

HOLOGIC

Hologic Master Sales Terms and Conditions (US Customers)

These Hologic Master Sales Terms and Conditions (“Terms”) apply to the sale or use of Hologic equipment (“Equipment”) and supplies (“Supplies”) (Equipment, Supplies, and any included Software, as defined in Section 14, collectively referred to as “Product” or “Products”) between Hologic, Inc. (together with its subsidiaries and affiliates, “Hologic”), and Customer. Hologic and Customer may hereinafter be referred to individually as a “Party” and collectively as the “Parties.” The Parties, intending to be legally bound, agree as follows:

- 1. Agreement.** These Terms, together with any applicable Hologic quotes, attachments or other purchasing program documents executed by the Parties constitute the complete and entire agreement between the Parties (collectively referred to herein as the “Agreement”) with respect to the Products. The Agreement shall supersede all other quotations, agreements, understandings, warranties and representations (whether written or oral) between the Parties with respect to the subject matter set forth in the Agreement. Any Customer documentation (including Customer’s purchase order terms and conditions) that conflicts with or attempts to modify the Agreement in any way is hereby rejected and of no effect unless specifically agreed to in writing and signed by the Parties. Customer acknowledges that there are no warranties or representations, which have been made by Hologic or any of its agents other than those expressly contained in the Agreement. If any action in law or equity is necessary to enforce or interpret the terms of the Agreement, the prevailing Party shall be entitled to reasonable attorneys’ fees, costs and necessary disbursements, in addition to any other relief to which the Party may be entitled. No provision of the Agreement shall be waived, amended, modified, superseded, canceled, terminated, renewed, or extended except in a written document signed by both Parties or signed by the Party against whom the modification is sought to be enforced. Headings and captions in the Agreement are for convenience only, do not form a part of the Agreement, and shall in no way affect its interpretation.
- 2. Prices.** Prices, fees and charges for Products and services (including maintenance, installation, and training as described in Hologic’s then-published service description) (“Service” or “Services”) are payable in United States (U.S.) Dollars only, and do not include any applicable taxes or shipping charges. If Customer claims any tax exemption, it must furnish a valid tax exemption certificate to Hologic before shipment of Products. Unless price protection is explicitly agreed to by Hologic in writing, Hologic reserves the right to increase prices on thirty (30) days written notice to Customer.
- 3. Payment.** Unless otherwise agreed to in writing by Hologic, Customer shall pay invoices net thirty (30) days from the invoice date. Hologic may charge monthly interest at the maximum rate permitted by law on all amounts not paid by the invoice due date until all such amounts are paid in full. Hologic retains a purchase money security interest in all Equipment sold to Customer to secure payment of the total purchase price thereof; Customer hereby grants Hologic the right to file a copy of the Agreement, with any appropriate authorities, to evidence this security interest; and Customer agrees to execute and deliver such other documents as Hologic may request in connection therewith. Hologic shall not be obligated to deliver any Product or perform any Service during any period when Customer payment is past due. Customer will be responsible for all costs (including reasonable attorneys’ fees) incurred by Hologic to collect overdue payments and/or to take possession or otherwise dispose of Products for which payment is overdue.
- 4. Product Shipment and Risk of Loss.** Unless otherwise agreed to in writing by Hologic, all Products will be shipped F.O.B. Origin, regardless of any provisions for payments of freight, insurance, the form of shipping documents, or selection of carrier by Hologic. F.O.B. Origin means title and risk of loss to the Products passes to the Customer at the shipping dock of Hologic or Hologic’s supplier or authorized agent. Customer is responsible for shipping charges. Hologic is responsible for the cost of insurance paid to cover any losses from Hologic’s shipment point to Customer’s receipt. Hologic will assist Customer in processing any loss claims and Customer will be paid directly by Hologic’s insurer.
- 5. Delivery.** Hologic shall use good faith efforts to ship Products on the dates and in the quantities listed in Customer’s purchase orders but all delivery dates are estimates and not binding on Hologic. Hologic may make shipments of Product(s) as available and each shipment shall be separately invoiced. All Products shall be adequately packed for shipment in Hologic-standard containers, marked for shipment to the address listed in the Agreement. Additional charges may be invoiced for special packaging requested by Customer or that Hologic determines to be necessary to maintain the integrity of the Product. Orders received from Customer shall not be binding on Hologic until they are accepted by Hologic.
- 6. Installation and Acceptance.** Product orders are subject to written acceptance by Hologic, receipt of specified deposits, as applicable, and continuing credit approval. Orders may be canceled by written notice to Hologic prior to shipment. If applicable, Hologic will install all Equipment that requires installation, at no charge, at the agreed upon location. Unless otherwise specifically agreed, installation shall be complete and acceptance shall occur upon Hologic’s demonstration that the Equipment meets Hologic’s then-current specifications (“Installation”). Installation is subject to Customer cooperating in preparing and maintaining the site in compliance with Hologic specifications, including but not limited to, applicable regulations including all electrical and other connections and all environmental conditions. If Customer fails to accept shipment of Products ordered by Customer or contemplated by the Agreement, Customer shall be responsible for Hologic’s reasonable insurance, handling and storage charges. If Hologic decides not to store Customer ordered Products refused by Customer, it is hereby authorized to arrange shipment and storage in a bonded warehouse at Customer’s sole risk and expense.
- 7. Delay of Performance.** The Parties’ obligations under the Agreement are subject to force majeure, including but not limited to, civil insurrection, terrorism, fire, flood, labor disputes, shortages, delays of suppliers or contractors, or government priority systems, actions taken or threatened by any governmental agencies, acts of God or other contingencies or acts not within the sole control of Hologic. Hologic reserves the right during any shortage period to (a) make Products available to Customer (as it sees fit) without any Hologic liability to Customer, and (b) to make substitutions and modifications in the specification of any Products, provided such substitutions or modifications do not materially affect the performance of Products.

