

## **General Terms of Sale**

### **1. SCOPE OF APPLICATION**

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

1.2 Subject to any special terms and conditions agreed to in writing between Tecan and the customer, these Terms of Sale together with the written quotation from Tecan (if any) shall comprise in entirety the terms and conditions of the contract entered into between Tecan and the customer.

Any:

(a) contractual terms and conditions of the customer;

(b) terms and conditions implied by use, statute or otherwise; and

(c) terms of the United Nations Convention on Contracts, 1980 (the Vienna Convention);

are, unless otherwise agreed in writing by Tecan, expressly excluded.

1.3 The customer agrees, at the time of the order, to comply with these Terms of Sale. Deviations can only be agreed on in writing.

1.4 These Terms of Sale govern the supply of goods and services by Tecan to the customer. Except for any special terms and conditions set out in a quotation submitted by Tecan to the customer, these Terms of Sale supersede all prior representations, advice, supervision, assistance and agreements given by Tecan or its employees, agents, transport contractors or representatives and override any inconsistent terms, unless agreed to in writing by Tecan.

### **2. QUOTE AND ACCEPTANCE, CONFIDENTIALITY, RETURN OF DOCUMENTS**

2.1 Subject to clause 3.2, Tecan's quote for the delivery of Products is valid only for thirty (30) days from the date of the quotation, unless otherwise agreed by Tecan in writing.

2.2 Tecan's quotation will be deemed to have been accepted and a binding contract entered into between Tecan and the customer on the date that Tecan receives either written (including by way of facsimile or email) acceptance of the quotation from the customer or an order from the customer to purchase the Products in accordance with the quotation. Tecan shall acknowledge each purchase order upon receipt.

2.3 The customer acknowledges and agrees that copyright in all drawings, illustrations, designs, specifications and other information provided by Tecan in connection with any quotation, Contract or otherwise remains with Tecan. The customer further acknowledges and agrees that the details and contents of the drawings, illustrations, designs, specifications and other information shall remain confidential between Tecan and the customer. 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.

### **3. PRICES, GST AND DELIVERY**

3.1 Any prices quoted to the customer by Tecan do not include GST unless expressly stated otherwise. If Tecan makes a taxable supply to the customer, the customer must pay to Tecan an additional amount equal to the GST payable on the supply (unless the consideration for that taxable supply is expressed to include GST).

- 3.2 The prices in the quotation are based on local transfer prices at the time of the quotation and are subject to change if production costs, import costs or exchange rates payable by Tecan with respect to the Products purchased vary prior to delivery, provided that the period between the conclusion of the purchase contract and delivery exceeds two (2) months.
- 3.3 Notwithstanding any delivery period specified in clause 3.2 as a precondition for price variations, where an exchange rate has been specified in the quotation, the prices quoted will be subject to variations in the exchange rate until the date of invoicing. The variation to the invoiced sales price (higher or lower) will be calculated as follows:
- a) when the percentage (%) change between the quoted rate and the current rate (being the Westpac Spot Selling Rate on the day of invoicing) varies by more than the agreed variation percentage specified in the quotation (in absence of an agreed variation, then + or - 2%) then
  - b) a credit or debit will be applied to the sales value by the rate of variation between the base rate and the current rate.
- 3.4 Shipment and transportation insurance costs form part of the quotation provided to the customer.
- Subject to clause 5, all Products are delivered to the customer CIP (as defined in Incoterms 2000) from Tecan's factory.
- 3.5 Notwithstanding anything to the contrary in these Terms of Sale, Tecan shall not be liable to the customer for any loss or damage which may be suffered as a direct or indirect result of its supply of Products to the customer being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond Tecan's reasonable control (each a "Force Majeure Event") including (without limitation) strike, lock-outs, labour disputes, unavailability of raw materials or lack of production capacity, fires, floods, acts of nature or public enemy, delays in transport, compliance with any applicable laws, rules, regulations or government order including restrictions or prohibitions by any government or semi-government authority or embargoes, power supply failure, accident to or destruction or failure of machinery, premises or other installation, shortage of labour, materials or utilities. If due to such circumstances or events Tecan has insufficient Products to meet all commitments, it may apportion available Products between its customers at its sole discretion or suspend its obligations under the Contract with the customer. In the event that delivery of Products is delayed by more than one (1) month as a result of a Force Majeure Event, the customer shall, at any time until Tecan advises the customer that the Products are available for delivery, be entitled to cancel the applicable purchase contract by notice in writing to Tecan.
- 3.6 Tecan will use its best efforts to supply the Products and services by the dates identified in accepted orders but does not represent or warrant that it will do so.

#### **4. SOFTWARE LICENSE AND RESTRICTIONS**

- 4.1 Subject to the customer's payment of the price identified on the quotation, Tecan hereby grants to the customer a non-exclusive license to use the Tecan software set forth in the quotation (the "Software") 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 The 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.

