

## Miltenyi Biotec General Terms and Conditions for the Sale of Products and Services

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**NOTICE: Any sale of Products or Services by Miltenyi to Customer is expressly conditioned on Customer's assent to these Terms and Conditions. Miltenyi's acceptance of any Purchase Order for Products or Services issued by Customer is expressly limited to these Terms and Conditions and Miltenyi expressly objects to any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Customer's Purchase Order for Products or Services shall constitute Customer's unrestricted acceptance of these Terms and Conditions. Unless otherwise specified in the quotation, Miltenyi's quotation shall expire 30 days from its date and may be modified or withdrawn by Miltenyi at any time before final acknowledgement of Customer's Purchase Order.**

### 1 DEFINITIONS

In these Terms and Conditions for Sale of Products and Services,

"Miltenyi," "Us," "We" or "Our" means Miltenyi Biotec GmbH, Germany, or its applicable affiliate and subsidiary selling Products or Services to the Customer under the Contract, as stated in Miltenyi's Acceptance.

"Customer," "You," or "Your" means the person or entity purchasing Products or Services from Miltenyi under the Contract.

"Acceptance" means Miltenyi's acceptance of Customer's Purchase Order and confirmation of a binding Contract between Miltenyi and Customer under which Products and/or Services are to be provided hereunder.

"Contract" means the agreement between Miltenyi and Customer, either made electronically or via a signed contract, or via a Purchase Order signed by Customer and accepted by Miltenyi, in written or electronic form, applicable to the sale of Products or Services, including these Terms and Conditions, Miltenyi's final quotation, any agreed statement(s) of work, and Miltenyi's order confirmation or acknowledgement, and any other relevant attachments thereto as agreed between the parties and made part thereof. In the event of a contradiction or inconsistency, except where specifically stated otherwise by the parties in writing, these Terms and Conditions shall prevail.

"Products" means any products (including any parts thereof and related documentation) and other goods (including software any Services Deliverables) which Miltenyi agrees to supply to the Customer under the Contract.

"Purchase Order" or "Order" means the electronically generated or written document containing the commitment of Customer to purchase the Products or Services, to which these Terms and Conditions shall apply.

"Services" means any chargeable or other services which Miltenyi agrees to supply to Customer under the Contract.

"Services Deliverable" means any work product of the Services supplied under these that Miltenyi has agreed to provide to Customer under the Contract.

"Terms and Conditions" means these "Terms and Conditions for the Sale of Products and Services," including any relevant addenda thereto and any additional provisions referenced herein, as amended.

### 2 SCOPE OF THESE TERMS AND CONDITIONS

2.1 These Terms and Conditions shall apply to all quotations made by Miltenyi and all Purchase Orders placed by Customer and shall form part of and govern any all Contracts and other dealings between Miltenyi and Customer for the sale of Products and/or Services, irrespective of whether Customer accepts these Terms and Conditions by a written acknowledgement, by implication, or by acceptance of Products and/or Services hereunder.

2.2 These Terms and Conditions shall apply to the exclusion of, and we shall not be bound by, any other term or condition on any Order, acknowledgement, acceptance or other communication or document submitted by Customer in any form whatsoever, which is hereby objected to and which shall be of no force or effect whatsoever. Miltenyi's failure subsequently to object to such terms and conditions contained in Customer's documents shall not be deemed a waiver of any of these Terms and Conditions herein set forth, which shall constitute the entire agreement between the parties. No amendment, deletion, supplement or change in these Terms and Conditions shall be binding upon Miltenyi unless separately and

specifically approved in writing and signed by a duly authorized representative of Miltenyi.

2.3 All items of software provided to Customer in connection with the Products or Services hereunder are licensed to Customer subject to the terms and conditions of the Miltenyi Biotec Software License Terms, made available on Miltenyi's web site, [www.miltenyibiotec.com](http://www.miltenyibiotec.com).

2.4 These Terms and Conditions are subject to change without notice at any time, in Miltenyi's sole discretion.

### **3 ORDERS AND ACCEPTANCE**

3.1 Any quotation given to Customer by Miltenyi's agents or employees only constitutes an invitation to treat but does not constitute an offer by Miltenyi, and is only valid for a period of 30 days from its date of issue unless withdrawn earlier.

3.2 By placing a Purchase Order, Customer makes a binding offer to Miltenyi to purchase the Products and/or Services listed in Customer's Order in accordance with these Terms and Conditions. When Customer places an Order (i.e. via fax, mail or by pushing the "Buy Now" button in the Miltenyi Biotec webshop), Miltenyi will provide Customer with a written or electronic notice confirming receipt and relevant details of Customer's Order. This order confirmation solely serves to acknowledge that Miltenyi has received Customer's Order, but does not constitute acceptance thereof. Orders placed by Customer may not be cancelled or rescheduled without Miltenyi's written consent. Customer shall be solely responsible for the accuracy and completeness of its Order and any relevant information provided therewith.

3.3 Customer's Purchase Order shall be subject to acceptance by Miltenyi at which point and on which date a binding Contract between Miltenyi and the Customer shall come into force and effect. Customer's Order shall be deemed to be accepted by Miltenyi subject to these Terms and Conditions in any of the following events (each, an "Acceptance"), whichever is earlier: (a) Miltenyi issuing express written acceptance of the Order to Customer; (b) dispatch of the ordered Products; or (c) Miltenyi's commencement of work on Products or performance of Services. Miltenyi may decline any Order in whole or in part, for any lawful reason whatsoever. A proposed Order shall be deemed void and without effect if Miltenyi fails to give Acceptance thereof within 60 days from the date of receipt thereof by Miltenyi.

3.4 Miltenyi will store Customer's Purchase Order and all relating contract documentation. Within 12 months following the Order, Customer may request a copy of the Contract and related documentation. For further information regarding the processing of personal data by Miltenyi, please see Miltenyi's Privacy Statement made available on Miltenyi's web site, [www.miltenyibiotec.com](http://www.miltenyibiotec.com).

