

BNOVATE TECHNOLOGIES LTD

GENERAL TERMS AND CONDITIONS (SALE AND LEASE)

A. GENERAL PROVISIONS

1. SCOPE OF THESE CONDITIONS; AMENDMENT

- 1.1. These general terms and conditions of sale (the **Conditions**) govern the sale agreement (the **Sale Agreement**) and the lease agreement (the **Lease Agreement**) to be entered into by and between bNovate Technologies Ltd, Chemin de la Dent d'Oche 1 A, 1024 Ecublens VD, Switzerland, registered with the commercial register of the canton of Vaud under the IDE n° CHE-312.285.408 (**bNovate**) and its customers (the **Customer**; the Customer and bNovate, collectively the **Parties** and individually a **Party**) relating to the sale and, respectively the Lease, of automated measuring instruments manufactured on the basis of bNovate's proprietary technology (the **Devices**), of any components, spare parts, cartridges and other products sold by bNovate relating to the Devices (the Devices and such products, jointly referred to as the **Products**), as well as of all services related thereto, such as tests, advice, consulting, maintenance, support and any other service, charged or free, from bNovate (the **Services**).
- 1.2. These Conditions apply to the extent that the Parties refer to them expressly, either (i) if the Parties agree to them in writing and/or (ii) if bNovate issues an Order Confirmation and/or an invoice referring to the Conditions and the Customer does not object to the application of the Conditions within 48 hours from receipt of the first to be received of (i) the Order Confirmation and (ii) the invoice. By contracting on the basis of the Conditions, the Customer agrees to the applicability thereof, in respect of the transaction between bNovate and the Customer with respect to which the Parties referred to these Conditions.
- 1.3. bNovate reserves the right to amend the Conditions at any time. The Conditions shall apply in the version in force at the time of the issuance of the relevant Order. The last version of the Conditions is published on bNovate's website, so that the Customer must consult such website before issuing an Order.
- 1.4. bNovate explicitly rejects the applicability of any general terms and conditions of the Customer. Furthermore, the Conditions supersede any and all terms of prior oral and written quotations, communications, agreements and understandings of the Parties in respect of the sale and/or lease of the Products and shall apply in preference to and supersede any and all terms and conditions of any order placed by the Customer and any other terms and conditions submitted by the Customer. Failure by bNovate to object to the terms and conditions set by the Customer shall in no event be construed as an acceptance of any of the terms and conditions of the Customer, unless expressly agreed otherwise in writing by bNovate.
- 1.5. The Conditions shall only apply vis-à-vis commercial customers and with respect to commercial transactions; they will not apply to Products sold to individuals using the Products for their private use, unless otherwise stated in the Order Confirmation (as defined below).
- 1.6. Sections A (General Provisions) and D (Miscellaneous Provisions) will apply to both Sale Agreements and Lease Agreements, whilst Section B will only apply to Sale Agreements and Section C will only apply to Lease Agreements, unless provided otherwise herein.
- 1.7. Any term starting with a capital letter defined in any section of these Conditions will have the same meaning in the rest of these Conditions, unless the context otherwise commands.

2. PRELIMINARY STEPS, ORDERS AND CONFIRMATION

- 2.1. Unless stated otherwise by bNovate, quotations made by, and price list published by, bNovate in whatever form, advice, specifications of samples and specimens given to the Customer are not binding to bNovate and merely constitute an invitation to the Customer to place an order. All such feature issued by bNovate are revocable and subject to change without notice.
- 2.2. If the Customer wants to purchase or rent a Product, it shall send an order to bNovate, in a form and content agreed by bNovate from time to time (**Order**). Orders are subject to the written acceptance of bNovate (such acceptance, the **Order Confirmation**). bNovate shall be entitled to refuse or accept any Order, at its sole discretion, without indicating the reasons. The mere absence of answer by bNovate to an Order shall not be deemed to be an Order Confirmation. Once the Order Confirmation is received by the Customer, the Sale Agreement or, where applicable, the Lease Agreement is entered into and binding upon the Parties. If the Order Confirmation differs from the Order in any material point, the Order Confirmation shall be deemed to be a counter-offer by bNovate and the Sale Agreement or, where applicable, the Lease Agreement will be deemed to be entered into on the terms offered by bNovate, unless the Customer refuses in writing the counter-offer within 2 business days.
- 2.3. bNovate may at its own discretion agree in writing to the cancellation or alteration of an Order Confirmation if the state of the works permits. The costs arising from the cancellation or alteration of an Order will be exclusively borne by the Customer.

