4. INVOICING – PAYMENT - DEFAULT

4.1 Seller shall invoice Buyer the price of the Products on a shipment per shipment basis. Seller shall invoice Buyer the price of the Services in advance at the commencement of the service agreement, or, for projects, prior to the supply thereof. The price shall be in the currency of Seller’s quotation or applicable price list.

4.2 Buyer shall pay Seller’s invoices in advance without any deduction or set-off. If Seller cannot complete a milestone in the schedule due to an act or omission of the Buyer, the installment payment related to such milestone shall be deemed payable if Buyer’s act or omission prevents Seller from completing the milestone within 30 days from Seller’s notification.

4.3 If payment is delayed, Buyer shall pay Seller late payment interest at 7% p.a. on any overdue amounts. If Buyer fails to comply with Seller’s payment terms or is unable to provide satisfactory security, Seller may, at its option, suspend its obligations until full payment or satisfactory security has been received by Seller, or consider all pending orders cancelled by Buyer. Any claim by Buyer shall not entitle Buyer to delay or withhold payment of the overdue amounts.

5. ON SITE INSTALLATION – ACCEPTANCE TESTS

5.1 If Seller has agreed to install the Products at a designated site, Buyer shall carry the Products at its expense from the place of delivery to the site of installation. Seller shall timely meet Seller’s installation requirements and perform all works to be carried out by Buyer. Buyer shall inform Seller of the health and safety risks on site at least 30 days prior to the installation and assume health and safety co-ordination between the contractors on site.

5.2 If Seller has agreed that the Products or the Services are subject to factory or on-site acceptance tests, Seller and Buyer shall agree on the acceptance procedures and tests. Buyer shall accept the Products or the Services if the acceptance tests only reveal non-critical issues not preventing the operational use thereof subject to Seller remediating such issues within a reasonable time period. Any operational use of the Products or Services by the Buyer or any other user shall be deemed to constitute a final acceptance. If no on-site acceptance test is agreed, Buyer shall, upon installation, properly inspect the Products. The buyer’s failure to complete the tests or carry out the inspection within 3 months from the shipment date shall constitute an unqualified acceptance and a waiver by Buyer of all claims with respect thereto. Seller shall replace for free any Product found defective or non-conforming within this time period by a new Product and carry both ways cost of packing, transport and insurance related to the replacement of the Product.

6. FORCE MAJEURE

6.1 Neither party shall be liable for default or delay in the performance of any of its obligations (except for any payment obligation) due to Acts of God, fires, explosions, strikes, riots, acts of terrorism, civil or international wars, invasions, refusal by governments to grant import or export licenses or the cancellation thereof, inability to obtain raw materials, components or parts due to Force Majeure, or a contingency of a supplier of goods and services, or any other event beyond the reasonable control of either party.

6.2 In case of Force Majeure, Seller shall allocate the available Products and supply the Services amongst its Buyers at its discretion.

7. WARRANTY

7.1 Warranty

(a) Hardware: Seller warrants that the Products shall conform to the specifications in effect at the date of delivery and be free from defects in material and workmanship.

(b) Software: Seller warrants that software shall perform substantially in accordance with the specifications in effect at the date of delivery. Software is inherently susceptible to bugs and errors. Seller makes no warranty with respect to software which is provided to Buyer on an "as-is" basis and does not warrant uninterrupted or error-free operation of the Products.

(c) Services: Seller warrants that it shall supply the Services in a workmanlike manner.

7.2 The Warranty Period

(a) Hardware (including second hand and demo equipment): 12 months commencing on the date of shipment or, if applicable, the date of acceptance as per Article 5.2. The warranty period for Products which are not subject to factory or on-site acceptance tests shall be extended with three (3) months, irrespective the actual time lapse between the shipment by Barco and the onward delivery to the end customer.

(b) Software: 3 months commencing on the date of delivery or, if applicable, the date of acceptance as per Article 5.2.

(c) Spare Parts: 3 months commencing on the date of shipment.

7.3 Conditions precedent for Warranty to apply

The Warranty shall apply only to the extent the Products, Services, or any parts thereof have:

(i) been handled, transported, stored and installed (if and to the extent such activities have not been carried out by Seller) in accordance with Seller’s instructions including but not limited to the following: (i) original packaging, covered and secure location, minimum temperature, maximum humidity, and installation by Barco certified personnel;... or, in absence thereof, in a professional and workmanlike manner;

(ii) not been subject to any unauthorized alteration, modification or repair or attempts thereto (such as removal of warning labels, original seals or serial numbers) or any abuse or damage;

(iii) been at all times "normally used" for the specified purpose and operated and maintained in strict accordance with the instructions set forth in the operating and maintenance manual or, in absence thereof, in a professional and workmanlike manner. For the purpose hereof, "normally used" shall mean a regular, ordinary and routine use as intended or as recommended by Seller;

(iv) not been connected to or used in combination with other equipment, products or systems (hardware and/or software) not compatible with the Product.