3.5 Miltenyi will notify Customer that the Order has been dispatched by sending an e-mail confirming the dispatch (the "Dispatch Confirmation"). If Customer's Order is dispatched in partial shipments, Customer may receive a separate Dispatch Confirmation for each shipment, and each Dispatch Confirmation and corresponding dispatch will conclude a separate contract of sale between Miltenyi and Customer for the Product(s) specified in the respective Dispatch Confirmation, unless otherwise agreed in writing.

3.6 Miltenyi reserves the right to make changes to the specifications of any Product and/or Service supplied which are required to conform with any applicable safety or statutory requirements.

3.7 Miltenyi field workers and sales personnel are not authorized to conclude oral agreements. Any oral commitments deviating from our offer, quotation or order confirmation shall only be valid if confirmed in writing and signed by a duly authorized representative of Miltenyi. Customer shall bear the burden of proof that Miltenyi has agreed to any terms that are not set forth in writing. Verbal agreements made after execution of a Contract must be confirmed in writing by a duly authorized representative of Miltenyi to be valid.

### **4 PRICES**

4.1 The price for Products shall be the price set out in the accepted Order, or if no price is quoted the price set out in Miltenyi's published price list as at the date of the Order.

4.2 The price for Services shall be the price set out in the accepted Order, or if no price is quoted the price set out in Miltenyi's published list as at the date of the Order or where there is none applicable to the Services in question, the price calculated on a time and material basis at Miltenyi's then current rates. In addition, we shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom we engage in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of Services provided by third parties and required by Miltenyi for the performance of the Services, and for the cost of any materials.

4.3 All prices are quoted EXW Miltenyi's facility or warehouse (Incoterms 2010) including normal packaging. Unless

otherwise indicated in the Contract or agreed in writing, prices quoted are exclusive of all costs and charges of special packaging, insurance, and transport of the Products which may be invoiced to the Customer at applicable rates.

4.4 All prices quoted are exclusive of any amounts in respect of taxes of any nature (including sales, use, excise or value added taxes (VAT) and other taxes and charges of any kind, other than taxes based on Miltenyi's income) or customs, import or other any other duties or levies as are chargeable in respect of the supply of the Products or Services to Customer from time to time (collectively "Taxes"). Where any taxable supply of Products or Services is made under the Contract by Miltenyi to the Customer, the Customer will be responsible for payment of all such Taxes. The Customer shall, on receipt of a valid tax invoice from Miltenyi, pay to Miltenyi such additional amounts in respect of applicable Taxes as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Products or Services.

4.5 If Miltenyi has the legal obligation to collect or withhold any such Taxes, the appropriate amount shall be added to Miltenyi's invoice to Customer and paid by Customer. If, for whatever reason, Miltenyi does not collect any such amount from Customer and Miltenyi becomes liable to pay any such Taxes or has paid such amounts, shall promptly reimburse such amounts to Miltenyi within thirty (30) from Miltenyi's written notice. If Customer deducts or withholds Taxes, Customer shall pay additional amounts so that Miltenyi receives the full invoiced purchase price without reduction for Taxes. Customer shall provide to Miltenyi, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

4.6 All prices are subject to change without prior notice at any time except for work in progress or as otherwise specifically provided in a written quotation signed by an authorized representative of Miltenyi. Rates of tax and duties on the Products and Services will be those applying at the time of invoice.

## **5 PAYMENT**

5.1 All amounts due hereunder are stated in, and shall be paid in, Euro (EUR) currency. The Customer shall pay each invoice submitted by Miltenyi, within 30 days of the invoice date (NET 30) (if no other terms of payment are specified), in full and in cleared funds to a bank account nominated in writing by Miltenyi (including by email), and time for payment shall be of the essence of the Contract. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law), except to the extent Customer's counterclaims are undisputed or have been finally adjudicated in a court of competent jurisdiction or pursuant to binding arbitration.

5.2 In respect of the Products and/or Services, Miltenyi reserves the right to invoice the Customer at any time during or after the Contract term (including on Acceptance of Customer's Order) and shall be entitled to raise interim and/or abortive invoices where relevant.

5.3 Payment by check or bill of exchange will be effective only after these instruments have been cleared and paid. All discounts on bills of exchange and any collection fees and other bank charges shall be borne by Customer.

5.4 If the Customer fails to make a payment due to Miltenyi under the Contract by the due date, then Miltenyi may, without prejudice to any other remedy available to Miltenyi (including termination pursuant to Section 18.2), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Section 5.4 will accrue each day at an annual rate of 8 percentage points above the European Central Bank's then-current base rate from time to time, but at a minimum rate of 8% a year (for any period when that base rate is below 0%) or, if lower, the maximum interest permitted by applicable law.

5.5 At any time, if in Miltenyi's opinion the financial condition of Customer so warrants, or if Customer fails to make payment when due or otherwise defaults hereunder, Miltenyi may change terms of payment, suspend any credit previously extended to Customer, require partial or full payment in advance and delay shipment until such terms are met, and pursue any other remedies available at law. In such event, if Customer refuses to accept such changes, Miltenyi may cancel any Order then outstanding and/or terminate the Contract with immediate effect without any liability to Customer on its part and recover any unpaid Products held by Customer which remain the property of Miltenyi.

5.6 Miltenyi may, at any time and in respect of any Order, require the Customer to pay a deposit as security for payment of future invoices or any other amounts that may become payable by the Customer to Miltenyi under or in connection with the Contract. If the Customer fails to pay such a deposit Miltenyi has a right to suspend the supply of Products or provision of the Services. Miltenyi shall be entitled to apply the deposit against any amount payable by the Customer under or in connection with the Contract. The Customer shall reinstate the full deposit amount by paying to Miltenyi any sums deducted from the deposit within 7 days of a demand for the same. The payment, receipt and application of any deposit is without

prejudice to any rights, remedies or claims Miltenyi may have against the Customer under or in connection with the Contract. The balance of the deposit shall be offset against the final payment due by the Customer to Miltenyi in respect of the corresponding Order.

