

# GENERAL TERMS AND CONDITIONS OF SALE OF RADIOMETER PACIFIC (RNZ)

## **I- GENERAL PROVISIONS**

The object of these General Terms and Conditions of Sale (the “**Terms and Conditions**”) is to define the conditions under which the company RADIOMETER PACIFIC (RNZ) (GST 52 664 470), Suite 2, 1/30 St Benedicts Street, Eden Terrace, Auckland 1010, New Zealand (hereinafter the “**Company**”) provides to the client, a professional buyer, (hereinafter the “**Client**”) who agrees, the solutions defined below and marketed by the Company.

The Client and the Company are referred to individually as the “**Party**” or collectively as the “**Parties**”.

Any order of Solutions implies unconditional acceptance by the Client and its full commitment to these General Terms and Conditions of Sale, which shall take precedence over any other document of the Client, and in particular over all general terms and conditions of purchase.

The invalidity of a contractual clause shall not result in the invalidity of these Terms and Conditions.

The Company reserves the right to amend its General Terms and Conditions of Sale at any time.

The applicable General Terms and Conditions of Sale are those in effect on the date of the order placed by the Client.

## **II- DEFINITION OF MARKETED SOLUTIONS**

The term “**Solutions**” refers to all the products and services marketed by the Company.

The term “**Products**” refers to all the marketed instruments (analyzers, monitors, electrodes), consumables, reagents and software.

The term “**Service**” refers to all the training, hotline, and maintenance proposed by the Company.

The term “**Software**” refers to any software provided by the Company whether offered as a stand-alone product or embedded into other instruments.

## **III - CONTRACTUAL DOCUMENTS**

The sale agreement for the Solutions between the Company and the Client (the “**Agreement**”) consists of the following elements:

- (i) the special conditions, being the document containing the commercial terms (“**Special Conditions**”); and
- (ii) these Terms and Conditions.

In case of divergence or contradiction between the provisions of one or more contractual documents, the order of priority shall be that established in the list above.

No amendment to the Special Conditions shall be binding on the Parties unless set out in writing and signed by authorized representatives of each of the Parties.

## **IV - ORDERS**

### **4.1 Final nature of the order**

Any order signed by the Client constitutes a firm and definitive commitment by the Client. Orders are also binding on the Client if received at the following email address: orders@radiometer.co.nz, unless rejected by the Company.

### **4.2 Cancellation policy**

Once the orders are firm and definite, any request for cancellation for whatever reason (except in case of Force Majeure), if accepted by the Company, shall be subject to a cancellation fee under the following conditions:

- a cancellation fee of 30% of the price of the order will be applied to orders relating to the sale of instruments and software Solutions;
- a cancellation fee of 30% of the current price in effect on the date of the order for Agreements for provision and lease; and
- Any consumable orders already shipped are non-returnable unless agreed by the Company in its absolute discretion (in such case, a restocking fee may be charged)

## **V- PRICE**

### **5.1. Sale price**

The sale price of the Solutions is stated in the Agreement signed by the two Parties. The prices are exclusive of GST, packaging, and shipping.

The shipping costs, excluding taxes, shall be invoiced at a flat rate as per the Company’s price list valid at the time of the order.

Orders are also subjected to handling fee that shall be invoiced at a flat rate as per the Company’s price list valid at the time of the order.

Please note that the aforementioned prices can be reviewed each year.

### **5.2. Change in price**

The Company reserves the right to amend its prices at any time with a prior notice period of thirty (30) days to the Client.

## **VI- PAYMENT OF PRICE**

### **6.1. Due date**

The terms of payment are fixed at 30 days from the invoice date.

Any sum not paid by the deadline shall, without prior notification, result in statutory interest according to the applicable rate in effect at the time of the payment default.

In case of default, the Company is entitled to suspend delivery of the Solutions.

