

PRIORCLAVE NORTH AMERICA INC (THE COMPANY) – CONDITIONS OF SALE

1 GENERAL

- 1.1 These conditions alone shall govern and be incorporated in every contract for the sale of all equipment including spare parts and the provision of services supplied by or on behalf of the Company and sold to the party hereafter referred to as the "Customer". These Conditions shall apply in place of and prevail over any terms or conditions (whether or not in conflict or inconsistent with these Conditions) contained or referred to in any documentation submitted by the Customer or in correspondence or elsewhere or implied by trade, custom, practice or course of dealing, unless specifically excluded or varied in writing by an authorized representative of the Company and any purported provisions to the contrary and hereby excluded or extinguished.
- 1.2 Acceptance by the Customer of the delivery of a product or service shall (without prejudice to Condition 2 or any other manner in which acceptance of these Conditions may be evidenced) be deemed to constitute unqualified acceptance of these Conditions.
- 1.3 If, subsequent to any contract of sale which is subject to these Conditions, a contract of sale or purchase is made for equipment or service with the same Customer without reference to any conditions of sale or purchase, such contract howsoever made shall be deemed to be subject to these Conditions.
- 1.4 The Customer confirms that, in accepting these Conditions, the Customer has not relied on any representation save insofar as the same has expressly in these Conditions been made a representation and agrees that it shall have no remedy in respect of any misrepresentation which has not been included in these Conditions save that the agreement of the Customer contained in this Condition shall not apply in respect of any fraudulent or negligent misrepresentation whether or not such has become a term of these conditions.
- 1.5 No alterations to any order will be recognized by the Company unless requested in writing or confirmed by an authorized officer of the Company in the same way.

2 QUOTATIONS, PRICES AND ACCEPTANCE

- 2.1 A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise a quotation at any time prior to the acceptance of the Customer's order.
- 2.2 All orders must be approved and accepted by a director or duly authorized representative of the Company. These Conditions shall be applicable to all Equipment or Services sold to the Customer by the Company.
- 2.3 All quotations and tenders are subject to availability within the delivery period of Equipment and Services and in the case of non-availability, the Company shall be entitled to substitute other goods or materials of similar or equivalent nature.
- 2.4 No contract or order may be cancelled without the Company's written consent. In the event that cancellation is agreed for whatever reason, the Customer shall indemnify the Company against all costs, claims, loss and expense occasioned thereby.
- 2.5 All prices quoted for Equipment and Services shall, other than expressly agreed in writing, be ex-works and exclusive of carriage, packaging and transportation costs and charges (including insurance), all of which shall be payable by the Customer in addition.
- 2.6 The Company shall have the right to revise any prices to take account of inflation and/or increases in costs, including (without limitation) costs of any equipment and Services, carriage, labor, travelling expenses, or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.
- 2.7 Unless otherwise specified, sales tax and any other tax or duties payable by the Customer shall be added to the price.
- 2.8 **Validity:** All quotations made by the Company remain valid for a period of thirty days. Acceptance following expiry of this period will be subject to confirmation. Any equipment not of our manufacture but included in our quotation is subject to the manufacturer's price variation terms.

3 TERMS OF PAYMENT

- 3.1 Where the acceptance of an order from the Customer is subject to credit approval, the Company reserves the right to require payment in full, prior to the shipment of any Products.
- 3.2 Payment of invoices, other than for on-site service or testing work shall unless otherwise agreed in writing be made in full within 30 days of the date of dispatch. Time of payment shall be of the essence of all contracts between the Customer and the Company. The Company reserves the right to suspend the provision of any Equipment or Services to the Customer where any amounts are overdue under any contract with the Customer until all such amounts have been paid. Payment shall become due and be payable irrespective of any delays in the connecting up of the equipment for use, however such delays are caused. Payment for equipment delivery and installation if appropriate shall also be made irrespective of any performance testing or calibration work that may be a requirement of the user.
In addition to the aforesaid, any period of extended warranty or warranty that the Company may offer beyond the minimum statute requirement shall be deemed invalid in the event of late or non-payment of its invoices or settlement of its accounts.
Any extension of credit allowed to the Customer may be changed or withdrawn at any time. In addition, if in the opinion of the Company the credit-worthiness of the Customer shall have deteriorated prior to delivery of the Products, the Company may require full or partial payment of the price prior to such delivery or the provision of security for payment by the Customer in a form acceptable to the Company.
Interest shall be payable on accounts at the rate of 4% over Barclays Bank plc base rate from time to time to run from the due date for payment until receipt by the Company of the full amount (including any accrued interest) whether before or after judgement. Interest to be calculated weekly.
Without prejudice to any of its other rights, the Company shall be entitled to suspend its obligations set out in these Conditions if any payment is not made in full on the due date.
The Company reserves the right to set off any payments made by the Customer against any outstanding payment due irrespective of the purpose of the payment specified by the Customer.

