

## CONDITIONS OF SALE OF PRODUCTS

Agfa HealthCare N.V.

Septestraat, 27

2640 Mortsel

Belgium

### Definitions

(a) **AGFA** means AGFA HEALTHCARE NV (registered in RPR Antwerp under number 0403003524) and any of its duly authorized representatives or agents;

(b) **Customer** means the person(s), firm or company whose order for the Products is accepted by AGFA;

(c) **Product(s)** means any product(s) which AGFA supplies to the Customer (including any of them or any part of them);

(d) **Conditions** means these "Conditions of Sale of Products";

(e) Any reference in the Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time;

(f) The headings in these Conditions are for convenience only and shall not affect their interpretation;

(g) For the purpose of these Conditions, Payment shall mean the receipt of cleared funds by AGFA.

### 1. Formation

1.1 In the absence of a duly executed agreement in writing (including any special terms and conditions agreed between the Customer and AGFA), the sale of Products shall be upon these Conditions, to the exclusion of all other terms and conditions and all previous oral or written representations, including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document.

1.2 The descriptions, technical specifications and illustrations contained in AGFA's catalogues, quotations, drawings, descriptive matter and advertisements are approximate only, are subject to change without notice, and are intended merely to give a general idea of the Products described therein. This is not a sale by sample.

1.3 Each order or acceptance of a quotation for Products will be deemed to be an offer by the Customer to purchase Products upon these Conditions.

1.4 Any quotation is valid for a period of 30 days only from its date, provided AGFA has not previously withdrawn it.

1.5 The Customer must ensure that the terms of its order and any applicable specifications are complete and accurate.

1.6 Acceptance of delivery of the Products will be deemed conclusive evidence of the Customer's acceptance of these Conditions.

## **2. Intellectual Property**

2.1 For the purposes of this article 2, Intellectual Property Rights means "all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in all countries in the world and together with all renewals and extensions." Software means "all object code form of any software provided for use with the Products".

2.2 No right or licence is granted to the Customer in respect of the Intellectual Property Rights of AGFA, except the right to use the Products in the Customer's ordinary course of business.

2.3 The Customer will not without AGFA's prior written consent allow any trademarks of AGFA or other words or marks applied to the Products to be obliterated, obscured or omitted nor add any additional marks or words.

2.4 In the event that the Products are used for any purpose other than the purposes for which the Products are normally used, AGFA shall have no responsibility for any infringement of any Intellectual Property Rights which arise as a result of the use of the Products for the particular purpose.

## **3. Price**

3.1 Save where prices have been quoted in writing pursuant to condition 1.4, the price for the Products will be the price(s) set out in AGFA's price list current at the date of delivery and is quoted exclusive of VAT which will be added to the sum in question. The Customer shall bear the cost of special transport arrangements requested by him.

3.2 The price list does not constitute an offer to sell. Orders for Products not available at the time of order will be dispatched immediately when stocks are available unless prior cancellation in writing is given by the Customer.

## **4. Acceptance of delivery**

4.1 The Customer shall accept delivery of the Products within a period of 14 days of being notified by AGFA that the Product(s) is/are available for delivery.

4.2 If Products forming any portion of an order is/are not taken by the Customer in accordance with the terms of delivery, the sale thereof may be postponed or cancelled at AGFA's option

without notice to the Customer. Such postponement or cancellation shall not affect any remaining portion of the order.

4.3 If the Customer fails to take delivery of any of the Products when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Products to be delivered (except solely on account of AGFA default) the Products will be deemed to have been delivered on the due date and in relation to the provision of the Products and without prejudice to AGFA's other rights, AGFA may:

4.3.1 store or arrange for storage of the Products until actual delivery has occurred in accordance with the Conditions and charge the Customer for all related costs and expenses (including, without limitation, storage and insurance); and/or

4.3.2 following written notice to the Customer, sell any of the Products at the best price reasonably obtainable in the circumstances ("the Resale Price") and charge the Customer for any shortfall below the list price, having taken into account any charges related to the resale (which shall include, for the avoidance of doubt, those charges mentioned at condition 4.3.1).

