

addition, as between Tecan and customer, Tecan is the sole owner of any inventions, discoveries, processes, methodologies, techniques, know-how, derivative works, improvements and enhancements arising out of or relating to the Software

GENERAL TERMS OF SALES of

TECAN Deutschland GmbH (hereinafter referred to as "Tecan")

1. SCOPE OF APPLICATION

1.1 The general terms of sales apply to the delivery of components, instruments which may either be delivered alone or in combination with software or software packages, of spare parts and consumables (all together hereinafter referred to as the "Products").

1.2 The customer agrees, at the time of the order, to comply with these conditions. Deviations can only be agreed on in writing. Deviating General Terms of the customer are only binding for Tecan if explicitly accepted in writing.

2. QUOTE AND ACCEPTANCE, CONFIDENTIALITY, RETURN OF DOCUMENTS

2.1 Tecan's quote for the delivery is valid for 30 days upon receipt by the customer, unless agreed otherwise.

2.2 All offer and project documents shall neither be passed on to third parties nor copied unless Tecan explicitly agrees in writing. Upon Tecan's request, the customer shall return all offer and project documents in connection with unaccepted quotes.

2.3 The purchase contract is concluded upon acceptance of the quote or upon submission of a separate order of Products by the customer in writing (including fax and e-mail). In case of acceptances by means of telephone, Tecan shall confirm such acceptance in writing within five days.

3. PRICES AND DELIVERY

3.1 Tecan's prices in the quotes do not include VAT, shipping costs, customs duty and insurance costs.

3.2 The prices in the quotes are based on the production costs at time of the quote and are subject to change if production costs increase until the time of the delivery, provided that the period between the conclusion of the purchase contract and delivery exceeds four months. Tecan shall only be entitled to change its prices reasonably in relation to the extent of the increase of its own costs (labor costs and costs for the procurement of raw materials and semi-finished goods) without increasing its profit margin.

3.3 Tecan arranges shipment and transportation insurance at its own discretion but at the costs of the customer [unless agreed otherwise / upon request of the customer].

3.4 All Products are delivered to the customer EXW (Incoterms 2000) Tecan's factory.

3.5 Agreed delivery dates are not binding for Tecan in case of unforeseeable incidences that are independent from the will of either party, such as force majeure, which actually hinder Tecan to deliver on time, always provided that Tecan is not responsible for the delay. Delivery dates are extended if such incidents hinder a supplier of Tecan to supply components or material in due time and if neither the supplier nor Tecan is responsible for the delay. In case of such excused delays for more than one month, the customer shall have the right to cancel (rescind) the purchase contract.

3.6 The delivery is deemed to be on time, when the Product has been sent by Tecan to the customer no later than on the agreed delivery date notwithstanding any *Installation*, *Operational* or *Performance Qualifications* that need to be carried out unless otherwise agreed in writing between Tecan and the customer.

4. SOFTWARE LICENSE AND RESTRICTIONS

4.1 Subject to customer's payment of the price identified on the quote, Tecan hereby grants to customer a non-exclusive license to use the Tecan software set forth in the quote and all related documentation provided by Tecan (the "Documentation," and referred to collectively with the Software as the "Software Products") solely for the purpose as identified in the Documentation.

4.2 Customer shall not, and shall not allow any third party to: (a) reverse assemble, decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code, or underlying ideas or algorithms of the Software; (b) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use the Software Products for the benefit of any third party; or (c) copy, modify, incorporate into or with other software or create a derivative work of any part of the Software Products. Notwithstanding anything to the contrary in the foregoing, customer may make one (1) copy of the Software Products for back-up purposes only, provided that customer reproduces all copyright notices and other proprietary legends on such copy.

4.3 The Software, including any updates, modifications and enhancements thereto, and any and all Documentation delivered by Tecan to customer shall at all times remain the sole and exclusive property of Tecan. In

4.4 Customer understands and agrees that Tecan considers the Software Products to be the proprietary and confidential information of Tecan. Customer agrees to maintain the Software Products in confidence, and except for the right of Customer to make a copy of the Software Products, Customer agrees not to disclose, duplicate or otherwise reproduce, directly or indirectly, the Software Products in whole or in part.

5. PASSING OF RISK

The risk of accidental damage and/or destruction passes to the customer upon departure of the shipment ex Tecan's factory and/or stock. In case of delay of shipment due to circumstances for which the customer is accountable the risk passes to the customer upon readiness of the merchandise for shipment.

