

## Terms and Conditions for the Supply of Equipment

Please read the Company's full terms and conditions below as these form the contract ("the Agreement") between the Company and the Customer.

To assist, a summary of some of the key terms of the Agreement are as follows:

Clause Number	Details
Clause 2.6	The Company reserves the right to cancel orders at its discretion and shall have no liability in this regard.
Clause 2.7	All terms and conditions of the Customer or other terms and conditions or warranties whatsoever, whether communicated before or after this agreement, are excluded from the contract or any variation thereof unless expressly accepted by the Company in writing
Clause 4.5	The Customer is responsible for any additional costs of delivery e.g. congestion charge, Ulez, Tolls, parking charges etc.
Clause 6.1	The costs of the Level 2 and Level 3 Service and any Reactive Service Appointment are not included in the price of the Order for the Equipment, but rather are subject to the Repair Fees as set out in clause 7.
Clause 6.2	This clause sets out a list of works not included in the price for the Equipment e.g. modifications to the Customer's own premises.
Clause 7.1 & 7.2	The Customer agrees to the Company carrying out an annual Level 2 Service, which the Company will quote for prior to undertaking any work. The Customer can choose to opt out at any time but failure to undertake the Manufacturer's recommended planned preventative maintenance could affect the warranty provided by the manufacturer on the Equipment.
Clause 7.6	Lists specific conditions and exclusions relating to all servicing and repairs undertaken by the Company. These should be read in full and noted.
Clause 8.1	The Customer is responsible for ensuring that the Customer's Services are as per the Manufacturer's Specification and shall indemnify the Company for any delay or loss caused by the Customer's failure to have these installed and operational.
Clause 8.2	The Customer is responsible for ensuring that the Customer's Premises are adequate for the Installation and shall indemnify the Company for any delay or loss caused by the Customer's failure to have the Customer's Premises in the necessary condition.
Clause 8.3	Where the Company installs Equipment that produces radiation, the Customer agrees to provide the Radiation Protection. The Customer shall indemnify the Company in relation to any failure in this regard.
Clause 8.4	Time is not of the essence in relation to the Delivery Date and the Company shall not be liable for any delays.
Clause 8.8	Unless the Customer has notified the Company not less than 5 (five) Business Days prior to the Delivery Date of any delay preventing the Installation on the Delivery Date, the Company is permitted to charge a fee for the missed appointment time or subsequent installation time at the then current call out and labour rates. This charge will not be less than £400 (four hundred pounds) plus Value Added Tax.
Clause 8.11	If the Company agrees to assist in moving the Customer's Equipment, the Customer shall sign a waiver and accepts that the Company shall not have any liability should the Customer's Equipment be damaged in the process.

<b>Clause 8.12</b>	The Company excludes liability for any direct or indirect loss arising from any failure of the Equipment which is caused by any failure on the part of the Customer or its existing plant or equipment.
<b>Clause 12.4</b>	All warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permissible by law, unless the Customer is a consumer within the meaning of the 1999 Regs.
<b>Clause 12.5</b>	This clause sets out the conditions related to Manufacturer Warranties and the duty on the Customer to check that the terms of the warranty are suitable for its needs. The Company is not responsible for the Manufacturer Warranty and terms and conditions of the warranty are available from the Manufacturer direct. The Company only provides labour free of charge in the first year following purchase of the Equipment and only in relation to issues covered by the Manufacturer Warranty.
<b>Clause 12.5.3 &amp; 12.5.4</b>	The Company does not provide labour and call out free of charge over any <b>extended warranty</b> period that the Customer may purchase or receive from the Manufacturer. The Customer must check the suitability of the extended warranty for its purpose and the Company accepts no liability in this regard and provides no warranty as to the suitability of the extended warranty for the Customer's needs.
<b>Clause 13.1</b>	The Company is not liable for indirect or consequential loss or damage, being loss or damage which does not directly and naturally flow from the supply of the Equipment or Services to the Customer.
<b>Clause 13.2</b>	Any liability of the Company is limited to the price of the Equipment and / or Services set out in the Order. Notification of loss must occur within 21 days.
<b>Clause 14</b>	The Customer is responsible for the Customer's Digital Services and the Company accepts no liability if these are incompatible with the Equipment or delays occur in relation to their configuration or installation. The Customer is responsible for its backup of data and the Company accepts no liability for loss of this.
<b>Clause 15</b>	Equipment is non-returnable save in exceptional circumstances and subject only to the express agreement of the Company. Where returns are agreed, restocking charges apply. The Customer is responsible for deleting any personal identifiable information or sensitive information from the Equipment, prior to returning it.

## 1 Definitions

In this Agreement the following definitions shall apply:

**"Applicable Laws"** shall mean any law, enactment, regulation, regulatory policy, by-law, ordinance or subordinate legislation relating to the Equipment and/or Services in relation to the performance of this Agreement, together with any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any applicable regulator, including the Bribery Act 2010, the Equality Act 2010, the Modern Slavery Act 2015, the Criminal Finances Act 2017 and Directive 2002/96/EC on Waste Electrical and Electronic Equipment

**"Business Day"** shall mean Monday to Friday during normal working hours unless such day is a bank holiday or other public or state holiday.