4.3.3 Any amount due to be paid to the Customer in accordance with these Conditions shall only become payable on receipt of cleared funds by AGFA of the Resale Price. For the avoidance of doubt, this condition 4.3. does not entitle the Customer to receive an amount in excess of the list price.

4.4 Any errors in any shipment intended to be received and opened by the Customer must be reported immediately upon receipt by Customer to AGFA's "Customer's Care Center". Requests for adjustments on concealed shortages involving boxes received intact must be reported to AGFA's "Customer Care Center" within two (2) days of receipt of the shipment.

4.5. All items are sold without return privileges. Returns are granted in the sole and absolute discretion of AGFA, and returns require AGFA's prior written authorization. When contacting AGFA for return authorization, AGFA must be given the invoice number and date of the shipment. For returns related to photochemical products, AGFA must be given documentary evidence, emulsion number or batch number and if possible a sample of the non-handled Product of the same package.

Returns must be in clean factory packaging. All returns must be made by prepaid transportation unless otherwise specified by AGFA. The credit for authorized returns shall be based on the price listed on the original invoice.

## **5. Passing of Risk**

All shipments shall be made:

DDP (Incoterms 2010) : within the E.U.

FCA( Incoterms 2010): outside the E.U.

Upon delivery of the Product to the Customer, risk of loss of each item of the Product shall pass to the Customer.

## **6. Delay in delivery of the Products**

Delay in delivery or, in the case of delivery by installments, delay in the delivery of an installment shall not give rise to any liability upon AGFA whether or not any time or date is given in respect of delivery. Time of delivery is not of the essence. In the event of inability for any reason to supply the total demand of the Products ordered, AGFA may allocate the available supply among all purchasers or users (including AGFA and its affiliates) or make partial shipments, on such basis as it may deem fair or practical without liability for any failure or performance which may result therefrom.

## **7. Payment**

7.1 Payment of invoices relating to Products sold on credit is due to be made within 30 (thirty) days from the date of the invoice and AGFA may invoice the Customer for the Products on or at any time after delivery or deemed delivery pursuant to article 4.

7.2 AGFA reserves the right to withdraw credit facilities if condition 7.1 is not fulfilled by the Customer. In such circumstances AGFA may, at its sole discretion, demand payment of all invoices whether due or not.

7.3. All accounts are payable to AGFA to the office designated on AGFA's invoice.

7.4 AGFA shall have the right to demand immediate payment of all sums payable to AGFA in the event of a suspension of deliveries of the Products pursuant to article 8.2.

7.5 All payments to be made by the Customer will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.

## **8. Interest on Overdue Accounts**

8.1 Amounts overdue shall accrue interest at one and one-half percent (1 ½ %) per month or the maximum amount permitted by law, if less. Customer shall reimburse AGFA for all costs and legal fees, including reasonable attorney's fees, incurred by AGFA or its agents in seeking to enforce Customer's payment obligations.

8.2 Without limiting its other rights, AGFA will be entitled to suspend deliveries of the Products until any outstanding amounts have been received by AGFA from the Customer.

## **9. Retention of Title**

9.1 Ownership of the Products will not pass to the Customer until AGFA has received in full (in cash or cleared funds) all sums due to it in respect of:

9.1.1 the Products; and

9.1.2 all other sums which are or which become due to AGFA from the Customer on any account.

9.2 Until ownership of the Products has passed to the Customer, the Customer must:

9.2.1 hold the Products on a fiduciary basis as AGFA's bailee;

9.2.2 store the Products (at no cost to AGFA) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the AGFA's property;

9.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;

9.2.4 maintain the Products in satisfactory condition insured on AGFA's behalf for their full price against all risks to the reasonable satisfaction of AGFA, and will whenever requested by AGFA produce an insurance certificate.

9.3 While any monies are owed by the Customer to AGFA, the Customer shall not:

9.3.1 pledge, charge or assign to third parties the Products or documents of title thereto or allow any lien to arise thereon;

9.3.2 process or mix the Products with any other Products or material.

