

TERMS AND CONDITIONS OF SALE

Between

ReSyn Biosciences (Pty) Ltd

Registration Number: 2012/173652/07

“ReSyn/Our/We/Us”

Chosen Address for delivery of notices:

*ReSyn Biosciences, C/O CSIR Biosciences,
Building 20, Meiring Naude Road,
Brummeria, Pretoria, South Africa, 0184*

Client

“You/Your/the Client”

Chosen Address for delivery of notices:

*The delivery address on your PO or
electronic communication when placing
an order with us.*

Thank You for Your interest in Our Products and technology. Due to the vast variability in samples and conditions We can unfortunately not test Our Products for all intended applications, and highly recommend You try the magnetic beads before purchasing. Please contact www.resynbio.com to enquire about a free sample. **OUR PRODUCTS ARE FOR RESEARCH PURPOSES ONLY AND NOT FOR DIAGNOSTIC OR THERAPEUTIC USE.** You are strongly advised to read Our **Instructions of Use** of the Product on Our website at www.resynbio.com, and in particular the **Recommended Storage** instructions.

These terms and Conditions “Terms/Agreement” create an Agreement between You and ReSyn.

DEFINITIONS

1. “Price” means the amount payable for the Products as set out in ReSyn’s price list from time to time;
2. “Products” means the range of magnetic microsphere technologies and products sold by the Company from time to time and any custom products especially created for you using our Products and IP;
3. "Confidential Information" means all confidential and proprietary information disclosed by one Party (“the Disclosing Party”) to the other (“the Receiving Party”) whether prior to or after date hereof and shall include, without limiting its ordinary meaning, and in respect of the Parties’ respective business affairs and technologies, oral, written, printed, photographically and electronically recorded information of all types, documents, letters, agreements, undertakings, messages, codes, data, formulae, specifications, blueprints, plans, processes, marketing methods, know-how, methodology, intellectual property, trade secrets, projects, projections, cash flow charts, software and copies, notes and extracts, and the strategic plans, financial plans and financial planning process, the direction, manner, timing and implementation of any Services to be undertaken, as well as any information, economic as well as financial, regarding the affairs of a Party to this Agreement which comes to the attention of the other Party pursuant to this Agreement. Confidential information shall not include information which (1) now or hereafter becomes, through no act or omission on the part of the Receiving Party, generally known or available to the public; (2) was acquired by the Receiving Party before receiving such information from the Disclosing Party and without restriction as to use or disclosure; (3) is rightfully furnished to the Receiving Party by a third party without restriction as to use or disclosure; (4) the Receiving Party can document was independently developed by it without a breach of any obligation of confidentiality; or (5) is required to be disclosed pursuant to law with the prior written consent of the Disclosing Party. Any defect in the Products/Business of the other Party and/or dispute between the Parties shall be deemed Confidential Information for purposes hereof;

4. "Intellectual Property" or "IP" means all copyright, whether owned or licensed by any of the Parties, including rights in programmes, data bases and computer software, patents, trademarks, trade names, service marks whether registered or not, business names including Internet domain names, design rights, data base rights, goodwill, know-how and all other intellectual property or similar proprietary rights of whatsoever nature whether registered or not, including applications to register all rights relating to and/or which at the Effective Date or in the future may form part of the intellectual property rights in and to the software, marketing material, Products and/or Services referred to in this Agreement or which may be created, developed or conceived pursuant to this Agreement;
5. "Patents" means the patent applications filed in respect of the Products and technology in various territories worldwide;
6. "Personal Data" means information relating to a person but not limited to information relating to the person's —race, sex, gender, sexual orientation, pregnancy, marital status, nationality, ethnic or social origin, color, age, physical or mental health, well-being, disability, religion, conscience, belief, cultural affiliation, language and birth; education, medical, financial, criminal or employment history; identifying number, pin code, customer or code or number, numeric, alpha, or alpha-numeric design or configuration of any nature, symbol, e-mail address, physical address, cellular phone number, telephone number or other particular assignment which can be decoded to reveal information on the person; blood type, fingerprint or any other biometric information; personal opinions, views or preferences; correspondence that is implicitly or explicitly of a personal, private or confidential nature (or further correspondence that would reveal the contents of the original correspondence); views or opinions of another individual about the person; and the person's name, if it appears with other Personal Data relating to such person or if the disclosure of the name itself would reveal information about the person as contemplated in the Protection of Personal Information Act, Ac 4 of 2013 ("POPI");
7. "Territory" means the geographical area and country that your business operations/laboratories are located in and where you will be using the Products.