7.4 Exclusions from the Warranty

In no event shall Seller be liable for any defects, failures, loss or damage caused by or resulting from (i) wear and tear, (ii) any external cause or event out of Seller’s control, (iii) use of or damage to the Product or Service prior to acceptance, (iv) any act or negligence of Buyer or any third party, or (v) any phenomena inherent to the technology such as: image retention, burn-in, vibrations, etc. The Warranty shall not apply to consumables (lamps, liquids, filters, batteries, etc.) or reflectors, fans, pumps, LED’s. Any third party product or any part thereof which Seller merely resells with the Products or Services, is subject to the original manufacturer’s warranty and no separate warranty is given in respect thereof by Seller.

7.5 Claims for repair or replacement under Warranty

Any claim under the Warranty must be notified to Seller in writing within 8 days from the discovery of the defect or failure.

7.6 Remedies under the Warranty

Under the Warranty, Seller shall, at its sole option and cost, and without undue delay, with respect to:

(a) Hardware: (i) repair or correct the Product or part; or (ii) replace the Product or supply part(s) or component(s). A replacement part shall be at least functionally equivalent to the original part. The replaced Product, parts and/or components shall become the property of Seller and shall, at Seller’s request, be returned to Buyer by Seller within 15 days. If Buyer fails to return the Seller, Seller shall invoice the replaced Product, parts and/or components at list price.

(b) Software: amend the software or supply an alternative version of the software.

(c) Service: reperform the Service.

7.7 Return of defective Product or parts – Repair - Replacement

The repair or replacement under the Warranty only covers the cost of material and in factory labor. The repair or correction shall be carried out at Seller’s repair facility, unless Seller has agreed to the repair or repair elsewhere, in which case time and travel and living expenses of the service engineer shall be payable by Buyer in accordance with Seller’s then applicable rates and procedures. Buyer shall not return a defective Product or part thereof without Seller’s prior written approval. Upon approval, Seller shall issue to Buyer a Return Material Authorization (RMA) number. The one-way cost of packing, transport, and insurance related to shipping the Product or part for repair or replacement shall be borne by Buyer. Buyer shall pack the Product correctly so as to protect them from transport damage and properly back up any data stored therein. The one-way cost of packing, transport and insurance related to shipping of the replaced or repaired Product or part to Buyer shall be borne by Seller.

8. TERMINATION - CANCELLATION

8.1 In the event that (i) a petition in bankruptcy is filed by or against Buyer, or (ii) Buyer is declared bankrupt, or (iii) Buyer becomes insolvent or his credit becomes impaired in the reasonable opinion of Seller, or (iv) proceedings are initiated by or against Buyer seeking appointment of a receiver, reorganization, liquidation, dissolution, debt rearrangement or any other similar relief, or (v) if Buyer fails to perform or fulfill at any time any material obligation or condition hereunder, Seller, at its discretion, shall have the right to either suspend the performance of his
8.2 If Buyer fails to comply with the order, Buyer shall pay the Seller a compensation equal to 20% of the order amount, without prejudice to Seller’s right to seek reimbursement equal to its actual losses. Advances which have already been paid will accrue definitively to Seller to the extent of the compensation due.

9. LIMITATION OF LIABILITY

9.1 To the maximum extent permitted by law, Seller’s exclusive liability and Buyer’s exclusive remedy for any and all claims, whether arising out of contract, warranty, negligence, Seller’s failure to comply with laws and regulations, strict liability or otherwise, shall be limited to the price of the Product or Service in relation to which the claim is made.

9.2 In no event shall Seller be liable for special, incidental, punitive, indirect or consequential damages, (including without limitation loss of profits, business, revenue, goodwill or anticipated savings) even if advised of the possibility of such damages.

10. LIMITATION OF LIABILITY

10.1 Buyer shall indemnify and hold harmless Buyer from and against any and all claims, damages, losses, penalties, and expenses (including attorneys’ and experts’ fees) awarded to such third party in a final judgment or a settlement as damages for compensation, an infringement of any patent, trademark, trade secret, or copyright of such third party by a Product or Service, provided that (i) Seller is promptly notified by Buyer in writing after Buyer becomes aware that a claim has been asserted against Buyer, and (ii) Seller shall assume sole control of the defense of such settlement negotiations, and (iii) Buyer shall not settle any claim without the prior written consent of Seller and (iv) Buyer shall provide assistance and support, as Seller may require, in connection with the defense and any settlement negotiations.

10.2 Seller shall have no indemnity obligation for any Product, or Service, or any portion thereof, (i) to the extent it is based on specifications, drawings, models or other data furnished or required to be furnished by Buyer, (ii) by Seller or, (iii) to the extent it is modified by a party other than Seller or, (iv) to the extent Buyer continues the allegedly侵权 activity after having been provided modifications that avoid the alleged infringement, or (v) where the use of the Product or Service, or the combination thereof with other products, processes or materials or the distribution thereof rather than the Product or Service itself is the primary cause of an alleged infringement.