4 DRAWINGS AND TECHNICAL LITERATURE

Any technical literature, advice or advertisement published by or on behalf of the Company shall not be deemed to be and shall not constitute any representation or warranty of any kind whatsoever in relation to the goods or any part thereof. All such material remains the property of the Company and shall not be passed on or copied without express permission in writing from the Company.

5 DELIVERY/DISPATCH

- 5.1 Delivery or dispatch dates mentioned in any quotation, order acceptance form or elsewhere are approximate only and the Company shall not be under any liability to the Customer in respect of any failure to deliver on any particular date or dates. Time for delivery shall not be of the essence of any contract to which these Conditions apply and shall not be made so by the service of any notice.
- 5.2 Delivery shall be at the Customer's premises unless otherwise stipulated or agreed by the Company in writing. The Customer shall pay the per unit delivery and insurance charges attributable to each of the Products, as specified in the Company's price list. The Customer shall be solely responsible for unloading the Equipment at the point of delivery. Unless otherwise agreed in writing, the Customer shall inspect the Equipment immediately on their arrival at the Customer's premises or at such other place as has been stipulated or agreed by the Company. The Customer shall indemnify the Company against any and all claims, liabilities, costs or expenses arising as a result of the Company or its sub-contractors assisting the Customer in the unloading, loading or other removal of the Equipment from the point of delivery.
- 5.3 If the Customer refuses or fails to take delivery of any Equipment tendered in accordance with the contract or fails to take any action necessary on its part for delivery and/or installation of the Equipment if appropriate, the Company shall be entitled to recover from the Customer any loss and additional costs incurred as a result of such refusal of failure (including, without limitation, storage costs, from the due date of delivery).
- 5.4 Unless otherwise expressly agreed, the Company may affect dispatch in one or more instalments. Where delivery is affected by instalments, each instalment shall be treated as a separate contract governed by these Conditions. Dispatch means the date on which the equipment is available for collection or the date of dispatch (whichever is the sooner).
- 5.5 The Customer shall prepare the area of delivery and installation where required, and provide the Company (including its employees, agents and sub-contractors) with free access to the place of installation and with free access to any services or facilities that be required to deliver and install. Where the same has not been provided the Company shall be entitled to charge for the same, or any repeat visits required to carry out this work by its engineers or sub-contractors.

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- 5.6 The Customer shall provide the Company (including its employees, agents and sub-contractors) with access to the Equipment at the agreed premises for the purpose of inspections and maintenance of the Equipment and with all necessary information and support that may reasonably be required by the Company for the performance of its obligations hereunder, if any.
- 5.7 The company cannot hold itself responsible for any damage in transit, the customer must immediately notify the Company, and also the carriers: without such notification no liability will be accepted after three days. In the event of non-delivery or shortages the Company must be notified within seven clear days from the date of invoice, otherwise no claim can be accepted.

6 RISK

- 6.1 Risk in the Equipment or Spares shall pass on dispatch.
- 6.2 Any property of the Customer in or under the Company's possession or control and all property supplied to the Company on behalf of the Customer shall be held by the Company at the Customer's risk.
- 6.3 From the time of dispatch or delivery of the equipment including spares to the Customer in accordance with Condition 7, the Customer shall insure the equipment or spares for the full value with a reputable insurance office. Upon request, the Customer shall use reasonable endeavors to have the Company's interest if any, in the equipment or spares noted on the insurance policy. Until this property passes to the Customer, the Customer shall hold the proceeds of any claim on such insurance policy for the Company and shall forthwith account to the Company with such proceeds.