3. CONTRACTUAL DOCUMENTATION

- 3.1. The Sale Agreement or, where applicable, the Lease Agreement will consist of the following documents listed from the highest rank of priority to the lowest rank of priority, i.e. (i) the Order Confirmation, (ii) the Order, (iii) these Conditions and (iv) all agreements and documents referred to in the Order Confirmation or these Conditions (including the User Manual, the declaration of conformity, etc.). In

case of discrepancy between provisions provided in documents of different ranks of priority, the provision contained in the document of the higher rank of priority will prevail.

4. PRICES, TERMS OF PAYMENTS, DISCOUNT

- 4.1. Prices to be paid under any Sale Agreement or Lease Agreement by the Customer to bNovate will be the prices set out in the Order Confirmation.
- 4.2. Unless stated otherwise in the Order Confirmation, such prices are to be paid in CHF (Swiss francs) by wire transfer onto the bank account specified from time to time by bNovate. Credit card payments are subject to acceptance by bNovate and deductions will be made at time of order placement by the Customer.
- 4.3. Unless otherwise stated by bNovate, prices do not include transfer, documentation, receipt and transport costs (**Transfer Costs**), packaging, insurance, and value added tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Products or the delivery thereof (**Taxes**). The amount of any Taxes (except bNovate's income tax) levied in connection with the sale or lease of Products to the Customer shall be for the Customer's account. In the event bNovate is required to pay any such tax for the account of the Customer, the Customer shall fully reimburse such tax payment to bNovate. Such payment shall either be added to each invoice or separately invoiced by bNovate to the Customer.
- 4.4. Any right of the Customer to withhold payment or to set off any amounts due against counter-claims shall be explicitly excluded, unless such counterclaims are uncontested, or a legal title exists.
- 4.5. If bNovate grants a discount to the Customer, this discount only relates to the sale or lease specifically mentioned in the Order Confirmation.

5. DELAY

- 5.1. Without prejudice to any other remedies or rights of bNovate under the applicable Sale Agreement or Lease Agreement or provided by law, in particular without prejudice of any termination right of bNovate, if the Customer is late in the payment of any amount due under a Sale Agreement or a Lease Agreement, then:
 - (i) an interest of 5% per annum shall accrue on the overdue payment from the due date until the outstanding amount due by the Customer is paid in full. The late interest shall be due without bNovate having to send a reminder to the Customer. All costs and expenses incurred by bNovate with respect to the collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be for the Customer's account;
 - (ii) bNovate has the right (i) to demand return and take repossession of any delivered or leased Products which have not been paid for, all costs relating to the recovery of the Products being for the account of the Customer, and to rescind in writing the part of the Sale Agreement or, where applicable, the Lease Agreement, not yet executed without allowing any further time and to cancel all or part of the Sale Agreement or, where applicable, the Lease Agreement, already confirmed but not yet executed, and (ii) to suspend its performance or terminate the Sale Agreement or, where applicable, the Lease Agreement, for pending delivery/rental of Products unless the Customer makes such payment for Products on a cash in advance basis or provides adequate assurance of such payment to bNovate. The Customer must compensate bNovate fully for damages arising therefrom.
- 5.2. Without prejudice to any other remedies or rights of bNovate under the applicable Sale Agreement or Lease Agreement or provided by law; if the Customer does not comply with the terms of payment or if it is unable to make payment, or if the Customer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (other than for the purpose of a reconstruction or merger) or any bankruptcy proceeding shall be instituted by or against the Customer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of the Customer or if the Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors, all outstanding credit balances become due for payment irrespective of the agreed payment deadlines and may be claimed by bNovate immediately.

B. PROVISIONS RELATING TO SALE AGREEMENTS

6. TERMS OF PAYMENT

- 6.1. Unless stated otherwise in the Order Confirmation, the price to be paid for the purchase of a Product shall be paid as follows: 50% on the entry into of the Sale Agreement and the outstanding amount no later than 10 days after receipt of the related invoice from bNovate.