### **6.2. Retention of title clause**

The transfer of ownership of Products is suspended until complete payment of the price and other charges for them by the Client. By express agreement, the Company can enforce the rights that it has under this retention of title clause for any receivables over all Products in the Client’s possession, the latter generally being presumed to be those that are unpaid, and the Company can take them back or claim them in compensation for all unpaid invoices, without prejudice to its right to rescind the sales in progress.

In the event that a procedure for legal redress or liquidation of Client’s assets is opened, the orders in progress will be automatically canceled and the Company reserves the right to claim the Products in stock.

This clause does not preclude the risk relating to the Products being transferred to the Client according to the applicable incoterm.

### **6.3 Personal Property Securities Act 1999 (New Zealand) (PPSA)**

For the purposes of the PPSA, terms used herein that are defined in the PPSA have the same meaning as in the PPSA.

The Client accepts, acknowledges and agrees that this Agreement constitutes a Security Agreement which creates a security interest in favour of the Company and in (i) all goods previously supplied by the Company to the Client (if any); (ii) all present and after acquired goods supplied to the Client by the Company (or for the Client’s account) including products in which goods become processed or commingled; and (iii) all Proceeds, as continuing security for payment of the Prices and all of the Client’s outstanding debts and obligations to the Company.

The Client agrees to grant to the Company a Purchase Money Security Interest (PMSI).

The Client accepts, acknowledges and agrees that: the Company obtains a Security Interest in all goods supplied by the Company to the Client on credit, including any Commingled Goods. The Company can, without notice to the Client, seek Registration of its Security Interest on the PPSR. The Company is not required to disclose to an interested person information pertaining to the Company’s Security Interest unless required to do so pursuant to the PPSA or at law generally. The Client will:

- (i) sign any further documents and/or provide any further information (which information the Client warrants to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to enable perfection of its Security Interest or registration of a Financing Statement or Financing Change Statement on the PPSR;
- (ii) not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 162 of the PPSA in respect of the goods, including any services, without the prior written consent of the Company;
- (iii) give the Company not less than 14 days written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business practice);
- (iv) indemnify the Company against any costs the Company incurs in perfecting and maintaining its perfected Security Interest in the goods or such other Personal Property under the PPSA and any costs the Company may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally; and
- (v) procure from any persons considered by the Company to be relevant to its security position, such agreement and waivers as the Company may at any time reasonably require.

To the extent permitted by the PPSA the Client waives its rights to:

- (i) receive a notice under any of subsections 114(1)(a), 120(2) and 129(1) and section 148 of the PPSA;
- (ii) receive a statement under subsection 116 of the PPSA;
- (iii) redeem Collateral after default under section 132 of the PPSA unless the Company agrees in writing to such redemption;
- (iv) reinstate the Security Agreement under section 133 of the PPSA; and
- (v) give a Notice of Objection under section 121 of the PPSA.

## **VII - DELIVERY**

### **7.1. Definition**

Orders are subject to CIP destination Incoterm@2020, unless otherwise specified in the Special Conditions. However, for instruments, transfer of risk take place upon commissioning when performed by the Company.

The Company reserves the right to fulfill the order through partial deliveries, and / or through suitable alternative items.

The Company shall be free to use sub-contractors in performing its obligations under the Agreement.

### **7.2. Delivery deadline**

The delivery deadlines scheduled when ordering are only given as an indication and any delays do not give the Client the right to cancel the sale, to refuse the Solutions or to claim damages.

### **7.3. Place of delivery**

The Solutions shall be delivered to the address indicated by the Client under the Special Conditions of the Agreement.

### **7.4. Methods of delivery**

The Company shall carry out the shipments.

No Products can be sent back without the consent of the Company.

In addition, in order to allow the Company to assert its rights, both with regard to the carriers and the insurance companies:

- upon receiving the Solutions, any damage or shortage must be reported by the Client by email orders@radiometer.co.nz within 48 hours of the delivery;
- if the damage is apparent when the Solutions are received, any objections from the Client must be made immediately;
- if the damage concerns defective consumables, the Client must report this to the Company within a maximum of 48 hours after generation of the error report.