5.7 At our discretion, any partial payment shall first be allocated to older debt. If costs for prosecution (in particular, costs for reminders) have already arisen, we shall be entitled to offset Customer's payment first against such costs, then against the interest and finally against the primary claim. In the event of default, unless higher costs have arisen, a fixed amount of € 15 shall be charged for each reminder following the occurrence of the default.

## **6 DELIVERY AND SHIPMENT; STORAGE**

6.1 Unless otherwise specified by Miltenyi in writing, delivery of the Orders described herein to Customer will be FCA Miltenyi's facility or warehouse (Incoterms 2010), freight prepaid and charged back (i.e., Miltenyi pays freight and adds it to the invoice; Customer bears freight, handling and processing costs; Customer owns goods in transit), in standard packaging. Miltenyi may invoice standard shipping charges.

6.2 Delivery will be made by Miltenyi either by delivering the Products to Customer's specified carrier (as is notified to Miltenyi in advance of delivery) or procuring delivery to the Customer by a common carrier of Miltenyi's choice. Method and route of shipment are at Miltenyi's discretion, unless Customer supplies written instructions otherwise.

6.3 Any dates quoted for delivery of the Products in the Order, Miltenyi's Acceptance, or any other communication between the Parties (whether oral or in writing) are approximate only and do not constitute a guarantee for delivery. Time for delivery will not be of the essence for the Contract, except where Miltenyi expressly guarantees on-schedule delivery in writing. Delivery dates shall be deemed to have been met upon Miltenyi's sending of the applicable Dispatch Confirmation pursuant to Section 3.5. Delivery may be made by Miltenyi in advance of the quoted delivery date upon giving reasonable notice to the Customer. Miltenyi may make partial shipments of Customer's Orders, to be separately invoiced and paid for when due, provided that freight and packaging shall only be charged once. Any delay in delivery of any instalment will not relieve Customer of its obligation to accept the remaining deliveries. While every effort is made to facilitate delivery of Customer's Order on time, and by the estimated delivery date, Miltenyi shall not be liable for any failure to ship complete Orders or for any delay in delivery of the Products however caused (except as provided in Section 6.4 below).

6.4 In the event that Miltenyi has provided an express written guarantee for on-schedule delivery and, due to the negligence of Miltenyi or its subcontractors, delivery is delayed beyond the guaranteed date of delivery, Miltenyi's liability for Customer's losses shall be limited to a maximum amount of one-half percent (0.5%) of the purchase price for the relevant Products or Services for each full week of delay, and shall in no event exceed an amount equal to five percent (5%) of the purchase price for the relevant Products or Services. This limitation shall not apply if our liability results from intentional misconduct or gross negligence.

6.5 In the event that any Products to be delivered hereunder at Miltenyi's facility or warehouse cannot be shipped to or received by Customer when ready due to any cause attributable to Customer or its other contractors (including Customer's carrier), then, without prejudice to any other right or remedy available to Miltenyi: (a) Miltenyi may store the Products until actual delivery and charge the Customer for all reasonable costs of storage, including insurance, incurred by Miltenyi related to the storage, payable by Customer upon submission of Miltenyi's invoice; or (b) in the case of Service Deliverables or other Products that are customized or made-to-order for Customer, sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Order or charge the Customer for any shortfall below the price under the Order. If Miltenyi places Products into storage, (x) delivery shall be deemed to have occurred and title and risk of loss will immediately pass to Customer; and (y) any amounts otherwise payable to Miltenyi upon delivery or shipment shall be due and payable by Customer upon submission of Miltenyi's invoices. When conditions permit and upon payment of all amounts due, Miltenyi shall make the Products available to Customer for delivery.

6.6 Miltenyi will gladly hold Customer's Order for one week after notification. After that time, we will assess a storage and handling fee of one-half percent (0.5%) of the invoiced purchase price for stored Products for every week, or portion thereof, during which the Products are stored. Customer shall also compensate us for any higher costs reasonably incurred in connection with the storage of the Products.

## **7 RISK AND TITLE**

7.1 Notwithstanding any expectation or agreed upon delivery times, prepayment of transportation or insurance charges, title and risk of loss or damage to the Products, including responsibility for any costs and expenses arising from or relating

to the Products, shall pass to Customer upon delivery of the Products or upon moving the Products into storage pursuant to Section 6.5, whichever occurs first. All expenses and risks of loss or any damages incurred in the transportation of the Products, including any risks of loss in loading or unloading, shall be borne solely by Customer, unless otherwise specified. Any such loss or damage shall not release Customer from its obligation to pay the purchase price in full.

7.2 Notwithstanding the foregoing, Miltenyi grants only a license, and does not pass title, for any software provided by Miltenyi under the Contract, and title to any leased equipment remains with Miltenyi.

7.3 If repair Services are to be performed on Customer's equipment at Miltenyi's facility, Customer shall be responsible for, and shall retain risk of loss of, such equipment at all times, except that Miltenyi shall be responsible for loss or any damage to the equipment while at Miltenyi's facility to the extent such loss or damage is caused by Miltenyi's negligence.

7.4 Unless otherwise notified by Miltenyi in writing, the right to retake possession of the Products purchased from Miltenyi shall remain with Miltenyi until all sums owing to it by Customer in respect of the Products shall have been paid in full. Miltenyi may, at Customer's expense, retake possession of the Products. So long as such right remains with Miltenyi, Customer shall keep the Products stored in such a manner which enables them to be identified as the Products and, wherever required by Miltenyi, identify the Products to Miltenyi. Customer shall maintain insurance for the Products after delivery to Customer until the Products are paid in full to the full replacement value of the Products.

## **8 INSPECTION AND ACCEPTANCE**

8.1 Customer shall be responsible for examining and inspecting each shipment of Products delivered hereunder promptly upon receipt of such shipment. Customer shall promptly notify Miltenyi in writing if any Products delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, or fail to comply with Miltenyi's warranty in Section 12 below. Any shipment of Products made hereunder shall be deemed to have been accepted by Customer if Customer fails to give written notice of rejection (with sufficient details of the alleged defect or deficiency) to Miltenyi (a) within five (5) business days after receipt of the relevant shipment of Products, or (b) for latent defects or deficiencies which could not have been discovered by the exercise of all reasonable care during reasonable inspection and testing, within five (5) business days from the occurrence or discovery of the alleged defect or deficiency by Customer. Customer's failure to give notice of any claim within the applicable time period specified above shall be deemed an absolute and unconditional waiver of such claim, irrespective of whether the facts giving rise to such claim shall have been discovered or whether processing or use of the Products shall have then taken place.