7. DELIVERY – EXAMINATION – ACCEPTANCE / COMPLAINT

- 7.1. bNovate's obligation to deliver to the Customer the Products ordered is subject to bNovate's receiving correct and timely delivery itself from the manufacturer and, as the case may be, its suppliers. If delivery is not timely made by the manufacturer and/or its supplier to bNovate, (i) bNovate shall notify the Customer immediately, and (ii) bNovate is entitled to withdraw from the Sale Agreement, any payments of the Customer shall be refunded immediately.
- 7.2. Unless stated otherwise in the Order Confirmation, any times or dates for delivery by bNovate are estimates and shall not be of the

essence. bNovate is entitled to deliver the Products as stated in the Order Confirmation in parts and to invoice separately. Notwithstanding Section 7.1, delay in delivery of any Products shall not relieve the Customer of its obligation to accept delivery thereof, unless the Customer cannot reasonably be expected to accept such late delivery. Without prejudice of any other right provided herein or by law, if the Customer fails to meet its contractual duties, bNovate shall have the right to extend the delivery period.

- 7.3. The Customer must inspect the Products immediately upon receipt and satisfy itself that the Products delivered meet the agreed specifications for the Products as stated in the Order Confirmation or, in the absence of agreed specifications, to the most recent specifications used by bNovate at the time of delivery of the Products (the **Specifications**).
- 7.4. Complaints about the Products shall be made in writing and must reach bNovate not later than 10 days from the date of delivery of the Products in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and 10 days from the date on which any other claim (e.g. hidden defects) was or ought to have been apparent, but in no event later than the expiry of (i) the Warranty Period (as defined below) and (ii) the shelf life or the expiration date of the Product, whichever occurs first.
- 7.5. In case of a disagreement between the Parties concerning the quality of a Product supplied by bNovate to the Customer, bNovate will submit the purported defective Product to an independent expert reasonably acceptable to the Customer to have determined whether or not the Product in question has met the Specifications. The results of such analysis shall be binding upon the Parties, and the Party unable to uphold its position shall bear the related costs of the expert.
- 7.6. Defects in parts of the Products do not entitle the Customer to reject the entire delivery of the Products, unless the Customer cannot reasonably be expected to accept delivery of the remaining non-defective parts of the Products.
- 7.7. Failure to complain within the appropriate time or any use of the Products shall be deemed to be an unconditional acceptance of the Products as of the date of delivery.

8. TRANSFER OF RISKS AND PROPERTY

- 8.1. Unless agreed otherwise in the Sale Agreement, risks are transferred to the Customer at the latest when the Products are handed over to the first carrier. If dispatch is not possible and no fault is attributable to bNovate, risks transfer to the Customer with the notification that the Products are ready for dispatch.
- 8.2. Unless agreed otherwise in the Sale Agreement, property is transferred to the Customer when the Products are handed over to the first carrier.

9. BNOVATE'S WARRANTY

- 9.1. bNovate gives to the Customer a manufacturer's warranty (**bNovate's Warranty**), on the terms and conditions of this Section.
- 9.2. Under the bNovate's Warranty, bNovate warrants that the Products sold hereunder to the Customer:
 - (i) will conform with all Specifications and descriptions thereof provided by bNovate at the time of conclusion of the Agreement;
 - (ii) will be manufactured, labelled, packed, stored, and tested in accordance with applicable CE or other certification granted to the Product from time to time by a written notice of bNovate on the Confirmation Order (where applicable),

(a breach of bNovate's Warranty is referred to as a **Defect**).
- 9.3. bNovate's Warranty is given for a period of 1 (one) year from the delivery of the Product (the **Warranty Period**) and will lapse should no claim for warranty be issued by the end of the Warranty Period.
- 9.4. If and to the extent a Defect is covered by bNovate's Warranty, bNovate may at its own option and within a reasonable time either repair or replace the Products at no charge to the Customer. Accordingly, bNovate's obligation shall be limited solely to repair or replacement of the Products, to the exclusion of any other remedy, service or compensation for the Customer. If after exercising reasonable efforts, bNovate is unable to repair or replace the Products, then bNovate shall refund to Purchaser all monies paid for such applicable Product.
- 9.5. If bNovate decides to repair the Products, the Customer shall provide necessary information to ensure the safety of the repair by bNovate or its agents. The Products returned by mail must be safe, non-hazardous and contain the measured samples. The Customer is exclusively responsible in the event of an incident during transport. In case of an on-site intervention by bNovate or its agents, safety must also be guaranteed and information on the liquids used must be available and provided to bNovate. IN CASE OF DOUBT AND/OR LACK OF INFORMATION, THE REPAIR CAN BE REFUSED, AND BNOVATE'S WARRANTY SHALL BE DEEMED TO HAVE BEEN ENTIRELY WAIVED BY THE CUSTOMER.
- 9.6. bNovate's Warranty shall be contingent upon the following cumulative conditions be met:
 - (i) receipt by bNovate of a timely notice by the Customer of any alleged Defect and, if applicable, the return of the Products, in accordance with bNovate's instructions; and
 - (ii) bNovate's Warranty is not excluded or limited by other provisions of the Sale Agreement, including Sections 9.5, 9.7 and 9.8.