If these provisions are not observed, the Client shall be deemed to have accepted the Solutions delivered with no objection, any claim concerning the Solutions delivered will be rejected, and the Client thereby being presumed to have renounced any legal recourse.

### **7.5. Commissioning**

Commissioning shall only be performed at the request of the Client.

A pre-installation meeting will be organized with the Company’s personnel in order to define all the prerequisites of each of the Parties.

The Company and the Client undertake to honor the points that are discussed. In case of non-compliance with the prerequisites mentioned in the report, the Company reserves the right to defer installation of the Solution.

The Company will contact the Client to agree on a delivery date and commissioning of the Solution.

The Solution described in the Special Conditions will be delivered and installed by the Company at the address of the Client communicated in the Special Conditions.

The costs incurred for assembly, installation, and commissioning, of the Solution (except consumables), and in accordance with the Agreement will be borne by the Company. In cases of provision or lease of instruments, the place and, if applicable, the premises inside which instruments will be installed must have the necessary features to permit the operation, protection, and maintenance of the Solution under proper conditions so that the Company is exempted from all responsibility with regard to third parties as the owner of instruments. The Client is not authorized to make any modification to instruments nor to move them (including within the same establishment) without prior written authorization from the Company.

Performance must be carried out by the Company and will be subject to a separate quote.

## **VIII - ASSIGNMENT / TRANSFER OF THE AGREEMENT**

The Agreements are “*intuitu personae*” and may not be subject to any assignment or transfer, whether in whole or in part, and whether or not in return for payment, unless the Parties agree in writing in advance. In case of merging, absorption, division, partial transfer of assets in case of amendment governing bodies, assignment of the majority of voting rights in one of the companies engaged into this Agreement, and in case of lease-management or any transfer of business capital from one of these companies, the other Party will have the option to terminate this Agreement automatically.

## **IX- CONTRACT DURATION**

The duration of the Agreement is set in the Special Conditions. However, please note that upon expiry of the term, if the contracting parties continue to perform the obligations, the Agreement will be tacitly renewed on the same terms, for successive further periods of one (1) year, unless notice of termination is served by one of the Parties to the other (by email to the Company at orders@radiometer.co.nz, and in writing to the Client’s registered address) three (3) months prior the term of the renewed period.

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## **X- CONFIDENTIALITY**

The Client cannot use or divulge any information of a financial, statistical, technical, or commercial nature that it may acquire from the Company without the prior written agreement of the Company.

## **XI- LEASE AGREEMENT**

### **11.1 Instruments' ownership**

In case of provision or lease of the Solution, the instruments are and shall remain the exclusive property of the Company for the entire duration of the Agreement, no other right being conferred on the Client in this regard by virtue of these Terms and Conditions.

### **11.2 Insurance**

For the entire duration of the Agreement in case of leasing, the Client undertakes to assume all the risks relating to instruments and in particular all risk of damages, total or partial loss, accident for whatever cause, including in case of unexpected circumstances, Force Majeure as well as those relating to civil responsibility resulting from the possession or use of instruments in the presence of third parties. To this end, the Client must insure instruments at its own cost against all risk of loss for its total replacement value and must assume the entirety of the risks from loss or damages whatever the cause, from the date of signing the Agreement until its end, whether these risks are covered or not by the insurance taken out. The occurrence of a loss or some kind of damage to instruments shall not release the Client from its obligations mentioned in this Agreement. In the insurance policies mentioned, the Company will be mentioned as the beneficiary of the compensation.

The Company may request the Client to produce a certificate of insurance evidencing that the insurance premiums relating to the insurance taken out have been paid. The Client is required to request reimbursement of the damages that must be paid by the insurance company, if applicable, in accordance with the insurance ceiling mentioned in the policy and taking into account any exclusions of risks. If instruments are damaged, the Client is obliged to inform the Company as soon as reasonably possible (and always within a maximum of seven (7) days), as well as the insurance company within the deadlines indicated in the policy and must exempt the Company from all responsibility resulting from the aforementioned damage.

