



GE Healthcare Terms and Conditions For Vscan Products

GE Healthcare

References herein to "Products" mean the Vscan products (including equipment and software) purchased by you ("Customer") pursuant to this Agreement ("Agreement").

1. General Terms

- 1.1. **Contract Formation.** This Agreement exclusively governs GE Healthcare's sale, and the purchase and use by Customer, of the Products through e-commerce and shall not apply to any other GE Healthcare sales for the Products by means outside of this e-commerce site or any other GE Healthcare product sales. This Agreement augments GE Healthcare's website terms and conditions which are found at the following link: <http://www.gehealthcare.com/terms.html> ("Website Terms and Conditions"), which govern Customer's use of the GE Healthcare website. In the event of any conflict between this Agreement and the Website Terms and Conditions with regard to Customer's purchase and use of the Products, this Agreement shall prevail. Customer is encouraged to print and retain a copy of this Agreement for Customer's files and future reference.

Upon Customer's receipt of GE Healthcare's confirmation that Customer's online order has been accepted, this Agreement shall constitute the entire agreement relating to the purchase of the Products. The parties agree that they have not relied on any oral or written terms, conditions, representations or warranties outside those expressly stated or incorporated by reference in this Agreement in making their decisions to enter into this Agreement. No agreement or understanding, oral or written, in any way purporting to modify these terms and conditions shall be binding on GE Healthcare unless hereafter made in writing and signed by GE Healthcare's authorized representative. Customer is hereby notified of GE Healthcare's objection to any terms inconsistent with this Agreement and to any other terms proposed by Customer in accepting this Agreement. Neither GE Healthcare's subsequent lack of objection to any such terms, nor the deliver of the Products, shall constitute an agreement by GE Healthcare to any such terms.

- 1.2. **Confidentiality.** Each party will treat the terms of this Agreement and the other party's written, proprietary business information as confidential if marked as confidential or proprietary. Customer will treat GE Healthcare (and GE Healthcare's third party vendors') software and technical information as confidential information whether or not marked as confidential and shall not use or disclose to any third parties any such confidential information except as specifically permitted in this Agreement or as required by law (with reasonable prior notice to GE Healthcare). The receiving party shall have no obligations with respect to any information which (i) is or becomes within the public domain through no act of the receiving party in breach of this Agreement, (ii) was in the possession of the receiving party prior to its disclosure or transfer and the receiving party can so prove, (iii) is independently developed by the receiving party and the receiving party can so prove, or (iv) is received from another source without any restriction on use or disclosure.
- 1.3. **Governing Law.** The law of the State where the Product is delivered will govern this Agreement.
- 1.4. **Force Majeure.** Neither party is liable for delays or failures in performance (other than payment obligations) under this Agreement due to a cause beyond its reasonable control. In the event of such delay, the time for performance shall be extended as reasonably necessary to enable performance.
- 1.5. **Assignment.** Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that either party may transfer and assign this Agreement without the other party's consent to any person or entity (except to a GE Healthcare competitor) that is an affiliate of such party or that acquires substantially all of the stock or assets of such party's applicable business if any such assignees agree, in writing, to be bound by the terms of this Agreement. Subject to such limitation, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Any attempted assignment in derogation of this Section will be null and void.
- 1.6. **Amendment; Waiver; Survival.** This Agreement may be amended only in writing signed by both parties. Any failure to enforce any provision of this Agreement is not a waiver of that provision or of either party's right to later enforce each and every provision. The terms of this Agreement that by their nature are intended to survive its expiration (such as the confidentiality provisions included herein) will continue in full force and effect after its expiration.
- 1.7. **Termination.** If either party materially breaches this Agreement and the other party seeks to terminate this Agreement for such breach, such other party shall notify the breaching party in writing, setting out the breach, and the breaching party will have sixty (60) days following receipt of such notice to remedy the breach. If the breaching party fails to remedy the breach during that period, the other party may terminate this Agreement by written notice to the breaching party. For the avoidance of doubt, this Agreement is not terminable for convenience and may only be terminated in accordance with this Agreement. If GE Healthcare determines in good faith at any time that there are legal or regulatory compliance issues with this Agreement, if any, GE Healthcare may terminate this Agreement (including warranty services hereunder) immediately upon written notice to Customer.
- 1.8. **Obligation to Provide Accurate and Current Information; Consent to Use Thereof.** Customer agrees to provide, and hereby represents and warrants to GE Healthcare that Customer has provided and will continue to provide, accurate and complete information to GE Healthcare with regard to Customer's registration to use the GE Healthcare website and Customer's purchase and use of the Products. Customer will promptly furnish updates to such information to GE Healthcare, as applicable, including in the event Customer moves to another organization. Customer hereby consents to the use of such information by GE Healthcare and its service providers in connection with GE Healthcare's fulfillment of Customer's order, GE Healthcare's support of the Product (including communicating with

Customer regarding use of the Product and any Product-related notices and announcements), and as otherwise provided in GE Healthcare Privacy Policy which can be found at the following link: <http://www.ge.com/privacy.html>.

