

Bioquell Inc.

Standard Terms and Conditions for the Sale of Goods & Supply of Services (version: [December 2010])

1. INTERPRETATION

In these Conditions, unless the context otherwise requires:

- 1.1. **'Authorized Representative'** means the individual or individuals of the Seller who are identified in Writing to Buyer as having the authority to enter into binding obligations on behalf of Seller with respect to the delivery of Goods and Services in accordance with the Conditions;
- 1.2. **'Conditions'** means the terms and conditions in this document;
- 1.3. **'Contract'** means an agreement in Writing between the Buyer and the Seller pursuant to which the Seller provides Goods and/or Services to the Buyer in accordance with the Conditions set forth herein and such other Special Terms that are applicable to such agreement;
- 1.4. **'Goods'** means the goods which are the subject of the Contract, including any software supplied;
- 1.5. **'Seller'** means Bioquell Inc., a Delaware corporation;
- 1.6. **'Services'** means the services which are the subject of the Contract;
- 1.7. **'Special Terms'** means any special terms and conditions of the Contract agreed in Writing by the Buyer and an Authorized Representative of the Seller; and
- 1.8. **'Writing'** means any communication in writing such as letter, fax or e-mail between the Buyer and an Authorized Representative of the Seller.

2. BASIS OF CONTRACT FOR SALE

- 2.1. The Seller shall sell to the Buyer, and the Buyer shall purchase from the Seller, Goods and/or Services in accordance with these Conditions, to the exclusion of all other terms and conditions (whether of the Buyer or otherwise) provided that any Special Terms which contradict these Conditions shall prevail over these Conditions.
- 2.2. No order submitted by the Buyer shall be deemed to be accepted by the Seller and no Contract for the supply of Goods or Services shall arise unless and until an order submitted by the Buyer is confirmed in Writing by an Authorized Representative of the Seller.
- 2.3. No Special Terms or any other variation to these Conditions or any applicable Contract shall be binding upon the Seller unless agreed to in Writing between the Buyer and an Authorized Representative of the Seller.
- 2.4. The Buyer acknowledges and agrees that it does not rely on any representations, warranties (express or implied), advice or recommendations, of any kind or nature, made or given by or on behalf of the Seller which are not expressly set out in these Conditions or any Special Terms.

3. ORDERS, QUOTATIONS AND SPECIFICATIONS

- 3.1. The Buyer is responsible for: (a) the accuracy of the terms in any order; (b) where applicable, for ensuring that any specifications in any quotation from the Seller are complete and correct and/or meet the requirements of the Buyer; and (c) for giving the Seller accurate, complete and correct information relating to the Buyer's requirements for Goods and Services.
- 3.2. Any quotation given by the Seller incorporates

these Conditions. However, no Contract shall exist, and no obligations or commitment on the Seller shall arise, in respect of any quotation by the Seller unless and until an order by the Buyer, specifically referring to that quotation, shall have been accepted by an Authorized Representative of the Seller. Upon the Seller's acceptance of the Buyer's order, along with any modifications contained in the Seller's acceptance of such order, a Contract incorporating these Conditions shall exist.

- 3.3. All samples, drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of these Conditions or any Contract for Good or Services. For the avoidance of doubt, the terms of Section 2.4 shall apply to all such materials.
- 3.4. The Seller reserves the right to change any specifications of Goods or Services after the formation of a Contract to conform with any applicable safety or other statutory or regulatory requirements or when such change does not materially and adversely affect the quality or performance of such Goods or Services.
- 3.5. The Buyer shall indemnify and hold the Seller harmless from and against any and all claims, losses, expenses, costs, damages and liabilities, of any kind or nature, including reasonable attorneys' fees, incurred, caused or occasioned by, in connection with or arising out of any Contract between the parties caused by the negligence, intentional act or breach of the Buyer's obligations under such Contract and these Conditions, including, without limitation, if the Buyer cancels the Contract, fails to timely pay the Seller or defers all or part of the Seller's delivery of Goods or Services under such Contract.

4. PRICE OF THE GOODS OR SERVICES

- 4.1. The price of the Goods or Services shall be the Seller's price in any relevant quotation or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list existing on the date of the Seller's acceptance of the Buyer's order.
- 4.2. The Seller reserves the right, by notice in Writing to the Buyer at any time, to increase the price of Goods or Services to reflect any increase in the cost to the Seller of manufacture or supply which is due to any cause beyond the reasonable control of the Seller, increases in applicable commodities costs, and/or where there is, at the request of the Buyer, any change in delivery dates, quantities or specifications and/or where there is any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3. Unless otherwise agreed in Writing all the Seller's prices are exclusive of any delivery, installation or similar costs, and where the Seller arranges transportation on behalf of the Buyer, the Buyer shall be liable for all of the Seller's charges for such transportation, packaging, and insurance, and

where the Seller installs Goods, the Buyer shall pay the Seller's charges for installation. All prices, charges and costs are exclusive of any applicable sales, withholding or other similar tax, which taxes shall be paid by the Buyer.