ENTIRE AGREEMENT

8. These Terms are the only terms and conditions that will apply to the relationship in terms of which We supply the Products to You and neither of us shall be bound by any agreement, representation, warranty, undertaking, promise or the like not set out herein. No other terms, documents, prior negotiations or Your trading terms will be applicable or override this Agreement;
9. The agreement between us is ONLY created once You receive an email confirmation that We have accepted Your order;
10. We reserve the right to modify, update or replace these Terms at any time in Our sole discretion. The new version shall take effect as soon as it is posted on Our website and the onus is on You to ensure that You are aware of Our latest Terms before placing Your order.

TERM

11. This Agreement shall come into effect on the date of acceptance of your first order and/or date of acceptance hereof, whatever is the earlier and remain in place until terminated by either Party with 30 days' written notice to the other;
12. The termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such termination (such as Confidentiality) or which of necessity must continue to have effect after such expiration or termination, despite that the clauses themselves do not expressly provide for this;

PRODUCTS & THEIR AVAILABILITY

13. Our Products are for research purposes only and not for diagnostic or therapeutic use of any kind;

14. We try to ensure a reasonable quantity of Products are kept and replenished on a regular basis but we may experience stock unavailability for periods. In certain situations, We may use Our reasonable judgment and apportion available Product stock fairly amongst Our customers. If You require large Product quantities, please contact us to make the necessary arrangements before placement of Your order.

PRICES

15. Our Prices exclude any VAT, duties, levies or other government fees that may apply to Your order. If these taxes/fees do apply, it is Your responsibility to pay them. If We pay them, We will add them to Your invoice. If You claim any tax exemption, You must provide a valid, signed certificate or letter of exemption from the relevant authority with Your order or on request;
16. We may change Our Prices at any time. All quotes are only valid for 30 days, unless the quote states differently. If no Price has been specified or quoted to You, the Price will default to be the Product Price as stated on Our website at the time of us receiving Your order.

INVOICING AND PAYMENT

17. We will invoice You on dispatch of Your Product and payment is due 30 days from date of invoice, unless otherwise agreed as stated on Our quotation;
18. We reserve the right to require You to make full or partial payment in advance of delivery;
19. Payment will be made in the currency specified on Our invoice and international SWIFT transaction fees will be for Your account (payment term OUR, please do not use SHA or BEN);
20. Late payment will be subject to 1) interest at the prevailing prime interest rate of First National Bank Ltd in South Africa plus 1.5%; 2) any reasonable costs of collection including agency and legal fees between attorney and own client. We reserve the right to cancel or delay any orders for Products until your account has been settled in full and/or any disputes regarding payment have been resolved;

DELIVERY

21. The Products purchased on our website are inclusive of delivery fees on checkout. If there is an authorised distributor of Our Products in Your territory, delivery will be on terms as determined by such distributor and delivery costs may therefore vary. Please contact Your relevant distributor for their terms of sale and relevant delivery information;
22. Due to the nature of our Products and its specific packaging, once you have placed Your order, we cannot accept any changes/cancellations;
23. We will ship Products to the destination stated in Your purchase order or electronic communication, DAP (Delivered At Place) as defined in the Incoterms 2010 (as amended from time to time) published by the International Chamber of Commerce. This incoterm excludes payments of duties and taxes that may be payable for importation of these Products. These costs may be invoiced separately by the courier or logistics company and will be for your account.
24. Delivery by courier requires a telephone number and name of the person taking delivery. Delay in supplying these details will lead to a delay in Your shipment being delivered for which We don't take responsibility.
25. We may, in Our discretion, make partial shipments and invoice each shipment separately.
26. Our shipping dates are approximate only and may be subject to international public holidays. Although We try Our best to expedite delivery, delays due to customs clearance or factors beyond Our control may delay delivery for which we cannot be held liable.
27. We are not liable for any loss or damages resulting from any delay in delivery. Risk of loss of the Products will pass to You when they are delivered to Your facility. Alternatively, if You prefer to use Your own carrier, risk of loss or damage passes to You when it is collected at Our facility.
28. Products remain our property until paid for in full by You.