2. Compliance

- 2.1. Generally. This Agreement is subject to GE Healthcare's on-going determination that Customer and this Agreement comply with all applicable laws and regulations, including those relating to workplace safety, FDA matters, Federal Healthcare Program Anti-kickback compliance, export/import control and money laundering prevention. Customer represents that it is purchasing the Products for its own use consistent with the terms of this Agreement and that it does not intend to re-sell the Products to any other party or to export the Products outside the country to which GE Healthcare delivers the Products.
- 2.2. Use for Clinical Diagnostic Purposes Only. CUSTOMER WILL USE THE PRODUCTS ONLY FOR CLINICAL DIAGNOSTIC PURPOSES IN THE DIAGNOSIS OR TREATMENT OF A DISEASE OR CONDITION, AND NOT FOR ANY ENTERTAINMENT, RECREATIONAL OR AMUSEMENT PURPOSES. GE HEALTHCARE WILL NOT DELIVER, SERVICE OR PROVIDE TRAINING ON USE OF THE PRODUCTS IF GE HEALTHCARE DISCOVERS THE PRODUCTS HAVE BEEN OR ARE INTENDED TO BE USED FOR ANY NON-CLINICAL PURPOSE. SUCH USE OR INTENDED USE OF THE PRODUCTS FOR NON-CLINICAL PURPOSES WILL VOID ANY APPLICABLE PRODUCT WARRANTY.
- 2.3. Promotion of Vscan Consistent With Cleared Indications for Use. The FDA requires that the promotion and marketing of the Product be consistent with the clinical applications and labeling for which the device has been cleared by the FDA. The Product is indicated for ultrasound imaging, measurement and analysis of the human body in clinical applications of Fetal/OB; Abdominal; Pediatric; Urology; Cardiac (adult and pediatric); Peripheral Vessel and Thoracic/Pleural motion and fluid detection. All other uses of the Product are considered off-label, including, but not limited to, Comprehensive Peripheral Vascular (e.g., carotids); Musculoskeletal; "Small Parts" (e.g., thyroids, breast, scrotum); and Transcranial Doppler.
- 2.4. Cost Reporting. Customer represents and warrants that it shall comply with (a) the applicable requirements of the Discount Statutory Exception, 42 U.S.C. 1320a-7b(3)(A), and the Discount Safe Harbor, 42 C.F.R. § 1001.952(h), with respect to any discounts Customer may receive under this Agreement and (b) the Warranties Safe Harbor, 42 C.F.R. § 1001.952(g), with respect to any price reductions of an item (including a free item) which were obtained as part of a warranty under this Agreement. Customer agrees that, if Customer is required to report its costs on a cost report, then (i) the discount must be based on purchases of the same good bought within a fiscal year; (ii) Customer must claim the benefit in the fiscal year in which the discount is earned or in the following year; (iii) Customer must fully and accurately report the discount in the applicable cost report; and (iv) Customer must provide, upon request, certain information required to be provided to Customer by GE Healthcare as a seller or offeror, as appropriate. If Customer is an individual or entity in whose name a claim or request for payment is submitted for the discounted items, the discount must be made at the time of the sale of the good; and Customer must provide, upon request, certain information required to be provided to Customer by GE Healthcare as a seller or offeror, as appropriate. GE Healthcare agrees to comply with the applicable requirements for sellers or offerors under the Discount Safe Harbor, as appropriate.
- 2.5. Site Access Control and Network Security. Customer shall be solely responsible for establishing and maintaining security, virus protection, backup and disaster recovery plans for any data, images, software or equipment. GE Healthcare shall have no obligation or liability with respect to the recovery of lost data or images. Customer shall comply with all applicable laws and regulations related to site access control.
- 2.6. Environmental Health and Safety. Customer shall provide and maintain a suitable, safe and hazard-free location and environment for the GE Healthcare Products in material compliance with any written requirements provided by GE Healthcare, perform GE Healthcare recommended routine maintenance and operator adjustments, and ensure that any non-GE Healthcare provided service is performed by, and GE Healthcare Products are used by, qualified personnel in accordance with applicable user documentation. GE Healthcare shall have no obligation to perform warranty services until Customer has complied with its obligations under this Section.
- 2.7. GE Healthcare-Supplied Parts. GE Healthcare can make no assurances that Product performance will not be affected by the use of non-GE Healthcare-supplied parts. In some instances, use of non-GE Healthcare-supplied parts may affect Product performance or functionality.
- 2.8. Training. Customer shall receive access to GE Healthcare's standard online education package(s) as made available on the Vscan web portal after purchase of the Product and after on-line activation has occurred.
- 2.9. Medical Diagnosis and Treatment. All clinical and medical treatment and diagnostic decisions are the responsibility of Customer and its professional healthcare providers.

