

## 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:

**Change:** means any alteration or any extra work, delay or other circumstance which results in an adjustment to any of the cost, delivery schedule, and/or any other aspect of the Equipment or Services including, without limitation, travel and accommodations costs substantiated by invoices;

**Commissioning:** means on site installation and start-up of the Equipment at Customer's site in accordance with Supplier's standards and verification by Supplier that the Equipment is in substantial conformance with the Specifications;

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

**Contract:** means the Quotation for the Equipment together with these Conditions;

**Credit Note:** means a credit granted by Supplier to Customer for the cost of parts or equipment that Supplier's own supplier has first accepted to refund irrevocably in writing;

**Customer:** means the person, firm or company who places an order for the Equipment and whose name appears as "Customer" on the Quotation;

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

**Documentation:** means the Supplier's user guides, operating manuals, education materials, reports generated by Supplier, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the Equipment or used in conjunction with the Services, whether made available in print, magnetic, electronic, or video format, in effect as of the date (i) the applicable Equipment is shipped to Customer, or (ii) the applicable Service is provided to Customer;

**Equipment:** means the stability storage equipment specified in the Supplier's Quotation and/or the Customer's purchase order (as approved by the Supplier), as well as all hardware, Software, Documentation, supplies, accessories, and other commodities that have been provided or will be provided by Supplier pursuant to the Contract;

**IPR:** means all patents, rights to Inventions, copyright and related rights, trademarks, 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;

**Quotation:** the Suppliers' quotation in which these Conditions are referenced;

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

**Software:** means computer programs and program objects of any kind (including source code and object code), program set-up and customization parameters, tools, and data and the tangible media on which any of the foregoing are recorded (and copies thereof), including middleware and firmware and related updates and upgrades.

**Specifications:** means Supplier's published specifications for the Equipment or Services.

**Supplier:** means, for US Customers, Source BioScience Inc. a corporation formed under the laws of Georgia; and

**Trademarks:** means all applicable trademarks, and service marks legally registered to and claimed or used by Supplier and its affiliates.

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

## 2 Application of Conditions

**2.1** These Conditions supersede and replace in their entirety any and all terms and conditions set forth on the face or reverse side of any purchase order or other document presented by Customer, except for the specific terms of a purchase order outlining the technical scope of requested Services (as approved in writing by the Supplier).

Acceptance of the Quotation shall be deemed given by Customer upon the earlier of its acceptance, confirmation of delivery date, confirmation shipment or other confirmation of performance. The Quotation is conditioned upon Customer's complete acceptance of the Quotation without additions or modifications. THE CONTRACT FOR SALE OF EQUIPMENT AND RELATED SERVICES IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS STATED IN THE CONTRACT, INCLUDING WITHOUT LIMITATION FOR DOCUMENTS USED BY THE PARTIES FOR EASE OF ADMINISTRATION. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY CUSTOMER ARE HEREBY REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY SUPPLIER. NO CONTRACT SHALL EXIST EXCEPT AS HEREIN PROVIDED.

**2.2** Customer may request a Change to a Contract provided that the request for Change is delivered to Supplier at least thirty days (30) prior to the scheduled shipping date. Customer shall pay to Supplier all reasonable costs associated with the Change.

- 2.3** Customer may cancel a Contract provided that such cancellation is delivered in writing to Supplier at least thirty days (30) prior to the scheduled shipping date. As a condition of any cancellation, all charges as set out in the Supplier's Quotation, and/or resulting from any Change, shall remain owed by Customer minus Credit Notes (if any), Supplier shall strive in good faith to obtain approvals for Credit Notes during a thirty (30) day period after receiving a cancellation notice from Customer.

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 Contract.
- 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 the Contract 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 and position the Equipment and/or Services;
  - 4.1.3** be responsible (at its own cost) for all environmental conditions and for preparing and maintaining the relevant premises for the provision and positioning of the Equipment and/or Services, including power up and power down operations and 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 this Contract 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.