WARRANTY & LIABILITY

29. We warrant only that each reagent or consumable will meet its minimum specification as indicated on the Product label until the expiry date, based on Our internal quality control procedure. Product performance may vary based on the conditions You use it under and that will be your sole responsibility as it is beyond ReSyn's control. Please contact us prior to use if You are unsure about the performance of the Product in Your specific conditions or request a free sample for Your evaluation prior to purchasing. **We strongly recommend that you make use of Our Instructions for the Use of the Product on Our website at www.resynbio.com and in particular the Recommended Storage instructions.**
30. ANY WARRANTY IS FOR YOUR BENEFIT ONLY AND IS NOT TRANSFERABLE TO ANY OTHER ENTITY OR PERSON. OUR OBLIGATION TO REPLACE A PRODUCT IS YOUR ONLY REMEDY IN TERMS HEREOF. WE DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND/OR THAT THE PRODUCTS ARE FREE FROM ERROR, OR WILL ACCOMPLISH ANY PARTICULAR RESULT, AS FAR AS LEGALLY PERMISSIBLE.
31. Notwithstanding anything else stated in this Agreement, Our total liability (whether in contract, delict (including negligence) or otherwise with regard to this Agreement, the Products, and any other items furnished under this agreement will in no event exceed the total monetary compensation paid by You to Us under this Agreement in the preceding 6 (six) months.
32. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE WILL NOT BE LIABLE FOR ANY INDIRECT AND/OR CONSEQUENTIAL DAMAGES THAT YOU MIGHT INCUR UNDER THIS AGREEMENT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH OUR PRODUCTS OR SERVICES, AND WE DO NOT WARRANT THAT OUR PRODUCTS ARE FIT FOR YOUR PURPOSES IF IT IS TO BE USED FOR OTHER THAN IS SPECIFIED ON OUR WEBSITE.
33. During the warranty period (until the expiry date stated on the product), for Products not meeting Our specifications, We agree, in Our sole discretion, to replace the non-conforming Product, subject to our Warranty and Returns Policy. Please inform us via e-mail to info@resynbio.com when You discover any defect or non-conformance, and include clear details of the non-conformance. We will then decide on an appropriate action such as returning the Product for evaluation, replacing the Product, issuance of a refund etc. We do not support or make any warranties about Products used for a purpose for which they are not intended, and/or are modified by third parties.

DEFECTIVE PRODUCTS

34. Products are couriered to Your door. Although We take care when packaging and shipping, Products may be damaged in transit to Your facility. Please contact info@resynbio.com within 7 days of receiving Your Product if it has been damaged. We must approve all returns of any Product that is damaged or defective, but expressly exclude defects caused by You and any failure by You to handle or store Products using reasonable care/as otherwise indicated on the label. Failure to contact us within 7 days will deem the Product to be accepted as undamaged and we will not entertain any late claims;

BREACH

35. If You breach any of the terms of this Agreement, We may immediately cancel this Agreement and/or any open orders without penalty in addition to any other remedies We have in law.

DISPUTES

36. Any dispute arising from this Agreement and the relationship between the Parties. The party declaring the dispute shall do so in writing to the other Party. Senior management representatives of each of the Parties shall then make themselves available within 14 (fourteen) business Days of the dispute being declared to meet with one another and attempt to resolve the dispute in an amicable manner. If this is unsuccessful and the dispute is not resolved within 14 (fourteen) days after the meeting, the Parties will proceed to appoint a mediator (elected by the Parties) within a further 7(seven) days, who shall attempt to mediate a settlement of the dispute between the Parties within 30(thirty) days from date of his appointment. If there is still no settlement, the Parties may refer the matter to a competent court with jurisdiction in South Africa. The provisions of this clause are severable from the rest of this Agreement and shall survive the termination or cancellation of this Agreement.

INDEMNIFICATION

37. ReSyn shall in no event whatsoever be liable for any direct, indirect, punitive, incidental or consequential damage to property or life, arising out of or connected with Your incorrect use (or misuse) of its Products as far as is legally permissible.
38. In the event that a third Party institutes a claim against you alleging an infringement of a third Party's IP of Product we supplied to you (due to no fault of your own) and specifically excluding 1) when You have used or combined Our Product with another which causes the infringement; 2) claims that arose based on Your failure to comply with the terms of this Agreement; 3) claims that arose based on Your failure to acquire any applicable additional IP rights related to Your use of the Products; 4) customised Products that We made on Your instructions, specifications, or other directions; 5) Your use or re-sale of Products in breach of these Terms; 6) modifications made by You or any third-party to the Products; 7) if You were aware of potential infringement claims and omitted to notify us as soon as reasonably possible; 8) You did not allow us to take over any action and solely deal with the settlement of any claims, and/or obstructed or did not provide and co-operate with us in providing information or assistance to defend the claim as may be needed, we will indemnify you in full subject to you allowing us to take over such claim
39. This indemnity will however be the ONLY LIABILITY WE HAVE TO YOU IN THIS EVENT AND YOUR SOLE REMEDY FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS BY, OR IN CONNECTION WITH, ANY PRODUCT, READ WITH THE EXCLUSIONS IN CLAUSE 38 ABOVE.
40. If a third-party makes a claim against Us for infringement of its IP rights based on Our manufacture or sale of a Product or custom Product We make under Your instructions, specifications, or using materials that You provide to us, Your failure to acquire any applicable additional rights to use our Products, or Your modification, use or re-sale of a Product in breach of this Agreement, You hereby indemnify and hold us harmless from any and all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees and other costs of defending and/or settling any action) that We may have to pay as a result of such claim which was due to no fault of Ours.

