

LUMENIS TERMS AND CONDITIONS OF SALE

1. **Sale; Authorized Representative.** When Buyer signs the Lumenis Sales Quotation (the “Quote”) to which these Terms and Conditions of Sale are attached, this Agreement is a binding contract between Lumenis Be Inc. (“Seller”) and Buyer for the purchase of the products/services described in the Quote (collectively, the “Equipment”), subject to credit approval by Seller. This Agreement consists of the Quote and these Terms and Conditions. Any inconsistent terms or conditions on Buyer’s order or other documents shall not apply. The person executing this Agreement for Buyer represents and warrants that s/he is duly authorized to sign this agreement on behalf of and in the name of Buyer.
2. **Prices and Payment.** Payment is due net 30 days of invoice. Accounts 30 days past due accrue 24% annual interest or, if less, the maximum rate permitted by law. Deposits are non-refundable. If payment is not made as agreed, the warranty shall be void, discounts shall be cancelled and the full balance due hereunder shall accelerate and be immediately due and payable. Buyer shall reimburse Seller for all costs of collection, including collection agencies, attorney fees and court costs.
3. **Security Agreement; Taxes and Other Charges.** Buyer hereby grants Seller a purchase money security interest in the Equipment and proceeds from sale thereof. Buyer grants Seller a limited power of attorney coupled with an interest to execute financing statements or take any action on Buyer’s behalf necessary or appropriate to perfect the security interest. Buyer shall pay all taxes, fees, duties, levies, or charges imposed by any governmental authority. Applicable sales taxes will be invoiced unless Buyer supplies a valid tax-exempt certificate prior to Delivery.
4. **Delivery and Claims.** For all purposes of this Agreement, title and risk of loss passes to Buyer and delivery is complete upon Seller’s tender of the Equipment to a common carrier (“Delivery”). All shipments are insured for the benefit and at the expense of Buyer. In the event of loss in transit, Buyer’s payment obligations will not be affected and Seller will act as Buyer’s agent in making any necessary insurance claim. All delivery dates are approximate. Seller will deliver in one shipment when possible, but reserves the right to make delivery in installments.
5. **Software License.** Seller grants to Buyer a limited, non-transferable, royalty-free and non-sublicensable license to use the software embedded in the Equipment for its intended use (the “Software”). Associated documentation is provided solely for Buyer’s internal use. Buyer shall not make any copies of the Software.
6. **Inspection; Returns.** Partial shipment by Seller is not a basis for a non-conformity claim. Within ten (10) days of receipt of the Equipment, Buyer shall inspect the Equipment, read the owner’s manual and accompanying documentation and give written notice of any error or claim that the Equipment does not conform to the Quote. Buyer’s sole remedy is set forth in Section 7, below. Purchase orders may not be cancelled without consent of Seller. A Return Material Authorization (“RMA”) will be provided by Seller for any Equipment to be returned. Accepted returns are subject to the charges, terms and requirements notified in writing to Buyer (which may include, without limitation, an 18% restocking fee). No act by Seller (including receipt of returned Equipment) shall constitute Seller’s acceptance of the returned Equipment unless Seller previously provided an RMA.
7. **Limited Warranty.** Seller warrants the Equipment (excluding consumable or disposable components or accessories such as heads and fibers, which will be subject to the warranty terms, if any, included therewith) will be free from defects in materials and workmanship and will conform in all material respects to the Equipment’s technical specifications for a period which is the shorter of (a) fifteen (15) months from Delivery or (b) twelve (12) months from the date of installation or from the date of Buyer’s receipt of Equipment that does not require installation. During such period, Seller shall repair or replace the Equipment at Seller’s sole option. Any head/handpiece repair or replacement will not exceed aggregate pulse count in excess of operational limit. Such repair or replacement shall be Seller’s sole obligation and Buyer’s sole remedy hereunder, and shall be conditioned upon Seller receiving written notice of such claimed defect within ten (10) days after its discovery. All replaced parts are the property of Seller. This limited warranty shall be void if: (a) anyone other than Seller removes Equipment casing or tampers with the Equipment or installs or moves Equipment for which installation is required; (b) the Equipment is not maintained or operated per Seller’s instructions or non-Seller authorized / 3rd party parts or fibers are used without consent; (c) the Equipment was subjected to misuse, abnormal conditions or negligent handling/operation; or (d) the Equipment is resold, leased or rented to anyone without Lumenis consent. Used/refurbished Equipment has no warranty. **This warranty is exclusive and in lieu of all other obligations of Seller, express or implied, written or oral. Seller disclaims and excludes any implied warranty, including warranties of merchantability and fitness for a particular purpose.**