9.4 If before the Customer shall have paid to AGFA all sums due to AGFA, the Customer shall commit any breach of any these Conditions or have a receiver or administrative receiver appointed or shall have a petition presented or pass a resolution for winding up or have a petition presented for the appointment of an administrator or a court shall make an order to that effect or the Customer shall be adjudged insolvent or bankrupt or be unable to pay his debts as they fall due or shall make any composition or arrangement with his creditors or if any payment to AGFA is overdue, AGFA may recover and resell the Products and the Customer grants AGFA, its agents and employees an irrevocable right at any time to enter upon any land or building upon which the Products is/are situated for that purpose.

9.5. Returnable product carriers or containers delivered but not sold hereunder are the property of AGFA and at AGFA's option the Customer will either return them undamaged freight collect to the destination designated by AGFA or make them available at the Customer's premises for collection by or on behalf of AGFA, in either case within the period specified by AGFA. Any deposit made by the Customer on such product carriers or containers shall be forfeited in the event of failure to return them undamaged within the specified period. Where no deposit is required, the Customer agrees to reimburse AGFA for the value, as shown on the face of the invoice, of any such product carriers or containers damaged or not returned within the specified period. AGFA's count and rejection of damaged product carriers or containers shall be accepted as final.

## **10. Warranty, Exclusion of Liability and Indemnity**

### **Warranty**

10.1 AGFA will, free of charge, for the warranty period granted (hereinafter "Warranty Period") repair, or at its option replace those Products which are proved to the reasonable satisfaction of

AGFA to be damaged or defective due to defects in material or workmanship. This obligation will NOT apply where:

10.1.1 the Products have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorized repair;

10.1.2 the Products have been improperly installed or connected;

10.1.3 any maintenance requirements relating to the Products have not been complied with;

10.1.4 any instructions as to storage of the Products have not been complied with in all respects; or

10.1.5 the Customer has failed to notify AGFA of any defect or suspected defect within 10 days of delivery where the defect should be apparent on reasonable inspection, or within 10 days of the same coming to the knowledge of the Customer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than the expiration of the Warranty Period.

AGFA does NOT warrant that: (i) operation of any Products shall be uninterrupted or error free; (ii) functions contained in a Product shall operate in the combinations which may be selected for use by Customer; (iii) the Products shall meet Customer's particular business needs; (iv) the Products shall be immune from unlawful or unauthorized access or use by third parties, including computer hacking, tampering, corruption or destruction of the Product, or any data or images displayed transmitted or stored in the Product.

All warranties and obligations of AGFA shall terminate if Customer fails to perform its obligations under these Conditions or fails to pay any charge due to AGFA.

For the avoidance of doubt, the Warranty Period commences on the original date of delivery of the Products.

10.2 AGFA will refund to the Customer the cost of carriage on the return of any such defective or damaged Products, and will deliver any repaired or replacement Products to the Customer at AGFA's own expense.

10.3 Any defective Products which have been replaced will belong to AGFA. Any substituted Products provided by way of repair or re-placement will be liable to repair or replacement under the terms specified in condition 11.1 for the unexpired portion of the Warranty Period from the original date of delivery of the replacement Products.

### **Liability**

10.4 AGFA does not exclude its liability (if any) to the Customer:

10.4.1 for personal injury or death;

10.4.2 for any matter which it would be illegal for AGFA to exclude or to attempt to exclude its liability; or

10.4.3 for fraud or serious misconduct.

10.5 AGFA can only be held liable in the event of fraud or serious misconduct on its part or on the part of its employees. In such a case, AGFA's liability shall be limited to repairing only that damage suffered by the Customer that was foreseeable direct, personal and certain.

**IN ALL CASES IN WHICH AGFA IS LIABLE, AGFA SHALL HAVE NO LIABILITY ARISING OUT OF THE AGREEMENT IN EXCESS OF THE AMOUNT OF THE MOST RECENT YEAR'S AMOUNT OF THE PRODUCT PURCHASED, GIVING RISE TO SUCH LIABILITY.**

IN NO EVENT SHALL AGFA BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER CONTRACTUAL OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, THE COST OF SUBSTITUTE SYSTEMS, OR FAILURE OR DELAY IN PERFORMANCE EVEN IF AGFA HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. NOR SHALL AGFA BE RESPONSIBLE FOR ANY CLAIM AGAINST THE BUYER BY A THIRD PARTY. THE REMEDY OF CONSEQUENTIAL DAMAGES SHALL NOT BE AVAILABLE EVEN IF THE EXCLUSIVE REMEDIES (PROVIDED IN THE WARRANTY ) FAIL OF THEIR ESSENTIAL PURPOSE.