3. Disputes; Liability; and Indemnity

- 3.1. Waiver of Jury Trial. EACH PARTY EXPRESSLY WAIVES ALL RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE ARISING UNDER THIS AGREEMENT.
- 3.2. Limitation of Liability. GE HEALTHCARE'S (AND ITS REPRESENTATIVES') LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE PRICE FOR THE PRODUCT THAT IS THE BASIS FOR THE CLAIM. NEITHER CUSTOMER NOR GE HEALTHCARE (NOR THEIR RESPECTIVE REPRESENTATIVES) SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT (OR OTHERWISE IN CONNECTION WITH THE PRODUCTS) FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PROFITS, REVENUE, TIME, OPPORTUNITY OR DATA, WHETHER IN AN ACTION IN CONTRACT, TORT, BREACH OF WARRANTY, PRODUCT LIABILITY, STATUTE, EQUITY OR OTHERWISE. THE LIMITATION OF LIABILITY AND EXCLUSION OF DAMAGES SHALL APPLY EVEN IF THE LIMITED REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.
- 3.3. IP Indemnification. GE Healthcare will defend, indemnify and hold harmless Customer from any third party claims for infringement of intellectual property rights arising from Customer's use of GE Healthcare manufactured equipment and/or GE Healthcare proprietary

software embedded in or otherwise furnished with the Product in accordance with their specifications and within the license scope granted in this Agreement. If any such claim materially interferes with Customer's use of such equipment and/or software, GE Healthcare shall, at its option: (i) substitute functionally equivalent non-infringing products; (ii) modify the infringing Product so that it no longer infringes but remains functionally equivalent; (iii) obtain for Customer at GE Healthcare's expense the right to continue to use the infringing Product; or (iv) if the foregoing are not commercially reasonable, refund to Customer the purchase price, as depreciated (based on five (5) year straight-line depreciation), for the infringing Product. Any such claims arising from Customer's use of such infringing Product after GE Healthcare has notified Customer to discontinue use of such infringing Product and offered one of the remedies set forth in clauses (i) through (iv) above are the sole responsibility of Customer. This Section represents Customer's sole and exclusive remedy (and GE Healthcare's sole and exclusive liability) regarding any infringement claim associated with such infringing Product. The above indemnification obligation is conditional upon Customer providing GE Healthcare prompt written notice of the infringement claim after receiving notice of such claim, allowing GE Healthcare to control the defense of such claim, and reasonably cooperating with GE Healthcare in such defense. Notwithstanding any other provision in this Agreement, GE Healthcare shall not have any obligation to Customer hereunder for infringement claims based on or resulting from: (a) use of such infringing Product in combination with any computer software, tools, hardware, equipment, materials, or services, not furnished or authorized in writing for use by GE Healthcare; (b) use of such infringing Product in a manner or environment or for any purpose for which GE Healthcare did not design or license it, or in violation of GE Healthcare's use instructions; or (c) any modification of such infringing Product by Customer or any third party. GE Healthcare shall not be responsible for any compromise or settlement or claim made by Customer without GE Healthcare's written consent. This indemnification obligation is expressly limited to the GE Healthcare manufactured equipment and/or GE Healthcare proprietary software furnished by GE Healthcare pursuant to this Agreement.