- 4.3 Interface information necessary to achieve interoperability with independently created computer programs will be made available, where the customer is entitled to such information under applicable law, upon written request and upon payment of the relevant fee. Notwithstanding anything to the contrary in clause 4.2, the customer may make one (1) copy of the Software Products for back-up purposes only, provided that the customer reproduces all copyright notices and other proprietary legends on such copy.
- 4.4 The Software, including any updates, modifications and enhancements thereto, and any and all Documentation delivered by Tecan to the customer shall at all times remain the sole and exclusive property of Tecan.
- 4.5 The customer hereby grants to Tecan a non-exclusive, royalty-free, perpetual, irrevocable licence (with the ability to grant sub-licences) to use and to have used, for any purpose, any inventions, discoveries, processes, methodologies, techniques, know-how, derivative works, improvements and enhancements created or developed by the customer or on the customer's behalf which arise out of or relate to the Software ("Improvements"). The customer shall, without delay, notify Tecan of any such Improvements following their creation or development.
- 4.6 The customer understands and agrees that Tecan considers the Software Products to be the proprietary and confidential information of Tecan. The customer agrees to maintain the Software Products in confidence, and except for the right of the customer to make a copy of the Software Products, the customer agrees not to disclose, duplicate or otherwise reproduce, directly or indirectly, the Software Products in whole or in part.

## **5. PASSING OF RISK**

All risk in the Products passes to the customer upon departure of the shipment from 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 Products for shipment.

## **6. PAYMENTS**

- 6.1 Payments are due thirty (30) days after the date of the invoice. All payments shall be made by the customer without any set-off, deduction, withholding or otherwise, except with the prior written consent of Tecan. If the customer fails to pay any amount due under these Terms of Sale, Tecan shall be entitled (but not obliged) to charge the customer interest on such overdue amount, immediately on demand, from the due date up to the date of actual payment, after as well as before judgment at a daily rate of eight percent (8%) per annum above the base lending rate of the principal bankers of Tecan until such time as the customer pays such overdue amount and any accrued interest.
- 6.2 Tecan may at any time require:
- (a) Payment in immediately available funds on or immediately prior to delivery of the Product; or
  - (b) Provision of other security acceptable to Tecan, if Tecan reasonably believes it necessary to ensure performance by the customer of its obligations.
- 6.3 If the customer fails to pay any amount due under these Terms of Sale, Tecan may, in addition to any other rights or remedies that it has at law or under these Terms of Sale, cancel or vary credit facilities offered to the customer and/or cancel or vary concessions or discounts available to the customer.

## 7. RETENTION OF TITLE

- 7.1 Neither legal nor beneficial title in all Products delivered to the customer shall pass to the customer until the customer pays the invoiced purchase price in connection with the supply and delivery of the relevant Products, and any other amounts owing by the customer to Tecan from time to time. Until title passes to the customer, the customer shall hold the Products as bailee and fiduciary agent of Tecan and must:
- (a) not sell, pledge, mortgage, grant a security interest over or otherwise dispose of the respective Products; and
  - (b) keep the Products in its possession and control, in good repair and condition (fair wear and tear excepted), stored separately and marked so that the Product is clearly and easily identifiable; and
  - (c) keep the Products insured for their full replacement value and, until payment in full is received by Tecan, note Tecan's interests on the policy of insurance.
- 7.2 Tecan's interest in any Products supplied to the customer will be a security interest for the purposes of the Personal Property Securities Act 2009 (**PPSA**). The customer agrees to do anything required by Tecan, at the customer's cost, to ensure that Tecan has a perfected security interest for any Products supplied with a retention of title, including supplying the information set out in Schedule 1.
- 7.3 The customer acknowledges that it waives its rights listed in section 115(1) of the PPSA and its rights to receive verification statements under the PPSA. The customer agrees that sections 130(1)(a) and 143 of the PPSA will not apply. The customer agrees that Tecan may exercise the rights in Chapter 4 of the PPSA whether or not Tecan has priority over all secured parties.
- 7.4 If the customer, with Tecan's prior consent, sells the Product before Tecan receives payment in full or if the customer uses the Product in a manufacturing, construction, invention, discovery, improvement or enhancement process of its own or some third party, it must hold such part ("such part" in this clause means an amount owing by the customer to Tecan at the time the Product is used in the manufacture of, or incorporated into use by other third parties or products) of the proceeds of any sale or dealing in the Product on trust for Tecan in respect of that Product, and must keep such proceeds in a separate account as the beneficial property of Tecan and the customer must pay such amount to Tecan on demand.
- 7.5 Notwithstanding any other provision to the contrary, Tecan reserves the following rights in relation to the Product until all amounts owed by the customer to Tecan in respect of the Product and all other goods and services supplied to the customer by Tecan at any time are fully paid:
- (a) legal and equitable ownership of the Product;
  - (b) to retake possession of the Product; and
  - (c) to keep or resell any of the Product repossessed.
- 7.6 In the event of a breach of this contract by the customer including, without limitation, failure by the customer to make payment for the Product by the date specified by Tecan to the customer, the customer must return the Product to Tecan immediately on demand. If the customer does not return the Product to Tecan on demand, the customer hereby grants full leave and an irrevocable licence to Tecan, and any person authorised by Tecan, to enter upon the customer's premises at any time (without further notice) where the Product is stored, under the supervision of the customer's representative, and do all things necessary to recover