### **11.3 Instruments' return at the end of the lease term**

At the end of the lease or provision of a Solution by the Company, the Client is obliged to ensure that the components of the Solution have not undergone any modification or removal and are in a state of normal wear. If components of the Solution are lacking, then the Company reserves the right to invoice them to the Client at the rate in effect at the time of return.

## **XII- FORCE MAJEURE**

Except for payment of the price hereunder, neither Party shall be liable for any delay or failure to perform under the Agreement due to causes beyond a Party's reasonable control, such as (but not limited to) acts of God, natural disaster, war or other hostility, acts of terrorism, civil disorder, the elements, flood, fire, pandemics or epidemics, shortage of supplies, infrastructures or transportation, power failure, equipment failure, industrial or labor dispute, embargo, law, rule, regulation or action by any governmental authority, national, regional or global emergency ("Force Majeure Event"). In the event of any such delay or failure to perform, the Company shall have additional time within which to perform the Company's obligations under the Agreement as may be reasonably necessary under the circumstances. Despite anything to the contrary in the Agreement, the Company may apportion Product subject to a shortage in any manner the Company considers equitable. If the Force Majeure Event lasts for a continuous period of more than three (3) months, then either Party shall be entitled to terminate this Agreement (or any Order placed under it), by giving to the other Party immediate written notice.

## **XIII- WARRANTY**

The Company warrants that instruments and Software are free from defects for a period of 12 months (i) from commissioning when performed by the Company, and (ii) from delivery when commissioning is performed by third parties, and a period of six (6) months for secondhand instruments. In case of a valid warranty claim, the Company will at its own discretion and as Client's sole remedy either repair, replace or reimburse the price paid for the instruments and Software. Repaired instruments are subject to the original warranty period, i.e. the warranty period is not extended as a result of the repair or replacement. The Client is obliged to use and protect the Solution with all reasonable care and attention, including that necessary according to the recommendations of the Company.

The Company reserves the right to retain any replacement part.

However, replacement of parts damaged (other than by the Company's negligence) are excluded from the warranty.

Software is licensed, not sold. Client is granted a non-exclusive, non-transferable license to use Software solely for its intended purpose. The Company does not warrant that the Software will be error-free or uninterrupted. All copyrights, other intellectual property and other rights in relation to the Software shall as between the Parties remain the Company's exclusive property. Client shall not reproduce, reverse engineer, de-compile or otherwise modify the Software.

## **XIV- INDEMNIFICATION AND LIMITATION OF LIABILITY**

### **14.1 Indemnification**

(i) The Client must defend and hold the Company harmless from all direct, incidental and/or consequential liability for any complaint, expense (including lawyers' costs and fees), damage and liability resulting from the use or improper use of the Solution by the Client, and in particular from complaints/claims (relating to personal injuries, death, damages or otherwise) resulting from a fault, negligence, serious misconduct, omission or violation of the Agreement.

(ii) The Company cannot be held liable for any damage suffered by the Client or by a third party resulting directly or indirectly from non-compliance by the Client with any of its obligations, from negligence, from using the Product for purposes other than those intended, from use made in its role as a professional, from information contained in the Solutions and interpretations that it makes, from the results that it obtains and from actions that are completed under the sole responsibility of the Client.

(iii) The Client is notified when it acquires its Solution that this is directed at professionals and that it is in no way intended to supersede its judgment nor to assume its responsibilities. (iv) The Client alone is responsible for the choice of Solution, having received the advice and information necessary and sufficient about its conditions of use, its capacities and performance limits, and for the use and/or interpretations that it makes from the documents and data that it consults, the results that it obtains, deduces and/or issues.

### **14.2 Limitation of liability**

(i) Neither Party shall have any liability arising out of or related to this Agreement for any loss of use, lost data, lost profits, failure of security mechanisms, interruption of business,

loss caused by the interruption, termination or delayed operation of the internet, third-party telecommunication services or third-party security features or systems, except as required by law.