#### 10.6. Liability related to Intellectual Property Rights:

Without prejudice to article 10.6., where proceedings are instituted against the Customer with respect to any intellectual right linked to the sale of the Products, the Customer shall inform AGFA immediately and shall enable AGFA to defend itself at its own cost. AGFA shall indemnify the Customer against any damages and costs ultimately awarded under the proceedings, provided that AGFA has sole control of the proceedings, the Customer cooperates fully and does not institute proceedings which might be detrimental to or undermine AGFA's position in any way whatsoever.

Where the Products becomes or might become the subject of proceedings for infringement of intellectual rights, AGFA may, at its sole discretion:

- provide to the Customer the right to continue to benefit from the said Product;
- make similar Product available or change the said Product to rectify any infringement, insofar at this does not lead to any substantial loss of functions or services;
- if neither of these alternatives are reasonably available, reimburse to Customer the fees relating to the Product.

The above-mentioned provision shall not apply to infringements attributable to changes to the Product by parties other than AGFA, neither to breaches resulting from the use of the Product in conjunction with other intellectual property, hardware or software, where this use gives rise to a claim.

The remedies specified in the present section shall constitute AGFA's sole remedies to the Customer with respect to claims by third-parties based on third-party intellectual rights.

#### 10.7 LIMITATION OF REMEDIES AND DISCLAIMER OF LIABILITY WITH RESPECT TO THE PRODUCTS

10.7.1 Except as set out in conditions 10.1 to 10.3, AGFA hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in these Conditions) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

THE EXCLUSIVE REMEDY OF BUYER AND SOLE LIABILITY OF AGFA IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THE PRODUCTS, IS THE REPAIR OR REPLACEMENT IN AGFA'S DISCRETION, OF THE DEFECTIVE PART, FEATURE OR FUNCTIONALITY, PROVIDED THAT, IN CASE OF HARDWARE, THE PART IS RETURNED AND THE DEFECT CONFIRMED BY AGFA.

**DISCLAIMER OF WARRANTIES.** THERE ARE NO OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS PROVIDED HEREUNDER. THE WARRANTIES EXPRESSLY SET FORTH IN THE CONDITIONS ARE THE EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

### **10.7.2 DISCLAIMER OF LIABILITY**

IN NO EVENT SHALL AGFA OR ANY OF ITS SUPPLIERS OR LICENSORS BE LIABLE FOR:

A. (1) DAMAGE OR INJURY CAUSED BY BUYER'S FAILURE TO PERFORM ITS RESPONSIBILITIES/OBLIGATIONS ; (2) REPAIRS, ADDITIONS OR ALTERATIONS DONE WITHOUT THE PRIOR WRITTEN APPROVAL OF AGFA; (3) USE OF SOFTWARE OR HARDWARE IN A MANNER THAT IS NOT EXPRESSLY AUTHORIZED BY AGFA; OR (4) DAMAGE CAUSED BY SYSTEM ACCESS (WHETHER DIRECT OR REMOTE) BY UNAUTHORIZED THIRD PARTIES. THE REMEDY OF CONSEQUENTIAL DAMAGES SHALL NOT BE AVAILABLE EVEN IN THE EVENT THE SOLE AND EXCLUSIVE REMEDY OF REPAIR AND/OR REPLACEMENT FAILS OF ITS ESSENTIAL PURPOSE.

B. ANY DAMAGES, LOSS OR INJURY RESULTING FROM OR ARISING FROM BUYER'S INTEGRATION OF THE PRODUCTS WITH THE PRODUCTS OR SYSTEMS OF THIRD PARTIES OR CUSTOMER'S UNAUTHORIZED OR UNINTENDED CLINICAL USE OF THE PRODUCTS.