8.2 Miltenyi reserves the right to inspect and test the rejected Product(s) in each case. Customer shall give Miltenyi reasonable time and opportunity to perform such inspection. Upon Miltenyi's request, Customer shall arrange for the return of the rejected Product to Miltenyi's facility, at Miltenyi's expense. If Customer's notification of defects proves to be unjustified, Customer shall be obligated to reimburse Miltenyi for all reasonable, documented costs actually incurred in connection with the investigation of the alleged defect (e.g., inspection costs, travel costs and shipment costs).

8.3 Defects of partial deliveries shall not entitle Customer to reject the remainder of the contractual quantity unless Customer can prove that it would be unreasonable for Customer to accept only a part of the delivery under these circumstances.

8.4 Customer's warranty claims owing to defects as to quality of the Products and/or Services shall become time-barred 12 months following the assumption of risk by Customer. The same shall apply to defects of title. Customer's rights under §§ 478, 479 of the German Civil Code (BGB), if applicable, shall not be affected thereby. For expendable materials (e.g. reagents, kits), the warranty period shall expire upon the earlier of the date set forth in the first sentence and the indicated use-by date of the product (see Section 9.3, below). In the event of maliciously concealed or intentionally caused defects, the statutory limitation periods shall apply with regard to Customer's damage claims and rights.

## **9 LIMITATIONS ON USE**

9.1 Products sold or otherwise delivered by Miltenyi must only be used for the purposes and in accordance with the usage instructions stated on the product package and/or the applicable product use statement. In particular, our Products are for research use only and are not to be used, neither directly nor indirectly, for therapeutic or diagnostic purposes unless (a) the product has been expressly approved for such purposes by Miltenyi, (b) such use is permitted under the statutory law applicable for Customer and the user, and (c) all required approvals and permissions have been granted by the appropriate regulatory agency(ies) and/or other competent authority(ies). Customer shall be solely responsible for ensuring that the Products are suitable for Customer's particular use, and that Customer's intended use of the Products does not violate statutory law and Customer has obtained all necessary approvals and permissions.



9.2 Customer shall handle and use the Products and any results obtained from their use in compliance with (a) good laboratory practice, (b) all applicable laws and regulations, guidelines and decisions of judicial or regulatory bodies and (c) any patent and other proprietary rights of third parties.

9.3 Products with use-by dates may only be used subject to the use-by dates stated on the product package and are only warranted for the use by such dates.

## **10 RETURNS; REFUNDS**

10.1 Products delivered under the Contract may not be returned without prior written approval from Miltenyi by way of a valid Return Goods Authorization ("RGA"). Only items that have been purchased directly from Miltenyi, either online or by other means, can be returned directly to Miltenyi. Products purchased through other retailers must be returned in accordance with their respective returns and refunds policy. Except for warranty returns, only standard goods regularly maintained in stock by Miltenyi will be considered by it for return by the Customer for credit. If RGA is granted, Products must be returned to Miltenyi in good resalable condition, freight prepaid and credit will be allowed depending on the condition upon receipt by Miltenyi. Special packaging by Customer may be necessary to protect Products returned. Credit shall not exceed 90% of the original or then current purchase price for the Products delivered to the Customer whichever is lower, less freight paid by Miltenyi on the original shipment to the Customer.

10.2 If Miltenyi determines (e.g., after inspection of the returned Products) that the requirements for a refund have been met, the refund is initiated immediately. The way your refund is processed depends on your original payment method. If you paid by credit or debit card, refunds will be sent to the card-issuing bank within 5 business days of receipt of the returned item. You will be notified via email at the address listed on your account when this transaction has taken place. Please note that your card-issuing bank may require additional days to process and post this transaction to your account once they have received the information from us. Please contact your banking institution with questions about when the credit will be posted to your account. Allow up to two billing cycles for a refund to appear on your credit card statement.

## **11 NO RESALE; NO EXPORT**

11.1 Except as otherwise agreed in writing by Miltenyi's authorized representative, the purchase or other delivery of Miltenyi Products only conveys to Customer the non-transferable right for Customer to use the delivered Products in compliance with the applicable product use statement. Unless otherwise authorized under a commercial license from Miltenyi, no right to resell the Products, or any portion of them, in any way, shape or form, including as a component of another product, is conveyed.

11.2 To the maximum extent permitted by applicable law, Miltenyi does not permit Customer to re-export the Products from the country of delivery.

## **12 LIMITED WARRANTY**

12.1 Miltenyi's Products are manufactured and all Services are rendered with due care and in accordance with applicable statutory laws and regulations. Owing to the complexity of biotechnological products, materials and procedures, however, it cannot be guaranteed that our Products or Services function without defects in all applications, environments and/or combinations. For this reason, Miltenyi does not assume any guarantee or liability to the effect that our Products or the results of our Services are appropriate in each individual case for the specific purpose intended by Customer. Subject to the limitations of this Section 12 and unless otherwise expressly provided, Miltenyi warrants only that the Products and Services will conform to Miltenyi's published specifications for such Products and Services in effect at the time of order acceptance, or any analysis certificate presented with the product or service result.

12.2 Any samples, measurements and product/service details contained in catalogues, price lists, brochures and/or quotations presented to Customer only constitute an approximate guide and may under no circumstances be understood as an assurance of properties in terms of a guarantee. We reserve the right to make any changes thereto which we consider necessary in our absolute discretion. In the event Miltenyi and Customer wish to agree on a guarantee in an individual case, contrary to the above, this must be done expressly and in writing signed by a person with requisite authority at Miltenyi.

