

## GENERAL TERMS AND CONDITIONS OF SALE PRIONICS LELYSTAD B.V.

**These General Terms and Conditions of Sale contain conditions limiting or excluding liability**

### **1. General**

These General Terms and Conditions of Sale govern the sale and delivery of all goods and services (the goods and services herein both separately and jointly referred to as: the "Goods") from or on behalf of Prionics Lelystad B.V. or one of its direct or indirect affiliates ("Seller") to customer ("Customer") and apply to all dealings between Seller and Customer. These General Terms and Conditions of Sale supersede any and all prior oral and written quotations, communications, agreements and understandings of the parties and shall apply in preference to and supersede any and all terms and conditions of any order placed by Customer and any other terms and conditions submitted by Customer. Failure of Seller to object to terms and conditions set by Customer shall in no event be construed as an acceptance of any terms and conditions of Customer. Neither Seller's commencement of performance nor Seller's delivery shall be deemed or constituted as acceptance of any of Customer's terms and conditions. If these General Terms and Conditions of Sale differ from any terms and conditions of Customer, these General Terms and Conditions of Sale and any subsequent communication or conduct by or on behalf of Seller, including without limitation confirmation of an order and delivery of Goods, constitutes a counter-offer and not acceptance of such terms and conditions submitted by Customer. Any communication or conduct of Customer which confirms an agreement for the delivery of Goods by Seller, as well as acceptance by Customer of any delivery of Goods from Seller shall constitute an unqualified acceptance by Customer of these General Terms and Conditions of Sale. These General Terms and Conditions of Sale may only be varied or waived by agreement between Seller and Customer concluded on behalf of Seller by one (1) of its managing directors or duly authorized officers. No other representative of Seller shall have any authority to vary these General Terms and Conditions of Sale in any respect or to agree to any additional terms or conditions. By contracting on the basis of these General Terms and Conditions of Sale, Customer agrees to the applicability thereof in respect of future agreements between itself and Seller, even if this is not expressly stated.

### **2. Quotations, orders and Confirmation**

Quotations made by Seller are not binding upon Seller and merely constitute an invitation to Customer to place an order. All quotations issued by Seller are subject to change without notice. Seller reserves the right to adjust any quoted price to take account of (i) additions or increases in the costs and other charges which affect the cost of Goods to Seller; (ii) expenses attributable to specific requirements of Customer made in any order; and (iii) changes in currency exchange rates. Price quotations based on estimated or projected quantities are subject to increase in the event that actual quantities purchased during the specified period are less than the estimated or projected quantities. Orders are not binding until accepted by Seller in writing ("Seller's Confirmation").

### **3. Prices**

Prices and currencies of Seller's Goods are as set out in the applicable price schedule for the Goods concerned held by Seller at the time of delivery if not stated otherwise in Seller's Confirmation. Unless agreed otherwise, Seller's prices include standard packaging but do not include Value Added Tax or any other applicable tax, duty, levy or charge in any jurisdiction ("Taxes") and the amount of any Taxes which Seller may be required to pay or collect shall be for Customer's account and shall be added to each invoice or separately invoiced by Seller to Customer. Seller shall be entitled to levy an additional service and/or handling charge of twentyfive Euro (€25. -) per order.

### **4. Payment and Customer's credit**

Unless expressly stated otherwise in Seller's Confirmation, payment shall be made on the basis of net cash within thirty (30) days following the date of Seller's invoice for the Goods by means of transfer into the bankaccount mentioned on the invoice. All payments shall be made without any deduction on account of any Taxes and free of set-off or counterclaim. Time for payment of the price for Goods shall be of the essence. Seller may, without prejudice to any other rights of Seller, charge interest on any overdue payment at the higher rate of either twelve percent (12%) per annum or one and a half time the statutory interest rate under prevailing law per annum, but not to exceed the maximum interest rate permitted under prevailing law, from the due date computed on a daily basis until all amounts outstanding are paid in full. All costs and expenses incurred by Seller with respect to collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be for Customer's account.

### **5. Delivery and acceptance**

Unless expressly stated otherwise in Seller's Confirmation, all deliveries of Goods shall be Ex Works Seller's production facility, as the term Ex Works shall have the meaning assigned to same in the latest version of INCOTERMS published by the International Chamber of Commerce at Paris, France, at the time of Seller's Confirmation. Unless expressly stated otherwise in Seller's Confirmation, any times or dates for delivery by Seller are estimates and shall not be of essence. In no event shall Seller be liable for any delay in delivery. Delay in delivery of any Goods shall not relieve Customer of its obligation to accept delivery thereof. Deviations in quantity of Goods delivered from that stated in Seller's Confirmation shall not give Customer the right not to accept the Goods or to claim damages and Customer shall be obliged to pay at the contract rate for the quantity of Goods delivered, provided such quantity does not exceed the quantity of Seller's Confirmation.