7 TITLE

- 7.1 **NOTWITHSTANDING DELIVERY AND PASSING OF RISK, THE EQUIPMENT OR SPARES OR CERTIFICATES OF CONFORMITY RESULTS FROM ANY TEST OR CALIBRATION SHALL REMAIN THE PROPERTY OF THE COMPANY UNTIL SUCH TIME AS THE CUSTOMER SHALL HAVE PAID TO THE COMPANY THE AGREED PRICE (TOGETHER WITH ANY ACCRUED INTEREST) AND ALL OTHER AMOUNTS OWED BY THE CUSTOMER TO THE COMPANY IN RESPECT OF ANY OTHER CONTRACT FOR THE SALE OF EQUIPMENT OR SERVICES.**
- 7.2 Until the Customer has paid in full pursuant to Section 3, the Customer shall not be entitled to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the equipment and the relationship between the Company and the Customer in respect of the equipment, including any proceeds of sale or other consideration therefore shall be one of bailee.
- 7.3 The Company or its appointed Agents shall be entitled (without prejudice to any other legal remedies which it may have) to enter the Customer's premises without notice to the Customer and remove the equipment at any time if:
 - 7.3.1 The Customer fails to make payment in full of all sums due under these Conditions by the due date; or
 - 7.3.2 Prior to the payment for the Equipment or Spares in Full pursuant to Condition 3, the Customer convenes a meeting of its creditors or makes a proposal for any composition, scheme or arrangement with (or assignment for the benefit of its creditors) or commits any act of bankruptcy or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of any administration order (otherwise than for the purpose of an amalgamation or reconstruction).
- 7.4 If the Customer sells the Equipment or Spares prior to payment in full, any proceeds of sale from it and all rights arising under or in respect of such sale shall be held (in the case of the proceeds of sale in a separate account) by the Customer as trustee for the Company.

8 WARRANTY

- 8.1 If within twelve months from the date of dispatch any defect is discovered in respect of materials, or workmanship, or design, the Company will at its sole discretion repair or replace any part of the goods which is in its view considered to be defective.
- 8.2 Subject to the aforesaid, if any defect becomes evident within twelve months in any part of the goods not manufactured by the company the latter will endeavor to obtain for the purchaser any guarantee or warranty (if any) given by the manufacturer but otherwise shall be under no liability whatsoever in respect of the goods.
- 8.3 The company shall not be liable to repair or replace any part of the goods until it is satisfied that the goods have, since dispatch been installed, used and operated and maintained in accordance with good engineering practice and any schedule as laid down by the Company and appertaining to that equipment. Should the Company or its representatives be called in to carry out maintenance or repairs to its products, which upon inspection prove to be installed or maintained contrary to the foregoing, the Company will be free to levy upon the client such charges as necessary to cover its costs.
- 8.4 The cost of removing or dismantling any defective part, its carriage to and from the Company premises and its reinstallation shall be borne by the purchaser.
- 8.5 Systems or equipment shall be deemed to be designed, function and perform to specification in a maximum ambient and surrounding air condition of not exceeding:
 - 8.5.1 For systems or equipment employing mechanical refrigeration 23° Celsius.
 - 8.5.2 For all other equipment 27° Celsius. No warranty or guarantee of performance can be accepted by the Company at temperatures exceeding these levels
- 8.6 The pressure vessel and pressure door (excluding door clamping system seals and hinges) of Priorclave Autoclaves are additionally warranted for 10 years from the date of dispatch, subject that throughout this period that the Autoclave is properly and regularly maintained by a Priorclave trained and currently certified engineer, in accordance with the recommendations in the handbook and the procedures appertaining to that machine as listed in the Company's Service Manual for that product. In the unlikely event that the company, at its sole discretion, deems it necessary to return the equipment to their factory for repair, the costs of disconnection/reconnection from the various services and transportation to and from Priorclave's factory in London shall be bourn entirely by the purchaser / end user.