**"Company"** shall mean Henry Schein UK Holdings Limited, Trading as Henry Schein Dental of Medicare House, Centurion Close, Gillingham Business Park, Gillingham, ME8 0SB;

**"Company Services"** shall mean the services agreed to be supplied by the Company to the Customer

as detailed in the Quotation and accepted in the Order, included but not limited to relocating the Customer's existing equipment or removing the same.

**"Confidential Information"** shall mean any information provided by a Party to the other Party under this Agreement which is relevant to the business, research and development activities, Intellectual Property Rights, materials, products, services, affairs, plans, finances and/or strategies of the disclosing Party and/or its commercial partners or clients which would reasonably be considered confidential;

**"Customer"** shall mean any person or persons, firm or company who buys or agrees to buy the Equipment from the Company;

**"Customer's Infrastructure"** shall mean any mounting brackets, plates, lead lining or similar hardware required to support the Equipment as part of the Installation.

**"Customer's Services"** shall mean but not be limited to the Customer's provision of necessary water, waste, electricity, air, suction and data lines to enable the Company to carry out the Installation.

**"Customer's Equipment"** shall mean equipment owned by the Customer, other than the Equipment.

**"Equipment"** shall mean the goods agreed to be sold by the Company to the Customer as detailed in the agreed Order;

**"Delivery Date"** shall mean the date agreed between the parties for the Installation of the Equipment as set out in the Order.

**"Drawings"** shall mean the technical and layout drawings provided by the Company to the Customer for the Installation at the Premises.

**"Due Date"** shall mean 5 days before the Delivery Date.

**"Force Majeure"** shall mean any event or circumstance which is beyond the control of and without the fault or negligence of the party affected including but not limited to acts of God, natural disasters, storms, fire, flooding, any labour or trade dispute, strikes, industrial action or lockouts, any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, extended customs procedures or unforeseen delays at borders, or failing to grant a necessary licence or consent, non-performance by suppliers or subcontractors, and, epidemic or pandemic.

**"Installation"** shall mean the fitting and installation of the Equipment at the Premises by the Company.

**"Intellectual Property Rights"** shall mean any intellectual property rights including copyrights and related rights, moral rights, rights in and to inventions, patents, database rights, rights in computer software, trade marks and trade names, domain names, rights in confidential information (including know-how and trade secrets), semi-conductor topography rights, plant variety rights, rights in goodwill and to sue for passing off, unfair competition rights, designs and design rights, utility models, supplementary protection certificates and other extensions of patent term and all rights of a similar nature in any part of the world (in each case whether registered or unregistered), and applications and the right to apply for registration of any intellectual property rights;

**"Level 2 Service"** shall mean an annual planned preventative maintenance service of the Equipment. This includes labour and replacement parts of those parts specified by the manufacturer as needing to be replaced as part of the annual planned preventative maintenance. In addition, we will undertake a general review and diagnosis of the Goods to see whether any other repairs or replacements are required to maintain the Goods that fall outside of the Level 2 Service. If additional

work is identified, this will be communicated to you along with a quote for the cost of undertaking the work. No additional work will be carried out without your authorisation following a full quote.

**“Level 3 Service”** shall mean the Level 2 Service and in addition to this, two additional emergency repair appointments per annum which include labour on the Equipment. You will be responsible for the cost of any replacement parts that are required outside of the Level 2 Service, but all parts required to maintain the Goods will benefit from a 20% discount on the prices quoted for the duration of the term agreed. If additional visits are required to resolve any issue with the Equipment, these will be charged at the Company’s normal rates.

**“Losses”** shall mean any indirect, special or consequential loss or damage; or loss of data or other equipment or property; or economic loss or damage; or incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill.

**“Manufacturer’s Specification”** shall mean any specification, guidance note, operating instructions and safety precaution information provided by the respective manufacturer’s of the Equipment setting out the conditions, requirements and safety measures required at the Premises for the Equipment’s effective and compliant Installation.

**“Manufacturer Warranty”** shall mean any warranty provided by the manufacturer of the Equipment which the Company will where it can pass on to the Customer subject to any terms dictated by the manufacturers in relation to the Manufacturer Warranty. Warranty terms vary in terms of timeframe cover and scope, but the Customer should note that most warranties exclude the obligation to replace parts that are subject to normal wear and tear.

**“Original Saleable Condition”** shall mean the Equipment being returned in good working order, free of cosmetic imperfections, including original packaging and manuals and fully operational to the Manufacturer’s Specification;

**“Order”** shall mean an order placed by the Customer with the Company for the Equipment by way of the Customer signing the Quotation.

**“Premises”** shall mean any practices or locations of the Customer in which the Installation of the Equipment occurs.

**“Quotation”** shall mean the quotation provided by the Company to the Customer setting out the Company’s proposal in terms of the cost for the sale of the Equipment and the Services to the Customer. The Quotation is only valid for 30 days from the date on it.