the Products. Tecan shall be entitled to resell or to deal with such Products in any manner it sees fit.

7.7 The customer agrees that:

(a) it will be liable for all costs, damages, expenses or any other sums of money incurred or suffered by Tecan (whether direct or indirect) as a result of Tecan retaking possession of the Product or otherwise exercising its rights under this clause; and  
(b) it will indemnify Tecan for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against Tecan in connection with retaking possession of the Product or the exercise by Tecan of its rights under this clause, and the customer must repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

**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 of the Products ("Acceptance"). The *Operational Qualification* will include the Laboratory Requirements 1 – 12 as defined in the proposal document.

8.3 The customer shall also sign such documents as Tecan reasonably requires confirming that the customer has received:

(a) directions for use of each of the Products and the appropriate Product manual (in English); and

(b) information about the risks that may occur in connection with the use of the Products and any other information required to be given by Australian laws or regulations.

8.4 In any event it is the customer's responsibility to carry out, promptly after delivery, 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 relocate any of Tecan's Products that are:

(a) subject to laws, rules or regulations concerning medical devices or otherwise in any jurisdiction; or

(b) subject to retention of title rights under clause 7,

to any third party or another business unit, the customer 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 time keep appropriate records ensuring traceability of each Product purchased from Tecan and allow Tecan and any competent governmental authority access to such records upon request within its ordinary business hours.

## **10. DISCLAIMER OF WARRANTIES AND LIABILITY & LIMITATION OF REMEDIES**

10.1 Tecan warrants for the warranty period described below that the Products correspond, in all material respects, with the written specifications (if any) agreed between the parties or, in the absence of such written specifications, Tecan's applicable standard product specifications. To the extent permitted by law, all other conditions, warranties, representations and terms, express or implied (whether by statute, common law, course of dealing, trade practice or otherwise) are hereby expressly excluded, including (without limitation) any implied warranty of merchantability or any other implied warranty, including any implied warranty of fitness for a particular purpose, data accuracy or system integration. Tecan does not guarantee that use of the software will be uninterrupted or error-free.

10.2 If the Trade Practices Act 1974 or any other legislation implies a condition or warranty into this Terms of Sale in respect of the Product supplied, and Tecan's liability for breach of that condition or warranty cannot be excluded but may be limited, the exclusion in clause 10.1 shall not apply to that liability and instead Tecan's liability for any breach of that condition or warranty is limited to Tecan doing any one or more of the following (at its election):

- (a) replacing the Product or supplying equivalent goods;
- (b) repairing the Product;
- (c) paying the cost of replacing the Product or of acquiring equivalent goods; and
- (d) paying the cost of having the Product repaired.

10.3 Tecan shall not be liable for any breach of the warranty set out in this clause 10:

- (a) if the Products or parts of the Products are used together with instruments or software other than those delivered by Tecan or are used otherwise than in accordance with the instructions of Tecan;
- (b) if caused by normal wear and tear or by the negligence or default of the customer; or
- (c) in the event that any Product is serviced, maintained, repaired, adjusted or modified in any manner other than as set forth in the applicable Product Manual (as defined in clause 13 below).

10.4 The warranty period is TWELVE (12) months (or such amended warranty period that may apply from time to time with respect to specific Products and notified to the customer at the time of quotation or ordering) beginning with the receipt of the Products by the customer or in the case of an Installation Qualification or Operational Qualification being carried out and/or supported by Tecan, TWELVE (12) months (or such amended warranty period that may apply from time to time with respect to specific Products and notified to the customer at the time of quotation or ordering) beginning with the acceptance (as defined in clause 8 above).