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

- 5.1** All deliveries of Equipment shall be on a CIP basis (INCOTERMS 2010) at the US delivery address specified in the Quotation, unless otherwise agreed between the parties. For the avoidance of doubt and without limiting the generality of this Clause 5.1, Customer shall clear the Equipment for import into the US on the arriving means of transport at its cost.
- 5.2** Customer shall reimburse Supplier for all costs associated with positioning the Equipment at the Customer's site. Supplier shall not be liable for any differing, subsurface, latent or concealed conditions encountered in the performance of any Services. The existence of such differing, subsurface, latent or concealed conditions shall constitute a Change.
- 5.3** Risk in the Equipment shall pass on Delivery. Title in the Equipment shall pass on receipt of payment in full for the Equipment.
- 5.4** Until title in the Equipment passes to the Customer, the Customer shall:
- 5.4.1** hold the Equipment as the Supplier's bailee; and
  - 5.4.2** 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.
- 5.5** 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.
- 5.6** If the Customer is subject to health and safety laws or regulations which are more stringent than the health and safety standards governing Supplier, or if Customer or elects to operate under more stringent health and safety standards than those to which Supplier is subject, and Customer requires Supplier to comply with those higher standards, Supplier shall be entitled to charge the Customer any extra costs incurred in so complying. Furthermore, Supplier may refuse, without any liability to Customer whatsoever, to perform in whole or in part the Services if the site presents unhealthy or unsafe conditions.

- 5.7 Information and/or notices given by Supplier to the Customer shall be deemed to be correctly given if provided to employees or representatives of the Customer.
- 5.8 When required by national or state regulations or safety rules, an employee or representative of the Customer shall be present in the room where the maintenance work takes place. If no employee or representative of the Customer is present, Supplier shall have the right to stop its work and to invoice the Customer at its normal labor rate.
- 5.9 All Equipment delivered pursuant to this Contract will be deemed accepted upon Delivery.
- 5.10 Software is not sold to customer. In the case of Software not branded under Supplier's Trademarks, that Software is licensed to Customer from the third party providing the shrink-wrap or click-wrap license accompanying the Software. In the case of Software embedded into the Equipment (if any), the Customer is granted a non-exclusive, paid up and limited right to use such Software only for purposes of operating the Equipment in conformity with the Specifications. All other rights are reserved.

## **6 Warranties**

- 6.1 The Supplier warrants that:
  - 6.1.1 the Equipment delivered to Customer pursuant to this Contract will be free from defects in workmanship and materials under normal use for the length of time outlined in the Equipment Documentation for the relevant Equipment, current as of the date on which the Equipment is ordered or, if no such period is stated for a period of 12 months from the date of Delivery; and
  - 6.1.2 the Services to be performed hereunder shall be performed in accordance with recognized professional standards customary in the industry in which the Services are being performed. Should the Services fail to comply with such standards, Supplier agrees to re-perform such deficient Services at no cost to Customer provided that Supplier has received written notification within twenty (20) days following the completion of the specific Services giving rise to the claim. FURTHERMORE, CUSTOMER AGREES TO HOLD SUPPLIER HARMLESS FROM ANY DAMAGES THAT ARISE FROM SERVICES PERFORMED IN STRICT ACCORDANCE WITH THE CUSTOMER'S SPECIFICATIONS OR DIRECTIONS WHICH ARE CONTRARY TO THE TERMS OF THIS CONTRACT OR SUPPLIER'S STANDARD PRACTICES.
- 6.2 The Supplier shall not be in breach of any of the warranties given in Clause 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 ascertainable by reasonable inspection on the date of Delivery);

**6.2.2** in respect of Services, within 20 days of the date on which the Services were completed; 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 at its discretion 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 Clause 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 Commissioning and/or operation of the Equipment and/or following the directions of the Customer.

**6.5** THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. SUPPLIER'S WARRANTIES CONTAINED HEREIN RUN ONLY TO CUSTOMER, AND ARE NOT EXTENDED TO ANY THIRD PARTIES.