### **6. Cancellation**

Customer's wrongful non-acceptance or rejection of Goods or cancellation or repudiation of Seller's Confirmation shall entitle Seller to recover, in addition to any incidental damages caused by such action: (i) in the case of Goods which reasonably cannot be resold by Seller to a third party, the price of such Goods; or (ii) in the case of Goods not covered by subparagraph (i) or where an action for the price is not otherwise permitted by law, damages equal to fifty percent (50%) of the price for the Goods as liquidated damages.

## **7. Examination and conformity to specifications**

On delivery and during the handling, use, processing, transportation, storage and sale (if expressly permitted in Seller's Confirmation) thereof (the "Use"), Customer shall examine the Goods and shall satisfy itself that these meet all contractual requirements. Complaints about the Goods shall be made in writing and must reach Seller not later than seven (7) days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and seven (7) days from the date on which any other claim was or ought to be apparent, but in no event later than seven (7) days from the shelf life date indicated on the Goods. For a determination whether or not delivered Goods conform to the agreed specifications for the Goods as stated in Seller's Confirmation or, in the absence of agreed specifications, to the most recent specifications held by Seller at the time of delivery of the Goods (the "Specifications"), only samples retained by Seller and taken from the batches or production runs in which the Goods were produced shall be analyzed in accordance with the methods of analysis used by Seller. Goods that Seller consents or directs in writing to be returned shall be returned to Seller at the risk of Customer freight pre-paid to the destination directed by Seller.

## **8. Transfer of risk and property**

Risk in the Goods shall pass to Customer on delivery. Goods for which delivery is suspended pending payment by Customer in accordance with the provisions of paragraph 16 of these General Terms and Conditions of Sale, as well as Goods whose delivery is wrongfully rejected or not accepted by Customer, shall be held at the risk and expense of Customer. Property in the Goods shall not pass to Customer and full legal and beneficial ownership of the Goods shall remain with Seller unless and until Seller has received payment in full for the Goods, including all secondary costs such as interest, charges, expenses etc. In any of the causes for termination set forth in paragraph 16 hereof, Seller shall, without prejudice to any other rights of Seller, be entitled to require immediate re-delivery of the Goods.

## **9. Limited warranty**

Goods sold by Seller are per delivery warranted to conform to the Specifications. If and to the extent that Goods fail to meet such warranty, as shall be determined in accordance with the provisions of paragraph 7 of these General Terms and Conditions of Sale, then Seller may at its own option within a reasonable time either repair or replace the Goods at no charge to Customer, or issue a credit for any such Goods in the amount of the original invoice price. ACCORDINGLY, SELLER'S OBLIGATION SHALL BE LIMITED SOLELY TO REPAIR OR REPLACEMENT OF THE GOODS OR FOR CREDIT OF THE GOODS. However, Seller's obligation to repair, replace, or credit shall be conditioned upon receipt by Seller of timely notice of any alleged non-conformance of Goods and the return of the Goods, in accordance with paragraph 7 of these General Terms and Conditions of Sale. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS OR OTHER TERMS, EXPRESS, IMPLIED, STATUTORY, CONTRACTUALLY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PURPOSE, OR ABSENCE OF INFRINGEMENT OF ANY CLAIM IN ANY PATENT COVERING THE GOODS.

#### **10. Limitation of liability and indemnification**

THE LIABILITY OF SELLER FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE GOODS AND THE USE THEREOF SHALL NOT EXCEED THE SUM OF CUSTOMER'S PAYMENTS FOR THE GOODS THAT ARE THE SUBJECT OF THE DISPUTE. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS, COST OR EXPENSE, INCLUDING WITHOUT LIMITATION, DAMAGE BASED UPON LOST GOODWILL, LOST SALES OR PROFITS, WORK STOPPAGE, PRODUCT FAILURE, IMPAIRMENT OF OTHER GOODS OR OTHERWISE, AND WHETHER ARISING OUT OF OR IN CONNECTION WITH BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE. Nothing contained in this paragraph 10 shall exclude or restrict any liability of Seller that may not in the relation between Seller and Customer, as professional parties, be excluded or restricted under prevailing law.

#### **11. Force majeure**

Neither party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with any delay, restriction, interference or failure in performing any obligation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, law, statute, ordinance, regulation, legislative measures, acts of governments or other administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, slowdown, labor disturbances, difficulty in obtaining necessary labor or raw materials, lack of or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown of public utilities, delay in delivery or defects in goods supplied by suppliers or subcontractors ("Force Majeure"). Upon the occurrence of any such event, the party suffering thereby shall promptly inform the other party by written notice thereof specifying the cause of Force Majeure and how it will affect its performance. In the event of any delay, the date of delivery shall be extended for a period equal to the time loss by reason of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period of more than two (2) months after the agreed delivery date, both parties are entitled to terminate Seller's Confirmation without liability to any of the parties.