9.7. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, BNOVATE'S WARRANTY IS EXCLUDED:

- (I) TO THE EXTENT THAT THE DEFECT RELATES TO AN ACTION OR AN EVENT OVER WHICH BNOVATE HAS NO CONTROL, SUCH AS AN IMPROPER HANDLING OR STORAGE OF THE PRODUCT BY THE CUSTOMER OR ANY THIRD PARTIES OVER WHICH BNOVATE HAS NO CONTROL, INCLUDING (1) ANY USE OF THE PRODUCT WHICH IS NOT IN STRICT COMPLIANCE WITH THESE CONDITIONS, THE USER MANUAL AND ANY OTHER INSTRUCTIONS GIVEN FROM TIME TO TIME BY BNOVATE TO THE CUSTOMER, (2) LACK OF PROPER MAINTENANCE, (3) INCORRECT STOCKING CONDITIONS, (4) USE OF ANY CONSUMABLES WHICH IS NOT APPROVED BY BNOVATE, (5) USE OF ANY PRODUCTS BEYOND THEIR SHELF LIFE OR EXPIRATION DATE AS SET FORTH IN THE APPLICABLE PUBLISHED SPECIFICATIONS OR LABELS OF SUCH PRODUCTS, (6) ANY INSTALLATION, REPAIRS, MODIFICATIONS, UPGRADES, MAINTENANCE OR OTHER SERVICING BY THE CUSTOMER OR A THIRD PARTY THAT IS NOT APPROVED BY BNOVATE, (7) DISASSEMBLY AND ANY ATTEMPT OF REVERSE ENGINEERING OR OF OBTAINING PROPRIETARY RIGHTS OF BNOVATE (8) ACCIDENTS OR SHIPPING RELATED DAMAGE, (9) ELECTRICAL FAILURE UNRELATED TO THE PRODUCT, (10) DAMAGE DUE TO VANDALISM, EXPLOSION, FLOOD OR FIRE, WEATHER OR ENVIRONMENTAL CONDITIONS AND ANY OTHER FORCE MAJEURE;
- (I) TO THE EXTENT THAT THE DEFECT MAY BE ATTRIBUTABLE TO NORMAL WEAR AND TEAR OF THE PRODUCTS;
- (II) TO THE EXTENT THAT THE DEFECT RESULTS FROM ANY RISKS SET OUT IN THE SALE AGREEMENT AND/OR THE USER MANUAL AND/OR DISCLOSED BEFORE THE CONCLUSION OF THE SALE AGREEMENT TO THE CUSTOMER.

9.8. UNLESS SET FORTH IN THE SPECIFICATIONS, BNOVATE MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY PRODUCT.

9.9. FOR THE SAKE OF CLARITY, IT IS HEREBY AGREED THAT, UNLESS OTHERWISE INDICATED BY BNOVATE, THE PRODUCT DOES NOT REPLACE THE DEVICES TO BE USED TO VALIDATE THE MICROBIOLOGICAL COMPONENTS IN QUALITY CONTROL, AND MAY NOT BE RELIED UPON TO THAT EXTENT, FOR MEDICAL AND/OR PHARMACEUTICAL APPLICATION AND CERTAIN OTHER APPLICATIONS, UNLESS AND UNTIL THE PRODUCT HAS RECEIVED THE NECESSARY AUTHORIZATION AND/OR CERTIFICATION, AS WILL BE CONFIRMED IN WRITING BY BNOVATE FROM TIME TO TIME.

9.10. THE BNOVATE'S 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 INTELLECTUAL PROPERTY RIGHT COVERING THE PRODUCTS.

C. PROVISIONS RELATING TO LEASE AGREEMENTS

10. LEASE

10.1. bNovate shall rent the Device(s) set forth in the Confirmation Order to the Customer (the **Lease** and, respectively, the **Leased Device**), on the terms and conditions of the Lease Agreement.

11. LEASE TERM; TERMINATION

11.1. The Lease shall commence on the day the Leased Device is delivered to the Customer and shall end as set forth in the Order Confirmation, unless terminated earlier in accordance with these Conditions (the **Lease Term**).