**6.6** Supplier shall not warrant, nor is Supplier required to provide any Service on any defects (i) resulting from a) the Equipment being modified by any person other than Supplier, (b) incorrect use of the Equipment (c) unsuitable environmental conditions, or (d) causes not attributable to the Equipment; or (ii) which were not apparent at the time of the Service visit. Supplier will submit to the Customer an estimate of the additional repair work required to correct any such defects. Said estimate will be based on Supplier labour and spare parts price list in force when the estimate is issued. Supplier will not perform any additional Services without having obtained the Customer's written contract to the estimate. The opinion of Supplier as to whether or not the work is additional maintenance work and therefore not covered under this Contract shall be conclusive. Furthermore, Supplier is not responsible for any software, firmware, information or memory data of Customer contained in, stored on, or integrated with any Equipment returned to Supplier

for repair, whether under warranty or not. Supplier also makes no warranty or representation that the Software will work in combination with any hardware or applications software products provided by third parties, that the operation of the Software will be uninterrupted or error-free, or that all defects in the Software will be corrected.

- 6.7 Software that is not branded under Supplier's Trademarks is excluded from the foregoing warranties, and Customer is instead provided the warranties extended by third parties under their own shrink-wrap or click-wrap licenses agreed by Customer.

## **7 Charges & Payment**

- 7.1 The Customer shall pay the charges as set out in the Supplier's Quotation, or resulting from any Change. Payment by Customer shall not be contingent upon payment by a third party.
- 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 Suppliers' invoice date without any right of set-off, abatement or deduction.
- 7.3 Without prejudice to any other right or remedy, if Supplier places Customer's account in the hands of an agency or a law firm for collection by legal action, Customer will pay an additional charge equal to the costs of collection including agency and attorneys' fees and court costs incurred to the extent permitted by laws governing these transactions. In case any invoice is not paid when due, Supplier shall be entitled to discontinue any Services. Discontinuation of Services does not relieve the Customer of its obligation to pay for the Services previously rendered.
- 7.4 Unless Customer provides acceptable evidence of exemption, Customer shall pay or reimburse Supplier for all taxes which are imposed upon Customer's acquisition of Equipment or Services. Customer shall not be obligated to pay or reimburse Supplier for any taxes attributable to the sale of any Equipment or Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by Supplier.

## **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 this Contract shall remain vested in the Supplier (or Supplier's providers as the case may be) at all times.
- 8.2 Neither Customer nor its affiliates have any right to incorporate any of Supplier's Trademarks into Customer's or affiliate's company name or trade name. Neither Customer nor its affiliates will alter, cover, obfuscate or remove any Trademarks placed by Supplier on the Equipment or any material contained therein.

## **9 Confidentiality**

**9.1** Each party acknowledges that in the course of performance of its obligations pursuant to this Contract, such party may obtain confidential and/or proprietary information of the other party. "Confidential Information" includes: information relating to development plans, costs, finances, marketing plans, equipment configurations, data, access or security codes or procedures utilized or acquired, business opportunities, names of customers, research, and development; the terms, conditions and existence of this Contract; any information designated as confidential in writing or identified as confidential at the time of disclosure if such disclosure is verbal or visual; and any copies of the prior categories or excerpts included in other materials created by the recipient party. Each party agrees that, for a period of two (2) years following its receipt of Confidential Information from the other party, whether before or after the effective date of this Contract, such recipient party shall use the same means it uses to protect its own confidential and proprietary information, but in any event not less than reasonable means to prevent the disclosure and to protect the confidentiality of the Confidential Information. Further, the recipient party shall only use the Confidential Information for the purposes of this Contract, and shall not disclose the Confidential Information without the prior written consent of the other party. This provision shall not apply to Confidential Information which is (i) already known by the recipient party without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) rightfully received from a third party (other than an Affiliate or customer of the party owning the Confidential Information) without an obligation of confidentiality, (iv) disclosed without similar restrictions by the Party owning the Confidential Information to a third party (other than an Affiliate or customer of the party owning the Confidential Information), (v) approved by the party owning the Confidential Information, in writing, for disclosure, or (vi) required to be disclosed pursuant to a requirement of a governmental agency or law so long as the recipient party provides the other party with timely prior written notice of such requirement.