6. PAYMENTS

Payments are due thirty (30) days after the date of the invoice. Upon expiration of this thirty days payment period, late interest in the amount of eight percentage points per annum above the then current base rate pursuant to section 247 of the German Civil Code (BGB) is payable. The customer has no right to offsetting unless the customer's claim was explicitly approved in writing by Tecan or is uncontested or final and absolute. The customer has no right to assign any claims to a third party without written consent of Tecan. Section 354a of the German Commercial Code (HGB) shall remain unaffected.

7. RETENTION OF TITLE

Tecan keeps full title in all Products delivered to the customer as long as the customer has not fulfilled all of its payment obligations in connection with the delivery of the respective Products. During the retention of title, the customer shall not sell, pledge, mortgage, grant security interest or otherwise dispose of the respective Products. The customer authorizes Tecan to make registrations or filings with the competent authorities that might be necessary to effect such retention of title.

8. VALIDATIONS: INSTALLATION QUALIFICATION, OPERATIONAL QUALIFICATION, PERFORMANCE QUALIFICATION

8.1 Depending on the Products delivered and as agreed between the parties, Tecan may perform an *Installation Qualification* as well as support an *Operational Qualification* at the premises of the customer.

Installation Qualification is understood as a qualification performed at the time of installation which documents that all aspects of the installation comply with the manufacturer's specifications.

Operational Qualification is understood as a qualification performed subsequent to installation which documents that all parts of the supplied equipment perform consistently within limits and tolerances as jointly specified by Tecan and the customer.

8.2 The customer shall sign a qualification protocol to confirm the performance of the *Installation Qualification* and *Operational Qualification*, such qualification protocol is deemed to constitute the customer's acceptance ("Acceptance").

8.3 In any event it is the customer's responsibility to carry out a *Performance Qualification*, which is understood as the qualification establishing confidence through appropriate testing and/or calibration procedures that the final result of a specified process or assay meets all release requirements with regard to proper functionality, gauging, and safety. Tecan only assists in such *Performance Qualification* under the terms and conditions to be agreed on between the parties in a separate agreement. Unless otherwise stipulated in such an agreement, Tecan does not assume any liability for any performance parameters subject to testing in a *Performance Qualification*.

9. TRACEABILITY

If the customer intends to resell, lease or otherwise dispose of or relocates any of Tecan's Products that are subject to medical device or similar regulations in any jurisdiction to any third party or another business unit, he/she shall inform Tecan in writing about such intention at least four weeks prior to the actual execution by indicating the serial number of the Products as well as the identity, location and scope of business of the respective receiver. This obligation shall not affect the customers' general right to dispose of the Products within the boundaries of applicable law. The customer shall at all times keep appropriate records ensuring traceability of each instrument purchased from Tecan and has to allow Tecan and any competent governmental authority access to such records upon request within his ordinary business hours.

10. WARRANTY

10.1 Tecan warrants that the Products are free from defects and that they – as the case may be – meet the specification agreed between the parties.

10.2 Tecan shall not be liable for defects for which it is not responsible, in particular for defects caused by the following conduct of the customer: inappropriate or improper use, non-observance of the operations

instructions, modifications of the Products, incorrect start-up of operation, faulty treatment, incorrect installation, use of unsuitable accessories or spare parts (including but not limited to software, instruments or reagents) and inappropriate repair works. Tecan shall not be liable for natural wear and tear or ordinary abrasion. Tecan shall also not be liable if the Products or parts of the Products are used together with instruments or software other than those delivered by Tecan. Tecan does not guarantee that the use of the Software will be uninterrupted or error-free.

- 10.3 The warranty period (period of limitations) is 12 (twelve) months beginning with the receipt of the Products by the customer or in case an *Installation Qualification* or *Operational Qualification* is carried out and/or supported by Tecan 12 (twelve) months beginning with the Acceptance (as defined in Section 8). For claims for damages due to other reasons than defects of the Products or for rights of customer with respect to defects concealed in bad faith or defects caused intentionally, the statutory period of limitations shall apply.
- 10.4 The customer shall inspect the Products immediately after receipt for defects and shall notify any obvious defects to Tecan within 10 (ten) days after receipt of the Products in writing. Hidden defects must be notified to Tecan in writing immediately upon their discovery. If the customer fails to notify Tecan of obvious or (detected) hidden defects, respectively, any warranty claims regarding such defects shall be excluded
- 10.5 Tecan has choice to either rectify the defect or to replace defective Products. If (i) such rectification fails or if (ii) the replacement is defective too or if (iii) it has not been delivered within a reasonable time period granted by the customer or if (iv) the remedy is unreasonable for the customer or if (v) Tecan has refused such remedy according to section 439 subsec. 3 of the German Civil Code (BGB), the customer has the right, at its option, to (i) claim an accordant reduction of the purchase price or to cancel (rescind) the purchase contract and to return the Products and (ii) to claim damages pursuant to para. 11 below or the reimbursement of its futile expenses. [In case of defects that do not restrain the fitness of the Product for the intended purpose, the customer does not have the right to the cancellation of the purchase contract.]
- 10.6 Limited remedies in case of Products not being serviced by Tecan

If Tecan neither performs an *Installation Qualification* nor supports an *Operational Qualification* and if the products are not serviced by Tecan or Tecan's affiliates, the customer's sole remedy in case of defects is the right to delivery of those spare parts free of charge by Tecan that are necessary to repair the defective Products.