**“Radiation Protection”** shall mean the compliance by the Customer in installing all necessary radiation shielding and following guidance on the positioning of the Equipment as set out in any legislation or guidance and as advised by the manufacturer of the Equipment. The Customer is responsible for obtaining its own advice to ensure compliance with all radiation protection obligations.

**“Reactive Service Appointment”** shall mean an emergency appointment requested by the Customer for the Company to come out and repair the Equipment or the Customer’s Equipment.

**“Repair Fees”** shall mean the fee agreed between the Company and the Customer plus VAT, for carrying out one or more of the following:

- Level 2 Service,
- Level 3 Service

- Reactive Service Appointment

“**Services**” shall mean the services agreed to be supplied by the Company to the Customer as detailed in the Quotation and accepted in the Order.

“**VAT**” shall mean Value Added Tax at the prevailing rate at the time of payment.

## **2 Conditions Applicable**

- 2.1 This Agreement shall apply to and govern all contracts for the sale of the Equipment by the Company to the Customer, whether the Company is responsible for the Installation of the Equipment or not.
- 2.2 This Agreement also covers repairs and maintenance such as the Level 2 or Level 3 Service and Reactive Appointments for the repair of the Equipment and the Customer’s Equipment by the Company, as set out in clause 7.
- 2.3 The Company reserves the right to contact external credit reference agencies.
- 2.4 The exercise by the Company of any right pursuant to this Agreement shall be without prejudice to any other right available to it whether hereunder or under general law.
- 2.5 Customer shall inform the Company if at any time its license/registration expires and has not been renewed, or is limited, revoked, terminated, cancelled or is no longer associated with the Customer’s account.
- 2.6 All Orders shall be subject to availability and the Company shall have the right to cancel and/or reject any order at its discretion. Any cancellation shall be notified to the Customer and refunds applied where applicable. The Company shall have no liability for cancelled orders. The Company shall notify the Customer within a reasonable period of any cancellation of an Order and where applicable refund any payments made subject to clause 5.6 below.
- 2.7 All products are sold for their intended purpose only, as set out by the legal manufacturer of the products. By purchasing the products from the Company, you agree to comply with the requirements outlined by the manufacturer of the products in relation to their intended use and where applicable, in relation to the sale of regulated substances and reportable substances, you agree to comply with the terms of the Poison Act 1972 (as amended) the identification of which are set out on the manufacturer’s literature and are indicated on our box content list accompanying the products.
- 2.8 All terms and conditions of the Customer or other terms and conditions or warranties whatsoever, whether communicated before or after this agreement, are excluded from the contract or any variation thereof unless expressly accepted by the Company in writing, and the Customer’s own conditions shall not in any circumstances be regarded as a counteroffer.

## **3 Title and Risk**

- 3.1 Risk in the Equipment shall pass to the Customer on the Delivery Date.
- 3.2 Title in the Equipment or any part thereof including spare parts shall only pass to the Customer when payment in full for the Equipment including any spare parts and labour has been

received in cleared funds by the Company.

- 3.3 Where title in the Equipment remains with the Company, the Customer shall act as bailie for the Company, and shall maintain the Equipment in satisfactory condition and shall not remove any identifying marks from it.
- 3.4 The Company's representatives including officers, employees, representatives or agents of the Company reserve the right to access the Premises to verify the state of the Equipment and in the event of nonpayment to retrieve the Equipment.

#### **4 Price, Quotation and Installation**

- 4.1 The price for the Equipment including delivery costs and installation charges shall be set out in writing on the Quotation.
- 4.2 The Company will use all reasonable care to ensure the accuracy of the Quotation. However, due to the often complex and bespoke nature of dental equipment provision, there may be instances when a revision to the Quotation is required. The Company will endeavour to keep this to a minimum and will not increase the Quotation without consultation.
- 4.3 All pricing for Equipment is exclusive of VAT unless indicated otherwise. The price shall be based on the sum in the Quotation, but the Company reserves the right to amend the price at any time in its absolute discretion and to correct clerical errors or omissions.
- 4.4 To place an Order the Customer agrees to sign the Quotation and return it to the Company.
- 4.5 The Customer is also responsible for any additional costs of delivering the Equipment from the Company to the Premises including but not limited to road or bridge tolls, ULEZ and congestions charges (currently £15 per day for entry into any zone covered by the congestion charge during the relevant time) and any other parking charges if free parking is not available at the Premises during Installation.
- 4.6 Where an Order is placed by the Customer the Supplier will provide the Drawings. The Customer is required to sign the Drawings as confirmation of its agreement with the contents of the Drawings and the suggested layout.
- 4.7 The Company may also attend the Premises prior to the Installation for a site meeting with the Customer's appointed contractor or staff member to check the Premises and the Customer's Services.
- 4.8 The handover of the equipment to the client will be carried out by the Supplier's installing engineers, on the day of the Installation. Alternatively, the parties may agree that the handover arrangements are provided by the Company's project manager if one has been appointed.
- 4.9 It is the responsibility of the Customer, or its appointed contractor to make good all areas that require attention, once any old Customer Equipment has been removed from the Premises. This includes but is not limited to vinyl floor coverings, ceiling tiles, walls etc.