9 SERVICE/MAINTENANCE WORK – WHETHER UNDER WARRANTY, SEPARATE CONTRACT OR ORDER OR AGREEMENT.

- 9.1 The Company will use its best endeavors to supply and fit any necessary part to the original specification irrespective of the origin of the autoclave being serviced or repaired and irrespective of it being of the Company's manufacture. However the Company reserves the right to substitute any original part or parts not being available for any other equivalent part or parts. The Company also reserves the right to modify any machine as necessary to receive such an equivalent part. In the case of Autoclaves, Chambers, and equipment not of Priorclave manufacture, but serviced or maintained by the Company, the Company will use its best endeavors to obtain any necessary parts from the originator of the equipment. However if such parts cannot be reasonably obtained the Company will advise the customer and seek appropriate direction from the customer.
- 9.2 The Company shall not be liable if a failure to meet the warranties (either statute or extended period), or the non-completion of a service obligation is caused by:
 - 9.2.1 Modifications or customizations made by or on behalf of the Customer to the equipment without the authorization of the Company.
 - 9.2.2 The Equipment not at all times being subject to proper and normal Conditions of use or maintenance in accordance with the Company's recommendations
 - 9.2.3 Any defects which arise wholly or partly as a result of negligence or accident or improper handling, installation, interconnection or maintenance or by any person or any other cause outside of the control of the Company.
 - 9.2.4 Spare parts being unobtainable from third party manufacturers or suppliers for equipment being serviced or maintained by the Company, but not manufactured by the Company.
- 9.3 Where the Customer requests inspection by the Company during the warranty period and such inspection does not reveal work which the Company is obligated to carry out under the terms of this warranty then such inspection or service work shall be provided at the Company's then current hourly service charge rates in addition to travel and living expenses of the Company's personnel involved.
- 9.4 The warranty does not extend and shall not apply to Products with materials supplied by the Customer if such defects were the result of or caused by the use of the said materials or design of the customer.

10 LIABILITIES AND INDEMNITIES

- 10.1 The Company shall not be liable to the customer, and user, or any other party for any damage to property or injury or loss of life or for any direct or consequential loss incurred by the customer, end user or any other party in consequence of any negligence or default on the part of the Company or negligence or default however caused on the part of its servants or agents in or in connection with the supply, fitting, installation or operation of its goods or services or as a result of any performance testing or calibration.
- 10.2 Neither party shall, or shall they purport to, exclude or restrict liability for death or personal injury resulting from the negligence of the relevant party or its employees, servants or agents in the course of their employment.
- 10.3 Save as expressly set out herein, all conditions, warranties and obligations which may be implied or incorporated into these Conditions by statute, common law or otherwise and any liabilities arising therefrom, are hereby expressly excluded.
- 10.4 Neither party shall in any circumstances be liable to the other for loss of profits, business or contracts or any other indirect or consequential damages caused in any way by some act or omission committed in connection with these Conditions (whether arising from negligence, breach of contract or howsoever), even if such loss was reasonably foreseeable or if one party had advised the other of the possibility of such loss.
- 10.5 Other than in respect of Condition 10.1, the total aggregate liability of one party to the other from any cause relating to or arising out of these Conditions, regardless of the form of action whether in contract, tort or otherwise, will not exceed the total amount paid under these Conditions in the 12 months period prior to the date of any breach or series of breaches under these Conditions.
- 10.6 Other than in respect of Condition 10.1, neither party shall have any liability to the other in any respect unless it shall have served notice of the same on the other party within 12 months of the date on which it became aware of the circumstances giving rise to any such claim or the date when it ought reasonably to have become so aware.
- 10.7 Each provision of this Condition 10, limiting or excluding liability, operates separately and shall survive independently of the other provisions.
- 10.8 The provisions of this Condition 10 shall survive termination of these Conditions insofar as they relate to events occurring before such termination.

11 CONFIDENTIALITY

All drawings, designs, specifications and information submitted by the Company shall be treated as confidential and shall not be disclosed to any third party without the Company's written consent or used by the Customer other than for purposes authorized by the Company.

12 PACKAGING

The Customer shall meet the cost of any special packaging requested by the Company or any packaging rendered necessary by delivery by any means other than the Company's normal means of delivery. The Customer shall unless otherwise agreed be solely responsible for the disposal of all packaging in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.

13 INSTALLATION

When the contract provides for installation and/or positioning of the Equipment by the Company or one of its approved agents (other than that carried out under delivery only terms) such work will exclusively comprise the installation and/or positioning and functional testing of appropriate equipment including any cabling or pipe work specifically quoted by the Company in writing. The Customer undertakes to ensure that the premises where the equipment is to be installed will be provided with adequate space, lighting, heating, ventilation and permanent mains power supply before the Company and/or its authorized agent will be called upon to make such installation, testing and/or positioning. In the event that the site is not adequately prepared the Company reserves the right to make an additional charge for travelling and time spent as a result.

14 FORCE MAJEURE

The Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of the Equipment being prevented, hindered, delayed, cancelled or rendered uneconomic by reason of circumstances or events beyond the Company's reasonable control ("force majeure circumstances") including, but not limited to strikes, lock-outs, labor disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or machinery, fire, flood, storm, difficulty to increased expense in obtaining workers, materials or transport or other circumstances affecting the supply of the Equipment or Services, or of Equipment or Services by the Company's normal source of supply or the equipment manufacture of the Equipment or Services by the Company's normal means or the delivery of the Equipment, or transportation of its employees by the Company's normal route or means of supply.

