

## **GENERAL CONDITIONS OF SALE**

### **1. TENDERS AND QUOTATIONS**

Where these conditions accompany a Quotation then these conditions should be read in conjunction with our Quotation, and apply in full unless and except where specifically varied in writing in the Quotation. In submitting a Quotation BECKMAN COULTER offers to provide the equipment and/or service described at the stated prices subject to the terms and conditions printed herein. No order placed pursuant to any Quotation is binding on BECKMAN COULTER until accepted by BECKMAN COULTER. Availability of goods may be affected by prior sale. Unless otherwise specified any Quotation will require written revalidation after thirty (30) days from the date of issue.

### **2. CASH OR CREDIT SALES**

These conditions shall apply to all BECKMAN COULTER credit sales and cash sales and their acceptance is a precondition to the granting of any credit facility.

- (a) **Prices:** Prices are for goods supplied as stated in the Quotation. In addition to the stated prices, Buyer must pay for all taxes and fees imposed on the sale or use of the goods and any other governmental charges imposed on BECKMAN COULTER relating to the goods and all shipping and handling, freight, insurance, and other services.
- (b) Installation, commissioning and maintenance costs are not included in the sale price unless specifically indicated in our Quotation.
- (c) **GST:**  
GST is not included in quoted prices and if applicable will be charged at the rate applying at the date of invoice. Where GST exemption is applicable, a GST Exemption number or Certificate as per the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* must be provided in writing at the time of order, otherwise GST will be charged.

#### **(d) Variations:**

Published prices are subject to change without notice. All prices are based on the quantity specified and do not necessarily operate pro rata for any greater or lesser quantities. In the case of Quotations prices are based on labour and material prices ruling at the date of our Quotation. Unless specified otherwise in any Quotation document, BECKMAN COULTER shall only vary prices in accordance with increases in the cost of materials, labour, shipping rates, insurance, wharfage, customs duty, any Federal or State taxes necessary, and currency exchange rates. Where an exchange rate is pertinent, it shall be the rate published daily by the Westpac Banking Corporation on the date of BECKMAN COULTER'S invoice. The base rate to be used in calculating any exchange rate variation shall be expressed in our Quotation. We will not vary our price unless the exchange rate varies by greater than ±2%.

### **3. TITLE AND RISK OF LOSS**

Title and risk of loss passes to the Buyer upon the earlier of: (a) delivery of the goods to the agreed delivery point; or (b) deemed delivery pursuant to clause 5(d) herein. As collateral security for the payment of the purchase price of the goods, Buyer hereby grants BECKMAN COULTER a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessories thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.

### **4. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (PPSA)**

- (a) For the purposes of the PPSA, terms used in clause 4 that are defined in the PPSA have the same meaning as in the PPSA.
- (b) The Buyer accepts, acknowledges and agrees that these General Conditions of Sale constitute a Security Agreement which creates a security interest in favour of BECKMAN COULTER and in (i) all goods previously supplied by BECKMAN COULTER to the Buyer (if any); (ii) all present and after acquired goods supplied to the Buyer by BECKMAN COULTER (or for the Buyer'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 Buyer's outstanding debts and obligations to BECKMAN COULTER.
- (c) The Buyer agrees to grant to BECKMAN COULTER a Purchase Money Security Interest (PMSI).
- (d) The Buyer accepts, acknowledges and agrees that: pursuant to clause 3, BECKMAN COULTER obtains a Security Interest in all goods supplied by BECKMAN COULTER to the Buyer on credit, including any Commingled Goods.
- (e) BECKMAN COULTER can, without notice to the Buyer, seek Registration of its Security Interest on the PPSR.
- (f) Pursuant to section 275(6) of the PPSA, the Buyer agrees BECKMAN COULTER is not required to disclose to an interested person information pertaining to BECKMAN COULTER'S Security Interest unless required to do so pursuant to the PPSA or at law generally.
- (g) The Buyer will:
- sign any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and up-to-date in all respects) which BECKMAN COULTER may reasonably require to enable perfection of its Security Interest or registration of a Financing Statement or Financing Change Statement on the PPSR;
  - not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the goods, including any services, without the prior written consent of BECKMAN COULTER;
  - give BECKMAN COULTER 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);
  - indemnify BECKMAN COULTER against any costs BECKMAN COULTER incurs in perfecting and maintaining its perfected Security Interest in the goods or such other Personal Property under the PPSA and any costs BECKMAN COULTER may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally; and
  - procure for any persons considered by BECKMAN COULTER to be relevant to its security position, such agreement and waivers as BECKMAN COULTER may at any time reasonably require.
- (h) To the extent permitted by the PPSA the Buyer waives its rights to:
- receive a notice under any of subsections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157 of the PPSA;
  - receive a statement that includes the information referred to in paragraph 132 (3)(d) of the PPSA;
  - receive a statement under subsection 132(4) of the PPSA;
  - redeem Collateral after default under section 142 of the PPSA unless BECKMAN COULTER agrees in writing to such redemption;
  - reinstate the Security Agreement under section 143 of the PPSA; and
  - give a Notice of Objection under section 137 of the PPSA.