### **10.7.3 MODIFICATIONS BY CUSTOMER**

Customer acknowledges that the Product is or may be a medical device subject to governmental regulations. Any tampering, alteration or services (including the loading of additional software packages) without proper training, certification, and prior written authorization from AGFA could render this device unsafe and/or ineffective for its intended use. Such activities shall also result in the voiding of the Product Warranty.

If Customer causes changes to be made to the Product without the prior written consent of AGFA, Customer shall indemnify and hold AGFA harmless against damages, costs and expenses (including, without limitation, reasonable attorney's fees and costs of suit) resulting from the defense and settlement of any claim by a third Party that Customer's use of the Product as modified either violates or infringes any intellectual property rights of or has caused any injury or damage of any kind to such claiming Party.

### **Indemnity**

10.8 The Customer shall defend, indemnify and hold harmless AGFA from and against any and all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect and consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (including without limitation all court costs and reasonable attorney fees incurred resulting from the defense and settlement of any infringement claim) and judgements which AGFA incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure in performance by the Customer of the terms of these Conditions.

### **11. Cancellation of Deliveries**

If the Customer cancels its order for Products, AGFA shall be entitled to recover from him any loss sustained thereby.

### **12. Software Licence**



12.1 The Software supplied for the use of the Customer remains the property of AGFA and the Customer acquires no title to it whatsoever other than the right to use it in accordance with the Conditions.

12.2 Customer is granted a non-transferable, non-exclusive, perpetual license (“License”) to use: a) the Software as delivered to Customer only on the Product at the location where the Product will be supplied/installed (hereinafter referred to as “Site”) and b) to use the documentation solely in connection with Customer’s use of the Software.

Customer may permit the Software to be used at the Site for the benefit of, or by, physicians and radiologists who are not employees of Customer and for the benefit of healthcare clinics, physician groups and other similar entities to be used by such individuals and entities; provided that in all such cases:

(i) the use is only to the extent necessary to ensure that such individuals and entities may properly perform their professional medical responsibilities to patients;

(ii) Customer ensures that such non-Customer personnel comply with the terms with respect to maintaining confidentiality and non-disclosure of the Software; and

(iii) Customer ensures that such non-Customer personnel have been trained in the operation of the Software (and if Customer requests AGFA to provide such training to non-Customer personnel, AGFA shall provide such training at AGFA’s then current training charges). Customer shall not otherwise use the Software for third-party training, commercial timesharing, rental, service bureau use or any similar use. AGFA retains all rights, title, and interest in and to the Software. If AGFA agrees to the transfer of the Software and the License granted, such transfer shall be in accordance with AGFA’s then current policy.

#### Termination of License

Upon Customer’s cessation of possession of the Product on which the Software is installed, the License granted as to such Software shall automatically terminate. AGFA may terminate the License granted if Customer: (i) fails to perform any obligation under these Conditions (including, but not limited to, payment terms) which is not cured within thirty (30) days after written notice of default from AGFA, or breaches any obligation under these Conditions involving the proprietary rights of AGFA, (ii) ceases to do business, or (iii) has its assets assigned by law. Within thirty (30) days after the License granted terminates, Customer shall, at its expense, return the Software to AGFA and destroy all copies of the Software, including computer memory or storage copies.

#### Use restrictions; copyrights

Customer shall not, and shall not suffer or permit its employees, representatives or agents to, (i) sell, assign, lease, sublicense, transfer, transmit, display or disclose or make available to any third party, or allow any third party to use, the Software or the documentation, except as specifically permitted, or (ii) copy or otherwise reproduce the documentation of the Software (or any portion thereof) except as necessary for Customer’s use, backup and archival of the Software. Each such copy, whether complete or partial, shall bear the same copyright notices and restrictive legends, if any, as are included in the material delivered to Customer. All copies shall be the sole and exclusive property of AGFA and shall be subject to these Conditions.