11.2. If the Lease Term is not limited in time, the Customer shall have the right to terminate the Lease Agreement at any time upon 60 calendar days prior written notice for the end of a month, unless otherwise stated in the Order Confirmation. If the Lease Term is ending on a fixed date, it shall expire at such fixed date, without notice and may not be terminated beforehand in accordance with the preceding sentence.

11.3. Notwithstanding the preceding Section, either Party shall be entitled to terminate the Lease Agreement forthwith by serving a written termination notice to the other Party for valid reasons. The following circumstances shall be deemed to be valid reasons, i.e. (i) the other Party commits a material breach of any of its obligations under the Lease Agreement, provided that the breaching Party fails to cure such breach or default within 30 calendar days after the date of the non-breaching Party's notice thereof and (ii) in the event that the other Party is declared bankrupt, fails to pay its debt when they become due, undergoes voluntary or involuntary dissolution, or makes an assignment for the benefit of its creditors.

11.4. Unless provided otherwise, the termination of the Lease Agreement shall not release either Party from any liability or obligation that has accrued or remains to be performed under the terms of the Lease Agreement. Upon expiration or termination of the Lease Term, the Customer shall forthwith return the Leased Device in condition and working order as when delivered to the Customer hereunder, ordinary wear and tear excepted.

12. RENTAL FEE

12.1. The Customer agrees to pay bNovate a rental fee (the **Rental Fee**) set forth in the Order Confirmation for the Leased Device for the full Lease Term.

12.2. Unless provided otherwise in the Order Confirmation, the Lease payment shall be due and payable on a monthly basis in arrears.

13. UTILITY CHARGES

13.1. The Customer shall pay all charges for gas, water, steam, electricity, light, heat, or power, telephone, or other utility service to be used on or in connection with the Leased Device, including charges for installation of such services during the Lease Term. There shall be no abatement or diminution of rent due to the interruption of any such services.

14. LOCATION

14.1. The Leased Device shall be located at the location set forth in the Order Confirmation or, absent such mention in the Order Confirmation at the premises of the Customer, during the Lease Term and shall not be removed from that location without bNovate's prior written consent.

15. INSURANCE

15.1. The Customer shall maintain in effect for the entire Lease Term insurance against all risk or physical loss or damage to the Leased Device in an amount not less than one hundred-percent (100%) of the replacement value of the Leased Device.

16. USE

16.1. The Customer shall exercise due care in the installation, use, operation, and maintenance of the Leased Device and will not install, use, operate, or maintain the Leased Device improperly, carelessly, in violation of any applicable law and standards, or for a purpose or in a manner contrary to that contemplated by the Lease Agreement.

17. REPAIR, REPLACEMENT AND MAINTENANCE

17.1. In case of a Defect (as defined in Section 9 (bNovate's Warranty) applicable *mutatis mutandis*), bNovate shall, at its own expense, replace or repair, at its own discretion, the Leased Device. The Rental Fee shall not be due for the period during which the Leased Device is out of service for repair or replacement, provided that such period be superior to 5 business days. bNovate's obligation to replace or repair provided in this Section shall be excluded to the same extent as bNovate's Warranty in accordance with Section 9.7 (Exclusion of bNovate's Warranty) *mutatis mutandis*. Furthermore, Sections 9.5 (Obligations of the Customer in case of repair), 9.8 (No warranty for merchantability or fitness) and 9.9 (Limited use In respect of certain applications) shall apply *mutatis mutandis*.

17.2. Subject to the limited obligations of bNovate to replace or repair in accordance with the precedent Section, the Customer shall provide for the service, repair, and maintenance of the Leased Device, at its own expense, so as to keep the Leased Device in as good condition, repair, appearance, and working order as when delivered to the Customer under the Lease Agreement, ordinary wear and tear excepted. The Customer shall, at its own expense, replace any and all parts and devices which may from time to time become worn out, lost, stolen, destroyed, damaged beyond repair, or rendered unfit for use for any reason whatsoever, which is not attributable to bNovate. All such replacement parts, mechanisms, and devices shall be free and clear of liens, encumbrances, and rights of others and shall become the Leased Device of bNovate and shall be covered by the Lease Agreement to the same extent as the Leased Device originally covered by the Lease Agreement.

18. NO LIENS

18.1. The Customer shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Leased Device, or any interest therein, except the respective rights of bNovate and the Customer as provided herein. The Customer shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, or claim not excepted above if the same shall arise at any time.