- 10.5 All warranty claims must be notified by the customer to Tecan during the warranty period.
- 10.6 The customer shall inspect the Products immediately after receipt for alleged non-conformance with the written specifications (if any) agreed between the parties or, in the case of absence of such written specifications, Tecan's applicable standard product specifications (such non-conformance hereinafter referred to as a "Defect"). The customer shall notify Tecan in writing of any non-latent Defects within TEN (10) days from the date of delivery of the Product. In the absence of such notification, Tecan shall have no liability for non-latent Defects, whether under the warranties set out herein or otherwise.
- 10.7 The customer must notify Tecan in writing of any alleged latent Defects immediately after their discovery, but in no event later than TWELVE (12) months after delivery of a product or acceptance of all other Products in accordance with clause 8.2.
- 10.8 The customer shall be responsible for the payment of all shipping and handling costs and shall bear all risk associated with the return of the Product to Tecan for a warranty claim.
- 10.9 Tecan has the choice, at its sole discretion, to either repair or replace any Product that contains an alleged Defect. If such repair fails or the replacement is defective too, the customer has the right to either claim for a reasonable reduction of the purchase price or to cancel the purchase contract and to return the Product(s) in question, in which case, Tecan shall refund to the customer the purchase price of the Products (or, to the extent applicable a proportion of the purchase price). Such repair, replacement or refund shall be the sole remedy of the customer for any breach of the warranties set out in this clause 10.

## **11. LIMITATION OF LIABILITY**

- 11.1 Tecan shall not be liable for any loss of income, loss of actual or anticipated profits, loss of business, loss of revenues, loss of contracts, loss of goodwill or reputation, loss of anticipated savings, loss of, damage to or corruption of data, or for any direct, incidental, indirect, special or consequential loss or damage of any kind arising out of or in connection with the supply of the Products to the customer, use of the Products by the customer or otherwise in connection with these Terms of Sale, in each case howsoever arising and whether such loss or damage was foreseeable or in the contemplation of the parties and whether caused by tort (including negligence), breach of contract or otherwise.
- 11.2 Tecan's total liability for any claim or series of claims arising out of or in connection with the supply of Products to the customer, use of Products by the customer or otherwise in connection with these Terms of Sale shall not exceed the total purchase price paid by the customer for such Products.
- 11.3 Notwithstanding clauses 11.1 and 11.2, nothing in these Terms of Sale shall limit or exclude any liability of Tecan for:
- (a) fraud;
  - (b) death or personal injury directly caused by the negligence of Tecan; and
  - (c) any other liability or breach of implied terms to the extent that the same may not be excluded or limited as a matter of law. unless otherwise agreed in writing between Tecan and the customer

## **12. INTENDED USE AND CUSTOMER'S LIABILITY**

- 12.1 To the extent required by applicable laws, rules or regulations concerning medical devices or otherwise which govern the use of the Products, the Products shall only be used within the purpose, specifications, and fields of application as defined in the quotation 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.

12.2 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.

12.3 If the customer operates and/or modifies the Products and/or combines them with other items beyond their Intended Use, the customer shall indemnify and keep indemnified Tecan and its respective directors, officers, employees, contractors and agents from and against all claims, actions, liabilities, losses, damages and expenses (including legal expenses) arising out of or in connection with (whether directly or indirectly) the customer's operations, modifications, or combinations of the Products beyond their Intended Use, and/or as a result of any willful or negligent conduct of the customer. 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 (each a "Product Manual").

13.2 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 customer's 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 labelling 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.

13.3 All notifications of incidents to Tecan shall be made immediately upon coming to the knowledge of the customer, but at the latest within three (3) working days.

13.4 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.

13.5 If the customer fails to ensure legal or regulatory compliance and compliance with the Product Manual with respect to the operation of the Products, the customer shall indemnify and keep indemnified Tecan and its respective directors, officers, employees, contractors and agents from and against all claims, liabilities, losses, damages and expenses (including legal expenses) arising (whether directly or indirectly) out of failure to ensure such legal or regulatory compliance.

### **14. TERMINATION**

14.1 If the customer fails to perform any of its obligations under the Contract or if Tecan reasonably believes that the customer is or will become unable to pay debts as they fall due, Tecan may, without limitation to any other rights or remedies available to Tecan under the Contract or at law, terminate the Contract by written notice to the customer. Upon termination, Tecan may also:

(a) cease manufacture and delivery of all outstanding orders and deal with those Products as Tecan sees fit;



(b) demand immediate payment of all outstanding invoices and recover any unpaid invoices as a liquidated debt;

(c) Repossess any Products held by the customer for which payment in full has not been received, and deal with those Products as Tecan sees fit.

**15. PLACE OF JURISDICTION AND APPLICABLE LAW**

These Terms of Sale shall be governed by and construed in accordance with laws of Victoria and the Commonwealth of Australia. Each of Tecan and the customer hereby submit to the exclusive jurisdiction of the Courts of Queensland and the Commonwealth of Australia in connection with any dispute arising out of these Terms of Sale, provided that Tecan shall be entitled, as claimant, to commence proceedings against the customer in the courts of any competent jurisdiction.

**16. MISCELLANEOUS**

16.1 Should any provision of the these Terms of Sales or any other contractual arrangement between the parties referring to these 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.

16.2 Tecan may assign or otherwise deal with the benefit of any Contract made pursuant to these Terms of Sale without the prior consent of the customer.