#### Third party software and third party hardware

The license granted, with respect to certain software programs within the Software, may be granted under authority granted to AGFA by one or more other third party licensors. In addition, some of the hardware sold and Software licensed hereunder may have been manufactured by third parties. Customer agrees that each such other third party licensor or third party hardware

manufacturer is, to the fullest extent permitted by law, a third party beneficiary of these Conditions, including without limitation, the provisions concerning confidentiality, warranty disclaimers and limitations of liability.

#### Lossy compression

In some versions of Software, AGFA provides an optional lossy compression algorithm. Lossy compression is an irreversible process, and accordingly, some image quality is degraded. Responsibility for any decision by Customer to implement lossy compression (as opposed to lossless compression, which is also available) shall lie solely with the Customer. Customer also acknowledges that any decision as to the suitability of lossy compression for a particular image type or class of images lies solely with the Customer.

#### Changes

Improvements, additions, modifications, alterations, derivative works and enhancements ("Changes") to any of the components of the Products, including but not limited to those made by the Customer with authorization of AGFA, those made by AGFA at the request of the Customer, or those made by AGFA on behalf of Customer, shall be the sole and exclusive property of AGFA. Notwithstanding the foregoing, Customer remains solely responsible for any liability associated with Changes that were made without AGFA's authorization.

### **13. Installation of Products**

13.1 Unless otherwise agreed, AGFA shall install the Products at the place specified provided that the Customer shall at his own expense:

13.1.1 provide access to, clear and prepare the site and provide adequate electricity and other services, and such other facilities as will enable AGFA to carry out the work expeditiously and without interruption;

13.1.2 provide connections for electrical and other services to the Products and labour for the installation thereof; and

13.1.3 provide such assistance, labour, lifting tackle and appliances as may be required in connection with the installation of the Products.

13.2 The Customer will indemnify AGFA against all claims and costs arising from or in connection with the use of such assistance, labour, lifting tackle and appliances provided by the Customer.

### **14. Demonstration of Products**

14.1 If AGFA undertakes the demonstration of the Products, AGFA will supply a skilled operator to assist and advise the Customer's skilled operator in the working of the Products for such period as AGFA shall in its absolute discretion determine. Any further assistance or advice required by the Customer will be provided at an additional cost. During this period any such Products is/are to be considered as under the control of the Customer, and the Customer shall supply all necessary materials.

14.2 Upon request, AGFA shall endeavour to furnish such technical advice or assistance (including, without limitation, the demonstration of the Products mentioned at condition 14.1) as it has available, at the Customer's cost it being expressly understood that all such technical

advice or assistance is given without liability and AGFA assumes no obligation or liability for any results derived from the advice or assistance given.

## **15. Confidentiality**

15.1 For the purposes of this condition 15, "Confidential Information" means "all information in respect of the business of AGFA including, but not limited to, know-how or other matters connected with the Products, and information concerning AGFA's relationships with actual or potential clients, customers or suppliers and the needs and requirements of AGFA and of such persons and any other information which, if disclosed, will be liable to cause harm to AGFA.

15.2 The Customer will keep confidential any and all Confidential Information that it may acquire.

15.3 The Customer will not use the Confidential Information for any purpose other than to perform its obligations under the Agreement. The Customer will ensure that its officers and employees comply with the provisions of this condition.

15.4 The obligations on the Customer set out in conditions 15.2 and 15.3 will not apply to any information which:

15.4.1 is publicly available or becomes publicly available through no act or omission of the Customer; or

15.4.2 the Customer is required to disclose by order of a court of competent jurisdiction.

## **16. Data Protection**

16.1 The Customer authorizes AGFA to collect, process and use any personal data, including but not limited to any names and addresses, data on the use of the Products, billing data, payment data and technical data.

These data can be processed for the following purposes

- processing of orders;
- provisioning and billing of the Products requested by the Customer;
- customer administration;
- dispute management;
- providing information about or promoting AGFA healthcare products and services, including by mail or e-mail;
- market surveys

16.2 AGFA will take appropriate technical and organizational measures against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

The appropriate security controls are in place to protect Customer data against unauthorized access.

Because AGFA is being part of the Agfa HealthCare Group, AGFA may transfer Customer's-related data to other AGFA offices or subsidiaries around the world, to the extent necessary for the purposes described. All entities are governed by the same privacy policy.