INTELLECTUAL PROPERTY

41. We own/license all IP rights relating to Our Products and services exclusively and nothing in this agreement limits Our ability to enforce Our IP rights and nothing in this Agreement grants any rights not specifically mentioned here. Our sale of Products to You grants You a limited, non-transferable right to use the quantity of Products purchased for Your internal research purposes. NO RIGHT TO TRANSFER, DISTRIBUTE OR RE-SELL OUR PRODUCTS IS GRANTED OR IMPLIED. We do not confer any rights to use Our Products for commercial applications, including manufacturing, quality control or any other commercial services such as fee for service platforms. If You are interested in obtaining commercial rights to Our Products, please contact info@resynbio.com;

42. We own all IP-rights in any inventions (patentable or otherwise), patents, discoveries, improvements, data, know-how, or other results that are conceived, developed, discovered, reduced to practice, or generated by Our team in the process of supplying Products of services to You.;
43. Due to the vast number of applications of Our Products, We do not accept any liability for You infringing IP rights of third parties in your application of Our Products and You hereby indemnify Us in full against any and all claims howsoever arising in this regard. It is Your responsibility to acquire any additional rights from third parties for Your intended application and we do not warrant that your intended use is possible, lawful and/or does not infringe third party rights;
44. We are committed not to knowingly breach any third party IP, however if it did happen and is discovered, or if there is reason to believe a Product We have sold to You may be infringing on third party intellectual property (due to Our oversight or fault), You must allow us to rectify the breach by notifying us no later than 48 hours after such becomes known to you, to make suitable corrections (at Our sole discretion), to either secure the right to continue using the Product; substitute the Product with another suitable Product with similar functionality or allow You to return the Product to us for a full refund;
45. This clause will survive termination or cancellation of this Agreement.

CUSTOM MADE PRODUCTS

46. If You request us to manufacture a custom-made Product for you, we reserve the right to decline to design or manufacture that Product at any stage of the process if we feel in our sole discretion that the Product is unsuitable or commercially unfeasible to manufacture as specified/required. If so, We will notify You, and You will not be obligated to pay any fees for any expenses We incurred in connection with the declined Product, and delay or cancel a custom Product's delivery without any liability. Similarly, we will have no liability to you for any loss or damage or whatsoever nature arising from such cancellation;
47. By requesting us to manufacture a custom Product for You, You agree that You have provided us with all the information You are aware of and/or in your possession or within your best knowledge regarding any hazards, whether these are biological, radiological, chemical or otherwise, associated with the handling, transport, exposure to, or other use of the materials You will be supplying to us to use and have all the required rights, (such as but not limited to IP rights, to allow you to commission the manufacture of such Custom Product and indemnify us in full for any loss or damage suffered (including claims by employees due to injury or death) in respect of your breach of these undertakings. We may require proof of such rights before starting production on any custom Products.
48. This clause will survive termination or cancellation of this Agreement.

PERSONAL DATA

49. Personal Information will be held on files which are kept in a database located at the head office in South Africa, that can be accessed electronically and is controlled by Our administrative staff.
50. You may contact Our Information Officer, at any time for more information about Our Privacy and Data Protection Policy.

REGULATORY

51. In addition to the restrictions set out in this Agreement, You agree to use the Products in accordance solely and completely within Our instructions made available with the Products from time to time and are solely responsible for making sure that the way You use Our Products complies with all applicable laws, regulations and governmental policies in Your Territory. You must obtain all necessary approvals and permissions You may need and it is Your sole responsibility to make sure the Products are suitable for Your particular use.

