

Hologic Product Rental Terms and Conditions

(US Customers)

Note – Rental agreements are only available on select products – contact your local sales representative for more information.

These Hologic Rental Terms and Conditions (“Terms”) apply to the rental of Hologic Equipment (“Rental Equipment”) between Hologic Sales and Service, LLC (together with its subsidiaries, affiliates, and agents, “Hologic”), and Customer. Hologic and Customer may hereinafter be referred to individually as a “Party” and collectively as the “Parties. These Terms, together with the Quote or other program documents attached hereto or referenced herein, (Terms and Quote, collectively, the “Agreement”) set forth the terms and conditions under which Hologic shall, from time to time, rent and/ or temporarily license to Customer, certain Rental Equipment, Hardware and/or Software (collectively “Rental Products”).” This Agreement shall be effective the date a Party last signs the Quote (hereinafter the “Effective Date”). This Agreement supersedes all other quotations, agreements, understandings, warranties and representations (whether written or oral) between the Parties with respect to the subject matter set forth in this Agreement. Any Customer documentation (including Customer’s purchase order terms and conditions) that conflicts with or attempts to modify this 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 herein. If any action in law or equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party is 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 No provision of this Agreement shall be waived, amended, modified, superseded, canceled, terminated, renewed, or extended except in a written document signed by both Parties or signed by the Party against whom the modification is sought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 this Agreement are for convenience only, and in no way affect its interpretation. The Parties, intending to be legally bound, agree as follows:

1. RENTAL PERIOD, PURCHASE OPTION, TERMINATION

A. RENTAL PERIOD. To the extent the Rental Products require installation, the rental period for the Rental Products shall begin on the date of installation of the Rental Products and shall continue thereafter either for the period of time specified on, or until the date specified on, the Quote (“Rental Period”), unless terminated earlier pursuant to Customer’s exercise of the Rental Conversion Option described in Paragraph 1.B. below or by the terms of Paragraph 1.C. below. Upon either the expiration or termination of the Rental Period of a product rental, if the Customer has not exercised the Rental Conversion Option in accordance with Paragraph 1.B. below, then (i) the Rental Period shall be extended on a monthly basis until the Rental Products are returned to Hologic, subject to Section 2.A or (ii) Hologic shall have the right thereafter to enter the Customer’s premises to retake possession of the affected Rental Products by de-installing, re-packing, and shipping the affected Rental Products back to Hologic at Customer’s expense. Customer is responsible for the removal of all Patient Health Information (“PHI”) from the Rental Product(s). At the time of such repossession or return shipment, the Rental Products shall be purged of all PHI, unmodified and in the same condition as originally delivered by Hologic to Customer, reasonable wear and tear only excepted.

B. RENTAL CONVERSION OPTION. Unless otherwise specified on the Quote, at any time prior to the expiration or termination of the Rental Period stated on the Quote, Customer may exercise the option to purchase the Rental Products at the Rental Conversion Price(s), inclusive of installation, set forth on the Quote (“Rental Conversion Price”). Hologic shall provide Customer with a separate quote for the purchase and/or license of the Rental Products, but if Customer does not sign such separate quote, then (i) the exercise of such option shall constitute a binding order to purchase and/or license the Rental Products and Customer shall accept and pay any invoice issued by Hologic reflecting such transaction without the necessity of further documentation being exchanged between the Parties; and (ii) the prevailing purchase terms as set forth in the quote shall govern the transaction. Upon full payment of the purchase price, the Rental Period shall terminate, and if applicable, the Rental Fee referred to in the Quote shall be pro-rated to reflect such early termination, provided such Rental Fee is paid as of the date of purchase. In the event Customer exercises the Rental Conversion Option, the warranty period granted under the Quote shall be deemed to have commenced on the earlier of: (1) the date the Rental Products were originally installed; or (2) thirty (30) days from the date they were shipped, notwithstanding anything to the contrary contained in the Quote.

C. TERMINATION. Hologic may terminate this Agreement for any reason and at any time upon fourteen (14) days written notice to Customer. Additionally, either Party may terminate the Agreement with immediate effect by written notice to the other party if: (a) the other Party shall have a receiver appointed over it or shall pass a resolution for winding up, or a court of competent jurisdiction shall make an order to that effect; or (b) the other Party shall become subject to an administration order or shall enter into a voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business. In the event this Agreement is terminated, Hologic shall have the right thereafter to enter the Customer’s premises to retake possession of the affected Rental Products by de-installing, re-packing, and shipping the affected Rental Products back to Hologic at Customer’s expense. Customer is responsible for the removal of all Patient Health Information (“PHI”) from the Rental Product(s). At the time of such repossession, the Rental Products shall be purged of all PHI, unmodified and in the same condition as originally delivered by Hologic to Customer, reasonable wear and tear only excepted. Notwithstanding the above, Customer is fully responsible for payment of all Rental Fees for the entire Rental Period.