8. **Exclusions.** No representation or warranty will be implied from any description of or claims regarding the Equipment or its effectiveness or ability to achieve any particular clinical results, whether written or oral, contained in specifications, samples, bulletins, marketing or promotional materials or similar statements made or furnished to Buyer by any person. Use of the Equipment requires the exercise of sound medical judgment and clinical results may vary based on operator skill and experience, patient suitability, patient response to treatment and other factors beyond the control of Seller. **Seller makes no representation or warranty of revenue or profits from use of the product and no such representation or warranty shall arise from projections, studies, illustrations, marketing or promotional material or other statements made to Buyer.**

9. **Liability Disclaimer.** Seller shall not be liable for any loss or damage whatsoever that may occur due to misuse, use other than in accordance with Seller's instructions, negligent handling or operation, use by unauthorized or unqualified users, use of unauthorized parts, or any error or omission by Buyer. In the event Buyer uses any 3rd party parts or fibers that are not certified or authorized in writing by Seller, then Seller is not liable for any loss or damage whatsoever that may occur if used by Buyer such as damage to the Equipment, personal injury or property damage. The right to determine which 3rd party parts or fibers are certified and authorized is in Seller's sole discretion. In no event shall Seller be liable for loss of use, loss of profits, punitive damages, attorney's fees and expenses, consequential, incidental or special damages, or any other damages.

10. **Proprietary Rights.** The purchase of the Equipment by Buyer shall in no way be deemed to confer upon Buyer any right, interest or license in any patents, patent applications, designs, copyrights, trademarks, service marks, trade names or other intellectual property rights Seller or any of its affiliates may have covering the Equipment. All such rights are hereby reserved for Seller and its affiliates. Buyer warrants that it will not, and will not permit or assist any other person or entity to, divulge, disclose, or in any way distribute or make use of such intellectual property, and that it will not, and will not engage, permit or assist any other person or entity, to modify, reverse engineer or manufacture any Equipment.

11. **Device Connectivity and Access to Data.** Buyer hereby agrees and acknowledges as follows:

- (a) The Equipment may support connectivity to a "cloud" platform ("the "Connection") designated for private access by Seller and its affiliated entities and their designees (collectively, "Analysts") for the purposes of (i) registration and remote activation of the Equipment, (ii) collection from the Equipment and transmission of certain system performance and usage data that may be entered by Buyer or by its personnel or other users ("Authorized Users") or collected or generated by the Equipment (collectively - "Transmitted Data"), and (iii) automated software updates for the Equipment. Seller may activate/deactivate the Connection in its sole discretion. Equipment in which the Connection is not installed may be upgraded or replaced with systems that include the Connection in Seller's sole discretion.
- (b) Analysts shall have access to and may use (and provide access to or share with relevant business contacts) Transmitted Data for various technical and business purposes, including, for usage and performance diagnostics, analyses and statistics, improving usability and performance, marketing purposes and technical support. Analysts may offer a designated application facilitating certain reports to Buyer based on such Transmitted Data under separate terms and conditions. Analysts may aggregate and share Transmitted Data collected from customers for general customers' benefit.
- (c) Certain data, including Transmitted Data, may be backed up by the Equipment for a certain period. Only technicians of Seller or its affiliated entities are authorized to access and removed such data from the Equipment.

