

## STABILITY STORAGE EQUIPMENT SUPPLY TERMS AND CONDITIONS

### 1 Definitions and Interpretation

1.1 In these Conditions the following words and expressions shall have the following meaning:

**Conditions:** means the terms and conditions set out in this document;

**Contract:** means the Suppliers quotation for the Equipment together with the Conditions and (if any) the Controlled Environment Agreement between the Supplier and the Customer;

**Customer:** means the person, firm or company who places an order for the Equipment;

**Delivery:** means the delivery of the Equipment in accordance with Condition 5.1;

**Equipment:** means the stability storage equipment specified in the Supplier's quotation and/or the Customer's purchase order (as approved by the Supplier);

**IPR:** means all patents, rights to Inventions, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, moral rights, rights in confidential information (including know-how and trade secrets and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Services:** means the Equipment-related installation, commissioning and/or training services (if any) specified in the Supplier's quotation and/or the Customer's purchase order (as approved by the Supplier);

**Supplier:** means Source BioScience (Storage) Limited; and

**VAT:** means value added tax chargeable in the territory in which the Equipment and/or Services are provided.

When used in these Conditions the word "include", "includes" and "including" shall mean "without limitation".

### 2 Application of Conditions

2.1 These Conditions shall prevail over any terms or conditions submitted by the Customer or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's purchase order, or the Customer's acceptance of a quotation from the Supplier for Equipment and/or Services, constitutes an offer by the Customer to purchase the Equipment and/or Services specified in it subject to these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than: (i) by a written acknowledgement issued by the Supplier accepting the offer; or (ii) (if earlier) by the Supplier commencing provision of the Equipment and/or Services.

- 2.3 These Conditions do not apply to any design and build services for stability storage equipment provided by the Supplier, the supply of which is governed by a separate agreement.

### **3 Supplier's Obligations**

- 3.1 The Supplier shall use its reasonable endeavours to deliver the Equipment and/or to provide the Services in accordance in all material respects with the quotation and the Customer's purchase order (as approved by the Supplier).
- 3.2 The Supplier shall use its reasonable endeavours to meet any dates for delivery of Equipment and/or performance of the Services which are agreed in writing between the parties but all such dates shall be estimates only and time shall not be of the essence for delivery of the Equipment and/or performance of the Services.

### **4 Customer's Obligations**

- 4.1 The Customer shall:
- 4.1.1 co-operate with the Supplier in all matters relating to the provision of the Equipment and/or Services;
  - 4.1.2 provide the Supplier and its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with such access to the Customer's premises, office accommodation, data and other facilities as is reasonably required by the Supplier to provide the Equipment and/or Services;
  - 4.1.3 be responsible (at its own cost) for preparing and maintaining the relevant premises for the provision of the Equipment and/or Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the provision of the Equipment and/or Services at those premises; and
  - 4.1.4 in advance of the Equipment and/or Services being provided, inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises.
- 4.2 If the Supplier's performance of its obligations under these Conditions is prevented or delayed by any act or omission of the Customer and/or its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay. The Customer shall indemnify the Supplier in full and on demand against any liability arising from death or personal injury to any personnel of the Supplier caused by the Customer's negligence.

### **5 Delivery, Risk & Title**

- 5.1 All deliveries of Equipment shall be on a CIP basis (INCOTERMS 2010) at the delivery address specified in the quotation, unless otherwise agreed between the parties.
- 5.2 Risk in the Equipment shall pass on Delivery. Title in the Equipment shall pass on receipt of payment in full for the Equipment.

- 5.3 Until title in the Equipment passes to the Customer, the Customer shall:
- 5.3.1 hold the Equipment on a fiduciary basis as the Supplier's bailee; and
  - 5.3.2 store the Equipment (at no cost to the Supplier) separately from all other goods in such a way that the Equipment remains readily identifiable as the Supplier's property.
- 5.4 The Customer grants to the Supplier and its agents, subcontractors, consultants and employees the right to enter any premises in order to recover any Equipment where the Customer's right to possession of such Equipment has terminated for any reason.

## **6 Warranties**

- 6.1 The Supplier warrants that:
- 6.1.1 the Equipment shall comply with the Supplier's specification for the Equipment in all material respects for a period of 12 months from the date of delivery; and
  - 6.1.2 it shall provide the Services with reasonable skill and care and in accordance with good industry practice.
- 6.2 The Supplier shall not be in breach of any of the warranties given in Condition 6.1 unless:
- 6.2.1 in respect of Equipment, the Customer notifies the Supplier of the breach within 10 days of Delivery or within 5 days of becoming aware of the defect (where such defect would not have been obvious on the date of Delivery);
  - 6.2.2 in respect of Services, within 20 days of the date on which the Services were provided; and
  - 6.2.3 in respect of Equipment and Services, the Customer provides the Supplier with a reasonable period of time, and no less than 30 days, to remedy the alleged defect.
- 6.3 Should the Supplier decide to replace or repair any allegedly defective Equipment, re-perform any allegedly defective Services or refund the monies received from the Customer in respect of the allegedly defective Equipment and/or Services, this shall constitute the Customer's exclusive remedy for any breach of the warranties given in Condition 6.1.
- 6.4 The Supplier shall not be in breach of any of the warranties where the defect is attributable to an act or omission of the Customer including damage to the Equipment (whether wilful or accidental including any repairs or modifications undertaken by the Customer or with its permission), failing to follow the Supplier's instructions in respect of the installation and/or operation of the Equipment and/or following the directions of the Customer.