### **5. DELIVERY**

- (a) Unless expressly specified on the Quotation, all goods will be delivered F.O.B. shipping point. Risk of loss with respect to all goods will pass from BECKMAN COULTER to Buyer upon shipment.
- (b) Any time or date stated by BECKMAN COULTER for anticipated or promised delivery of the goods is an estimate only. If BECKMAN COULTER is delayed by any circumstance or event beyond its control then it may suspend delivery or extend the delivery time in respect of the whole or part of the goods and it shall not be liable to the Buyer for any consequential loss or damage arising from any such delay.
- (c) The Buyer shall accept delivery of the goods at the agreed delivery point of the Buyer.
- (d) If for any reason the Buyer fails to accept delivery of any of the goods on the date fixed pursuant to BECKMAN COULTER'S notice that the goods have been delivered to the agreed delivery point, or in the event of a substantial delay (which is a delay of more than 7 days) in accepting delivery by the Buyer, or if BECKMAN COULTER is unable to deliver the goods to the agreed delivery point on such date because the Buyer has not provided appropriate instructions, documents, licenses or authorisations: (a) title and risk of

loss to the goods shall pass to Buyer; (b) the goods shall be deemed to have been delivered; and (c) BECKMAN COULTER, at its option, may store the goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, freight, restocking, storage and insurance).

- (e) Any agreement or undertaking by BECKMAN COULTER is contingent upon its ability to secure or supply the goods.
- (f) Delivery may be made in one or more lots. Each lot shall form a separate contract on delivery and be accepted and paid for accordingly notwithstanding late delivery or non-delivery of any other lot. Upon failure of the Buyer to pay any amount when due BECKMAN COULTER may at its option terminate the contract as to further delivery and no forbearance or course of dealing shall affect this right of BECKMAN COULTER.

### **6. FORCE MAJEURE**

BECKMAN COULTER shall not be liable for any failure to make delivery resulting from any cause beyond its control, including, without limiting the generality of the foregoing, act of God, lockouts, strikes, fire, riots, tempest, pandemic, accidents to machinery, war, non-availability of materials or default by any manufacturer for or sub-contractor to BECKMAN COULTER.

### **7. TERMS OF PAYMENT**

#### **(a) Credit Accounts:**

The Buyer will only be granted a credit account if he has completed a formal BECKMAN COULTER Credit Application Form and has had that application accepted in writing by BECKMAN COULTER. Payment by credit account buyers is to be made strictly net cash within thirty (30) days from the date of invoice. Should payment not be received by the due date then any credit facilities may be withdrawn without notice and future supply may be refused. BECKMAN COULTER shall have no liability to the Buyer for any consequential loss or damage suffered by the Buyer as a result of such withdrawal and/or refusal.

#### **(b) Interest:**

BECKMAN COULTER shall be entitled to charge interest on overdue accounts calculated from the day following the date upon which payment should have been made, at the rate of the lesser of 1½% per month or the maximum legal interest rate.

#### **(c) Payment by Cash Buyers:**

In the case of cash buyers, payment shall be made strictly net cash before supply takes place. Cheques are to be cleared prior to delivery of the goods. Credit Cards –Debit Card, Credit card (Visa and MasterCard) are accepted as a means of payment, through designated webpage Westpac Payway Net - the corresponding transaction to be cleared prior to dispatch.

Electronic transfer of funds directly to BECKMAN COULTER'S account is an acceptable means of payment, and the goods will be dispatched once BECKMAN COULTER is satisfied that the funds have been lodged in the corresponding account.