2. RENTAL FEES, SHIPPING COSTS AND INSURANCE

A. Customer shall pay the rental fee specified on the Quote ("Rental Fee") during the Rental Period, payable in the frequency as specified on the Quote, with the first such payment due on the Effective Date of this Agreement, prorated for the remainder of the current calendar month, and each successive installment due on the first day of each succeeding month during the term of this Agreement, provided that if this Agreement is terminated by Hologic because of non-payment by Customer, the entire Rental Fee for the minimum Rental Period shall immediately thereupon be due and payable. If the Customer does not exercise its Rental Conversion Option and thereafter for any reason Customer fails to permit Hologic to retake possession of the Rental Products at the end of the Rental Period, then without waiving Hologic's right to retake possession, and in addition to Hologic's other available remedies, Customer will pay 200% of the Rental Fee amount as a monthly rental fee until the Rental Product is returned to Hologic.

B. All costs for shipping the Rental Products to Customer's site shall be paid by Customer, unless indicated otherwise on the Quote. All costs incurred by Hologic for shipping the Rental Products from Customer's site back to Hologic at the expiration or termination of the Rental Period shall be paid by Customer, unless indicated otherwise on the Quote. Hologic shall bear the risk of loss of, or damage to the Rental Products while in transit to Customer's premises and Customer shall bear the risk of loss of, or damage to the Rental Products while in transit to Hologic. Customer shall bear the risk of loss of, or damage to, the Rental Products during the Rental Period.

C. Customer agrees, at its own expense, to obtain and maintain during the Rental Period, with insurers of recognized responsibility, property insurance in amounts sufficient to insure against all risk of loss of, or damage to, the Rental Products; said amount to be not less than the Rental Conversion Price/license fee of the Rental Products. Hologic shall be named as an Additional Insured (ATIMA) on such policy and a current, valid Certificate of Insurance shall be furnished to Hologic evidencing said coverage. Additionally, if so requested by Hologic, Customer shall allow Hologic to join in the negotiation of any insurance claim brought by Hologic as a result of any loss of, or damage to, the Rental Products while in Customer's care, custody or control.

3. INSTALLATION, SERVICE, TRAINING

A. If applicable, during normal business hours Hologic shall install all Rental Products that require installation, at no charge, to the "ship to" location on the Quote. 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.

B. Hologic agrees to provide service for the Rental Products during the Rental Period, in accordance with its standard warranty and service policies and practices. Based on the Rental Product(s) described in the Quote, Customer may be required to provide Hologic with remote access to those Rental Products to permit Hologic to; (i) perform support services and meet service levels, including remote diagnostics, troubleshooting, monitoring and repair services and (ii) determine how many exams are occurring on a monthly basis. The remote access shall be provided through Hologic Connect™, Logmein® or Hologic's then-current remote access technology. Customer agrees that it shall be responsible for any charges and costs associated with service that are not ordinarily covered by Hologic's Rental Product warranty, including without limitation after-hours site visits, and replacement of consumables and other excluded or pro-rated items. Payment for all charges and costs described herein shall be due thirty (30) days from the date of invoice.

C. Hologic agrees to provide applications training as set forth in the Quote at the time of Rental Product installation hereunder.

4. SOFTWARE LICENSE

Hologic hereby grants to Customer a temporary, non-transferable, non-exclusive license to use the Software and related materials, solely on the Hologic Rental Equipment on which it is first installed or as designated in this Agreement, in connection with the equipment in the normal course of Customer's business, and for no other purpose or business, for the duration of the Rental Period. No license is provided under this Agreement to use Software for multi-site quality control or data review purposes or for source code of any type. Software, at all times, remains 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 copy, de-compile, disassemble, or reverse engineer the Software. From time to time, Hologic may develop new versions or updates for this software. Customer shall allow Hologic access to the Hologic Rental Equipment to implement any new versions or updates to the software. 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 this Agreement or for use in connection with equipment provided hereunder. This license will immediately terminate upon the termination of the relevant Rental Period.