19. NO ASSIGNMENT AND SUBLET

19.1. Without the prior written consent of bNovate, which will not be unreasonable withheld, the Customer shall not (i) assign, transfer, pledge, or hypothecate the Lease, sublet the Leased Device, or any part thereof, or any interest therein; or (ii) permit the Leased Device to be used for any purpose not permitted by the Lease Agreement.

D. MISCELLANEOUS PROVISIONS

20. OTHER COVENANTS OF CUSTOMER

20.1. Unless provided otherwise in these Conditions or agreed otherwise in writing by bNovate, the Customer shall:

- (i) use the Product in strict compliance with the User Manual and any other instructions provided by bNovate from time to time, any and all applicable law and industry standards;
- (ii) conduct all necessary testing and verification, including for fitness for the intended purpose and compliance with the applicable law and standards, prior to the use of any Products;
- (iii) in all time take all appropriate measures to safeguard the auxiliary persons of bNovate who will access the Customer's premises or

will perform any of bNovate's obligations under the Sale Agreement or, where applicable, the Lease Agreement. For the avoidance of doubt, Section 9.5 relating to the return of Products to be repaired applicable to all return of Products *mutatis mutandis*;

- (iv) in no event use the Products for measuring any substance not classified as Biosafety 1 according to the Swiss federal office of environment;
- (v) obtain all permits and licenses necessary for the installation, operation, possession, and use of the Products (if any);
- (vi) inform bNovate immediately of any feedback relating to the Products from its internal organization and/or its own customers, which may have a material negative impact on the image and commercialization of the Product or which may otherwise be of interest for bNovate, in accordance with reporting guidelines to be agreed upon from time to time by the Parties;
- (vii) not export the Products without the prior written authorization of bNovate and provided that the Customer shall (i) inform bNovate by written notice about the country of destination and (ii) ensure that the product certifications are in accordance with the standards of the country of destination. The Customer shall not export the Products in a country where the product certifications are missing or non-valid. IF THE CUSTOMER FAILS TO COMPLY WITH ANY OF THE ABOVE-MENTIONED OBLIGATIONS, THEN THE CUSTOMER SHALL BE EXCLUSIVELY RESPONSIBLE FOR ANY ISSUE THAT MAY ARISE IN CONNECTION WITH THE PRODUCTS, BE IT DIRECTLY OR INDIRECTLY, AND BNOVATE'S WARRANTY AND LIABILITY SHALL BE DEEMED TO HAVE BEEN ENTIRELY WAIVED BY THE CUSTOMER. In this case, bNovate further reserves the right to refuse to deliver components, spare parts, cartridges and other products relating to the Device(s);
- (viii) not (i) make any alterations to the Products without the prior written consent of bNovate, (ii) reverse engineer the Products and any other material, equipment or software containing bNovate technology (iii) disassemble any portion of the Products and any other material, equipment or software containing bNovate technology to attempt to derive the structure or logic underlying the Products, (iv) copy, modify or make any reproduction of the Products and any other material, equipment or software containing bNovate technology in whole or in part through mechanical or other means, or (v) permit or induce the foregoing;
- (ix) not be authorized to retail the Products under its own brand or under another brand, unless such retail has specifically and expressly been approved by bNovate.

21. ACKNOWLEDGMENT OF RISKS

- 21.1. The Customer acknowledges that there are risks associated with the use of the Products, including the risks set out in bNovate's user manual, as amended from time to time (the **User Manual**) and/or in any other documents or information provided by bNovate to the Customer. The Customer confirms that, by issuing an Order, it understands, and agrees with, such risks and that it is responsible to properly inform, warn and protect all those exposed to such risks, including its own employees, subcontractors and clients.