#### **5 Payment and Finance**

- 5.1 Where the Customer purchases the Equipment using its account with the Company, the following payment conditions apply:

- 5.1.1 The Customer shall pay the Company a deposit on the Equipment, as follows:
- (a) No deposit for Equipment valued under £6,000;
  - (b) A deposit equal to 20% (twenty percent) of the Order value plus VAT to be paid by the Customer when returning the signed Quotation;
- 5.1.2 Any outstanding amount due for the Equipment including the cost of Installation and spare parts must be received by the Company in cleared funds on or before the Due Date.
- 5.1.3 If the Customer has requested not to take delivery of all or part of the Equipment due to its project timeline being extended and has not taken delivery of the Equipment within nine months following the date of the Order, the Customer is liable to pay any outstanding amount owed on the Equipment and is liable for additional storage fees until the Equipment is delivered. The reasonable cost for storage will be determined by the Company at its absolute discretion at the relevant time.
- 5.1.4 If full payment for the Order is not received by the Due Date, the Company shall not be obliged to deliver the Equipment to the Customer by the Delivery Date. In this instance a new date for delivery will be agreed by the parties following receipt by the Company of full payment for the Equipment.
- 5.2 Where the Customer is purchasing the Equipment either fully or in part through a third-party financing arrangement the following conditions apply:
- 5.2.1 The Customer shall pay a minimum deposit of 20% (twenty percent) of the Order value plus VAT when returning the signed Quotation. The Company in its absolute discretion may waive its right to receive a 20% deposit at this time. Any such waiver shall only be valid if agreed in writing by the parties.
  - 5.2.2 The total value of the Order plus VAT must be received by the Company from the Customer's third-party finance company on or before the Due Date for delivery of the Equipment to occur on the Delivery Date. If there is a delay in receipt of funds from the finance company, a new date for delivery of the Equipment will be arranged with the Customer once the Company has received payment in full for the Equipment.
  - 5.2.3 Where a deposit has been received by the Company and the total Order value is later paid in full by the third-party finance company on behalf of the Customer, any deposit already paid by the Customer for the Order will be refunded within 10 (ten) Business Days of receipt of full payment for the Equipment by the Company.
  - 5.2.4 The Company reserves the right to set off any overdue balances owed by the Customer to the Company from the deposit prior to repaying it.
  - 5.2.5 If the Customer wishes to return the Equipment for any reason, the maximum refund the Customer will be entitled to is the cost of the Equipment being returned as set out on the Quotation and at no point will the Company be liable for any finance costs, penalties, or interest.
- 5.3 Where the Company has purchased Equipment direct from a manufacturer / supplier for the Customer, at the Customer's specific request, the Customer is not entitled to return the Equipment and request a refund.
- 5.4 Time shall be of the essence in relation to all payments by the Customer under this Agreement.

- 5.5 The Customer shall notify the Company at the time of placing the Order of its intended method of payment. The Company shall have a right to reject any such method of payment at its absolute discretion.
- 5.6 If the Customer is in default in paying any sum as it falls due, the Company shall have the right to suspend all further deliveries of the Equipment until full payment is received and/or to cancel the Agreement in respect of any Equipment not yet delivered. Additionally, outstanding payment for the Equipment supplied to the Customer shall become immediately due and owing, whether previously invoiced or not.
- 5.7 In the event that the Customer fails to pay any monies by the Due Date, the Company shall be entitled to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 unless the Customer is a consumer within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999 in which case interest at the rate of 4.5% per annum will apply, until full payment is received. The Customer shall also indemnify the Company against expenditure on all costs of recovery including without limitation all legal fees, costs and disbursements reasonably incurred. Any banking charges incurred by the Company in respect of dishonoured cheques will be payable by the Customer.
- 5.8 The Customer is not permitted to cancel an Order once placed, except with the Company's prior written consent.
- 5.9 Where the Company agrees to the Customer cancelling all or any part of the Order the Company may without prejudice to any other rights against the Customer which it may have, require the Customer to:
- 5.9.1 pay a cancellation charge including but not limited to the Company retaining the 20% deposit ("the **Cancellation Charge**"); and
- 5.9.2 In the event that the Company agrees to the cancellation of an Order in respect of the supply of Equipment which has been ordered to comply with the Customer's special requirements, the Customer shall be liable for all costs incurred by the Company up to the time of cancellation of the Order in addition to the payment of the Cancellation Charge.
- 5.10 Without prejudice to the Company's other rights and remedies if full payment for the Equipment has not been received by the Company prior to the Delivery Date, the Company reserves the right to recover the Equipment or charge the Customer a late payment interest fee calculated at 5% (five percent) above the bank base rate per month of the invoiced value of the Order until payment has been received.