#### **(d) Claims:**

Subject to the provisions of any appropriate Commonwealth or State legislation to the contrary, no claim in relation to the goods will be recognised unless such claim is made in writing within seven (7) days after receipt of the goods.

### **8. DEFAULT**

#### **(a) Upon the happening of any of the following events:**

- the commission by the Buyer of any act of bankruptcy or the Buyer going into liquidation or a petition being presented for the sequestration of the Buyer's estate or the winding up of the Buyer; or
  - the Buyer assigning its property for the benefit of creditors or having a receiver or official manager appointed; or
  - the Buyer being in breach of any of these terms and conditions; then in such event BECKMAN COULTER shall have the right to:
    - decline to deliver the goods or any balance of the goods still due; and/or
    - retake possession of the goods. The Buyer irrevocably authorizes BECKMAN COULTER to enter the Buyer's premises (or any other premises under the Buyer's control if the goods are stored at such premises) to retake possession of the goods; and/or
    - defer or decline to make any shipment of goods to Buyer, and/or
- d. otherwise cease to perform any of its obligations to the Buyer; and/or
- e. terminate the contract without incurring any liability at law or in equity and without prejudice to its rights to recover amounts owing to it by the Buyer and/or damages; and/or
- f. recover from the Buyer the contract price of the goods delivered and for freight, storage, handling and other expenses incurred by the Buyer; and/or
- g. to sell the goods elsewhere and charge the Buyer with any resultant loss.
- (b) Should BECKMAN COULTER by its servants or agents enter upon any premises where goods are situated for the purpose of repossessing such goods in accordance with its rights herein and any person bring any action for trespass or any other action against BECKMAN COULTER based upon such entry or anything done during or in connection with such entry, the Buyer shall indemnify and keep indemnified BECKMAN COULTER for all damages for which BECKMAN COULTER may be responsible as a result of such action.

### **9. RETURNS FOR CREDIT/ORDER CANCELLATION**

Unless otherwise agreed in writing, BECKMAN COULTER will not accept any goods returned for credit for reasons other than incorrect supply by BECKMAN COULTER, or damage to the goods caused by BECKMAN COULTER or failure to perform to specification. Goods being returned for credit are to be clearly consigned to the address of BECKMAN COULTER in accordance with the following procedures:

- Approval must first be obtained from BECKMAN COULTER who will provide a Return Authority Note.
- Goods must be in the original carton and complete with all accessories and in a saleable and undamaged condition and marked with BECKMAN COULTER'S Return Authority Note.
- The BECKMAN COULTER invoice number and Return Authority Note number and date must be stated on the claim form.
- The reason for return of the goods (e.g. faulty, damaged, wrongly delivered) must be stated on the claim form.
- BECKMAN COULTER shall in each case determine at its sole discretion whether it should bear the relevant cost of freight.

### **10. CANCELLATION OR ASSIGNMENT**

If an Order is requested to be cancelled, then BECKMAN COULTER may charge a cancellation fee to be advised, and dependant on the condition of the returned goods. Any assignment by the Buyer of its rights or obligations to BECKMAN COULTER shall require BECKMAN COULTER'S written authority by a Senior Manager.

### **11. WARRANTY**

- (a) BECKMAN COULTER supplied goods other than for service use are warranted to be free from defects in design, materials and workmanship provided they are properly installed, maintained and operated under the specific rating and conditions set out in the relevant technical manual for a period of twelve (12) months. The warranty commences from the date of dispatch by BECKMAN COULTER from its store, or the date of any BECKMAN COULTER on site commissioning.
- (b) In addition to the basic 12 month warranty, for detailed product warranty and pro-rata warranty against use conditions, refer to the specific Warranty Conditions for each instrument, as printed in each Instrument User Manual or Instructions for Use publication. Any service provided on a do and charge basis is warranted for 90 days parts and labour for that particular fault repair only.
- Consumables, are warranted to be fit for the purpose and to meet specifications, however, as they are "consumable" items no period warranty is offered.
- (c) BECKMAN COULTER goods come with guarantees that cannot be excluded under the Australian Consumer Law. Buyer is entitled to a replacement or refund for a major failure and compensation for

any other reasonably foreseeable loss or damage. Buyer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The above warranty is in addition to the warranties and conditions contained in the *Competition and Consumer Act 2010 (Cth) (CCA)* including the *Australian Consumer Law* or by applicable State Acts and Territorial Ordinance to the extent that such implied warranties and conditions are incapable of being excluded. All other warranties and conditions are hereby expressly excluded.