22. RULES APPLYING TO CERTAIN ADDITIONAL SERVICES TO BE PROVIDED BY BNOVATE

- 22.1. If the Customer is purchasing Services such as tests, advice, consulting, maintenance and support or any other service, charged or free, from bNovate in relation to a Sale Agreement or, where applicable, a Lease Agreement, the following provisions shall apply, unless agreed otherwise in writing by the Parties.
- 22.2. bNovate decides at its own discretion where the Services can be best provided, i.e. either on site or remotely.
- 22.3. bNovate shall provide the Services in a professional and workmanlike manner, consistent with average standards of workmanship and materials then prevailing in the trade.
- 22.4. The Customer agrees that bNovate, in its sole discretion, may resort to the services of third parties. In case bNovate resorts to the services of third parties, in particular employees, subcontractors, subagents, consultants or other auxiliary persons, it shall ensure that its auxiliary persons abide at all times by the terms of the Sale Agreement or, where applicable, the Lease Agreement, and bNovate shall assume full responsibility for the acts of, and for any remuneration or compensation of any nature whatsoever due to, such auxiliary persons.
- 22.5. In the case of a breach of bNovate's obligation to perform the Services, the Parties agree that the sole remedy available under the services agreement shall be repeat performance by bNovate of the portion of such Services that constitutes or gives rise to the breach. If, in its reasonable opinion, bNovate is unable to repeat the performance of such Services, the Parties agree that the sole remedy in such a case is for bNovate to refund to the Purchaser all sums paid for the portion of such Services. For the sake of clarity, Section 23 shall apply to the limitation of bNovate's liability.

23. LIMITED LIABILITY

- 23.1. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE HEREIN, BNOVATE SHALL NOT INDEMNIFY NOR BE LIABLE TO THE CUSTOMER, THE CUSTOMER'S CUSTOMERS, SUCCESSORS, OR TO ANY PERSON OR ENTITY FOR ANY CLAIMS, DAMAGES OR LOSSES ARISING OUT OF THE SALE, LEASE OR USE OF PRODUCTS OR THE PROVISION OF ANY SERVICES BY BNOVATE.

23.2. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BNOVATE SHALL UNDER NO CIRCUMSTANCES BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS, COST OR EXPENSE, INCLUDING WITHOUT LIMITATION, DAMAGE BASED UPON LOST GOODWILL, LOST SALES OR PROFIT, DELAY IN DELIVERY, WORK STOPPAGE, PRODUCTION FAILURE, IMPAIRMENT OF OTHER GOODS OR BASED ON ANY OTHER CAUSE, AND WHETHER ARISING OUT OF OR IN CONNECTION WITH ANY USE OR FAILURE OF THE PRODUCTS, BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE. BNOVATE'S LIABILITY IS NOTABLY EXCLUDED (I) FOR ANY DAMAGE DIRECTLY OR INDIRECTLY ARISING OUT OF AN INTERPRETATION OF THE RESULTS GENERATED BY THE PRODUCTS AND (II) IN THE EVENT THAT THE PRODUCTS ARE USED FOR ANY TYPE OF HUMAN TESTING, ANIMAL TESTING, DIAGNOSIS AND ANY USE WHICH IS NOT IN COMPLIANCE WITH THE SALE AGREEMENT OR, WHERE APPLICABLE, THE LEASE AGREEMENT.

23.3. BNOVATE'S LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS AND THE USE THEREOF SHALL UNDER NO CIRCUMSTANCES EXCEED THE PRICE PAID BY THE CUSTOMER TO BNOVATE DURING THE LAST 12 MONTHS.

24. FORCE MAJEURE

24.1. 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, laws and regulations, 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 or shortage of utilities, delay in delivery or defects in goods supplied by suppliers or subcontractors (**Force Majeure**). The same shall apply to contractual breaches on the part of suppliers caused by Force Majeure.

24.2. Force Majeure shall not be an excuse to delay payments.

24.3. Upon the occurrence of any event of Force Majeure, the Party suffering thereby shall promptly inform the other Party by written notice thereof specifying the cause of the event and how it will affect its performance of its obligations under the Sale Agreement or, where applicable, the Lease Agreement. In the event of any delay, the obligation to deliver shall be suspended 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 extending to more than 60 days after the agreed delivery date, either Party is entitled to cancel the affected part of the Sale Agreement or, where applicable, the Lease Agreement, without any liability to the other Party.

25. CONFIDENTIALITY

25.1. The Customer shall not, without bNovate's written consent, disclose any documents, drawings, schematics, plans, designs, specifications, information, know-how, discoveries, production methods and the like that are marked confidential, proprietary or the like (**Confidential information**) furnished to the Customer by bNovate, or on bNovate's behalf, during the negotiations and/or for the performance of the Sale Agreement or the Lease Agreement, to any person other than the auxiliary persons of the Customer on a need to know basis and provided that such auxiliary persons are bound by confidentiality and non-use obligations not less stringent than the confidentiality and non-use obligations provided herein. The Customer shall take reasonable precautions against any such Confidential information being acquired by unauthorized persons and shall not employ any such Confidential information for its own use for any purpose whatsoever, except in the performance of the Sale Agreement or the Lease Agreement and/or as permitted by the Sale Agreement or Lease Agreement.