10.3 If Buyer determines that Seller has infringed any third party rights, Seller shall indemnify Buyer, its affiliates, including shareholders, officers and employees against all claims, proceedings or actions brought by such third parties, and shall pay all expenses, including reasonable attorneys fees, incurred by such third parties in connection with the investigation and defense of such claims, proceedings or actions brought by such third parties. Buyer shall use reasonable efforts to notify Seller of such infringement of its rights.

11. SECRECY - INTELLECTUAL PROPERTY RIGHTS

11.1 Buyer may not copy, or in any manner use, any proprietary or confidential information of Seller. Any representations, claims or warranties with respect to the Products other than those specifically authorized in writing by Seller. Buyer shall instruct the end-user not to use the Product beyond its intended use defined by the Seller. Buyer shall ensure that, while the Product is under its responsibility, all storage and transport conditions comply with the principles. In the event of a conflict between these terms and conditions and public order provisions under any applicable law, the latter shall prevail and the validity of the other clauses of these terms and conditions shall not be affected. The provisions of the 1980 United Nations Convention on Contracts for the International Sales of Goods and the United States Uniform Commercial Code shall not apply to any order.

12. DATA PROTECTION

12.1 Buyer may, without restriction, save, process, use and reuse any data obtained in relation with the sales of the Products or supply of Services. Upon request of Seller, Buyer shall promptly and at no charge provide Seller with all data obtained in relation with the sales of the Products or supply of Services in Buyer’s country and provide any reasonably required assistance in obtaining any license required therefor.

13. EXPORT

13.1 Buyer shall comply with any applicable export control laws and regulations or any end-user certificate issued thereunder and shall not export, nor permit the export or re-export of (i) any proprietary information or software or any copy thereof, or (ii) the Products in violation of any such laws and regulations, or without all required licenses and authorizations, to any country.

13.2 Buyer shall timely inform Seller of any local rules or regulations which may restrict, technically, administratively, or otherwise, the deployment or operation of the Products or supply of the Services in Buyer’s country and provide any reasonably required assistance in obtaining any license required therefor.

14. ASSIGNMENT

Buyer may not assign or otherwise transfer to a third party the benefits or obligations arising from the order, in whole or in part. Seller may assign the order to an affiliate of Seller or to a third party with the sole condition of the buyer’s agreement. The tripartite order shall be binding and shall inure to the benefit of the legal successors of either party.

15. WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE)

If Seller is required by law to collect, treat, recover and dispose WEEE in an environmentally sound manner, Buyer shall arrange for and pay for the cost of collection and transportation of WEEE to the recycler designated by Seller.

16. GOVERNING LAW AND JURISDICTION

16.1 All sales of Products and supplies of Services are subject to the law of Seller’s country or, where applicable, state or province of incorporation without recourse to its conflict of law principles.

16.2 Any dispute shall be settled by the courts of Seller’s registered or, at Seller’s option, the courts of Seller’s registered office, and without prejudice to the enforcement of any judgment or order or any other jurisdiction.

17. HEALTHCARE REGULATORY

17.1 This article applies to the medical devices referred to in the following links: https://www.barco.com/en/products/medical-display-systems and https://www.barco.com/en/products/nexxis-for-the-operating-room

17.2 Seller shall determine the countries in which the Product can be offered for sale, (i) register the Product in those countries, (ii) provide Buyer with the list of such countries upon request and (iii) maintain product registration for such countries until the Product has become end of service (EOS). Buyer shall refrain from selling the Product in other countries without Seller’s prior consent.

17.3 All Instructions For Use (IFU) and product labelling shall be in English, unless otherwise required. Buyer may not rework, relabel or repack the Products.

17.4 Buyer shall make no representations, claims or warranties with respect to the Products other than those specifically authorized in writing by Seller. Buyer shall inform the end-user not to use the Product beyond its intended use defined by the Seller. Buyer shall ensure that, while the Product is under its responsibility, all storage and transport conditions comply with the principles. In the event of a conflict between these terms and conditions and public order provisions under any applicable law, the latter shall prevail and the validity of the other clauses of these terms and conditions shall not be affected. The provisions of the 1980 United Nations Convention on Contracts for the International Sales of Goods and the United States Uniform Commercial Code shall not apply to any order.

17.5 Whenever liability may not be excluded or limited by applicable law.

17.6 Buyer shall indemnify and keep indemnified Seller against all claims, proceedings or actions brought by a competent public authority or an individual against Seller arising out of any breach by Buyer or any of its processors of any third party rights or its obligations under applicable data protection laws.

18. PRODUCT REGISTRATION AND PRODUCT LABELING

18.1 Seller shall notify Buyer of the Product from which personal health information that may be stored thereon prior to returning such Product to Seller.

18.2 For the purpose of the above, “Seller” shall include “and, where applicable manufacturer’s authorized representative and the importer”.

18.3 Buyer shall clear the Product from any personal health information that may be stored thereon prior to returning such Product to Seller.

18.4 In case of subcontracting or resale, the Buyer shall impose the requirements contained in this article 17 upon its contracting party.