## **6 Items not included in the price of the Order**

- 6.1 Unless otherwise stated by the Company the costs of the Level 2 and Level 3 Service and any Reactive Service Appointment are not included in the price of the Order for the Equipment, but rather are subject to the Repair Fees as set out in clause 7.
- 6.2 Unless otherwise stated by the Company the costs of the following are also not included in the price for the Equipment:
- (a) any uninstalling and/or reinstalling of the Customer's existing equipment or cabinetry;



- (b) any removal or disposal of the Customer's existing equipment or cabinetry;
- (c) any modifications or additions to the Customer's Services required for the Equipment;
- (d) changes or additions in plumbing, electrical, or carpentry;
- (e) any applicable charges associated with disposing of the Equipment.
- (f) Storage costs where the Customer requests to delay delivery of the Equipment.
- (g) Local tariffs or charges such as Ulez, congestion charges (currently £15 per day for entry into any zone covered by the congestion charge during the relevant time), toll charges, parking costs etc to the Premises.

## **7 Service and Repairs**

- 7.1 As part of this Agreement, the Customer agrees to the Company carrying out a Level 2 Service on the Equipment, for the Repair Fees. The Level 2 Service includes the Company's engineers attending your practice annually, as recommended by the manufacturer, to carry out a Level 2 Service on the Equipment. Failure to carry out the Level 2 Service could result in the manufacturer failing to honour any warranty provided with the Equipment.
- 7.2 The cost of the Level 2 Service is subject to the Repair Fee, which is payable in full prior to the annual service being carried out by the Company. A quotation for the Repair Fee will be provided to the Customer before the annual Level 2 Service is carried out. If the Customer does not want the Level 2 Service, the Customer can opt out at any time by notifying the Company in writing at the following email address: [equipment-servicedesk@Henryschein.co.uk](mailto:equipment-servicedesk@Henryschein.co.uk), but the customer should note that not having a Level 2 Service on the Equipment could affect any warranty that the manufacture has provided on the Equipment.
- 7.3 If the Customer wishes to purchase a Level 3 Service package in relation to the Equipment from the Company, the terms of the Level 3 Service including the Repair Fee, payment method and duration of the term of the service agreement, will be provided to the Customer in writing by the Company, for mutual agreement. Payment of the Repair Fee will be as agreed between the Customer and the Company as part of the quotation process. Unless agreed otherwise, the Level 3 Service will renew annually, with any amendment to the amount of the Repair Fee provided to the Customer on or around two months prior to the next annual service appointment falling due. The Level 3 Service may be terminated in accordance with the provisions of clause 7.4 following the expiry of the initial term agreed, by the Customer contacting the Company in writing at the following email address: [equipment-servicedesk@Henryschein.co.uk](mailto:equipment-servicedesk@Henryschein.co.uk).
- 7.4 For all Level 2 and Level 3 Services, the Customer must sign up to a minimum term of either one (1), three (3), or five (5) years, with the agreement to automatically renew annually thereafter unless terminated by either party on three months' written notice to the other.
- 7.5 If the Customer requires a Reactive Service Appointment, it should contact the Company by telephone or email for an appointment and quotation. If the quoted Repair Fee for the Reactive Service Appointment is:

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- 7.5.1 Under £500 plus VAT for any single appointment, the quotation will be agreed over the phone and where possible the Company will provide the Customer with an email thereafter setting out the agreement reached and the Repair Fee owed;
  - 7.5.2 Either £500 plus VAT or more for any single appointment, a written quotation will be provided to the Customer by the Company setting out the Repair Fees and any other terms agreed.
  - 7.5.3 All Reactive Service Appointment Repair Fees are due for payment within 30 days following receipt of an invoice from the Company.
- 7.6 In relation to all servicing and repairs under this clause 7, the following specific conditions and exclusions apply:
- 7.6.1 The Company shall not be liable for any work undertaken by an engineer who does not work for the Company;
  - 7.6.2 Whilst all reasonable endeavours will be made to restore the Equipment or the Customer's Equipment to a useable condition during a repair appointment, this cannot be guaranteed during a diagnostic visit and is subject to the condition of the equipment, the extent of the repairs needed and the availability of replacement parts.
  - 7.6.3 The Company disclaims all liability for any loss by the Customer caused through the equipment not becoming operational following a repair appointment, whether the loss is actual, perceived, or anticipated, whether direct or indirect and in particular the Company expressly excludes all liability for alleged loss of earnings caused by equipment not being left in or restored to full working order following a repair by the Company as this is often due to circumstances beyond the Company's reasonable control.
  - 7.6.4 The limitations and exclusions set out in the rest of these terms also apply to servicing and repairs where applicable.
  - 7.6.5 If any Repair Fees are not paid on time a late payment interest fee will be charged to the Customer calculated at 5% (five percent) above the bank base rate per month, of the invoiced value, until payment has been received.
  - 7.6.6 Where an engineer visit is abandoned and/or an engineer is refused access to the Customer's Premises a callout fee at the engineer's normal rates at that time shall be applied to the customer's account.
  - 7.6.7 The Company is not liable to repair faults with the Equipment in the following circumstances:
    - i. Where the faults are caused by the Customer's improper use or misuse of the Equipment
    - ii. Replacement of parts subject to normal wear and tear unless there is proof that they were defective at the time of delivery;
    - iii. Faults and/or damage caused by a defect in the Customer's Services connected to the Equipment.
    - iv. Faults and/or damage resulting from the use of the Equipment outside of the Manufacturer's Specification.
    - v. Colour change of plastic elements of the Equipment;
    - vi. Software upgrades, unless expressly agreed with the Company in writing;
    - vii. Where the Equipment consists of handpieces, consumable/disposable

goods or accessories;

- viii. In relation to DAC and Melag equipment, any replacement part of the data logger.
- ix. Where remote technical support is provided by the Company's Equipment remote helpdesk, this does not include provision of training to the Customer or its employees.