25.2. The Customer shall, at bNovate's request, return or destroy all copies of the Confidential information. Confidential information shall not include information which is generally published or lawfully available to the Customer from other sources or which was known to the Customer prior to its disclosure by bNovate.

26. INTELLECTUAL PROPERTY AND DATA

26.1. All intellectual property rights owned or controlled by a Party before the term of the Sale Agreement or, where applicable, the Lease Agreement, or developed independently thereafter shall be the exclusive ownership of that Party. In particular, any intellectual Property which relate to the Products shall be the exclusive property of bNovate.

26.2. The sale or Lease of Products shall not, by implication or otherwise, convey any license under any intellectual property right relating to the compositions and/or applications of the Products, and the Customer explicitly assumes all risks of any intellectual property infringement by reason of the use of the Products, whether singly or in combination with other materials or in any processing operation.

26.3. bNovate has not verified the possible existence of third-party intellectual property rights which might be infringed as a consequence of the sale and/or Lease of the Products and bNovate shall not be held liable for any loss or damage in that respect.

26.4. The data generated by the Devices which directly relate to the water or other materials of the Customer tested by the Device shall be owned by the Customer, provided that bNovate shall be entitled to receive a copy of such data and to use them to perform its obligations

and to improve the Products. Such data shall be considered as the Customer's Confidential Information. All other data which directly relate to the Products shall be owned by bNovate and treated as bNovate's Confidential Information. The Customer agrees that bNovate (or any of its affiliates) may, for its confidential internal use only, collect anonymous diagnostic data (from the instruments or cartridge during a servicing or cartridge refill) necessary for the maintenance of the instrument or the cartridge (e.g. number of cycles done by the valves or pump, maximal pressure in the system, running temperature or humidity of the system, etc), it being specified that no measurement data shall be collected.

27. RECALL

- 27.1. bNovate shall, immediately upon discovery, advise the Customer of any or all required replacement/modifications to the Products or component part thereof or withdrawal of Products by reason of safety hazard or recall regardless of the nature of same. In such event, the Customer shall forthwith return the Products in accordance with the instructions of bNovate.

28. FINAL PROVISIONS

- 28.1. Independent Contractors. bNovate and the Customer are independent contractors, and the relationship created hereby shall not be deemed to be that of representation, agency or partnership. Each of the Parties shall furthermore remain solely responsible for its own acts, statements, engagements, performances, products and personnel.
- 28.2. Non-Assignment. Neither Party may assign any of the rights or obligations under the Sale Agreement or the Lease Agreement without the prior written consent of the other Party, except that bNovate may assign such rights and obligations to any of its affiliates or to a third party acquiring all or a substantial part of its assets.
- 28.3. Notice. Unless another format is expressly admitted thereunder, any notices required or permitted to be given by either Party to the other under these Conditions shall be made in writing and shall be sent (i) by registered mail to that other Party at its registered office or principal place of business or such other address as indicated by it in connection with this provision, or (ii) by email, it being specified that the electronic communication system used by bNovate will serve as sole proof for the content and the time of delivery and receipt of such communications.
- 28.4. Severability. If any provision of the Sale Agreement is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the legal and economic intent of the Parties to the fullest extent possible. In any event, all other provisions of the Sale Agreement shall remain valid and enforceable to the fullest extent possible.
- 28.5. Headings. The headings contained in the Conditions are included for mere convenience of reference and shall not affect the latter's construction or interpretation.
- 28.6. Waiver. Failure by bNovate to enforce at any time any provision of the Sale Agreement or the Lease Agreement shall not be construed as a waiver of bNovate's right to act or to enforce any such term or condition and bNovate's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by bNovate of any breach of the Customer's obligations shall constitute a waiver of any other prior or subsequent breach.
- 28.7. Amendment. Any amendment to the Sale Agreement or the Lease Agreement, including this Section, is subject to the written agreement of both Parties.
- 28.8. Language. The original version of the Conditions is made in the English language. In the event of any inconsistency or contradiction between the English version and any translation thereof, the English version shall prevail.

29. APPLICABLE LAW AND JURISDICTION

- 29.1. **The Sale Agreement and the Lease Agreement shall be governed by and construed in accordance with the substantive laws of Switzerland, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall not apply.**
- 29.2. **Any dispute arising out of, or in connection with, the Sale Agreement and the Lease Agreement shall be exclusively submitted to the courts of Lausanne, Switzerland, without prejudice to a possible appeal to the Swiss Federal Tribunal.**

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