15 SAMPLES

Any samples or test programs or procedures supplied to the Customer are supplied for information and in no way import and express or implied conditions or warranties as to quality, description, fitness for purpose or satisfactory quality and the Customer shall be deemed to be satisfied as to such matters prior to ordering the Equipment, Services or Test procedures and Calibration.

16 INSPECTION AND TESTS

All products handled, distributed or manufactured by the Company are carefully inspected and submitted to standard tests before dispatch. If additional or witnessed tests are required or if inspection by the Customer's representative is called for, additional charges will be made to cover the extra work involved. In the event of any delays on the Customer's part in attending such tests after two days notice that we are ready, the tests will be made in the Customer's absence and shall be deemed to have been made in the Customer's presence.

17 TERMINATION

- 17.1 If the Customer (being an individual) enters into a voluntary arrangement or if a petition is presented for the making of a bankruptcy order against him or if he compounds with his creditors or it (being a Company) an application for an order is made or a resolution is passed for the winding-up of the Customer (otherwise than for the purposes of amalgamation or reconstruction) or if a meeting is called to approve the appointment of a receiver to the Customer or if a petition is presented to the Court for the appointment of a receiver to the Customer or if a receiver, manager, administrative receiver or an administrator is appointed or a petition is presented to the Court for the appointment of an administrator to the Customer or over any part of the Customer's undertaking or if circumstances arise which might entitle the Court or a creditor of the Customer to appoint a receiver, manager, administrative receiver or administrator or which might entitle the Court to make a winding-up order or if the Customer takes or suffers any similar or analogous action in consequence of debt or commits a breach of any contract between the Company and the Customer, then the Company may, without prejudice to any of its other rights, stop any Products in transit under Condition 7 and/or by notice in writing to the Customer terminate any contract with the Customer.
- 17.2 Upon termination of any contracts pursuant to Condition 17.1 any indebtedness of the Customer to the Company shall become immediately due and payable and the Company shall be relieved of any further obligations to supply any Products to the Customer pursuant to such contracts.
- 17.3 Any termination of these Conditions (howsoever occasioned) shall not affect any accrued rights or liabilities of either party which have arisen on or before the date these Conditions terminate, nor shall it affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

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18 ASSIGNMENT

None of the rights or obligations of the Customer under these Conditions may be assigned or transferred in whole or in part without the prior written consent of the Company. The Company shall be entitled to assign its rights and obligations under these Conditions in whole or in part at its sole discretion.

19 LIEN

The Company shall be entitled to a general lien on all goods and property owned by the Customer in the Company's possession (although the Customer may have paid for the same in full) in satisfaction of the whole or part as the case may be of the unpaid price of any Products sold and delivered to the Customer under any contract. The Company shall be entitled to offer any sum or sums owing to it from the Customer against any sums owed to the Customer by the Company.

20 HEADINGS

The headings of these Conditions shall not affect the interpretation of these Conditions.

21 SEVERABILITY

If any of these Conditions is held to be invalid, illegal or unenforceable in any respect, whether in whole or in part, such invalidity, illegality or unenforceability shall not prejudice the effectiveness of the rest of these Conditions or the remainder of any part of a Condition affected.

22 WAIVER

Failure by the Company to exercise or in exercising any right or remedy under any contract subject to these Conditions shall not constitute a waiver or the right or remedy shall prevent any further exercise or the right or remedy/or the exercise of any other right or remedy.

23 NOTICES

Any notice under or in connection with a contract subject to these conditions shall be in writing and may be delivered personally or sent by first class post pre-paid recorded delivery (and airmail if overseas) or by facsimile to the party concerned at its last known address. Notices delivered personally shall be deemed to have been duly given when delivered, notice sent by first class post shall be deemed to have been duly given 48 hours after posting (five days if given by airmail) and notices sent by facsimile shall be deemed to have been duly given on receipt of a satisfactory transmission report.

24 GOVERNING LAW

Any contract to which these Conditions apply shall be governed by and construed in accordance with the laws of the State of Michigan without regard to any conflicts of laws and the Customer hereby submits to the exclusive jurisdiction of the Washtenaw County Michigan or Federal District Court of Michigan courts.