4. Commercial Logistics

- 4.1 Transportation, Title and Risk of Loss. Unless otherwise indicated in the Agreement, shipping terms are FOB Destination. Title and risk of loss to equipment passes to Customer upon delivery to Customer's designated delivery location. Software is licensed to Customer, not sold; no title to or other ownership interest in such software passes to Customer.
- 4.2 Delivery. When feasible, GE Healthcare reserves the right to make delivery in installments. Delivery dates are approximate. For GE Healthcare software or documentation, delivery means the first to occur of: (i) communication to Customer through electronic means, that allows Customer to take possession of the first copy or product master, or (ii) delivery to Customer's designated delivery location.
- 4.3 Network. Customer is solely responsible for ensuring that Customer's network is adequate for the proper operation and performance of the Products and otherwise meets GE Healthcare's written network configuration requirements. This responsibility includes providing and maintaining connectivity to the products (modem line, internet connection, vpn persistent access, broadband internet connection, or other secure remote access reasonably requested by GE Healthcare to perform support services and meet service levels, including remote diagnostic, monitoring and repair services.
- 4.4 Acceptance. Customer shall be deemed to have accepted a Product delivered by GE Healthcare under this Agreement five (5) days after delivery of the Product to Customer.
- 4.5 Taxes. Customer shall be solely responsible for any and all applicable sales, use, excise, value-added, services, consumption and other taxes and duties payable to any taxing authority in connection with Customer's purchase and use of the Product. The specified tax represents a maximum national sales tax amount. Though your credit card will be authorized for this amount initially, you will only be responsible and billed for applicable local taxes in accordance with your local tax jurisdiction rates.

5. Software License

- 5.1. License Grant. GE Healthcare grants to Customer a non-exclusive, non-transferable license to use for Customer's internal business purposes the GE Healthcare software, third-party software and Documentation at the location identified in the Agreement, subject to the license scope and other restrictions set forth in this Agreement. "Documentation" means the GE Healthcare user manuals, on-line help functions, technical specifications and user instructions regarding the operation, installation and use of the software as made available by GE Healthcare to Customer. Customer may only use third-party software provided by GE Healthcare together with the GE Healthcare software and will comply with all third-party software license terms included in any click or shrink wrap license or of which GE Healthcare otherwise makes Customer aware. To the extent permitted by applicable law, licensors of third-party software shall be third-party beneficiaries of this Agreement with respect to third-party software sublicensed under this Agreement. Customer may permit its employees, agents, independent contractors and healthcare providers with privileges at Customer's facilities to use the software and Documentation; provided, however, that Customer shall be responsible for any acts of such third parties that are inconsistent with this Agreement. Notwithstanding the foregoing, independent contractors that supply products comparable to the software shall be provided access to the software only with GE Healthcare's prior written consent and subject to any conditions GE Healthcare deems appropriate to protect its confidential and proprietary information.
- 5.2. Additional License Terms. Without GE Healthcare's prior written consent, Customer may not: (i) copy, sublicense, distribute, rent, lease, loan, resell, modify or translate the software or create derivative works based thereon, except that to the extent applicable, the software may be configured as specifically permitted in the Documentation; (ii) directly or indirectly decompile, disassemble, reverse engineer or otherwise attempt to learn the source code, structure, algorithms or ideas underlying the software; (iii) provide service bureau, time share or subscription services based on the software; (iv) remove, obscure or modify any markings, labels or any notice of the proprietary rights, including copyright, patent and trademark notices of GE Healthcare or its licensors; (v) electronically transfer the software outside Customer's intranet or network dedicated for the software, unless otherwise authorized in writing by GE Healthcare; or (vi) publicly release the results of any testing or benchmarking of the software without the prior written consent of GE Healthcare. Customer may transfer authorized copies of the software, and Documentation to a party that purchases or otherwise acquires the equipment and accepts any applicable license terms, except for software and Documentation that are (a) not a part of the base system

standard operating software or Documentation for the equipment and (b) generally provided by GE Healthcare to its customers for a separate fee or charge. Advanced service software is subject to a separate fee and eligibility criteria and licensed under a separate agreement with GE Healthcare.

- 5.3. Remedies. Customer agrees that a violation of GE Healthcare's license, confidentiality or intellectual property rights will cause irreparable harm to GE Healthcare for which the award of money damages alone are inadequate. In the event of any breach of this Section 5 or Customer's confidentiality obligations under this Agreement, GE Healthcare shall be entitled to seek injunctive relief in addition to immediately terminating the license granted herein and requiring that Customer cease use of the software and Documentation and return all copies of the Documentation and stand-alone software in any media in addition to seeking any other legal or equitable remedies available to GE Healthcare. This paragraph shall survive the termination of this Agreement.

6. Product Returns

Customer shall not have any right to return Products for a refund after delivery except for products shipped in error that are different from the Products listed in the Quotation.