(ii) The Company shall not be liable for any indirect, special, incidental, exemplary, punitive, reliance, or consequential damages of any kind, even if informed of the possibility in advance, suffered by the Client resulting from or arising out of or related to this Agreement or the performance or breach thereof.

(iii) Unless otherwise specified, in no event will either Parties' liability for any damages arising from or related to this Agreement, whether in contract or in tort or under any other legal theory including strict liability and negligence, exceed the aggregate amounts payable by the Client to the Company for Solutions under this Agreement, for the six (6) months prior to the month in which the event giving rise to liability occurred. The Parties agree that the aggregate liability of the Parties for such damages shall in no event, exceed the payments (paid or payable by the Client) to the Company in the first 12 months of this Agreement. The foregoing shall not release the Client from its obligations to pay all amounts due hereunder with respect to the periods up to the date of termination or expiration of this Agreement.

(iv) Notwithstanding any other provision in this Agreement, nothing in this Agreement shall operate to exclude or restrict the liability of the Parties for death or personal injury resulting from their negligence, or their fraud or deceit.

## **XV- EXPORT CONTROL**

Client acknowledges that the Products may be subject to restrictions under export control laws and regulations and undertakes not to sell or make available Products to a third party without the Company's prior written consent.

## **XVI- PROCESSING OF PERSONAL DATA**

The information gathered on the Client is subject to computer processing implemented by the Company and is essential to the processing of its order. This information and personal data is also kept for security purposes in order to fulfill legal and regulatory obligations. It will be kept for as long as necessary for the managing of orders and warranties that may apply. The controller of the data is the Company, whose contact details are in the header of these Terms and Conditions. Access to the personal data will be strictly limited to employees responsible for processing and authorized to process them by virtue of their positions. The information gathered may be communicated to third parties contracted by the Company to execute subcontracted tasks without requiring authorization from the Client. Company may transfer personal data to recipients based outside New Zealand. Company provides adequate protection with respect to personal data sent outside New Zealand. The Client has the right of access, to rectification, to erasure, to portability of the data concerning it, as well as the right to object to processing for just cause, rights that it can exercise by contacting the controller at the postal address or following email: [privacy@radiometer.dk](mailto:privacy@radiometer.dk), attaching supporting evidence of valid identification.

Except as expressly provided above, the Client acknowledges that the Company would not require access to any Personal Data, including patients' Personal Data, at any time in performance of its obligations under this Agreement. Where applicable, in the event any data is required to remedy technical issues and/or performance of the Products ("Permitted Purposes"), the Client agrees that prior to providing or granting access to such data to the Company, the Client shall be responsible to ensure all Personal Data in such data, if any, are De-Identified and Coded to ensure that the identity of the individual to whom the data pertains is not identifiable to and is not traceable by the Company and/or the Company's Personnel. The Client further represents that it has established policies and procedures in place to prevent the release of individuals' Personal Data and is responsible for informing and ensuring its employees to comply with the Client's obligations in this clause. The Client shall fully indemnify the Company and its affiliates against any and all claims, losses or damages arising from or related to non-compliance of this clause including but not limited to costs on a solicitor/attorney-client basis.

For the purpose of this clause,

(i) "Personal Data" means any information, data and/or opinion relating to and about an identified or reasonably identifiable natural person;

(ii) "De-Identified" means the identity of the individuals is not known to and ensure data is not traceable by the Company and/or the Company's Personnel; and

(iii) "Coded" means that a number, letter, symbol, or combination thereof (i.e. the code) has replaced identifying individual information (such as name or national registered identification number); and

(iv) "Company's Personnel" means employees, agent and/or contractor of the Company associated with the performance of its obligations under this Agreement.

## **XVII- WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy is only effective if given in writing.

## **XVIII - JURISDICTION**

This Agreement is governed by and must be construed in accordance with the laws in force in New Zealand. The Parties submit to the non-exclusive jurisdiction of the Courts of New Zealand in respect of any proceedings arising out of or in connection with this Agreement. Each Party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.