## **8 Services and Installation Requirements**

- 8.1 The Customer shall be responsible for providing the Customer's Services precisely in accordance with the Manufacturer's Specification, and the Drawings provided by the Company and to ensure that all floor coverings and decoration are complete. The Customer is responsible for making the final connection of the Customer's Services to the Equipment following the Installation. The Company shall not be liable for any damage and/or delays caused by the Customer in relation to the Customer's Services or otherwise. The Customer shall indemnify the Company against any and all costs or losses incurred as a result of a failure and/or delay in implementing the necessary Customer's Services for the Installation of the Equipment.
- 8.2 The Customer shall be responsible for securing the structure of the Premises for the Installation, including providing the Customer's Infrastructure required as part of the Installation. The Company shall have no liability for any damage and or delays caused by the Customer complying with its obligation to provide the Customer's Infrastructure and the Customer shall indemnify the Company for any and all claims in connection with any delay to the Installation caused by a failure by the Customer to adequately implement the Customer's Infrastructure on time.
- 8.3 Where the Company has agreed to install Equipment that produces radiation for the Customer, the Customer agrees to provide the Radiation Protection. The Company shall have no liability for any damage and or delays caused by the Customer through its compliance with its Radiation Protection obligations and the Customer shall indemnify the Company for any and all claims in connection with the Customer's obligation to adequately provide the Radiation Protection.
- 8.4 The Company shall use reasonable endeavours to install the Equipment on the Delivery Date but time shall not be of the essence. The Company shall not be liable to make good any damage or loss, however arising, (whether direct or indirect) by reason of any failure to meet the Delivery Date. Any failure to meet the Delivery Date shall not entitle the Customer to terminate or rescind the Order unless such delay exceeds 60 (sixty) Business Days.
- 8.5 If the Equipment is sold and delivered to the Customer in instalments, each delivery shall constitute a separate contract, and failure by the Company to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalment shall not entitle the Customer to treat the Order as a whole as repudiated.
- 8.6 The Company will only deliver the Equipment to a registered dental practice address, which for the avoidance of doubt shall not include a residential address.
- 8.7 Where the Customer provides measurements for the Installation, the Company shall not be

liable to make good and/or cover any additional costs associated with any issues due to the Customer's incorrect measurements. Where the inaccuracies result in additional costs such costs shall be borne solely by the Customer.

- 8.8 Unless the Customer has notified the Company not less than 5 (five) Business Days prior to the Delivery Date of any delay preventing the Installation on the Delivery Date, the Company is permitted to charge at its sole discretion a fee for the missed appointment time or subsequent installation time at the then current call out and labour rates. This charge will not be less than £400 (four hundred pounds) plus Value Added Tax.
- 8.9 Where the Customer requests an employee or contractor working for the Company, to undertake works at the Premises including but not limited to attachment of any item to the structure of the Premises or to provide any connection to or adaptation of the Customer's Services or Customer's Infrastructure such employee or contractor shall have the right to refuse to do so for any reason. For the avoidance of doubt the Company shall not be liable for any such work undertaken and/or refusal to undertake such work as this work falls outside of the Installation.
- 8.10 The Customer shall ensure that the Premises comply with all relevant health and safety legislation at all times including but not limited to the provision of working toilet facilities and washing facilities.
- 8.11 Where the Company agrees at its absolute discretion for the Company's engineers to move existing equipment at the Premises at the request of the Customer, the Customer shall sign a waiver prior to any such activity accepting that the Company or its engineers are not liable should the Customer's existing equipment be damaged in the process of moving it. For the avoidance of doubt no guarantee or assurances can be provided that the Customer's existing equipment will work following relocation and the Customer accepts this risk.
- 8.12 The Company excludes liability for any direct or indirect loss arising from any failure of the Equipment which is caused by any failure on the part of the Customer or its existing plant or equipment.

## **9 Snagging Issues post Installation**

- 9.1 If a defect occurs with the Equipment in the first 28 days following the Installation ("**Snagging Period**"), then this will be dealt with as a snagging issue by the Company unless it can be shown that the default has occurred owing to the Customer not following the Manufacture's Specification ("**Snagging Defect**").
- 9.2 Snagging Defects will be dealt with by the Company free of charge during the Snagging Period, thereafter, they will be dealt with under the Manufacturer's Warranty.

## **10 Confidentiality**

- 10.1 Both parties shall retain all rights in their respective Confidential Information and Intellectual Property Rights including in the case of the Company the Intellectual Property Rights in the Drawings.