## **10 Exclusion & Limitation of Liability, IP Infringement, Indemnification**

**10.1** SUPPLIER'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER FOR DIRECT DAMAGES WILL IN ALL CASES BE LIMITED TO THE PRICE PAID/PAYABLE FOR THE PARTICULAR ELEMENT OF THE EQUIPMENT AND/OR SERVICES WHICH IS THE SUBJECT OF THE CLAIM. THE FOREGOING LIMITATION WILL NOT REDUCE SUPPLIER'S LIABILITY FOR BODILY INJURY CAUSED BY SUPPLIER'S NEGLIGENCE. NOTWITHSTANDING ANY PROVISION IN THESE TERMS AND CONDITIONS TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, ITS OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES BE LIABLE FOR ANY



FORM OF LOSS OR DETERIORATION OF PRODUCTS STORED WITHIN THE EQUIPMENT, ANTICIPATED PROFITS OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER SUCH DAMAGES ARISE IN CONTRACT OR TORT, IRRESPECTIVE OF FAULT, NEGLIGENCE OR STRICT LIABILITY OR WHETHER SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

**10.2** The limitation of liability in Clause 10.1 shall apply to the full extent permitted by law, and shall apply whether liability is grounded in contract, tort, or otherwise, and shall extend to each party and their respective affiliates, directors, officers, and employees.

**10.3** The provisions of this Clause 10 shall survive the term or termination of this Contract for any reason.

**10.4** Supplier will defend or settle any claim against Customer alleging that Equipment provided under this Contract infringes a third party's US copyright, patent or trademark, if Customer:

1. promptly notifies Supplier of the claim in writing;
2. cooperates with Supplier in the defence of the claim; and
3. grants Supplier sole control of the defence or settlement of the claim.

Supplier will pay infringement claim defence costs, Supplier negotiated settlement amounts, and court-awarded damages with respect to any such claim.

If such a claim appears likely, then Supplier may modify the Supplier Equipment or Services, procure any necessary license, or replace the affected Equipment with one that is functionally equivalent. If Supplier determines that none of these alternatives is reasonably available, then Supplier will issue Customer a refund equal to the depreciated value of the affected Equipment.

Supplier has no obligation for any claim of infringement arising from:

1. Supplier's compliance with Customer or third party designs, specifications, instructions, or technical information;
2. modifications made by Customer or a third party;
3. Customer non-compliance with the Documentation; or
4. Customer use with non-Supplier products, software, or services.

**10.5** CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD SUPPLIER, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND CUSTOMERS (WHETHER DIRECT OR INDIRECT) HARMLESS AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, DEMANDS,

LOSSES, CAUSE OF ACTION AND SUITS (INCLUDING REASONABLE ATTORNEY FEES) WHICH THEY, OR ANY OF THEM, MAY SUSTAIN OR INCUR AS A RESULT OF (I) ANY CLAIM OF VIOLATION OF ANY COMMON LAW OR ANY FEDERAL, PROVINCIAL, STATE, LOCAL OR FOREIGN STATUTE, LAW, ORDINANCE, RULE, REGULATION, LICENSE, PERMIT, AUTHORIZATION, REGISTRATION, POLICY OR ORDER BY CUSTOMER, (II) NEGLIGENCE, BREACH OF WARRANTY OR STRICT LIABILITY IN TORT IN CONNECTION WITH THE USE OR PROVISION OF THE EQUIPMENT OR SERVICES, EXCEPT SUCH AS MAY BE CAUSED TO THE EXTENT OF THE NEGLIGENCE OF SUPPLIER, OR (III) CUSTOMER'S BREACH OR DEFAULT OF THE CONTRACT.

