

CONDITIONS OF SALE - THE BINDING SITE LIMITED

1. INTERPRETATION

1.1 In these Conditions:-

"Code of Business Conduct"	means TBS' code of business conduct available from time to time on TBS' website.
"Conditions"	means the standard terms and conditions of sale set out in this document and includes any special conditions agreed in writing between the Customer and TBS.
"Contract"	means an Order for Products which, once accepted by TBS, will together with these Conditions and the terms of any Lease Agreement and/or any Service Agreement (if applicable), form the contract.
"Customer"	means the party placing an order for Products.
"Data Protection Laws"	means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as ended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of personal data to which a party is subject, including the <i>Privacy Act 1993</i> .
"Delivery"	means the delivery of the Products at the Delivery Address.
"Delivery Address"	means the place for delivery of the Products as specified in the Order.
"Instruments"	means the instruments (or any part of them) as set out in the Order.
"Intellectual Property Rights"	means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, specification rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. "Intellectual Property Right" means any one of the Intellectual Property Rights.
"Lease Agreement"	means a lease agreement entered into between the Customer and TBS in respect of the Products.
"Order"	means an order for Products submitted by the Customer in accordance with Clause 3.
"Products"	means the products which are the subject of an Order including but not limited to Instruments, Reagents, Software and consumables.
"Product Prices"	means the prices of the Products as determined in accordance with Clause 5.1.
"Reagents"	means the reagents supplied by TBS.
"Service Agreement"	means a service agreement entered into between the Customer and TBS in respect of the Products.
"Software"	means any software that is supplied (other than as part of an Instrument) by TBS to the Customer.
"Specification"	means the specification of the relevant Products as provided in the operator manual for Instruments and Software and the package inserts for Reagents and consumables.
"TBS"	means The Binding Site Limited, a company registered at the New Zealand Companies Register with company number 7595577.

CONDITIONS OF SALE - THE BINDING SITE LIMITED

2. FORMATION OF CONTRACT

- 2.1 All Orders accepted by TBS are subject to these Conditions. For the avoidance of doubt, the parties acknowledge and agree that any conditions of sale submitted at any time by the Customer to TBS shall not apply to this or any other Contract (and any terms of such shall be expressly excluded) and any failure by TBS to challenge any such conditions of sale shall not imply acceptance by TBS.

3. ORDERS

- 3.1 Each Order by the Customer to TBS shall be an offer to purchase the Products subject to these Conditions and the terms of any Contract (as applicable). TBS may accept or reject an Order at its discretion. An Order shall not be accepted until the earlier of:

- 3.1.1 TBS' written acceptance of the Order; or
3.1.2 Delivery.

- 3.2 Each Order shall:

- 3.2.1 be given in writing and shall specify the type, quantity and code numbers of the Products ordered; and
3.2.2 contain an order number assigned by the Customer and each party shall use the relevant order number in all subsequent correspondence relating to the Order; and
3.2.3 specify the Delivery Address.

4. MANUFACTURE, PACKING AND DELIVERY

- 4.1 TBS shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Products.
- 4.2 TBS shall obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Products. TBS shall provide all necessary documentation relating to the Products including any certificates of origin, certificates of analysis, user manuals and warranty documentation.
- 4.3 TBS is not bound by any delivery dates quoted in the Order and time will not be of the essence in respect of Delivery under the Contract.
- 4.4 Each Delivery shall be accompanied by a delivery note from TBS showing the order number, the type and quantity of Products included in the Order.
- 4.5 TBS is permitted to make partial shipments of the Products or the ship the Products ordered by the Customer in multiple shipments.

- 4.6 Delivery of the Products shall be Free Carrier TBS' premises (Incoterms 2010) unless otherwise agreed in writing between the parties.

- 4.7 If for any reason the Customer fails to accept Delivery of the Products or TBS is unable to deliver the Products on time because the Customer has not provided appropriate instructions, documents or authorisations, TBS may store the Products until Delivery can take place and the Customer shall be liable for all related costs and expenses (including without limitation storage and insurance).

5. PRODUCT PRICES

- 5.1 The Product Prices shall be TBS' published price list at the date of the Order or as otherwise agreed between the parties and stated in the Order accepted by TBS in accordance with 3.1.

- 5.2 Unless otherwise agreed in writing, the Product Prices are exclusive of GST (or such other applicable sales taxes) and costs of Delivery.

- 5.3 TBS may, by giving notice to the Customer at any time up to Delivery, increase the price from that advised in the acceptance of the Order, if such increase is due to:

- 5.3.1 increased cost of raw materials or labour;
5.3.2 any change in government regulations;
5.3.3 any request by the Customer to change the quantities or types of Products ordered; or
5.3.4 any Force Majeure Event.