12. **Privacy and Data Protection.**

- (a) Buyer hereby acknowledges that any personal data of Buyer (or any of its owners or managers) and of Authorized Users and other Buyer personnel shared with or collected by Analysts in the course of Buyer's dealings with Seller or the use of the Equipment, including as part of Transmitted Data, may be used and processed separately or together with other personal data Analysts may have with respect to such individuals, and/or with non-personal data, for the purposes provided herein and otherwise in accordance with Lumenis' Privacy Statement (available at <https://lumenis.com/privacy-statement/> and also in the Privacy Notice at the preamble to the Equipment's User Manual). Buyer shall bring the Lumenis' Privacy Statement to the attention of its Authorized Users and other personnel at its earliest convenience, and in any case prior to the creation of the relevant user account in the Equipment and/or otherwise sharing their personal data with Analysts.
- (b) Buyer has the sole responsibility for complying with all applicable privacy and data protection legislation with respect to the collection, processing, transferring and/or sharing of any data related to its personnel and patients (including without limitation by providing any privacy notices to such individuals and obtaining any consents as required for its compliance with such legislation) in connection with the performance of this Agreement and the use of the Equipment.

- (c) For the avoidance of any doubt, Transmitted Data is not intended to include any personally identifiable patient or health information. Transmitted Data includes de-identified patient information. Reidentification, and attempted reidentification, of the deidentified information by Analysts is prohibited pursuant to Cal. Civ. Code § 1798.148. Unless otherwise required by law, Analysts may not further disclose the deidentified information to any third party unless the third party is contractually bound by the same or stricter restrictions and conditions. For purposes of this section, “re-identify” means the process of reversal of de-identification techniques, including, but not limited to, the addition of specific pieces of information or data elements that can, individually or in combination, be used to uniquely identify an individual or usage of any statistical method, contrivance, computer software, or other means that have the effect of associating de-identified information with a specific identifiable individual.
13. **Financing and Assignment.** This Agreement binds Buyer regardless of any financing arrangement, subrogation or assumption. Buyer may not assign its rights or delegate its obligations hereunder except with the prior written consent of Seller (which consent may be withheld in its sole discretion). Seller may assign this Agreement in its unrestricted discretion.
14. **Certifications and Authorizations.** Federal (USA) and state law may restrict the Equipment to use by or on the order of a physician or other practitioner licensed in the state in which the Equipment is used (a "Prescribing Practitioner"). Buyer is responsible for use and operation of the Equipment in accordance with applicable law and regulations, and medical and treatment guidelines, and for ensuring that each operator is adequately trained and qualified to operate the Equipment safely and properly and to perform medical procedures in accordance with such laws, regulations and guidelines. Seller makes no representations or warranties regarding federal, state or local laws or regulations, or medical or treatment guidelines that may apply to the use and operation of the Equipment. Use of the Equipment may involve certain risks of injury to patients. Buyer is solely responsible for ensuring that patients are informed of these risks. Improper use of the Equipment may increase the risk of injury to patients. Buyer is solely responsible for contacting state and local licensing agencies regarding requirements applicable to the use and operation of the Equipment. Buyer is responsible for timely obtaining all necessary certifications, authorizations, permits, licenses, approvals and consents required in connection with the purchase and use of the Equipment in the State in which Buyer is located and in the State in which the Equipment is used. Seller relies on Buyer’s commitment to fulfill such obligations, including any special certifications that may be required by the FDA.
15. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the parties regarding this matter and supersedes any prior or contemporaneous contract, agreement, statement, promise, representation, warranty, purchase order or quotation, whether written or oral. This Agreement may not be modified except in writing signed by the parties.
16. **Governing Law; Jurisdiction and Venue; Time Limit; Arbitration.** This Agreement is governed and construed according to the laws of the state of California, exclusive of conflicts of law provisions. Any action for enforcement or any dispute arising hereunder shall be filed exclusively in courts located in Santa Clara County, California. Buyer hereby consents and waives any objection to the jurisdiction and venue of such courts. Any action for breach of warranty or contract must be commenced not later than one year from the date on which such action accrues or be forever barred. Either party may require any dispute arising out of or related to this Agreement, including any claim arising out of or related to an alleged injury related to use of the Equipment ("Claims"), be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, conducted by one (1) arbitrator sitting in Santa Clara County, California. If any party institutes a judicial proceeding relating to any Claim, that action shall not impede the right of the other party to require submission of such Claim to arbitration so long as such other party initiates arbitration before an Answer is required to be filed in such judicial proceeding. On initiation of arbitration, all judicial proceedings shall be stayed. Neither party will join any Claim with the claim of any other person in a lawsuit, arbitration or other proceeding and no Claim shall be resolved on a class-wide basis. Neither party will assert a Claim in a representative capacity on behalf of anyone else.
17. **Force Majeure.** Timely performance of obligations hereunder is excused due to events beyond the control of the party (“Force Majeure”). Force Majeure includes Acts of God; Acts or omissions of any government entity; Fire or other casualty for which a party is not criminally culpable; quarantine or epidemic; disruption of sources/shipments. Existence of any Force Majeure is determined on a daily basis. No failure to declare a Force Majeure constitutes a waiver to subsequently declare or extend a Force Majeure. In such event, Seller is released from its obligations until the Force Majeure no longer exists and shall not be liable for delay in performance. Buyer expressly waives all objections except to reserve Buyer’s rights to reimbursement of any amount paid to Seller for services not rendered or for Equipment not tendered to a common carrier.
18. **Additional Terms for triLift Marketing Kit (if triLift is purchased).**