- (d) The Buyer and its employees or agents shall not make any statement, representation, undertaking or warranty concerning the goods other than those contained in literature published by the manufacturer and supplied by BECKMAN COULTER or those which are expressed or implied by law and which cannot be excluded.
- (e) To the extent permitted by law, the acceptance of any of the goods by the Buyer shall imply a condition indemnifying BECKMAN COULTER and keeping it indemnified against any loss, claim or damage suffered by reason of or arising out of:
  - 1) any statement, representation, undertaking or warranty regarding the goods which is not authorised by BECKMAN COULTER, and
  - 2) any loss or damage caused to the goods after risk therein has passed to the Buyer.
- (f) To the maximum extent permitted by law, BECKMAN COULTER makes no representation nor gives any guarantee or warranty except as stated in this clause (including, without limitation, of merchantability, acceptable quality, fitness for any particular purpose or fitness for disclosed result) nor has any other liability under any warranty, condition, guarantee or other liability imposed by statute in connection with the BECKMAN COULTER supplied goods (Statutory Warranties).
- (g) To the extent BECKMAN COULTER is liable in connection with any Statutory Warranties, and excluding or modifying the application of, or exercise of, or liability under, such Statutory Warranties would contravene any applicable law or cause this clause to be void, BECKMAN COULTER's liability for any breach of such Statutory Warranties or liability under such Statutory Warranties shall be limited to any one of the following as determined by BECKMAN COULTER:
  - 1) replacement of the goods or the supply of equivalent goods;
  - 2) the repair of the goods at BECKMAN COULTER's designated premises;
  - 3) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - 4) the payment of the cost of having the goods repaired.

#### **12. DE-IDENTIFICATION OF PERSONAL DATA**

The Buyer acknowledges that BECKMAN COULTER 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 equipment ("Permitted Purposes"), the Buyer agrees that prior to providing or granting access to such data to BECKMAN COULTER, the Buyer 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 BECKMAN COULTER and/or BECKMAN COULTER's Personnel. The Buyer 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 Buyer's obligations in this clause.

For the purpose of this clause,

- (a) "Personal Data" means any information, data and/or opinion relating to and about an identified or reasonably identifiable natural person;
- (b) "De-Identified" means the identity of the individuals is not known to and ensure data is not traceable by the BECKMAN COULTER and/or BECKMAN COULTER's Personnel; and
- (c) "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
- (d) "BECKMAN COULTER's Personnel" means employees, agent and/or contractor of the BECKMAN COULTER associated with the performance of its obligations under this Agreement.

#### **13. SEVERABILITY OF PROVISIONS**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of that provision in any other jurisdiction.

#### **14. SPECIFICATION**

Any specification, illustration or description accompanying any Quotation is indicative and may not completely represent the goods. BECKMAN COULTER or its supplier reserves the right to incorporate minor modifications thereto without notice and without incurring any liability.

#### **15. TESTS**

Equipment offered is subject to an established Quality Assurance procedure in the Manufacturer's factory and/or at installation by BECKMAN COULTER staff.

#### **16. CONSTRUCTION**

No waiver or alteration of these conditions shall be binding on BECKMAN COULTER unless accepted in writing by BECKMAN COULTER's authorised officer.

#### **17. LIMITATION OF LIABILITY**

To the extent permitted by law, the Buyer agrees that: (a) the total liability of BECKMAN COULTER and the Buyer's exclusive remedy for any and all claims arising out of or related to these terms and conditions, the Buyer purchase and use of the goods and/or services, regardless of the form of the action, will be limited to 100% of the total price of the goods and/or services paid by the Buyer to BECKMAN COULTER, the subject matter of the claim; and (b) BECKMAN COULTER will under no circumstances be liable to the Buyer for any loss of profit, loss of revenue, loss of data, loss of use of goods, loss of or damage to goodwill or reputation loss of business opportunity, business interruption or any indirect, consequential, punitive, incidental, special or exemplary damages (arising directly or indirectly).

These terms and conditions cannot be changed or terminated orally and they and any contract containing them shall be construed in accordance with the laws of the State of New South Wales, Australia.

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