AGFA's files are made available to third parties (subcontractors) which work with AGFA. In any event, access by those third parties is restricted to the data they need for the performance of their contractual obligations vis-à-vis AGFA.

The Customer data may be communicated to the competent authorities in cases provided by law.

AGFA strives to collect and process only that information that is considered as necessary for its legitimate business interests. AGFA further stores the information only as long as necessary for the fulfilment of the purposes for which it was collected.

AGFA shall respect the applicable regulation regarding the protection of private life in relation to the processing of personal data and free movement of data.

Customer has a right to access and rectify its incorrect, incomplete or irrelevant personal data.

To that end, the Customer can submit a request, duly signed and dated together with a copy of its identity card to AGFA, in compliancy to the privacy notice on AGFA's website ([www.agfa.com](http://www.agfa.com)).

At any time the Customer will have the right to object to the use of its personal data for any direct marketing purpose. The Customer can communicate these objections, in compliancy to the privacy notice on AGFA's website ([www.agfa.com](http://www.agfa.com)).

16.3. The Customer is responsible for the "user account management" and shall preserve the secrecy and confidentiality of its usernames and passwords. The Customer has full and sole responsibility for the secrecy of such means of identification.

## **17. Force Majeure**

17.1 If performance shall be delayed by any circumstances or conditions beyond the control of AGFA, for example, (but without prejudice to the generality of the foregoing) war, industrial disputes, strikes, lockouts, riots, malicious damage, fire, storm, acts of God, accidents, non-availability or shortage of materials or labour, any statute, rule bye-law, order or requisition made or issued by any government department, local or other duly constituted authority, then AGFA shall have the right to suspend further performance until such time as the cause of delay shall no longer be present.

17.2 If performance by AGFA shall be prevented by any such circumstances or condition beyond the control of AGFA (whichever is appropriate), then AGFA shall have the right to be discharged from further performance and liability. If AGFA exercises such right, the Customer shall thereupon pay to AGFA the value of the Products delivered following which payment both parties shall be released from their contractual liability.

## **18. Notices**

Any notice required to be served pursuant to these Conditions shall be in writing and served by first class post or by hand or by facsimile on AGFA at their last know address with a copy to e-

mail "[healthcare.legal@agfa.com](mailto:healthcare.legal@agfa.com)" or fax number +32.3.400.92.43 , or on the Customer at the Customer's last know address. Any notice sent by post shall be deemed to have been served 48 hours after posting and any notice sent by facsimile shall be deemed to have been served at the time of despatch.

## **19. Legality and Severance**

The invalidity, illegality or unenforceability of the whole or part of a condition does not affect or impair the continuation in force of the remainder of these Conditions.

## **20. Assignment/Subcontracting**

20.1. AGFA may at any time, without the prior written consent of the Customer, assign all or any part of its rights and/or obligations under these Conditions.

The Customer shall not assign all or any part of his rights or obligations under these Conditions.

20.2. AGFA may subcontract or otherwise delegate the performance of its obligations under these Conditions to any third party (who is in the sole judgement of AGFA qualified to perform the obligation(s)), without Customer's prior consent.

## **21. Waiver**

The failure by AGFA to exercise, or delay in exercising a right or remedy provided by these Conditions does not constitute a waiver of the right or remedy. No single or partial exercise of any such right or remedy prevents any further or other exercise thereof or the exercise of any other right or remedy.

## **22. Governing Law and Jurisdiction**

All issues, questions and disputes concerning the validity, interpretation, enforcement or performance of these Conditions shall be governed by and construed in accordance with Belgian law, without giving effect to any other choice of law or conflict-of-laws rules or provisions (Belgian, foreign or international) including the United Nations Convention on Agreements for the International Sale of Products (1980) ("Vienna Convention") (if applicable), that would cause the laws of any jurisdiction other than Belgium to be applicable.

Any dispute concerning the validity, interpretation, enforcement, performance or termination of the Agreement shall be submitted to the exclusive jurisdiction of the courts of Antwerp, Belgium. AGFA however, shall be entitled to institute legal proceedings at the Courts mentioned above or at the venue of the Customer.