11. LIMITATION OF LIABILITY

- 11.1 Subject to the provisions in para. 11.2, Tecan's statutory liability for damages shall be limited as follows:
- (i) For damages caused by a slightly negligent breach of a material contractual obligation Tecan shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract;
 - (ii) Tecan shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.
- 11.2 The limitation of liability as set out above does not apply to any mandatory statutory liability (in particular to liability under product liability) or to any liability for a specific guarantee accepted by Tecan nor to any liability for culpably caused personal injuries.
- 11.3 The customer shall take all reasonable measures necessary to avert and reduce damages.

12. INTENDED USE AND CUSTOMER'S LIABILITY

- 12.1 To the extent required by applicable medical devices law or similar law governing the use of the Products, the Products shall only be used within the purpose, specifications, and fields of application as defined in the quote and/or product description issued by Tecan ("Intended Use"), and shall not be modified or combined with other items in a way not compliant with their Intended Use. The Intended Use also includes a designation of a Product as a single-use medical device, or a research-use-only product, or a general laboratory equipment. Tecan does not assume any liability vis-à-vis the customer and does not warrant legal or regulatory compliance for Products operated and/or modified and/or combined with other items beyond their Intended Use.
- 12.2 If the customer operates and/or modifies the Products and/or combines them with other items beyond their Intended Use, the customer shall hold Tecan harmless from any third parties' claims, including actions taken by public bodies, to the extent such claims or actions arise in connection with the customers operations, modifications, or combinations of the Products beyond their Intended Use, and as a result of a willful or negligent conduct of the customer, if and to the extent Tecan is not responsible for such third party claim or action. This also applies in case of a resale of Products modified or combined with other items beyond their Intended Use by the customer to third parties.

13. REGULATORY COMPLIANCE OF THE CUSTOMER AND NOTIFICATION OF INCIDENTS, INDEMNIFICATION OF TECAN BY THE CUSTOMER

- 13.1 The customer undertakes to only use, service and maintain the Products in full compliance with all applicable laws and regulatory requirements and any instruction given in Tecan's manuals accompanying the Products. The customer shall in particular make all necessary notifications of incidents or near incidents and of recalls to the competent authorities as set forth by applicable laws and regulations, and provide Tecan with a copy thereof immediately upon issuing such notification. Without prejudice to the customers' notification

duties pursuant to applicable laws and regulations, the customer shall in any event notify Tecan in writing of any incident coming to his knowledge which is equal to a malfunction, failure or deterioration in the characteristics and/or performance of a Product, or an inadequacy in the labeling or the instructions for use that, directly or indirectly, might lead to or might have led to the death of a patient, or user or of other persons or to a serious deterioration in their state of health; all notifications of incidents to Tecan shall be made immediately upon coming to the knowledge of the customer, but at the latest within 3 (three) working days hereafter.

- 13.2 The customer shall ensure maintenance of the Products by qualified personnel only. Upon request of Tecan, the customer shall provide Tecan with all relevant service documentation.
- 13.3 If the customer fails to ensure legal or regulatory compliance with respect to the operation of the Products, the customer holds Tecan harmless of damages, losses, claims and expenses to the extent such damages, losses, claims and expenses arise in connection with the customer's willful or negligent failure to ensure legal or regulatory compliance.
- 14. PLACE OF JURISDICTION AND APPLICABLE LAW**
- 14.1 Exclusive venue for all disputes arising under or in connection with the contractual relationship of the parties shall be Ellwangen.
- 14.2 German law shall apply with the exception of the United Nations Convention on Contracts for the International Sales of Goods (CISG), which is excluded.
- 15. MISCELLANEOUS**

Should any provision of these General Terms of Sales or any other contractual arrangement between the parties referring to these General Terms of Sales be or become invalid, the other provisions shall not be affected and the parties shall use their reasonable endeavours to reach agreement to have the invalid provision replaced by a valid arrangement which comes as close as possible to the purpose of the invalid provision and to the intention of the parties related to such provision.