8. WARRANTIES. Except as otherwise expressly stated in the Agreement: i) Equipment manufactured by Hologic is warranted to the original Customer to perform substantially in accordance with published product specifications for one (1) year starting from the date of shipment, or if Installation is required, from the date of Installation (“Warranty Period”); ii) digital imaging mammography x-ray tubes are warranted for twenty-four (24) months, during which the x-ray tubes are fully warranted for the first twelve (12) months and are warranted on a straight-line prorated basis during months 13-24; iii) replacement parts and remanufactured items are warranted for the remainder of the Warranty Period or ninety (90) days from shipment, whichever is longer; iv) consumable Supplies are warranted to conform to published specifications for a period ending on the expiration date shown on their respective packages; v) licensed Software is warranted to operate in accordance with published specifications; vi) Services are warranted to be supplied in a workman-like manner; vii) non-Hologic Manufactured Equipment is warranted through its manufacturer and such manufacturer’s warranties shall extend to Hologic’s customers, to the extent permitted by the manufacturer of such non-Hologic Manufactured Equipment. Hologic does not warrant that use of Products will be uninterrupted or error-free, or that Products will operate with non-Hologic authorized third-party products.

9. Warranty Claims and Remedies. In the event of any warranty claim, Hologic will replace with new or remanufactured items any Equipment, part, component, or consumable supply that is in breach of warranty, and will use reasonable efforts to promptly fix or provide a workaround for any Software defect or bug which prevents operation in substantial conformity with functional specifications. Alternatively, Hologic may elect to repay or credit to Customer an amount equal to the purchase price of the defective Equipment, component, Software, consumable supply, or Service. Items replaced shall become Hologic property. All claims shall be initiated by contacting Hologic within the applicable Warranty Period and thirty (30) days after discovery of the breach or non-conformity. Hologic must be given reasonable access and an opportunity to inspect all associated materials. If Hologic and Customer are unable to settle any claim and Customer has not notified Hologic within one (1) year after the claim arises, Customer shall be barred from instituting any legal action thereafter. These remedies shall comprise Hologic’s entire liability and Customer’s exclusive remedy for breach of warranty and are in lieu of any other remedies at law or equity. HOLOGIC’S ENTIRE WARRANTY RESPONSIBILITY IS EXPRESSLY LIMITED TO REPAIR OR REPLACEMENT (AT HOLOGIC’S OPTION AND IN THE FORM ORIGINALLY SHIPPED) OF PRODUCT OR CORRECTION OF SERVICE SUBJECT TO ANY CLAIM, OR, AT HOLOGIC’S ELECTION, REPAYMENT OF, OR CREDITING CUSTOMER WITH, AN AMOUNT EQUAL TO THE HOLOGIC PRICE, FEE OR CHARGE THEREFOR. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUCH LIMITED WARRANTY IS GIVEN SOLELY TO THE ORIGINAL CUSTOMER AND IS NOT GIVEN TO, NOR MAY IT BE RELIED UPON BY, ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, CUSTOMERS OF CUSTOMER. THIS WARRANTY IS VOID UPON TRANSFER OF PRODUCT BY CUSTOMER TO ANY ENTITY WHO HAS LESS THAN FIFTY (50) PERCENT OWNERSHIP IN THE PRODUCT. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER. CUSTOMER MAY ALSO HAVE OTHER RIGHTS, WHICH VARY, FROM STATE TO STATE. These warranties do not apply to any item that is: (a) repaired, moved, or altered other than by Hologic authorized service personnel; (b) subjected to physical (including thermal or electrical) abuse, stress, or misuse; (c) stored, maintained, or operated in any manner inconsistent with applicable Hologic specifications or instructions, including Customer’s refusal to allow Hologic recommended Software upgrades; or (d) designated as supplied subject to a non-Hologic warranty or on a pre-release or “as-is” basis.