12.3 The warranty shall not cover defects and/or damage caused by force majeure or other outside impact, inappropriate treatment, improper storage, disregard of operating and safety procedures or recommended maintenance intervals, or normal wear and tear. In particular, no warranty shall apply to any item which has been operated by untrained users, serviced, repaired or altered except as set forth in the user manual or otherwise expressly authorized by Miltenyi, or which has been otherwise interfered with by Customer and/or by unauthorized third parties. Defects and/or damage caused by the use of

replacement parts, accessories and/or expendable materials (in particular, reagents) other than those expressly approved by Miltenyi (e.g., in the user manual or otherwise in writing) shall also not be covered by this warranty.

12.4 Miltenyi's sole liability, and Customer's sole and exclusive remedy, with respect to any claim of any kind against Miltenyi, including without limitation any claim in contract, negligence or strict liability, will be, at Miltenyi's option, (a) redelivery of the non-conforming Product or re-performance of any non-conforming Services (or such portion thereof as may reasonably be required to be re-performed) until completion or (b) a refund of the payments allocable to the non-conforming Product or Services.

12.5 THE LIMITED WARRANTY IN SECTION 12.1 ABOVE IS EXPRESSLY IN LIEU OF ANY AND ALL OTHER WARRANTIES AND MILTENYI HEREBY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION (A) ANY IMPLIED AND ALL OTHER WARRANTIES AND MILTENYI HEREBY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION (A) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR (B) ANY IMPLIED WARRANTY THAT ANY USE OF THE PRODUCTS OR SERVICES WILL NOT VIOLATE OR INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHTS OF THIRD PARTIES, WITH RESPECT TO THE PRODUCTS OR SERVICES, OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 12.1 ABOVE.

### **13 LIMITATION OF LIABILITY**

13.1 MILTENYI SHALL NOT IN ANY EVENT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OF WORK-IN-PROGRESS, LOSS OF DATA, COST OF SUBSTITUTE EQUIPMENT, MATERIAL, FACILITIES OR SERVICES, DOWNTIME COSTS, COSTS OF UNUSED STAFF, LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, OR OTHER ECONOMIC LOSS OF ANY KIND, ARISING IN CONNECTION WITH CUSTOMER'S USE OF OR INABILITY TO USE THE PRODUCTS OR SERVICES, OR MILTENYI'S FAILURE TO PERFORM THE SERVICES IN ACCORDANCE WITH THE LIMITED WARRANTY SET FORTH IN SECTION 12 ABOVE. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY UNDER ANY LEGAL THEORY AND REGARDLESS OF THE FORM OF ACTION, INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND, WHETHER OR NOT FORESEEABLE, EVEN IF MILTENYI HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, AND SHALL ALSO APPLY IN THE EVENT OF LOSSES CAUSED BY THE BREACH OF DUTIES IN CONTRACT NEGOTIATIONS.

13.2 Miltenyi's liability for breach of warranty or for any loss or damage resulting from any other cause whatsoever, including alleged negligence, shall not exceed the lesser of (i) the cost of correcting any non-conformity in the Products or Services or (ii) the cost of replacing the Products or re-performing the Services. In no event (including unenforceability of the above limitations and independent of any failure of essential purpose of the limited warranty and remedies provided hereunder) shall Miltenyi's aggregate liability for damages hereunder exceed the purchase price or fee (exclusive VAT) paid or to be paid for the specific Products or Services to which the particular claim relates. The parties acknowledge that the limitations set forth in this Section 13 are integral to the prices charged and that, were Miltenyi to assume any further liability other than as set forth herein, such prices would of necessity be set substantially higher. Customer expressly agrees that this limitation of damages and remedies shall constitute the exclusive remedies and measure of damages available to Customer and all other remedies and measures of damages which might otherwise be available under the law of any jurisdiction are hereby waived by Customer.

13.3 Without limitation to the generality of the foregoing limitation, Miltenyi shall not be liable for any damage or loss caused by the improper or unapproved use of the Products. Customer shall defend, indemnify and hold harmless Miltenyi from and against any and all losses, costs and expenses, including without limitation reasonable attorneys' fees, in any way arising out of or relating to (a) any use of the Products not in compliance with the uses stated in Section 9 above, (b) any failure of Customer to comply with good laboratory practice, laws, regulations, guidelines or decisions in the handling or use of the Products, (c) any violation or infringement of any patent or other proprietary rights of third parties by Customer in the handling or use of the Products, or (d) any other use or misuse of the Products by Customer.

13.4 The limitations set forth in this Section 13 shall not restrict or exclude our liability for death or personal injury caused by negligence on our part, on the part of our executive employees or on the part of our vicarious agents. Further, nothing set forth herein shall restrict or exclude our liability based on intentional misconduct or gross negligence on our part, on the part of our executive employees or on the part of our vicarious agents, or our liability resulting from mandatory product liability laws or other mandatory statutory laws and regulations, as applicable.

## **14 PERFORMANCE**

14.1 Timely performance by Miltenyi is contingent upon Customer supplying to Miltenyi, when needed, all required technical information, documentation and/or materials, as reasonably requested by Miltenyi from time to time. Miltenyi shall be released from its obligation to deliver the Products and/or to perform the Services under Customer's Order if, and for as long as, Customer fails to provide all necessary technical information, documentation and/or materials. Any technical information, documentation, specifications, data, drawings, data sheets, or other materials or documentation provided to Customer by Miltenyi are intended for guidance only and are not binding unless expressly stated otherwise. Miltenyi reserves all rights in all such materials and documentation. Without Miltenyi's prior written consent, any such materials and documentation shall not be: (a) disclosed, in whole or in part, to any third party; (b) used for any purpose other than those for which they have been provided to Customer; or (c) used for the manufacture of any duplicate or similar products (or part thereof) or performance of any duplicate or similar Services (or any portion thereof) by Customer or any third party.