52. You hereby indemnify ReSyn in full against any and all liability howsoever arising from your breach of clause 51 above.

FORCE MAJEURE

53. We will not be responsible or liable for failing to perform Our obligations under the Agreement to the extent caused by circumstances beyond Our reasonable control, including (but not limited to), acts of God, riots, civil insurrection, acts of a public enemy, accidents, acts of a civil or military authority, floods, earthquakes or winds, or similar situations.

SEVERABILITY

54. If any provision of this Agreement or of any part hereof to any extent is or becomes invalid or unenforceable, the Parties shall agree upon such adjustments as are necessary and reasonable in order to ensure continued delivery of the unaffected portions and to secure the vital and strategic interests of the Parties, taking into account the main objectives prevailing at the time of execution of this Agreement;

CONFIDENTIALITY

55. You agree to keep confidential all Confidential Information and not divulge the confidential information to any person, including any of its Staff, (save for Staff directly involved with the execution of this Agreement) for the duration hereof and a period of 3 (three) years after termination of this Agreement, except if required by law in which case it will notify the other Party of such request first to allow it to contest it;

56. The recipient of Confidential Information shall return same or at the discretion of the original owner thereof, destroy such confidential information, and shall not retain copies, samples or excerpts thereof on request.

57. The following information will, for the purpose of this Agreement, not be considered to be confidential information: 1) information that can be proved was known to either of the Parties prior to the date that it was received from the other Party; or 2) information known to the public or generally available to the public prior to the date that it was disclosed by either of the Parties to the other; or 3) information which becomes known to the public or becomes generally available to the public after the date that it was disclosed by either of the Parties to the other, through no act or failure to act on the part of the recipient of such information; or 4) information which either of the Parties, in writing, authorises the other to disclose; 5) can be proven by documentary proof was developed independently of the Confidential Information

NOTICES

58. Any notice or communication must be in writing (in ink on paper), and sent by courier or hand delivered, and will be deemed received when delivered and signed for by an adult at the chosen address as set out on Page 1 of this. No waiver, consent, modification, amendment or changes to the terms of the Agreement will be binding unless in writing and signed by both parties (writing means in ink and on paper). Our failure to object to terms contained in any subsequent communication from You will not be a waiver or modification of Our Agreement. Delivery by normal post will NOT be accepted.

GENERAL

59. You may not delegate any duties nor assign any rights or claims hereunder without Our prior written consent;

60. This agreement will be governed by the laws of South Africa and any dispute arising from this agreement shall be adjudicated by a competent high court in South Africa;

61. Any action arising under this agreement must be brought within one year from the date that the cause of action arose;

62. The U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded;
63. If any provision of this agreement which is prohibited, or which is held to be void or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof;
64. Reference to "days" shall be construed as calendar days. Any reference to a "month" shall mean a calendar month;
65. Reference to "this Agreement" means this Agreement as amended from time to time, and all annexures and schedules thereto. Prior drafts of this Agreement shall not be admissible in any proceedings as evidence of any matter relating to any negotiations preceding the Agreement date;
66. Any reference in this Agreement to legislation or subordinate legislation or to any other agreement is to such legislation or subordinate legislation or any other agreement at the date hereof and as amended and/or re-enacted from time to time.
67. It is hereby also explicitly stated and guaranteed that both signatory Parties hereto have extensively perused the terms of this Agreement and have reconciled themselves therewith, thus accepting it as a true reflection of the full meeting of their minds;
68. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next Business Day;
69. For the avoidance of doubt, it is specifically recorded that any amendment to or variation or deviation from this Agreement must be specifically identified, recorded as such in writing and signed by a director of ReSyn in order to be effective against either Party. Writing for purposes of this clause shall mean in ink on paper and exclude writing as contemplated in sec 12 and 13(1) of the Electronic Communications and Transactions Act, Act 25 of 2002 as amended from time to time;
70. This Agreement shall be binding on and enforceable by the heirs, trustees, estates, executors, administrators, liquidators and/or assigns of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall also be to them, as the case may be;
71. No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this agreement, and which either party ("the grantor") may grant or show to the other party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right;
72. No waiver on the part of either party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision;
73. This Agreement may be executed in any number of counterparts and by the different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together, shall constitute one and the same agreement;
74. Each Party warrants to the other Party that it has power, authority and legal right to agree to and perform in terms of this Agreement and that this Agreement has been duly authorised by all necessary actions of its trustees and constitutes valid and binding obligations on it in accordance with the terms of this Agreement.