

**1 INTERPRETATION**

- 1.1. In these Conditions unless the context otherwise requires:
- 1.2. **'Buyer'** means the person whose written order for Goods or Services is accepted in Writing by the Seller and **'Contract'** means the contract arising from such acceptance;
- 1.3. **'Goods'** means the goods which are the subject of the Contract including any software supplied;
- 1.4. **'Seller'** means Bioquell UK Limited, a company registered in England and Wales under number 2520270 whose registered office is at 52 Royce Close, Andover, Hampshire SP10 3TS;
- 1.5. **'Conditions'** means the terms and conditions in this document;
- 1.6. **'Services'** means the services which are the subject of the Contract; and
- 1.7. **'Special Terms'** means any special terms and conditions of the Contract agreed in Writing between the Buyer and the Seller.
- 1.8. **'Writing'** means any communication in Writing such as letter, fax, e-mail, SMS or internet.

**2 BASIS OF SALE**

- 2.1. The Seller shall sell and the Buyer shall purchase 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 confirmed in Writing by the Seller.
- 2.3. No variation to these Conditions or any Contract shall be binding unless agreed in Writing between the Buyer and the Seller.
- 2.4. The Buyer acknowledges that it does not rely on any representations, warranties, advice or recommendations made or given by or on behalf of the Seller which are not set out in the Contract.

**3 ORDERS, QUOTATIONS AND SPECIFICATIONS**

- 3.1. The Buyer is responsible for the accuracy of the terms in any order and where relevant for ensuring that any specifications in any quotation from the Seller are correct and/or meet the requirements of the Buyer and for giving the Seller all information relating to its requirements for Goods and Services.
- 3.2. Any quotation given by the Seller shall incorporate these Conditions but no obligations or commitment on the Seller shall arise in respect of a quotation unless and until an order, specifically referring to that quotation, shall have been placed with and accepted by the Seller in accordance with these Conditions.
- 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 the Contract and this is not a sale by sample.
- 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 disadvantage the quality or performance of such Goods or Services.

- 3.5. If the Buyer cancels the Contract or defers all or part of its delivery or breaches any of its obligations thereunder, the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages and expenses incurred by the Seller as a result of any such cancellation, deferral or breach.

**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 current at the date of 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 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 ex works, and where the Seller arranges transport on behalf of the Buyer, the Buyer shall be liable for all the Seller's charges for transport, 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 value added or sales, withholding or other similar tax, which shall be for the Buyer's account.

**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 on or at any time after despatch of the Goods or provision of the Services, except that where Goods are to be collected by the Buyer or the Buyer fails to take delivery of the Goods or the Seller is unable to gain access to the premises whether the Services are to be provided or is otherwise restricted from providing the Services, the Seller shall be entitled to raise an invoice at any time after notifying the Buyer that the Goods are ready for collection or the Services can be provided or the Seller has offered delivery of the Goods or the provision of the Services or stated that they are ready for delivery.
- 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 for any payment by the Buyer shall be of the essence of any Contract.
- 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 available to it, the Seller shall be entitled to:
  - a) treat the Buyer's failure as wrongful termination or repudiation of the Contract without due cause or suspend any further deliveries of Goods or provision of Services to the Buyer pending payment; and/or
  - b) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above The Royal Bank of Scotland Group Plc's base rate from time to time, until payment in full is made.

## **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 after notification by the Seller that the Goods are ready for collection or delivery.
- 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. Unless otherwise agreed between the parties, 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 delivered by the Seller or its agents otherwise than at the Seller's premises when the Goods are unloaded at the address nominated by or on behalf of the Buyer; 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 they will be stored (at the Buyer's expense and risk of loss or damage) with the Seller having the right to dispose of 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 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 instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver anyone or more instalment in accordance with the Contract or any claim by the Buyer in respect of any one or more instalments 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 instalment 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.

## **7 RISK AND PROPERTY**

- 7.1. Notwithstanding delivery and the passing of risk in Goods, and/or any other provision of these Conditions, the property 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 property 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 resell or use the Goods in the ordinary course of its business, but provided the Goods are still in existence and have not been resold, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods; and
  - c) the Buyer grants the Seller, 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 charge by way of security any of the Goods which remain the property of the Seller, but if the Buyer does so all money owing by the Buyer to the Seller in respect of such Goods shall (without prejudice to any other right or remedy of the Seller) forthwith become 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;
  - 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 the 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 for a period of twelve months from the date of their initial use or twelve months from delivery, whichever is the first to expire.
- 8.3. The above warranties are given by the Seller subject to the following conditions:
  - a) the Seller shall be under no liability in respect of any defect in the Goods or Services arising from any drawing, design specification or information supplied by the Buyer;
  - b) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subsection to abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing and including any operation and/or maintenance manual for the Goods), 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;
  - c) 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 by the due date for payment; and
- d) the above warranty does 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 are exercisable by or on behalf of any third party such as the Buyer.
- 8.4. Subject as expressly provided in these Conditions, all warranties, conditions or other terms 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 quantity, 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 not as relevant) 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 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, shall, unless otherwise agreed, be at a time agreed to by the Seller and at the 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 by the Seller's negligence;
- 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; and
- b) 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**

- 9.1. 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 (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purposes only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed in respect of its business or assets or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of schedule B1 to the Insolvency Act 1986 and as subsequently amended by Schedule 2(i) of the Insolvency Act 2000), or a resolution is passed or a petition is presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; 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 or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 12 of the Insolvency Act 1986 (or as subsequently amended) or the Buyer ceases to trade; or
- c) the Buyer encumbers or in any way charges any of the Goods,
- 9.2. 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 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 all loss damage or injury whatsoever sustained by the Seller's employees or agents or caused to the Buyer, its servants, agents, visitors, contractors or licensees which occur while the Seller's servants or agents are working at the premises in any way in connection with the performance by the Seller of its obligations under this Contract; and
- c) Unless otherwise agreed, the Seller shall deliver thereto the Goods and any materials required or

supply the Services and the Seller's employees or agents shall be given full access to the relevant premises. All materials and Goods on site whether fixed or unfixed 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 authorised 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 (eg labour 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 making good any damage to the said premises howsoever caused by the Seller, its employees or authorised agents or subcontractors.
- 10.4. The Buyer is responsible for complying with all relevant legislation and regulations applicable in the country 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 Kingdom, 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 the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979; 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, either the Services or 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, labour, 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 the 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 the 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 notified 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 the 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 authorised representative of the Seller and until that occurs the Seller may exercise those rights at any time. Further no failure or delay or waiver by either party in exercising any of its rights under the 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 the Contract by the other 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 England and the parties agree to submit to the exclusive jurisdiction of the English courts.