5. TERMS OF PAYMENT

- 5.1. Unless otherwise agreed in Writing, the Seller shall invoice the Buyer for the price of the Goods or Services, and all other relevant charges, as follows: (a) where Goods are shipped to the Buyer, on or at any time following the shipment of the Goods for delivery to the Buyer; (b) where Goods are being picked up by the Buyer, on or at any time following the time such Goods are made available for pick-up by the Buyer; or (c) for Services, at the time the Seller makes such Services available to the Buyer. Invoicing will occur whether or not the Buyer takes delivery of the Goods or the Seller is unable to gain access, or is otherwise restricted from access, to the location where the Services are to be provided.
- 5.2. The Buyer shall pay the full price of the Goods or the Services without deduction or set-off within 30 days of the date of the Seller's invoice, time being of the essence. The Buyer shall pay interest on past due amounts (both before and after any judgement) at a rate of 1.5% per month.
- 5.3. If the Buyer fails to make any payment and/or accept delivery of the Goods or provision of the Services on the due date then, without prejudice to any other rights and remedies available to the Seller at law or equity, and in addition to charging interest on the past due amounts, the Seller shall be entitled to:
- a) treat the Buyer's failure as wrongful termination or repudiation of the Contract without due cause; and/or
 - b) suspend any further deliveries of Goods or provision of Services to the Buyer pending payment.

6. DELIVERY

- 6.1. Unless otherwise agreed in Writing, delivery of the Goods shall be made to the Buyer at the Seller's premises at a time notified by the Seller following consultation (where appropriate) with the Buyer.
- 6.2. Unless otherwise agreed in Writing, provision of the Services shall be made at the premises set out in the Buyer's order on the date agreed between the parties.
- 6.3. Delivery shall be deemed to be effective and risk of loss and/or damages in Goods shall pass:
- a) in the case of Goods to be collected by the Buyer or the Buyer's agents, when the relevant Goods are loaded on to the vehicle collecting them;
 - b) in the case of Goods shipped, at the time the Goods are provided to the carrier; and
 - c) provided always that if Goods are not collected by or for the Buyer or if the Buyer fails to accept delivery at the agreed date at the time notified by the Seller, without prejudice to the Seller's other rights and remedies at law and equity, such Goods may be stored (at the Buyer's expense and at the Buyer's risk of loss or damage) with the Seller having the right to dispose of the same following notice to the Buyer.
- 6.4. Any dates quoted or agreed for delivery of Goods or provision of Services are approximate only, and

the Seller shall not be liable for any delay in delivery of the Goods or provision of the Services however caused. Delivery dates may be altered by the Seller where the Buyer fails to fulfil its obligations under a Contract. In any event, the Seller shall be under no liability whatsoever for any delay in delivery of Goods or provision of Services or for the performance of any Contract. Goods may be delivered by the Seller in advance of the agreed delivery date upon giving reasonable notice to the Buyer.

- 6.5. Where goods are to be delivered in installments, each delivery shall constitute a separate Contract, and failure by the Seller to deliver any one or more installment in accordance with the Contract, or any claim by the Buyer in respect of any one or more installments, shall not entitle the Buyer to treat the Contract as a whole as repudiated, provided always that any failure by the Buyer to make payment for and/or accept delivery of Goods in any installment shall entitle the Seller to invoke condition 5.3 above.
- 6.6. Without prejudice and subject to the terms of any Conditions which otherwise exclude or limit the liability of the Seller, and subject to the Buyer's duty to mitigate its loss, the Seller's liability under any Contract for any failure or delay of delivery of Goods or Services shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods or services to replace those not delivered or provided or those in respect of which the complaint is made over the price of the Goods or Services or the Contract price of the Goods or Services not delivered or provided, whichever is the lower. NOTWITHSTANDING ANY OTHER PROVISION OF THESE CONDITIONS OR ANY SPECIAL TERMS, THE SELLER SHALL NOT BE LIABLE TO THE BUYER FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR LOSS OF ANTICIPATED PROFITS, ON ACCOUNT OF OR ARISING OUT OF ANY BREACH OR ALLEGED BREACH OF ANY OBLIGATIONS UNDER THESE CONDITIONS, ANY SPECIAL TERMS OR THE APPLICABLE CONTRACT.