6. INVOICING AND PAYMENT

- 6.1 TBS shall invoice the Customer for the Products on or at any time after Delivery.

- 6.2 The Customer shall pay all invoices in full without deduction or set off in cleared funds within 30 days from the end of the month in which the invoice is dated. Time of payment is of the essence.

7. TITLE AND RISK

- 7.1 The risk of the Products passes to the Customer on Delivery.

- 7.2 The title to the Products shall remain with TBS until TBS has received payment in full and cleared funds for the Products.

- 7.3 Until title to the Products has passed to the Customer, the Customer shall:

- 7.3.1 notify TBS immediately if it becomes subject to any of the events listed in Clause 12.1.4; and
7.3.2 give TBS such information relating to the Products as TBS may require from time to time.

- 7.4 Subject to Clause 7.5, the Customer may use the Products in the ordinary

course of its business (but not otherwise) before TBS receives payment for the Products.

- 7.5 If, before title to the Products passes to the Customer, the Customer becomes subject to any of the events listed in Clause 12.1.4 or the Customer encumbers or in any way charges any of the Products then, without limiting any other right or remedy TBS may have:

7.5.1 the Customer's right to use the Products in the ordinary course of its business ceases immediately; and

7.5.2 TBS may at any time:

- (a) require the Customer to deliver up all Products in its possession which have not been irrevocably incorporated into another product; and
(b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

- 7.6 TBS shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from TBS.

8. INTELLECTUAL PROPERTY

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the supply of Products shall as between the parties be owned by TBS.

- 8.2 Software included in the price list is subject to a non-exclusive licence agreement. The Customer may not reproduce, modify nor transfer the Software without TBS' consent.

9. WARRANTIES

9.1 Instruments

- 9.1.1 TBS warrants that for a period of 12 months from the date of Delivery ("**Warranty Period**") that the Instruments shall:

- (a) conform in all material respects to the Specification; and
(b) be free from material defects in design, material and workmanship.

- 9.1.2 Subject to Clause 9.5 and to the extent permitted by law, TBS shall, at its option, repair or replace any Instruments that in TBS' reasonable opinion do not comply with Clause 9.1.1 provided that:

- (a) the Customer promptly notifies TBS in writing upon discovery of any defect and that such notification is within the Warranty Period;
(b) the Instruments have been used and maintained in accordance with:

- (i) normal operating conditions;
(ii) the applicable user manual; and
(iii) any other documentation provided by TBS at the time of or since the date of the Order.
- 9.1.3 To the extent permitted by law, items that could reasonably be expected to require repair or replacement within the Warranty Period (e.g. consumables, batteries etc.) are excluded from the warranty at Clause 9.1.1.
- 9.2 Reagents**
- 9.2.1 TBS warrants that Reagents shall conform in all material respects to the relevant Specification until their expiry date as indicated in the package insert.
- 9.2.2 Subject to Clause 9.5 and to the extent permitted by law, if:
(a) the Customer gives notice in writing to TBS within a reasonable time of discovery that some or all of the Reagents do not comply with the warranty set out in Clause 9.2.1;
(b) TBS is given a reasonable opportunity of examining such Reagents; and
(c) the Customer (only if asked to do so by TBS) returns such Reagents to TBS' place of business at TBS' cost, TBS shall, at its option, replace the defective Products or refund the value of the defective Products in full.
- 9.3 Software**
- 9.3.1 TBS warrants that any Software will conform in all material aspects to the Specification for a period of six months from the date the Order is placed.
- 9.3.2 Subject to Clause 9.5 and to the extent permitted by law, Clause 9.3.1 will not apply to the extent that the non-conformity is caused by:
(a) incorrect use of the Software;
(b) use of the Software for a purpose other than for which it was intended;
(c) attempted or actual modification or alteration of the Software;
(d) use of the Software on equipment that is not expressly certified as compatible by TBS; or
(e) failure to update the Software with the most recent version.
- 9.4 The Customer will provide TBS with access to the necessary information and documentation in order to investigate or rectify any non-conformity with Clause 9.3.1.
- 9.5 To the extent permitted by law, TBS shall not be held liable for, and expressly excludes all liability in respect of, Products' failure to comply with the warranties set out in Clauses 9.1, 9.2 and 9.3 in any of the following events:
9.5.1 the Customer makes any further use of such Products after giving notice to TBS of a defect;
9.5.2 the failure to comply arises because the Customer failed to follow TBS' oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
9.5.3 the Customer alters or repairs such Products without the written consent of TBS;
9.5.4 the failure to comply arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions;
9.5.5 the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;
9.5.6 the failure to comply arises as a result of a Force Majeure Event; or
9.5.7 the failure to comply arises as a result of any act or omission of the Customer.
- 9.6 To the extent permitted by law, the parties agree that the Customer's sole and exclusive remedies in respect of the Products' failure to comply with the warranties set out in Clauses 9.1, 9.2 and 9.3 shall be as provided for in this Clause 9, and TBS shall have no further liability in respect of such failure.
- 9.7 Except for those expressly set out in the Contract, all warranties, conditions, representations and undertakings (including without limitation any and all warranties, conditions, representations and undertakings implied by statute, common law or otherwise) are excluded to the fullest extent permitted by law.
- 9.8 To the extent permitted by law, the parties agree that the provisions of this Clause 9 shall apply to any repaired or replacement Products supplied by TBS, provided that the warranties set out above shall apply to such repaired or replacement Products only for the term of such warranties remaining in respect of the Products repaired or replaced.
- 10. CUSTOMER'S OBLIGATIONS**
- 10.1 The Customer shall ensure compliance with and user manual, instructions or storage conditions written on the packaging of the Products or set forth in the package inserts.
- 10.2 The Customer shall take all measures to ensure that the Products are used and disposed of in compliance with legal requirements and standards (including relevant traceability rules). The Customer shall use the Instruments in strict compliance with the recommendations of TBS and shall remain liable for any interpretation and any use of results provided.
- 10.3 TBS will not be liable for any non-compliance with such rules or guidance in relation to the Products after Delivery. The Customer agrees to indemnify TBS against any third party action on the consequences of using non-compliant Products.
- 11. LIMITATION OF LIABILITY**
- 11.1 Nothing in the Contract shall limit or exclude the liability of either party for death or personal injury; or fraud or fraudulent misrepresentation; or any other liability which cannot be excluded or limited by New Zealand law.
- 11.2 Without prejudice to Clause 11.1 and to the extent permitted by law, TBS shall not be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any special, indirect or consequential damage or loss suffered including but not limited to loss of profit, use, production, contract, opportunity, savings or goodwill (whether direct or indirect) by the Customer that arises under or in connection with the Contract.
- 11.3 Without prejudice to Clause 11.1 or Clause 11.2 and to the extent permitted by law, TBS' total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to 125% the Product Prices paid or payable under the Contract.
- 12. TERMINATION**
- 12.1 A party shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the other party if:
12.1.1 the other party fails to pay any undisputed amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
12.1.2 the other party commits a material breach of its obligations under the Contract

and (if such breach is remediable) fails to remedy that breach within a period of 14 days after receipt of notice in writing requiring it to do so; or

12.1.3 the other party commits a series of persistent minor breaches which, when taken together, amount to a material breach; or

12.1.4 any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the other party or if the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding up passed or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the other party or if the other party ceases or threatens to cease to carry on business; or

12.1.5 any Force Majeure Event (as defined in Clause 13.2) prevents the other party from performing its obligations under the Contract for any continuous period of three months.

12.2 Termination of the Contract shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

13. FORCE MAJEURE

13.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under the Contract so long as, and to the extent to which, the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.

13.2 A "Force Majeure Event" means an event beyond the reasonable control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism.

14. DATA PROTECTION

14.1 The parties shall comply with the Data Protection Laws and any legislation or guidelines which amend or replace such legislation to the extent necessary to perform their

respective obligations under the Contract.

14.2 GENERAL

14.3 The Customer agrees to comply with the terms of TBS' [Code of Business Conduct](#) in place from time to time.

14.4 If any provision of these Conditions shall be held to be invalid or unenforceable in whole or in part, the unaffected provision shall remain in full force and effect.

14.5 No waiver of or delay or failure by TBS to exercise any rights or remedies shall prejudice any future or further exercise thereof.

14.6 All notices to be served on TBS by the Customer shall only be valid if addressed to the Chief Financial Officer of TBS at TBS' registered address.

14.7 The Customer shall not without the prior written consent of TBS sub-contract or assign all or any part of the Contract.

14.8 The Customer shall keep as confidential all information disclosed to it by or on behalf of TBS which could reasonably be considered as confidential. This shall include, but not be limited to, all information received by the Customer which comprises Intellectual Property Rights or know-how belonging to TBS and all information relating to TBS' business which is not in the public domain. TBS shall not use any information provided to it other than to enable it to perform its obligations under the Contract.

14.9 A person who is not a party to the Contract shall have no rights to enforce any term of the Contract.

14.10 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with New Zealand law.

14.11 The parties irrevocably agree that the courts of New Zealand shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).