14.2 Other than for the requirements to make payment when due, neither party shall be liable for any delay or failure to meet its obligations under these Terms and Conditions and the applicable Contract due to unforeseen circumstances or to causes beyond such party's reasonable control, including events of force majeure, including, but not limited to, acts of governmental authority or any agency or commission thereof, revisions of statutory law, war, fire, flood, accidents, acts of God, terrorism, embargoes, acts of third parties, breakdown of equipment, shortages of material, labor or power, labor strikes, work stoppage or labor unrest, or any other cause beyond reasonable control that renders the delivery or service substantially more difficult or impossible. In the event of any such delay, performance of the affected obligation shall be suspended for a period of time equal to the time of such delay save that in the event that the delay continues for more than three (3) months, Miltenyi may elect to terminate the Contract with immediate effect without incurring any liability.

14.3 Customer shall be solely responsible that the materials, documents or other information provided by Customer hereunder do not infringe the intellectual property rights or other rights of third parties (in particular, patents, utility patents and other property rights and copyrights). The same shall apply in the event Customer prescribes by means of instructions, information, documentation, drafts or drawings how an ordered product is to be created or an ordered service is to be rendered. Customer shall be obligated to indemnify and hold harmless Miltenyi from any claims of third parties that are asserted against Miltenyi on the basis of such infringement.

## **15 SUPPLEMENTAL TERMS AND CONDITIONS FOR SERVICES**

15.1 Miltenyi will perform all Services using due care in accordance with (a) the statement of work relating to the Services that is made part of the Contract and (b) generally prevailing industry standards. Miltenyi will make a good faith effort to start and complete all Services in a timely manner and will notify Customer if it has determined that there are likely to be substantial delays.

15.2 In the event that Customer requests or otherwise directs any change to the agreed scope of work of the Services that results in an increase in the cost of the Services and/or affects the projected completion date of the Services, the agreed fee for the Services and/or the completion date shall be adjusted to a degree commensurate with such changes. Cancellation of Services in progress will result in a partial charge commensurate with the percentage of work completed at the time of cancellation.

15.3 Customer shall furnish Miltenyi with all necessary materials such as cells, compounds, samples, or other substances, in sufficient quantities as reasonably required by Miltenyi to perform the Services, as well as comprehensive data and information pertaining to said materials concerning stability, storage and safety requirements (collectively, "Customer Materials"), Customer Materials provided. Prior to the performance of microarray Services, Miltenyi will perform QC testing of Customer Materials. An additional charge will be incurred where a repetition of the preprocessing tests should be required due to Customer Material failing such a test. Miltenyi reserves the right to ship Customer Materials to other Miltenyi facilities for processing. Shipments of Customer Materials shall be made at Customer's sole risk. Miltenyi shall not be liable for any loss or damage to Customer Materials during transit, unless caused by intentional misconduct or gross negligence of Miltenyi. All claims for loss or damage incurred during shipment shall be made by Customer directly to the carrier. Upon completion of the Services, excess Customer Materials will be disposed of, unless otherwise requested by Customer in writing. Excess non-amplified RNA will be stored at Miltenyi's facility at Customer's risk for a period of three months after completion of the Services. On request, excess non-amplified RNA, and/or other Customer Materials, shall be sent to Customer subject to an additional charge. Otherwise all excess non-amplified RNA will be destroyed without further notice after the end of the three month storage period.

15.4 Except as set forth otherwise herein or in the Contract, Miltenyi will maintain documentation of all relevant



information, records, raw data, specimens and other work product generated by Miltenyi as a result of the performance of the Services ("Data") for a period of 12 months following completion of the Services. During performance of the Services and for three (3) years thereafter, Miltenyi will keep all Data confidential and will not disclose the same to any person except its employees, consultants, and subcontractors having a need to know in connection with the performance of the Services. Miltenyi may disclose Data to its employees, consultants, or subcontractors, provided that such disclosure shall be made subject to a confidentiality undertaking on terms no less onerous than those contained herein. Miltenyi shall protect the Data using the same degree of care as Miltenyi uses to protect its own confidential information, but in any event no less than a reasonable degree of care. Notwithstanding any other provisions herein, Miltenyi shall have no liability or obligation to Customer for, nor be in any way restricted in, its disclosure or use of any Data which, as Miltenyi can reasonably establish (a) is already known to Miltenyi at the time of disclosure; (b) is or later becomes publicly known by any means whatsoever, through no wrongful act of Miltenyi; (c) is received from a third party without breach of the confidentiality obligation hereunder; (d) is disclosed pursuant to an enforceable order of a court or administrative agency; or (e) is independently developed by or for Miltenyi.

15.5 Invoices shall be sent to Customer upon completion of the Services and delivery to Customer of the agreed Services Deliverables. If Customer defaults in any payment when due, Miltenyi, at its option and without prejudice to its other lawful remedies, may defer delivery or terminate the Services.

15.6 Except as otherwise set forth herein or in the relevant Contract, Customer shall be the exclusive owner of, and Miltenyi hereby assigns to Customer, all Customer Materials, Data, inventions, improvements, designs, programs, formulas, know-how and writings supplied by Customer and/or generated or discovered as a direct result of Miltenyi's performance of the Services, whether or not copyrightable or patentable (collectively, the "Inventions"). If requested by Customer, Miltenyi shall, at Customer's expense, do all things reasonably necessary or appropriate to assist Customer in obtaining patents or copyrights on any Inventions. Notwithstanding the foregoing, Customer shall not by virtue of the Services Agreement or either party's performance thereof obtain any intellectual property or other ownership rights in any methods or processes used or developed by or for Miltenyi in or for the provision of Services or any documentation, records, raw data, materials (other than Customer Materials), specimens, work product, concepts, information, inventions, improvements, designs, programs, formulas, know-how, or writings related thereto, except those methods and/or processes, if any, provided by Customer to Miltenyi and designated as being owned by Customer in a separate written agreement between the parties.

15.7 Miltenyi's sole warranty with respect to the Services is that Miltenyi will perform all Services in accordance with the standard of performance set forth in Section 15.1 above. Customer shall notify Miltenyi in writing of any claim for a breach of such warranty by Miltenyi within one (1) month after delivery by Miltenyi of the written report of the results relating to such Services. Customer's failure to give notice of any claim within the applicable time period specified above, shall be deemed an absolute and unconditional waiver of such claim, irrespective of whether the facts giving rise to such claim shall have been discovered or whether processing or use of the Services shall have then taken place.