7. RISK AND PROPERTY

- 7.1. Notwithstanding delivery and the passing of risk in Goods, and/or any other provision of these Conditions, ownership and title in Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the relevant Goods and all other sums which are or which become due to the Seller from the Buyer on any account.
- 7.2. Until such time as the ownership and title in Goods passes to the Buyer:
- a) the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property;
 - b) the Buyer shall be entitled to use the Goods in the ordinary course of its business; provided, that until ownership and title has passed to the Buyer, the Seller shall be entitled at any time to require the Buyer to return the Goods to the Seller and, if the Buyer fails to do so,

- the Seller may enter upon the Buyer's premises where the Goods are stored and repossess the Goods; and
- c) the Buyer grants the Seller and its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or where the Buyer's right to possession has terminated to recover them.
- 7.3. The Buyer shall not pledge or otherwise encumber by way of security interest or otherwise any of the Goods until such time as ownership and title passes to the Buyer. In the event of any breach of this section, all amounts then due and owing from the Buyer to the Seller shall become immediately due and payable.
- 8. WARRANTIES AND LIABILITY**
- 8.1. The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- a) any breach of these Conditions or any Special Terms;
- b) any use made or resale by the Buyer of any of the Goods or Services, or of any product incorporating any of the Goods or Services; and
- c) any representation, statement or tortious act or omission, including negligence, arising under or in connection with any Contract.
- 8.2. The Seller warrants that:
- a) the Goods will correspond with the description in the Seller's quotation;
- b) the Services shall be provided with reasonable care and skill; and
- c) the Goods will be free from defects in material and workmanship.
- 8.3. The above warranties are given by the Seller subject to the following conditions:-
- a) all warranties expire 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire;
- b) the Seller has no liability arising from any defect in the Goods or Services caused in whole or in part from any drawing, design specification or information supplied by the Buyer;
- c) the Seller has no liability arising from any defect caused from reasonable wear and tear, or any wilful damage, negligence, subjection to abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party;
- d) the Seller shall be under no liability under the above warranties (or any other warranty, condition or guarantee express or implied) if the total price for the Goods or Services has not been paid in full by the due date for payment; and
- e) the above warranties do not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any warranty or guarantee given by the manufacturer to the Seller to the extent that the same is exercisable by or on behalf of any third party such as the Buyer.
- 8.4. Except as expressly provided in these Conditions, all warranties, conditions or other terms expressed or implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.5. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or Services or their failure to correspond with the Contract must (in order to give rise to any rights of the Buyer) be notified in Writing to the Seller within 7 days from the date of delivery of the Goods or provision of the Services, and the Buyer shall, within 7 days of delivery of the Goods or provision of the Service, test the Goods or Services to ensure that they comply (or do not comply, as applicable) with the Contract. If the Buyer does not notify the Seller accordingly, the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price on the basis that the Goods or Services had been delivered or provided satisfactorily in accordance with the Contract.
- 8.6. Where any valid claim in respect of any of the Goods or Services which is based on any defect of quantity, quality or condition of the Goods or Services, or their failure to correspond with the Contract, is notified to the Seller in accordance with these Conditions, the Seller shall, at its sole option, be entitled to repair or replace the Goods or re-perform the Services or refund the price of such Goods or Services, but the Seller shall have no further liability to the Buyer.
- 8.7. Any test or inspection of the Goods above the Seller's usual or routine tests or inspection, and which is agreed to by the Seller in Writing, shall be at the sole cost and expense of the Buyer.
- 8.8. Nothing in these conditions excludes or limits the liability of the Seller:
- a) for death or personal injury caused solely by the Seller's gross negligence or wilful misconduct;
- b) for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
- c) for fraud or fraudulent misrepresentation.
- 8.9. Subject to condition 8.8:
- a) the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract, shall be limited to the price of the Goods or Services in connection with the Contract;
- b) the Seller shall not be liable for any damages to the extent any such damage was caused by the acts or omissions of the Buyer or its employees, agents, consultants or other representatives;
- c) the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (however caused) which arise out of or in connection with the Contract.

9. INSOLVENCY OF BUYER

If:

- a) the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or an involuntary bankruptcy action is initiated against the Buyer, or the Buyer is not generally paying its debts as they become due, or there is a material adverse change in the Buyer's financial position; or
- b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract, these Conditions or any other contract between the Seller and the Buyer; or
- c) the Buyer encumbers, in any manner, any of the Goods; then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries or performance under the Contract without any liability to the Buyer, and if Goods have been delivered or Services have been performed but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Buyer's right to possession of the Goods shall terminate immediately.