#### **12. Modifications, information, indemnity**

Seller reserves the right to change or modify the Specifications, construction and/or creation of Goods and to substitute materials used in the construction and/or creation of Goods from time to time without notice. Customer acknowledges that data in Seller's catalogues, specification sheets and other descriptive publications distributed by Seller, may accordingly be varied from time to time without notice. Any statement, representation, recommendation, advice, sample or other information of Seller in relation to the Specifications, the Goods and the Use thereof shall be furnished for the accommodation of Customer only. Customer must utilize and solely rely on its own expertise, know-how and judgement in relation to the Goods and its Use thereof and in its application of any information obtained from the part of Seller for the purposes intended by Customer. Customer shall indemnify and hold Seller harmless from and against any and all damage, losses, costs, expenses, claims, demands and liabilities arising out of or in connection with the Goods, Customer's Use thereof and its use or application of any information disclosed or provided by or on behalf of Seller.

### **13. Compliance with laws and standards**

Seller makes no promise or representation that the Goods shall conform to any law, statute ordinance, regulation, code or standard ("Laws and Standards"), unless expressly stated in Seller's Confirmation or in the Specifications. Customer acknowledges that the Use of the Goods may be subject to requirements or limitations under Laws and Standards. Customer affirms that it shall maintain compliance with all Laws and Standards applicable to the Goods and the Use thereof.

### **14. Independent contractors**

Seller and Customer are independent contractors, and the relationship created hereby shall not be deemed to be that of principal or agent. No sale or obligation of either party towards a third party shall in any way bind the other party.

### **15. Non-assignment**

Neither party may assign any of the rights or obligations under Seller's Confirmation without the prior written consent of the other party, with the exception, however, that Seller may assign such rights and obligations, wholly or partly, to any of its parent companies, subsidiaries or affiliates.

### **16. Suspension and termination**

If Customer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (otherwise than for the purposes of a reconstruction or amalgamation) or any bankruptcy proceeding shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors, or if Customer is in default of performance of its obligations towards Seller, or if Seller has reasonable grounds for insecurity with respect to Customer's performance of its obligations to Seller and Customer fails to provide to Seller adequate assurance, such as by means of ongoing credit approval, of Customer's performance before the date of scheduled delivery and in any case within thirty (30) days of Seller's demand for such assurance, then, without prejudice to any other rights of Seller, Seller may by notice in writing forthwith: (i) demand re-delivery and take repossession of any delivered Goods which have not been paid for, for which purpose Customer hereby grants an irrevocable right and license to Seller to enter upon all or any of the premises where the Goods are or may be located and all costs relating to the recovery of the Goods are for the account of Customer; and/or (ii) suspend its performance or revoke Seller's Confirmation for outstanding delivery of Goods unless Customer makes such payment for Goods on a cash in advance basis or provides adequate assurance of such payment for Goods to Seller; without any intervention of courts being required and without liability for Seller of whatsoever kind arising out of or in connection with such suspension or termination. In any such event, all outstanding claims of Seller become due and payable instantly in proportion with the quantity of Goods delivered to Customer and not re-possessed by Seller.

### **17. Waiver**

Failure by Seller to enforce at any time any provision of these General Terms and Conditions of Sale shall not be construed as a waiver of Seller's right to act or to enforce each and every such term and condition and Seller's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by Seller of any breach of Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

## **18. Severability and conversion**

In the event that any provision of these General Terms and Conditions of Sale shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity or enforceability of the remainder of the arrangements between the parties and shall be severed there from. The pertaining provisions held to be invalid or unenforceable shall be deemed reformed to provisions satisfying the legal and economic intent of the original provisions to the maximum extent permitted by law.

## **19. Limitation of action**

No action by Customer shall be brought unless Customer first provides written notice of any claim alleged to exist to Seller within thirty (30) days after the event complained of first becomes known to Customer and an action is commenced by Customer within twelve (12) months after such notice.

## **20. Governing law and jurisdiction**

The parties' rights and obligations arising out of or in connection with Seller's Confirmation and/or these General Terms and Conditions of Sale shall be governed, construed, interpreted and enforced according to the laws of the Netherlands. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. The parties agree that any suits, actions or proceedings that may be instituted by any party shall be instituted only in the competent courts of the Netherlands, and the parties do hereby consent to the jurisdiction of those courts and waive any objection which they may have, now or hereafter, to venue of those suits, actions or proceedings.

## **21. Survival of rights**

The parties' rights and obligations shall be binding and inure to the benefit of the parties and their respective successors, permitted assigns, parent companies, subsidiaries, affiliates, directors, officers, employees, agents and legal representatives. Termination of one or more of the rights and obligations of the parties, for whatsoever reason, shall not affect the provisions of these General Terms and Conditions of Sale which are intended to continue to have effect after such termination.

## **22. Headings**

The headings contained in these General Terms and Conditions of Sale are included for mere convenience of reference and shall not affect their construction or interpretation.

These General Terms and Conditions of Sale have been filed at the office of the Trade Register of the Chamber of Commerce for Lelystad, the Netherlands, file number 390.74.495.

**Prionics Lelystad B.V.**  
**Lelystad, The Netherlands**  
Signing

**Dr. G.D. Keizer**  
**Chief Executive Officer**

(date)