10. LIMIT OF LIABILITY. EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM HOLOGIC’S NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, HOLOGIC SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, DATA, OR USE), DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING, SERVICE OR USE OF PRODUCT ORDERED OR FURNISHED PURSUANT TO THIS AGREEMENT, OR FROM ANY CAUSE RELATING THERETO UNLESS EXPRESSLY AGREED TO BY THE PARTIES IN WRITING. EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM HOLOGIC’S NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, IN NO EVENT SHALL HOLOGIC BE LIABLE UNDER ANY LEGAL THEORY OR FOR ANY CAUSE WHATSOEVER, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE, OR OTHER THEORY, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, FOR ANY AMOUNT IN EXCESS OF THE PRICE, FEE OR CHARGE THEREFOR RECEIVED BY HOLOGIC.

11. Insurance. Hologic shall at all times during the term of the Agreement maintain in effect the following insurance with respect to Customer’s location (i) worker’s compensation insurance covering any and all of its employees, agents or representatives who may be providing services to Customer under the terms of the Agreement, in amounts and coverage complying with the requirements of the applicable state; (ii) general liability insurance covering the acts or omissions of Hologic and its employees, agents or representatives, and any and all Equipment and other personal property of Hologic; and (iii) products liability insurance. At Customer’s request, Hologic shall provide a certificate of insurance to Customer.

12. Governmental Authorizations. Customer is responsible for compliance and costs associated with all required licenses, permits, or other governmental authorizations, including but not limited to, any license or certification needed for Customer to use the Product, and any export or import license, exchange permit, or the like (“Licenses”), even if applied for by Hologic on Customer’s behalf. If any authorization is delayed, denied, revoked, restricted or not renewed, Hologic shall not be liable, and Customer is not relieved of its obligations. Customer represents and agrees that it will handle all Product and technical data related to the Licenses so that it conforms to all applicable U.S. laws and regulations, including U.S. export licensing laws and the U.S. Foreign Corrupt Practices Act. Customer shall not trans-ship, divert, re-export or otherwise dispose of any U.S. origin goods or technology obtained from Hologic except as U.S. laws and regulations expressly permit.

13. Intellectual Property Indemnity. Hologic will defend, indemnify, and hold harmless Customer against any third-party claim that Customer's use of Products infringes a valid U.S. patent, copyright, or trademark, provided that: (1) Products are used as approved by Hologic and have not been altered other than by Hologic or its authorized service personnel; (2) Customer promptly notifies Hologic of such claim; (3) Hologic has sole control of the defense, settlement, or compromise thereof and Customer will be solely responsible for attorneys' fees and costs it incurs independently of Hologic's representation; and (4) Customer cooperates with Hologic and furnishes all aid, information, and assistance necessary or useful to defend such claim. If a final injunction is obtained against the Customer's use of any Product, or if in the opinion of Hologic the Product is likely to become the subject of a successful claim, Hologic may, at its option and in its sole discretion: (i) obtain for Customer the right to continue using the Product; (ii) replace or modify the Product so that it becomes non-infringing; or (iii) if neither (i) or (ii) are reasonably available, accept return of such Products held by Customer, grant a credit therefore as depreciated on a five-year straight-line basis, and terminate the Agreement without any further obligation or liability. The remedy selected by Hologic will be Customer's exclusive remedy for any damage, cost, or expense resulting from any court order or settlement enjoining Customer's use of the Product.