10. PROVISION OF SERVICES ON AGREED PREMISES

10.1. Where Goods are to be installed or Services are to be provided on agreed premises:

- a) The Buyer shall ensure that all necessary services (such as electricity) and facilities (in each case to the standard required by the Seller) are provided at the Buyer's expense and that the relevant site in all ways complies with the requirements of the Seller and is suitable for the relevant installation or Services (including, but not limited to, ensuring structural stability);
- b) The Buyer shall indemnify the Seller against any and all loss, damage, injury, cost or expense whatsoever sustained by the Seller or its employees or agents or caused to the Buyer or its employees, agents, visitors, contractors or licensees which occur while the Seller's employees or agents are working at the premises, in any way in connection with the performance by the Seller of its obligations under the Contract; and
- c) Unless otherwise agreed in Writing, the Seller and its employees and agents shall be given full access to the Buyer's premises as necessary for the provision of the Goods or Services. All materials and Goods on site, whether attached or unattached, are at the sole risk of the Buyer as to loss or damage.

10.2. Any variation covering work by the Seller's subcontracting agents must be given by the Buyer to the Seller in Writing, and no liability is accepted

by the Seller for delays or additional costs incurred where instructions are given by the Buyer directly to the Seller's subcontractors or agents.

- 10.3. Unless otherwise agreed in Writing, all work to premises where installation of Goods or provision of Services is to take place are to be effected by the Buyer or its authorized agents. All floors shall be flat and level and the location of all wiring or HVAC systems and other services and facilities clearly notified to the Seller in Writing by the Buyer. Any variations to Goods or Services and/or further expense to the Seller (e.g. labor charges) incurred by the Seller as a result of the Buyer's failure to comply with this Condition shall be for the Buyer's account. The Seller shall not be liable for the cost of repairing any damage to the said premises howsoever caused by the Seller or its employees or authorized agents or subcontractors.
- 10.4. The Buyer is responsible for complying with all applicable laws, rules and regulations applicable in the country, state and locality where the Goods or Services are supplied.

11. EXPORT TERMS

11.1. In these Conditions, 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce, as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

11.2. Where Goods or Services are supplied for export from the United States, the following provisions shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply in addition to any other provision of these Conditions (and so that in the event of contradiction these following provisions shall, subject as aforesaid, apply):

- a) the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them;
- b) unless otherwise agreed in Writing, the Goods shall be delivered f.o.b. the air or sea port of shipment; and
- c) the Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. If the Buyer does not so test or attend any testing carried out by the Buyer, the Seller's report or testing shall be accepted by the Buyer, and the Seller shall have no liability for any claim in respect of any defect in Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage or loss during transit.

12. FORCE MAJEURE

12.1. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods due to any cause beyond the Seller's reasonable control, such as, by way of example only:

- a) Act of God, explosion, flood, tempest, fire or accident; war or civil disturbance; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); and
- b) any actions or restrictions on the part of any governmental or local authority; import or export regulations or embargoes; difficulties in obtaining raw materials, labor, fuel parts or machinery; power failure or breakdown or malfunction of machinery.

13. GENERAL

- 13.1. The Seller is a member of the group of companies whose holding company is Bioquell PLC, and the Seller may at its sole discretion perform any of its obligations or exercise any of its rights hereunder itself or procure or permit any other member of its group to do the same, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 13.2. The Seller may assign a Contract or any part of it, or subcontract any of its obligations under the Contract, to any person, firm or company. The Buyer shall not be entitled to assign a Contract or any part of it without the prior written consent of the Seller.
- 13.3. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been provided pursuant to this provision to the party giving the notice and shall be effective on the business day of actual receipt or, if received otherwise than on a business day, on the next business day.
- 13.4. No failure or delay on the part of the Seller in exercising its rights under a Contract shall constitute a waiver of those rights, and a waiver shall only occur on the part of the Seller when a right is specifically waived in Writing by an Authorized Representative of the Seller, and until that occurs, the Seller may exercise those rights at any time. Furthermore, no failure or delay or waiver by either party in exercising any of its rights under a Contract shall be deemed to be a waiver of any other rights available to that party, and no waiver by either party of any breach of a Contract by the other party shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.5. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 13.6. The Contract shall be governed by the laws of the Commonwealth of Pennsylvania, and the parties agree to submit to the exclusive jurisdiction of any state court of competent jurisdiction in Montgomery County, Pennsylvania, or the U.S. District Court for the Eastern District of Pennsylvania.