5. TITLE

Customer acknowledges that Hologic shall have sole and exclusive title to, and ownership of, the Rental Products. Customer agrees, if reasonably necessary to protect Hologic's interest, to keep the Rental Products labeled so as to indicate Hologic's ownership thereof, and to execute such further documentation as Hologic may request (including UCC Financing Statements) to evidence Hologic's title. This section shall survive the termination of this Agreement.

6. ALTERATIONS, MODIFICATIONS, AND ATTACHMENTS

Customer agrees that it shall make no alterations, modifications or attachments to the Rental Products without Hologic's prior written permission. This section shall survive the termination of this Agreement.

7. PROPRIETARY INFORMATION

All Rental Products provided hereunder, manuals, the provisions of this Agreement, and, if identified in writing as being proprietary, other information furnished to Customer by Hologic, constitute proprietary information of Hologic ("Proprietary Information"). Customer represents that it has adopted reasonable procedures to protect the Proprietary Information, including procedures precluding use of and access to such Proprietary Information except by such of Customer's employees that require access because of their direct involvement in the use, operation and/ or maintenance of the Rental Products. Customer and its employees agree not to disclose such Proprietary Information to any third party. This section shall survive the termination of this Agreement.

8. WARRANTY/LIMITATION OF LIABILITY

A. Except as otherwise expressly stated on the Quote, (i) Rental Products are warranted to the Customer to perform substantially in accord with published Rental 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) replacement parts and remanufactured items are warranted for the remainder of the Warranty Period or 90 days from shipment, whichever is longer; (iii) consumable Supplies are warranted to conform to published specifications for a period ending on the expiration date shown on their respective packages; (iv) licensed Software is warranted to operate in accordance with published specifications; (v) Services are warranted to be supplied in a workman-like manner; and (vi) non-Hologic manufactured Rental 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 Rental Equipment. Hologic does not warrant that use of Rental Products shall be uninterrupted or error-free, or that Rental Products shall operate with non-Hologic authorized third-party Rental Products. This section shall survive the termination of this Agreement.

B. In the event of any warranty claim, Hologic shall replace with new or remanufactured items any Rental Equipment, part, component, or consumable supply that is in breach of warranty, and shall 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 Rental 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 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 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 RENTAL 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 RENTAL PRODUCT BY CUSTOMER TO ANY ENTITY WHO IS NOT AN AFFILIATE OF CUSTOMER. 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. This section shall survive the termination of this Agreement.

C. EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM HOLOGIC'S NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, HOLOGIC IS NOT 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 RENTAL 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, HOLOGIC IS NOT 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. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

9. INDEMNITY

Customer agrees to indemnify, defend and hold harmless Hologic against any and all claims, causes of action, lawsuits, losses, and costs, including, without limitation, reasonable attorney's fees, arising from loss or damage which results from the Rental Products being (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 published Rental Product specifications and instructions; or which results from the negligent or wrongful acts or omissions of Customer or its employees or agents or invitee. This section shall survive the termination of this Agreement.

10. GENERAL

A. This Agreement constitutes the exclusive statement of the terms and conditions and represents the entire agreement between the Parties with regard to the rental and licensing of the Rental Products. Except as set forth herein, any variation in the terms and conditions contained in this Agreement including, but not limited to the inclusion of Customer's own terms and conditions in any purchase order or other document issued by Customer in response to and/or referencing Hologic's Quote or this Agreement is hereby rejected and of no effect unless specifically agreed to in writing and signed by both Parties.

B. Customer may not assign, transfer, sublet, pledge, or otherwise encumber or suffer a lien upon this Agreement or the subject Rental Products to or for the benefit of any other party.

C. This Agreement supersedes all prior Rental Product Rental Agreements between the parties regarding the specific Rental Products which are the subject of the Quote. No change, termination or attempted waiver of any of the provisions hereof shall be binding unless contained in writing and signed by both Parties to this Agreement.

D. This Agreement and its terms apply only to those Rental Products listed on the Quote, which are in fact delivered to Customer. This Agreement does NOT supersede any other non-loan agreements that may be in effect between the parties, including, but not limited to, purchase agreements. This Agreement shall be governed by, subject to, and construed in accordance with, the laws of the Commonwealth of Massachusetts.

E. Payments overdue from Customer are subject to a finance charge of 1.5% per month or the maximum legal rate, whichever is less. Customer is also responsible for Hologic's costs, including reasonable attorney's fees, incurred in enforcing its remedies for non-payment.

F. All Customer payment obligations hereunder shall survive termination of the Agreement.