or any successor or similar law, and such actions or proceedings are not dismissed within sixty (60) days after commencement of such actions or proceedings; or (d) Customer dies or a guardian is appointed for Customer; or (e) Customer (or any affiliate) is in default of or fails to fulfill the terms of any other agreement between Customer and Olympus or any affiliate of either; or (f) without Olympus's consent, Customer attempts to remove from the Equipment Location, sell, transfer, encumber, part with possession of, or sublet any Equipment; or (g) Customer consolidates with or merges with or into any entity, or sells or otherwise transfers a majority of its assets or stock to any entity, or incurs a substantial amount of indebtedness other than in the ordinary course of its business, unless Customer provides reasonable advance written notice to Olympus and Olympus consents, in writing, to not find Customer in default and continue with the terms of the Rental, which consent shall not be unreasonably withheld or delayed if Olympus determines that the criteria upon which the Olympus had originally approved Customer for leasing would not be adversely changed as a result of the proposed merger or sale of substantially all of its assets; or (h) Customer violates any other term of the Rental or any guarantee and fails to correct such violation within ten (10) days after written notice from Olympus.

11. REMEDIES

Upon the occurrence of an event of default by Customer (as described in Section 11), Olympus may, at Olympus's sole discretion, exercise any and/or all of the following remedies: (a) terminate the Rental and/or any other rental with Customer; (b) as liquidated damages for loss of a bargain and not as a penalty, declare all amounts due and to become due under any or all Rentals to be immediately due and payable, plus the then-current fair-market value of the Equipment, plus any other amounts due under the Rental, including without limitation any expenses or costs of Olympus in connection with the repossession, holding, repair and subsequent sale, rental or other disposition of the Equipment; provided, however, that in no event shall Olympus be entitled to recover any amount in excess of the maximum permitted by applicable law; (c) require Customer to return the Equipment in good condition, repair and working order at Customer's cost and expense to a location acceptable to Olympus; (d) to the extent allowed by law, collect interest on any delinquent payment or payments made by Olympus on Customer's behalf, which shall continue to accrue at the lower of prime plus two (2%) percent or the highest lawful rate from the due date until paid by Customer; and/or (e) pursue any other remedy available at law or in equity. Customer's obligations hereunder shall not abate by reason of Olympus's taking of possession of the Equipment or for any other reason. Customer agrees to pay to Olympus all costs and expenses, including reasonable attorneys' fees, incurred by Olympus in exercising any or all of its rights or remedies or in collecting and setting off money due or to become due under the Rental. All rights and remedies hereunder are cumulative and may be enforced separately or concurrently and from time to time. The exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy.

12. EQUIPMENT RETURN REQUIREMENTS

On or before the last day of the Term of the Rental (and any other time Customer is required to return Equipment to Olympus under the terms of the Rental), Customer shall immediately return the Equipment, decontaminated, complete, and in good working order and condition (normal wear and tear excepted) in accordance with the manufacturer's guidelines, to such place within the continental United States as is designated by Olympus, properly crated, freight prepaid and insured. Certain Equipment may, at Olympus's sole discretion, require de-installation by Olympus at Customer's cost and expense. Customer shall be responsible for, and shall reimburse Olympus promptly on demand for, any cost incurred by Olympus to qualify the Equipment for the Supplier's maintenance service or, if not available, to return the Equipment to good working condition. If Customer fails to return the Equipment following the last day of the Term, Olympus shall continue to invoice Customer, and Customer agrees to pay, the Periodic Rental Payment until the Equipment is returned to Olympus in accordance with this Section 13. Additionally, in the event Customer fails to return the Equipment following the last day of the Term, Olympus may enter upon the premises where the Equipment is located, with or without demand or legal process, and peacefully repossess the Equipment, free from all claims by Customer and without liability for trespass, conversion, refund, or damages. In the event of early Rental termination or Customer's failure to meet its requirements under the Rental, all Equipment must be returned to Olympus.

13. ASSIGNMENT

CUSTOMER SHALL NOT (A) RENT, LEND, ASSIGN, PLEDGE OR ABANDON THE EQUIPMENT, OR (B) SELL, ASSIGN, OR TRANSFER ANY RIGHTS, INTERESTS, OR OBLIGATIONS UNDER THE RENTAL. All rights of Olympus in the Equipment and under the Rental may be assigned, pledged or otherwise disposed of without notice to Customer, in whole or in part, to one or more assignees, subject to the rights of Customer. Customer agrees that any assignee of Olympus will be entitled to receipt of all payments and Customer's payment obligation to such assignee shall not be subject to any abatement, offset, defense, or counterclaim.