14. Software License. The term "Software" includes all Hologic (and third-party) computer software, firmware and associated documentation, whether in printed or machine-readable form supplied by reason of the Agreement or for use in connection with Equipment or Services. To the extent the Product includes Software, Customer is granted a non-exclusive, non-transferable, royalty-free license to use Software solely on the Equipment on which it is first installed or as designated in the Agreement, in connection with the Equipment in the normal course of Customer's business, and for no other purpose or business. No license is provided under the Agreement to use Software for multi-site quality control or data review purposes or for source code of any type. Software, at all times, shall remain the sole property of Hologic. Software is agreed to contain and shall be treated as confidential information. Customer shall maintain all copyright, proprietary, and other notices on the Software, and shall not de-compile, disassemble, or reverse engineer the Software. The Parties agree that all information needed for interoperability is available from Hologic in accordance with applicable government directives. From time to time Hologic may develop new versions or updates for this software. Customer agrees to allow Hologic access to the Equipment in order to implement any new versions or updates to the software. If Customer transfers Equipment to a third-party, Customer may assign the right to use Software on the Equipment; provided, that the third-party agrees in writing with Hologic to be bound by and to permit Hologic to enforce the provisions of this Section. Customer has no other right to use, sell, assign, transfer, copy, or sublicense Software. As identified in the applicable software product specifications, some third-party software vendors (including Microsoft Corporation) provide different warranties and require different or additional terms applicable to software which they supply; such warranties and terms supersede the Agreement and Customer agrees to abide by such terms with respect to such third-party software. The Microsoft End User License is located on the applicable installation CD-ROM (file name is EULAtxt). In addition to all other rights and remedies Hologic may have at law or in equity, Hologic may immediately terminate any Software license agreement should Customer default on any portion of this section.

15. Confidential Information. Both Parties agree to hold in strict confidence the terms of the Agreement and all information provided to the other in connection with the performance of their respective obligations under the Agreement, including without limitation, financial information and information relating to the Customer and pricing, except to the extent that disclosure is required by applicable law. Notwithstanding the above, the terms and conditions of the Agreement will not be disclosed to any third-party without the prior written consent of the other Party, except either Party may disclose the terms and conditions of the Agreement to its employees, professional advisors, agents or independent contractors that are providing contractual services for the applicable Party and who require knowledge of the terms and conditions of the Agreement, so long as such individuals are subject to applicable non-disclosure agreements.

16. Intended Uses. Products are only intended for the uses listed in the applicable operator's manual or instructions for use. Customer assumes all risks associated with non-listed uses of Products and hereby indemnifies and holds Hologic harmless from any claim associated with such non-listed uses.

17. Compliance with Laws. Hologic and Customer agree to comply with all federal and state laws that govern the enforceability and performance of the Agreement.

18. HIPAA Compliance. To the extent HIPAA (as defined below) applies, both Parties agree to comply with the applicable provisions of the privacy regulations within the Health Insurance Portability and Accountability Act of 1996, as enacted in 45 C.F.R. parts 160, 162, and 164 and as codified at 42 U.S.C. § 1320d, as amended from time to time ("HIPAA"). Hologic agrees that if it directly or indirectly gains access to Protected Health Information ("PHI") during any interaction with Customer it will keep the PHI confidential pursuant to the terms of the Agreement.

19. Federal and State Reporting/Disclosure Laws. Customer acknowledges and agrees that federal and state reporting laws, including, but not limited to, the Federal Physician Payments Sunshine Act, may require Hologic to disclose certain aspects of this arrangement. Unless otherwise noted in the Agreement, the cost of any Product training provided by Hologic shall be included in the purchase price of the Product where applicable.

20. Fraud and Abuse. Hologic hereby certifies that it is not currently a listed vendor in the: (a) Federal General Services Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Presidential Executive Orders 12549 and 12689 "Debarment and Suspension;" and (b) in the Office of the Inspector General of the Department of Health and Human Services' "List of Excluded Individuals/Entities." Any discounted pricing terms offered under the Agreement may be a "discount or other reduction in price" under the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). Customer shall take all actions necessary to comply with the Anti-Kickback Statute discount safe harbor regulations, 42 C.F.R. § 1001.952(h), including but not limited to, (1) maintaining accurate records reflecting the pricing terms of items and Services purchased under the Agreement, (2) fully and accurately reporting any discount received under the Agreement if applicable, and (3) making available information provided to Customer by Hologic concerning cost reports and other filings with the government, including but not limited to, the Secretary of the U.S. Department of Health and Human Services or other state agencies.