## **7 Charges & Payment**

- 7.1 The Customer shall pay the charges as set out in the Supplier's quotation and/or Schedule [3] to the Contract of which these Conditions form part. All charges quoted

to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate.

- 7.2 The Customer shall pay each invoice submitted to it by the Supplier in full and in cleared funds by direct bank transfer within 30 days of receipt (or such other period as is stated in the Supplier's quotation or invoice or Schedule [3] to the Contract of which these Conditions form part (as applicable)) in the currency set out in the Supplier's quotation without any right of set-off, abatement or deduction.
- 7.3 Without prejudice to any other right or remedy, if the Customer fails to pay the Supplier on the due date, the Supplier may take such action as it deems to be necessary to enforce such debt and the Customer shall indemnify the Supplier in full and on demand against such costs, where reasonably incurred.

## **8 IPR**

- 8.1 All IPR in the Equipment and any materials, information or documentation provided by the Supplier to the Customer under or in connection with these Conditions shall remain vested in the Supplier at all times.

## **9 Confidentiality**

- 9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier and any other confidential information concerning the Supplier's business or its products or services.

## **10 Exclusion & Limitation of Liability**

- 10.1 This Condition 10 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:
- 10.1.1 any breach of these Conditions;
  - 10.1.2 the Equipment, the Services or any part of them; and
  - 10.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions (save for section 12 of the Sale of Goods Act 1979).
- 10.3 Nothing in these Conditions limits or excludes the liability of the Supplier:
- 10.3.1 for the death or personal injury resulting from its negligence;
  - 10.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
  - 10.3.3 any other form of damage or liability which cannot be excluded or limited by law.

10.4 Subject to Condition 10.2 and Condition 10.3:

10.4.1 the Supplier shall not be liable for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses including: (i) lost profits, (ii) lost business; (iii) loss of product and/or (iv) third party claims against the Customer; and

10.4.2 the Supplier's maximum aggregate 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 its obligations under these Conditions shall be limited to the price paid/payable for the particular element of the Equipment and/or Services to which the claim relates (provided that the Supplier's liability to the Customer under or in connection with these Conditions shall not exceed £1,000,000 in aggregate).

## 11 Termination

11.1 Either party may terminate the Contract of which these Conditions form part without liability to the other immediately on giving notice to the other if:

11.1.1 the other party fails to pay any amount due under the Contract of which these Conditions form part on the due date for payment; or

11.1.2 the other party commits a material breach of any of the terms of the Contract of which these Conditions form part and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

11.1.3 the other party enters into administration or becomes insolvent.

11.2 On termination of the Contract of which these Conditions form part for any reason:

11.2.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest under and in connection with the Contract of which these Conditions form part and, in respect of Equipment and/or Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and

11.2.2 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

## 12 Entire Agreement

12.1 The Contract of which these Conditions form part constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into the Contract of which these Conditions form part, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than for breach of contract. Nothing in this Condition 12 shall limit or exclude any liability for fraud.

### **13 General**

- 13.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract, or deal in any manner with all or any of its rights or obligations under the Contract of which these Conditions form part.
- 13.2 A person who is not a party to the Contract of which these Conditions form part shall not have any rights under or in connection with it.
- 13.3 Any notice required to be given under the Contract of which these Conditions form part shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party to the address shown on the Supplier's quotation or invoice. Any notice shall be deemed to have been duly received if delivered personally, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 13.4 No variation of the Contract of which these Conditions form part shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 13.5 The Supplier shall have no liability to the Customer under the Contract of which these Conditions form part if it is prevented from, or delayed in performing, its obligations under the Contract of which these Conditions form part or from carrying on its business by acts, events, omissions or accidents beyond its control.

### **14 Governing Law & Jurisdiction**

- 14.1 The Contract of which these Conditions form part, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales. The parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract of which these Conditions form part or its subject matter (save that the Supplier shall be entitled to seek interim relief in any court in any jurisdiction willing to accept jurisdiction to protect its IPR and confidential information).

### **15 Disputes**

- 15.1 If a party to this Agreement has any dispute, difference or question ("a dispute") in respect of the construction of this Agreement, then that party shall deliver by hand or send by certified mail to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.
- 15.2 Within 7 days after the service of the notice of the dispute, the parties shall confer at least once to attempt to resolve the dispute or to agree to methods of resolving the dispute by other means. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute.

15.3 If the dispute has not been resolved within 21 days of the service of the notice of dispute, or such other time as may be mutually agreed by the parties prior to the expiry of 21 days of the service of the notice of the dispute, the parties shall refer the dispute to mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR notice") to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR notice. No party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

## 16 Validity

16.1 If at any time one or more of the provisions of the Contract of which these Conditions form part is or becomes invalid, illegal or unenforceable in any respect under any law or regulation, the validity, legality and enforceability of the remaining provisions of the Contract of which these Conditions form part shall not be in any way affected or impaired thereby.

## 17 Waiver and Exercise of Rights

17.1 A single or partial exercise or waiver of a right relating to the Contract of which these Conditions form part will not prevent any other exercise of that right or the exercise of any other right.

17.2 A party will not be liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right by the other party.