14. INDEMNIFICATION

Olympus shall defend any products liability suit or proceeding brought against Customer based on a third party's claim for bodily injury or property damage arising from the Products provided hereunder, provided Olympus is (i) notified promptly in writing of any such claim; (ii) given authority to control fully any such suit or proceeding, provided that in the case Customer reasonably believe that such control will adversely impact Customer, Customer may, at Customer's own expense, seek counsel; and (iii) in receipt of information and reasonable assistance and cooperation from Customer in preparation of the defense of any such suit or proceeding. Provided Customer comply with the above requirements, Olympus shall pay all damages, costs, and expenses, including reasonable attorneys' fees of third parties (excluding Customer's fees and the fees of Customer's affiliates), that Customer shall be legally required to pay on the basis of bodily injury or property damage and shall reimburse Customer for any authorized expense Customer incur at Olympus' written request. Olympus' liability to Customer for the aforementioned damages, costs, and expenses shall not exceed \$1,000,000.00 per occurrence and \$5,000,000.00 for all occurrences combined. Notwithstanding the terms of this Section 17, Olympus shall not be liable to Customer to the extent the bodily injury or property damage claim is based on or arises out of: (i) the use of products not manufactured by Olympus and/or not bearing the OLYMPUS or GYRUS ACMI brand label; (ii) any Product which has been disassembled, repaired, tampered with, altered, changed, or modified by persons other than Olympus' own authorized service personnel; (iii) Customer's negligence, omissions, or other misconduct; (iv) representations and warranties regarding the Products made by Customer or any agents, salespersons, or representatives of Olympus or Customer; (v) the improper storage, usage, service, or maintenance of the Products; (vi) Customer's failure or the failure of the end-user to use updated components provided by Olympus for avoiding such injury or damage; or (vii) use of the Products in a manner for which they were neither designed nor contemplated. THE FOREGOING SETS FORTH CUSTOMER'S EXCLUSIVE REMEDY AND OLYMPUS' SOLE OBLIGATION WITH RESPECT TO ANY CLAIMS OF BODILY INJURY OR PROPERTY DAMAGE RELATING TO THE PRODUCTS SUPPLIED HEREUNDER.

15. LIMITATION ON LIABILITY

CUSTOMER ACKNOWLEDGES AND AGREES THAT OLYMPUS SHALL NOT BE RESPONSIBLE FOR ANY INJURIES, DAMAGES, PENALTIES, CLAIMS OR LOSSES, INCLUDING LEGAL EXPENSES, INCURRED BY CUSTOMER OR ANY OTHER PERSON CAUSED BY THE TRANSPORTATION, INSTALLATION, MANUFACTURE, SELECTION, PURCHASE, OWNERSHIP, POSSESSION, MODIFICATION, MAINTENANCE, CONDITION, OPERATION, USE, RETURN OR DISPOSITION OF THE EQUIPMENT. CUSTOMER AGREES TO REIMBURSE OLYMPUS FOR AND DEFEND OLYMPUS AGAINST ANY CLAIMS FOR SUCH LOSSES, DAMAGES, PENALTIES, CLAIMS, INJURIES, OR EXPENSES. THIS INDEMNITY CONTINUES EVEN AFTER THE RENTAL HAS EXPIRED FOR ACTS OR OMISSIONS WHICH OCCURRED DURING THE TERM. IN NO EVENT SHALL OLYMPUS BE RESPONSIBLE, WHETHER UNDER THE RENTAL, IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER OR NOT OLYMPUS SHALL BE OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE

16. RENTAL NON-CANCELABLE

IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT THE RENTAL SHALL BE NON-CANCELABLE. CUSTOMER AGREES THAT IT HAS AN ABSOLUTE AND UNCONDITIONAL OBLIGATION TO PAY ALL PERIODIC RENTAL PAYMENTS AND OTHER AMOUNTS WHEN DUE. CUSTOMER IS NOT ENTITLED TO ABATE OR REDUCE PERIODIC RENTAL PAYMENTS OR ANY OTHER AMOUNT DUE, OR TO SET OFF ANY CHARGE AGAINST ANY SUCH AMOUNT.

17. SURVIVAL

All representations, warranties and covenants made by Customer and Olympus hereunder shall survive the termination of the Rental and shall remain in full force and effect. All of Olympus's rights, privileges and indemnities under the Rental, to the extent they are fairly attributable to events or conditions occurring or existing on or prior to the expiration or termination of the Rental, shall survive such expiration or termination and be enforceable by Olympus and Olympus's successors and assigns.

18. DISCOUNT DISCLOSURE

The Rental and the payments hereunder may result in a discount or reduction in price with respect to the services provided to Customer hereunder. Olympus will provide the amount of the discount or reduction in price to Customer so that Customer can comply with its obligation to properly disclose and appropriately reflect the reduced prices of services on applicable cost reports or in charges to Medicare, Medicaid, and other federal health insurance programs or state health insurance programs in accordance with Section 1128B(b)(3) of the Social Security Act, 42 U.S.C. § 1320a-7b(b)(3). Notwithstanding the foregoing, however, Olympus hereby advises Customer that the net value of the services may be found on quotations for the services or on any invoices issued by Olympus. If Customer requires any further information, Customer may contact Olympus and such information will be provided to Customer.

19. CHOICE OF LAW & FORUM

[Intentionally omitted.]

20. GENERAL TERMS

The Rental and these Terms and Conditions contain the entire agreement between Customer and Olympus. THE RENTAL MAY ONLY BE AMENDED BY ANOTHER WRITTEN DOCUMENT WHICH STATES THAT IT IS AMENDING THE RENTAL AND WHICH IS PROPERLY EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF EACH PARTY. Notwithstanding the foregoing, Olympus and Customer may enter into additional or supplemental schedules for the Rental of additional pieces of equipment during the Term of the Rental. Any of such additional pieces of equipment shall be deemed Equipment governed by the terms and provisions of the Rental. Any and all prior discussions, negotiations, commitments or understandings related hereto, if any, are hereby merged herein. Any provision or part of the Rental which for any reason may be unenforceable in any jurisdiction shall not invalidate the remaining provisions or parts thereof of the Rental, which shall remain in full force and effect. A delay and/or omission in exercising any right or remedy accruing to Olympus upon any breach or default by Customer under the Rental shall not be construed as a waiver of any such breach or default or of any similar breach or default thereafter occurring. The Rental may be executed in counterparts, which collectively shall constitute one document.