- (a) By accessing Seller’s triLift Marketing Kit and any information and/or documents included in it (the “Marketing Materials”), the terms and conditions set forth below shall apply. If Buyer does not agree to these terms and conditions, Buyer should not use or distribute any Marketing Materials.
- (b) Ownership and Copyright: All Marketing Materials and any derivatives thereof are the property of Seller and are protected by applicable copyright laws. Buyer agrees not to reproduce or distribute any Marketing Materials without the express prior written permission of Seller.
- (c) Term: Buyer may use the Marketing Materials until February 24, 2024 or such other date specified by Seller in writing (the “Term”). In its sole, unrestricted discretion, Seller may immediately terminate Buyer’s right to use the Marketing Materials, without prior notice or liability. Upon expiration or termination of the Term, Buyer will promptly delete the Marketing Materials from all channels, means and locations where used by Buyer, unless otherwise instructed by Seller.
- (d) Use of Marketing Materials: Buyer may use the Marketing Materials during the Term solely for the purpose of promoting triLift. Buyer will not: (1) use the Marketing Materials through paid media; (2) modify, alter, copy, sell, lease, assign, license, edit or adapt any of the Marketing Materials without the express prior written permission of Seller; or (3) use any Marketing Materials to promote Buyer’s business and any products and services Buyer provides, other than triLift.
- (e) Disclaimer of Warranties: Seller makes no warranties, express or implied, regarding the Marketing Materials, including but not limited to the accuracy, completeness, or reliability of any information or data contained therein.
- (f) Limitation of Liability: Seller shall not be liable for any damages, including but not limited to direct, indirect, incidental, or consequential damages, arising out of the use or inability to use the Marketing Materials.
- (g) Indemnification: Buyer shall indemnify, defend and hold Seller harmless from and against any loss or damage suffered by Seller as a result of any claim regarding the use of the Marketing Materials inconsistently with these terms and conditions.

Acknowledged and Agreed: BUYER / BUYER’S REPRESENTATIVE:

Signature

Printed Name

Date