7. Limited Warranty

- 7.1. Warranted Product. This limited warranty covers the purchase and use of GE Healthcare's Vscan product only.
- 7.2. Warranty Scope. GE Healthcare warrants that its services will be performed by trained individuals in a professional, workman-like manner. GE Healthcare will promptly re-perform any non-conforming services for no charge as long as Customer provides reasonably prompt written notice to GE Healthcare. The foregoing service remedy, together with any remedy provided herein, are Customer's sole and exclusive remedies (and GE Healthcare's sole and exclusive liability) for warranty claims. These exclusive remedies shall not have failed of their essential purpose (as that term is used in the Uniform Commercial Code) as long as GE Healthcare remains willing to repair or replace defective Products or re-perform any non-conforming services for no charge, as applicable, within a commercially reasonable time after being notified of Customer's warranty claim. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND DATA ACCURACY, WILL APPLY.
- 7.3. Warranty Period. Except as indicated otherwise below, GE Healthcare warrants the Product will be free from defects in title and that for 1 year from the Warranty Commencement Date (as defined below) (i) the Product will be free from defects in material and workmanship under normal use and service and (ii) the Product will perform substantially in accordance with GE Healthcare's written technical specifications for the equipment (as such specifications exist on the date the Product is shipped) (the "Specifications"). This warranty covers both parts and labor and is available only to end-users that purchase the Product from GE Healthcare. GE Healthcare may use refurbished parts in new Products as long as it uses the same quality control procedures and warranties as for new Products. Any part for which GE Healthcare has supplied a replacement shall become GE Healthcare property.
- 7.4. Warranty Commencement. The warranty period begins (the "Warranty Commencement Date") on the fifth (5th) day after delivery of the Product to Customer. The warranty period for any Product or component furnished to correct a warranty failure will be the unexpired term of the warranty applicable to the repaired or replaced Product.
- 7.5. Remedies. If Customer promptly notifies GE Healthcare of Customer's warranty claim during the warranty period and makes the Product available for service, GE Healthcare will, at its option (i) with respect to equipment, either repair, adjust or replace (with new or exchange replacement parts) the non-conforming Product or components of the Product and (ii) with respect to GE Healthcare's licensed software, either correct the non-conformity or replace the applicable licensed software. Standard warranty includes (i) repair services at GE Healthcare service facilities, (ii) five (5) business day turnaround repair time once Product is received at the repair facility (GE Healthcare is not responsible for delays in shipment) and (iii) technical support via telephone from 7:00 AM to 7:00 PM Central Time, Monday – Friday, excluding GE Healthcare holidays. With respect to GE Healthcare's warranty for the services it provides to Customer, Customer's exclusive remedy is set forth in Section 7.2 above. Warranty claims for the Products should be directed through GE CARES at 1-800-437-1171.
- 7.6. Limitations. GE Healthcare shall not have any obligation to Customer hereunder if the warranty claim results from or arises out of: (i) the use of the Product in combination with any software, tools, hardware, equipment, supplies, accessories or any other materials or services not furnished by GE Healthcare or recommended in writing by GE Healthcare; (ii) the use of the Product in a manner or environment, or for any purpose, for which GE Healthcare did not design or license it, or in violation of GE Healthcare's recommendations or instructions on use; or (iii) any alteration, modification or enhancement of the Product by Customer or any third party not authorized or approved in writing by GE Healthcare. In addition, this warranty does not cover the Product to the extent it is used in any country other than the country to which GE Healthcare ships the Product (unless GE Healthcare expressly agrees otherwise in writing). GE Healthcare does not guarantee that licensed software will operate without error or interruption.

In addition, these warranties do not cover: (i) any defect or deficiency (including failure to conform to Specifications and/or Documentation, as applicable) that results, in whole or in part, from any improper storage or handling, failure to maintain the Products in the manner described in any applicable instructions or specifications, inadequate back-up or virus protection or any cause external to the Products or beyond GE Healthcare's reasonable control, including, but not limited to, power failure and failure to keep Customer's site clean and free of dust, sand and other particles or debris; (ii) the payment or reimbursement of any facility costs arising from repair or replacement of the Products or parts; (iii) any adjustment, such as alignment, calibration, or other normal preventative maintenance required of Customer; (iv) expendable supply items; (v) stockpiling of replacement parts; (vi) any failure of the Products to use or correctly process dates; and (vii) products not listed in GE Healthcare's Accessories and/or Supplies catalogs at the time of sale and all service manuals, all of which are provided "AS IS".