21. Access to Books and Records. Until the expiration of four (4) years after the furnishing of Services under the Agreement, Hologic shall make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, the Agreement and such books, documents and records of Hologic as are necessary to certify the nature and extent of the costs hereunder. If Hologic carries out any of its duties under the Agreement through a subcontract, for the value or cost of \$10,000 or more over a twelve (12)-month period, with a related organization, such contract shall contain a clause placing the same duty on the subcontractor as the agreement places on Hologic. This clause shall survive the termination of the Agreement according to its terms. If the law or regulations are effectively amended to increase or decrease the annual amount necessary to require this clause, the amount set forth herein shall be amended accordingly. Notwithstanding the presence of this clause in the Agreement, this clause shall only apply if the actual dollar amount paid during any twelve (12)-month period equals or exceeds the government threshold amount.

22. Default: In addition to any default events specified elsewhere in this Agreement, the occurrence of any of the following events shall constitute a default ("Default") by either applicable Party: (a) non-payment when due of any amount payable by Customer in accordance with this Agreement; and/or (b) either Party's failure to materially perform any covenant or condition of this Agreement. In the event of Default by Customer hereunder, all indebtedness of Customer may, at the option of Hologic and without demand or notice of any kind, immediately become due and payable, and in addition to all other remedies, Hologic may (i) require Customer to return any Hologic-owned Equipment and/or (ii) immediately terminate this Agreement. The non-Defaulting Party shall be entitled to recover from the Defaulting Party any and all expenses and damages that the non-Defaulting Party sustains by reason of Default including, but not limited to, reasonable attorneys' fees, and in the case of Hologic, all expenses of repossession, removal, storage and disposition of the Equipment. The remedies and rights specified herein shall not be exclusive and shall be cumulative. The exercise or the non-exercise of any right or remedy shall not limit or prejudice the non-defaulting Party as to that right or remedy or as to any other rights or remedies provided by applicable law.

23. Bankruptcy. Except as may be prohibited by applicable bankruptcy laws, a Party to the Agreement may elect to cancel any unfulfilled obligations if any of the following situations arise: (1) the other Party becomes insolvent or is unable to pay debts as they become due; (2) a voluntary or involuntary bankruptcy proceeding is instituted by or against a Party hereto; or (3) an appointment of a receiver or assignee for the benefit of creditors occurs on behalf of a Party hereto.

24. Waiver and Severability. If either Party fails to perform obligations under the Agreement, such nonperformance shall not affect the other Party's right to enforce performance at any time. Waiver of any remedy or material breach of any subject matter contained in the Agreement shall not be viewed as a waiver unless agreed to by the Parties in writing. Each provision of the Agreement is separate and independent of one another, and the unenforceability of any provision will not affect the enforceability of any other provision. If any provision is held to be excessively broad or unenforceable, such provision shall be modified accordingly so that it is enforceable to the fullest extent possible by law.

25. Assignment. Subject to the limitations provided in Section 14, Customer shall not assign the Agreement without the prior written consent of Hologic, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, the rights and obligations herein will be binding upon the successors and assigns of Customer.

26. Notices. Any notification required under this Agreement shall be deemed to have been given either one (1) day after being given to an express overnight carrier with a reliable system for tracking delivery; or when sent by a confirmed facsimile with another copy sent by any other means specified in this paragraph; or three (3) business days after having been mailed postage prepaid by United States registered or certified mail. Any required notices to Customer will be delivered to the address set forth in the applicable Hologic quote or other purchasing program document, and to Hologic at the addresses listed below. Either Party may change its mailing address by notice as provided by this section.

Hologic, Inc.
250 Campus Drive
Marlborough, MA 01752
Attn: Contracts Department
Fax: 866-523-8691

With a copy to:
Hologic, Inc.
250 Campus Drive
Marlborough, MA 01752
Attn: Legal Department
Fax: 508-263-2959

27. Governing Law. Upon execution, the Agreement is considered to be a Massachusetts contract, entered into in Massachusetts, and shall be governed and viewed under the laws of the Commonwealth of Massachusetts without reference to its conflict of laws provisions. The Parties specifically agree that any action relating to the relationship between the Parties, the Agreement, Products, or Services provided, purchased or licensed hereunder, shall be brought and tried in the Courts of Massachusetts. Customer hereby waives all objections to, and consents to the jurisdiction of the Massachusetts Courts.

28. Counterparts and Electronic Signatures. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission or delivered by scanned image (e.g. .pdf or .tiff file extension name) as an attachment to electronic mail (email). Such facsimile or scanned signature must be treated in all respects as having the same effect as an original signature.

29. Miscellaneous. See applicable Hologic quote, attachment or purchasing program for additional terms and conditions, which may include, but are not limited to: **Term, Termination, and Right of Returns or Cancellation.**