10.2 Neither party shall use the other's Confidential Information or Intellectual Property Rights for any reason without the other party's express written consent and at all times shall only use the other's Confidential Information or Intellectual Property Rights for the purpose of carrying out the terms of this Agreement.

## **11 Value Added Tax**

11.1 All sums payable under this agreement, or otherwise payable by the Customer to the Company are exclusive of any VAT chargeable on the supplies for which such sums (or any part of them) are the whole or part of the consideration for VAT purposes. The Company will add VAT to its invoices and the Customer agrees to pay the same.

## **12 Warranties**

12.1 The Company warrants that in providing the Equipment and Services under this Agreement it will exercise reasonable care and skill and that it will comply with the Applicable Laws.

12.2 The Customer warrants that it or its agents will exercise reasonable care and skill when providing the Customer's Services, the Customer's Infrastructure, any work in complying with the Manufacturer's Specification or readying the Premises for the Installation and any other obligation under this Agreement. The Customer also warrants that both it and its agents will comply with all Applicable Laws and the Manufacturer's Specification at all times.

12.3 Except as set out in this Agreement, any statements or verbal confirmations provided by the Company's employees and/or subcontractors shall not constitute a warranty and such statements shall not be relied upon.

12.4 Subject as expressly provided in this Agreement and except where the Equipment is sold or the Services are provided to a person dealing as a consumer within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999 all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permissible by law.

12.5 Where the Equipment is supplied to the Company with a Manufacturer Warranty, the Manufacturer Warranty will continue to apply to the Equipment following onward sale to the Customer. The following conditions will apply:

12.5.1 The details of the Manufacturer Warranty will be outlined on the Order, but the full terms and conditions of the Manufacturer Warranty are available from the Equipment manufacturer direct.

12.5.2 If alleged defects in the Equipment are shown to have been caused by incorrect operation, cleaning or handling or other improper use of the Equipment, not in compliance with the Manufacturer's Specification or conditions of the Manufacturer's Warranty, the Company reserves the right to charge for service calls to deal with any repairs of the Equipment and to charge for replacement parts and to refuse a refund for the Equipment if requested by the Customer.

12.5.3 In all other circumstances the Company will provide any replacement parts specifically covered by the Manufacturer's Warranty, free of charge for the length of the Manufacturer's Warranty, but only for those replacement parts covered by the Manufacturer's Warranty. Save in respect of the first year following Installation where

labour and call out fees are provided free of charge for issues covered by the Manufacturer's Warranty, labour and call out fees thereafter are payable by the Customer for the remainder of the Manufacturer's Warranty period. The Company does not provide labour and call out free of charge over any extended warranty period that the Customer may purchase or receive from the Manufacturer.

12.5.4 In some cases it may be possible for the Customer to purchase an extension to the Manufacturer's Warranty for the Equipment. Any such purchase will be subject to the manufacturer's specific terms and conditions associated with the extended warranty, as advised by the manufacturer of that Equipment from time to time. The Company or its employees will assist the Customer in obtaining the details of the extended warranty, but the Customer remains primarily responsible for checking that the extended warranty meets the Customer's specific needs and that the Customer is happy with the terms of the extended warranty. The Company accepts no liability in this regard and provides no warranty as to the suitability of the extended warranty for the Customer's needs.

12.6 Where the Customer purchases Equipment which is used, ex-display, ex-demonstration and/or are clearance goods or similar, such Equipment shall be excluded from the Manufacturer's Warranty and all other warranties unless expressly agreed otherwise with the Company.

### **13 Restriction of Liability**

13.1 The Company shall not in any event be liable for indirect or consequential loss or damage, being loss or damage which does not directly and naturally flow from the supply of the Equipment or Services to the Customer, including, without limitation, loss of profits, of use, overhead costs, collateral damage or of contracts arising out of the supply or failure of supply of the Equipment or Services by the Company to the Customer (other than liability for death or personal injury resulting from the negligence of the Company) and whether arising from breach of contract, negligence or for any other liability howsoever arising, whether by statute or otherwise.

13.2 In all other cases (being cases of direct and natural losses or damage) it is specifically provided and agreed that the compensation and damages payable under any claim or claims arising out of this Agreement between the parties under whatsoever pretext shall not under any circumstances amount in aggregate to more than the price of the Equipment and/or Services set out in the Order forming the subject of the claim or claims.

13.3 No liability for such direct losses shall attach to the Company unless details of such losses are notified to the Company in writing within 21 days of the Delivery Date, or the date of the event giving rise to such loss if it is not apparent upon the Delivery Date.

13.4 For the avoidance of doubt, nothing in this agreement shall confer on any third party any benefit or the right to enforce any term of this agreement.

### **14 Digital Imaging and Software Installations**

14.1 It is the responsibility of the Customer to ensure that any computers/servers/monitors/ cards, network, backup systems and other digital interfaces with the Equipment ("**Customer's Digital Services**") that are used by the Customer with the Equipment are compatible with the requirements of the Equipment and any directly associated software, as set out in the Manufacturer's Specification or as otherwise advised to the Customer by the Company. The Company excludes all liability for loss or damage to the Equipment or otherwise where the Customer's Digital Services are incompatible with the Equipment.