15.8 Except to the extent caused by gross negligence or intentional misconduct of Miltenyi, Customer shall indemnify and hold harmless Miltenyi, its affiliates and their respective officers, directors, employees and agents from and against any and all expenses (including, but not limited to, reasonable attorney's fees), damages, judgments, and losses incurred by any such indemnified party as a result of or in connection with any claim, demand, or cause of action asserted by a third party for physical injury to or death of persons, physical damage to property, or infringement of intellectual property arising out of or based upon (a) Customer's manufacture, sale, or use of any quantity of Customer Materials, the Data or any product or service based in whole or in part on Customer's reliance on the Services or any portion thereof provided to Customer by Miltenyi, or any derivative thereof, and (b) Miltenyi's use or reliance on Customer Materials for the performance of the Services for Customer.

15.9 It is a condition of any Services Agreement that Customer will use any materials provided by Miltenyi, including without limitation any compounds, biological materials, and nucleic acid molecules (e.g. DNA, RNA, vectors, clones, libraries such as cDNA libraries, cells, etc.) ("Samples"), only for Customer's internal research purposes. In particular, Customer shall not be permitted to sell or transfer Samples to any third party, whether or not Samples are sold or transferred without consideration for use in research.

## **16 SOFTWARE LICENSE**

16.1 As used herein, "Software" means any Product which is software including without limitation operating systems, bundled software, stand-alone software and downloadable software.

16.2 Customer acknowledges that Products (e.g. instruments) often contain not only hardware but also Software, including

but not limited to operating systems and applications. Such Software may be embedded in hardware, or it may be contained separately on disks or on other media. Such Software is proprietary, is copyrighted, and may also contain valuable trade secrets and be protected by patents. Customer, as an end user, is licensed to use any Software contained in or accompanying the Products, subject to the terms and conditions of the applicable license agreements accompanying the Product and/or the Software, if any, or (if no other terms are specified) the applicable Miltenyi Biotec Software License Terms, and the applicable patent, trademark, copyright, and other intellectual property laws. Customer shall not separate any such end-user license for Software from a Product.

16.3 In addition to any obligations or restrictions set forth in the applicable Software license, except to the extent permitted by law, Customer shall not duplicate, disassemble, de-compile, reverse engineer, modify, create derivative works, or otherwise change a Software or its form. Customer may use Software that are incorporated in or packaged with a Product solely in connection with the authorized use of such Product, and shall have no other rights with respect to the Software.

## **17 CONFIDENTIALITY**

17.1 Miltenyi and Customer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with this Contract. "Confidential Information" means all scientific, technical, business and financial information (a) that is designated in writing as "confidential" or "proprietary" (or other marking of similar nature) by Disclosing Party at the time of written disclosure, or (b) that is orally designated as "confidential" or "proprietary" by Disclosing Party at the time of oral or visual disclosure and is confirmed to be "confidential" or "proprietary" in writing within twenty (20) days after the oral or visual disclosure, or (c) that is generally deemed to be confidential by its nature or made available under circumstances reasonably indicating it is confidential and that would be considered confidential by a person exercising reasonable judgment, whether or not marked or declared as confidential pursuant to (a) or (b). In addition, prices for Products and Services shall be considered Miltenyi's Confidential Information.

17.2 Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and use of Products and Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (iii) not to disclose the Confidential Information to a competitor of Disclosing Party. Notwithstanding these restrictions, (a) Miltenyi may disclose Confidential Information to its affiliates and subcontractors in connection with the performance of the Contract, (b) a Receiving Party may disclose Confidential Information to its auditors, (c) Customer may disclose Confidential Information to lenders as necessary for Customer to secure or retain financing needed to perform its obligations under the Contract, and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a written non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information on terms not less onerous than the provisions hereof, and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information by the third party. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information; and provided further that, each Party shall have the right to retain one archive copy of Confidential Information for regulatory compliance or legal purposes, and neither Party shall be obligated to purge extra copies of Confidential Information from electronic media used solely for disaster recovery backup purposes

17.3 The obligations under this Section 17 shall not apply to any portion of Confidential Information that Receiving Party can demonstrate: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information.

17.4 Each Disclosing Party warrants that it has the right to disclose the information that it discloses. Neither Customer nor Miltenyi shall make any public announcement about the Contract without prior written approval of the other party. As to any individual item of Confidential Information, the restrictions under this Section 17 shall expire five (5) years after the date of disclosure. The provisions of this Section 16 shall not supersede any separate confidentiality or non-disclosure agreement that may have been, or that may be, entered into by the parties.

17.5 In the event of breach, or a threatened breach of the provisions of this Section 17 by Receiving Party, each Disclosing Party shall be entitled to an injunction restraining Receiving Party from committing such breach without showing or proving any actual damage sustained.

## **18 TERMINATION**

18.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if: (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so; (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or (d) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

18.2 Without affecting any other right or remedy available to it, Miltenyi may terminate the Contract with immediate effect by giving written notice to the Customer if: (a) the Customer fails to pay any amount due under the Contract on the due date for payment; (b) there is a change of control of the Customer; (c) the Customer commits any breach of Section 17.

18.3 Without affecting any other right or remedy available to it, Miltenyi may suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between Miltenyi and the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Section 18.1, or Miltenyi reasonably believes that the Customer is about to become subject to any of them.

18.4 On termination of the Contract: (a) the Customer shall immediately pay to Miltenyi all of Miltenyi's outstanding unpaid invoices and interest and, in respect of Services and Products supplied but for which no invoice has been submitted, Miltenyi shall submit an invoice, which shall be payable by the Customer immediately on receipt; (b) any payment due from the Customer in relation to the preceding clause (a) may be partly or wholly recovered from any deposit; (c) the Customer shall return all of Miltenyi's materials and any Products (including Services Deliverables) which have not been fully paid for. If the Customer fails to do so, then Miltenyi may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

18.5 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

18.6 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **19 EXPORT CONTROL**

Customer shall comply with all laws, regulations and orders of the United Nation Organization, the member states of the European Union and the European Free Trade Association, and any other country applicable to the export, re-export, transfer or resale of Products or the provision of Services and related technical data ("Export Laws"). Purchaser shall not (i) use or make Products or Services available in any country in contravention of any Export Laws, or any other law, and (ii) not use or make Products or Services available in a country for which an export license or other governmental approval is required without first obtaining all necessary licenses or other approvals.

## **20 ENVIRONMENTAL MATTERS**

20.1 Local law or recycling schemes may require Customer to comply with certain collection or recycling requirements and other similar duties imposed on the Products (or parts thereof) or their packaging by central or local authorities. Customer shall comply with such requirements and duties at its expense.

20.2 Commercial Customers shall be solely responsible for the proper disposal of discarded Products considered as waste electrical or electronic equipment, and any fees and other costs associated with such disposal, in accordance with the provisions of Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on Waste Electrical

and Electronic Equipment (WEEE) and/or any applicable statutory national regulation based thereon, as amended from time to time. Upon accepting delivery of such Products, Customer agrees to hold harmless, release, and indemnify Miltenyi from any and all claims or demands by third parties or authorities in anyway resulting from or arising out of the proper treatment and disposal of these Products at the end of their life cycles, unless otherwise required by mandatory stipulations of applicable law. In particular, Customer shall impose a like obligation on any commercial third party to which the Products are transferred later on. Should Customer fail to impose such contractual obligation on commercial third parties to which the delivered Products are transferred, Customer shall remain responsible to Miltenyi for the proper disposal of these Products in compliance with statutory law. Customer's obligation hereunder to hold harmless and indemnify shall not become time-barred before the expiration of two years following the date of final termination of use of the equipment (suspension of the statute of limitations). Said suspension period shall commence no earlier than upon proper receipt by Miltenyi of a written notification by Customer indicating the final termination of use of the equipment. We reserve the right to reach a different, separate agreement concerning the takeback of used equipment with Customer in individual cases.

## **21 DATA PRIVACY**

We will treat all personal data relating to Customer confidentially and in accordance with applicable data privacy laws and regulations. BY PLACING ORDERS, THE CUSTOMER CONSENTS TO THE STORAGE AND FORWARDING OF PERSONAL DATA FOR THE PURPOSE OF CREDIT REVIEW, COLLECTION OF DEBTS AND NOTIFICATIONS UNDER ANY APPLICABLE LAWS AND REGULATIONS. UPON REQUEST, WE WILL INFORM THE CUSTOMER OF THE CONSEQUENCES OF HIS REFUSAL OF CONSENT. For further details please see our Privacy Statement posted on Miltenyi's web site, [www.miltenyibiotec.com](http://www.miltenyibiotec.com).

## **22 NOTICES**

Notices and other communications hereby required or contemplated shall only be effective if delivered in writing to the party for whom intended at its designated "Invoice Address" if to Customer or the Miltenyi contact address if to Miltenyi, either by (a) personal delivery, (b) postage prepaid, return receipt requested, registered or certified mail, (c) internationally recognized overnight courier (such as DHL, FedEx, or UPS), or (d) facsimile with a confirmation copy sent simultaneously by any of the other methods described above. Notice by registered or certified mail shall be effective on the date officially recorded as delivered to the intended recipient by return receipt or equivalent, and in the absence of such record of delivery, the effective date shall be presumed to have been the fifth (5th) business day after deposit in the mail. Notices delivered in person or sent by courier shall be effective on the date of personal delivery. Notices delivered by facsimile shall be deemed to be effective on the date sent. Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized representative of the party to whom it was given.

## **23 GOVERNING LAW, JURISDICTION**

23.1 These Terms and Conditions and any Contract hereunder shall be governed by and construed in accordance with the laws of Germany, without giving effect to any choice of law rules that would cause or permit the application of the laws of another jurisdiction. If the Contract includes the sale of Products and Customer's location is outside of Miltenyi's country, the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply.

23.2 Any litigation or other proceeding ("Proceeding") arising out of, under or relating to these Terms and Conditions and any Contract hereunder or otherwise with respect to the Products and Services shall be instituted exclusively in the courts of competent jurisdiction applicable to Miltenyi's principal place of business. Each of the parties irrevocably submits to the exclusive jurisdiction of such courts in any such Proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any such Proceeding in any other court. The foregoing shall apply only to the extent that Customer is a fully qualified merchant, a legal entity under public law or public law special assets.

## **24 MISCELLANEOUS**

24.1 Severability. If any of the provisions, either in part or in full, of these Terms and Conditions is held by a court or other tribunal of competent jurisdiction to be unenforceable or invalid, such provision shall be enforced to the maximum extent possible or permissible and these Terms and Conditions will be adjusted, if possible, so as to give maximum effect to the original intent and economic effect of the parties with respect to the unenforceable provision and the remaining portions of these Terms and Conditions shall remain in full force and effect.

24.2 No Waiver. The waiver by either party of any default by the other party shall not waive subsequent defaults by such other party of the same or different kind.

24.3 Modification. No amendment or modification to these Terms and Conditions (including modification or waiver of this Section 24.3) or any Contract or collateral agreement of which these Terms and Conditions form part shall be binding unless made in writing and signed by an authorized representative of each party.

24.4 No Assignment. Customer may not assign this Agreement nor any Order related thereto and Customer may not delegate its duties under the Agreement without Miltenyi's prior written consent which shall not be unreasonably withheld. Miltenyi may assign the Agreement without Customer's consent provided that such assignment is to an affiliated company forming part of the Miltenyi group of companies.

24.5 Place of Performance. Place of performance for Customer's payment obligations and for Miltenyi's obligation to provide the Services shall be Bergisch Gladbach, Germany. Place of performance for Miltenyi's obligation to deliver the Products shall be Miltenyi's applicable facility or warehouse.

## **25 CONTACT**

If You have any comments or questions relating to Miltenyi's Products and Services or these Terms and Conditions, please contact us at the address below:

Miltenyi Biotec GmbH, Friedrich-Ebert-Str. 68, 51467 Bergisch Gladbach, Germany, [macs@miltenyibiotec.de](mailto:macs@miltenyibiotec.de)