14.2 Any computer at the Premises which interfaces with the Equipment must be installed and

configured to the Customer's network by the Customer or its agent prior to the Installation of any Equipment including specifically where the Company is installing any digital imaging software.

- 14.3 The Customer's IT support must be available throughout the Installation of any Equipment that is classified as digital imaging equipment such as x-ray machines, by the Company.
- 14.4 It is the Customer or its agent's responsibility to carry out all and any necessary wireless network configuration or re-configuration of the Customer's Digital Services that is required as part of the Installation. Should the Customer request the Company to assist in any work associated with the Customer's Digital Services the Company excludes all liability for any damage or loss which arises from this, even if the Company or its engineers are shown to be at fault. The Company shall have the absolute right to refuse to provide the Customer with any assistance in relation to the Customer's Digital Services as part of the Installation.
- 14.5 Any unavailability of the Customer's Digital Services or support during the Installation will result in additional charges to the Customer at the Company's standard call out and labour rates.
- 14.6 Any backup of the Customer's data is the sole responsibility of the Customer whether as part of the Installation or otherwise. The Company excludes all liability for backup of the Customer's data or for ensuring that a professional backup process and hardware is in place prior to the Installation.

## **15 Returns**

- 15.1 Equipment purchases are non-returnable unless expressly approved by the Company in writing in advance of the Equipment's return.
- 15.2 All Equipment returned at any time shall be subject to a minimum 15% (fifteen percent) restocking fee. Any returned Equipment must be sent back to the Company at the Customer's cost within 30 (thirty) days of the Delivery Date and the Equipment must be in Original Saleable Condition including arriving back at the Company's premises with undamaged packaging. Where the Company at its absolute discretion considers accepting returned Equipment that is not in its Original Saleable Condition, such Equipment is subject to a minimum 25% (twenty five) percent restocking fee, depending on condition.
- 15.3 All Equipment returned to the Company (with the express agreement of the Company in writing) between 31 (thirty-one) and 60 (sixty) days following the Delivery Date, shall be subject to a restocking fee of not less than 25% (twenty five percent) provided such Equipment is Returned in Original Saleable Condition with undamaged packaging. Where Equipment returned in this period (between 31 (thirty-one) and 60 (sixty) days following the Delivery Date) is not in its Original Saleable Condition including in relation to packaging, such Equipment is subject to a 50% (fifty percent) restocking fee.
- 15.4 Where returned Equipment (with the express written agreement of the Company) at any time includes technological items including but not limited to, laptops, desktop PCs, servers, printers, TVs, monitors, portable storage devices and network hardware, such Equipment shall be subject to a minimum 50% (fifty percent) restocking fee.
- 15.5 All Equipment returned to the Company (with the express agreement of the Company) more than 90 (ninety) days following the Delivery Date shall be subject to a minimum 50% (fifty per cent restocking fee and the refund for the remaining 50% (fifty percent) cost of the Equipment shall be provided by way of a credit placed on the Customer's account with the Company to settle an outstanding balance or towards new purchases from the Company.
- 15.6 The Company shall not be obliged to accept the return of any Equipment which in the Company's reasonable opinion shows signs of abuse, misuse and/or damage or has not been used in accordance with the Manufacturer's Specification. Where the packaging of the Equipment is damaged and/or unavailable the Company may apply an additional restocking

charge to reflect this.

- 15.7 Where Equipment is returned to the Company for any reason, any interest rate charges and/or early repayment charges applied by the Customer's third party finance company remain the sole responsibility of the Customer. For the avoidance of doubt the Customer shall indemnify the Company against any and all costs, claims and/or losses in connection with such charges.
- 15.8 Any Equipment returned for any reason by the Customer that contains personal data on it should have all personal data permanently deleted by the Customer before the Equipment is returned to the Company. If the Customer does not comply with this obligation, the Customer agrees to be responsible for reimbursing the Company in full for all and any costs that the Company incurs in having to send the Equipment to a third-party specialist to have the personal data permanently deleted from the Equipment. This includes the Company complying with its obligations under Directive 2002/96/EC on Waste Electrical and Electronic Equipment and the Applicable Laws.

**16 Data Protection and Anti Bribery**

- 16.1 Both parties will and will ensure that its staff also comply with all relevant data protection legislation.

**17 Anti Bribery**

- 17.1 The Parties shall comply with all applicable laws, statutes, regulations and codes relating to antibribery and anti-corruption including but not limited to the Bribery Act 2010 and promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement.

**18 Applicable Law**

- 18.1 These Terms and Conditions and the rights and obligations of the parties to the Agreement shall be governed, interpreted and construed solely in accordance with the Laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

**19 Force Majeure**

- 19.1 The Company shall not be liable to the Customer or be deemed to be in breach of any provision of these terms by reason of any delay in performing, or any failure to perform any obligation under this Agreement if the delay or failure was due to circumstances which the Party could not avoid and the consequences of which it was unable to prevent.