- 10.6** ANY ACTION RESULTING FROM ANY BREACH ON THE PART OF SUPPLIER AS TO THE CONTRACT, EQUIPMENT OR SERVICES MUST BE COMMENCED NO LATER THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

## **11 Termination**

- 11.1** Either party may terminate the Contract of which these Conditions form part, or any portion thereof, 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 and such failure continues for a period of thirty (30) days after written notice is given to Customer; 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 becomes insolvent or upon the institution by the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts; or following the institution of such proceedings against the other party, which proceedings are not dismissed or otherwise resolved in that party's favor within sixty (60) days thereafter or upon the other party's making a general assignment for the benefit of creditors or the other party's dissolution or ceasing to conduct business in the normal course.

- 11.2** Supplier may terminate immediately its Service obligation if Customer engages a third party to perform emergency or corrective maintenance on equipment which is governed by this Contract. In the event of said termination, all obligations hereunder shall be terminated and Supplier shall have no liability for the termination or any damages caused as a result of the third party's actions or inaction.

- 11.3** On termination of the Contract of which these Conditions form part for any reason:

**11.3.1** 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

**11.3.2** 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 Clause 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, subcontract, or deal in any manner with all or any of its rights or obligations under the Contract of which these Conditions form part. This Contract shall be binding on the parties and their respective successors in interest and permitted assigns.

**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.

- 13.6** The Section and Clause headings used in these Conditions are for reference and convenience only and shall not affect the interpretation hereof.
- 13.7** Supplier is performing only as an independent contractor. Nothing set forth in this Contract shall be construed to create a relationship of principal and agent between Supplier and Customer.
- 13.8** Customer acknowledges and agrees that the commodities, Software, and/or technology herein are subject to the export control laws and regulations of the United States and/or other national governments. These regulations include, but are not limited to, the U.S. Export Administration Regulations (US EAR), the U.S. State Department's International Traffic in Arms Regulations (ITAR), sanction regimes of the U.S. Department of Treasury Office of Foreign Assets Controls (OFAC) and export laws and regulations of the European Union (EU) and/or any of its member states. Customer will comply with these laws and regulations. Customer shall not, without prior U.S. Government authorization, export, re-export, or transfer any commodities, Software, or technology, either directly or indirectly, to any country subject to a U.S. trade embargo or sanction or to any resident or national of said countries, or to any person, organization, or entity on any of the restricted parties lists maintained by the U.S. Departments of State, Treasury, or Commerce. In addition, any commodities, Software, or technology herein may not be exported, re-exported, or transferred to any end-user engaged in activities, or for any end-use, directly or indirectly related to the design, development, production, use, or stockpiling of weapons of mass destruction (e.g. nuclear, chemical, or biological weapons, and the missile technology to deliver them). Supplier may suspend performance if Customer is in violation of any applicable laws or regulations.

## **14 Governing Law & Jurisdiction**

- 14.1** THE RIGHTS AND OBLIGATIONS OF THE PARTIES ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. RATHER THESE RIGHTS AND OBLIGATIONS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS, OTHER THAN CHOICE OF LAW RULES, OF THE COMMONWEALTH OF MASSACHUSETTS.
- 14.2** THE PARTIES CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS IN BOSTON, MASSACHUSETTS, INCLUDING WITHOUT LIMITATION IN CASE OF PLURALITY OF DEFENDANTS,

THIRD PARTY PROCEEDINGS AND EMERGENCY PROCEEDINGS. THE PARTIES WAIVE THE RIGHT TO CHANGE VENUE.

## **15 Disputes**

**15.1** Without prejudice to Clause 14.2 above, if a party to this Contract has any dispute, difference or question (“a dispute”) in respect of the construction of this Contract, then that party may 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 may 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.

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 may refer the dispute to mediation to a mediation body of their choice.

## **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** Any waiver of this Contract or of any covenant, condition, or agreement to be performed by a party under this Contract shall (i) only be valid if the waiver is in writing and signed by an authorized representative of the party against which such waiver is sought to be enforced; and (ii) apply only to the specific covenant, condition or agreement to be performed, the specific instance or specific breach thereof and not to any other instance or breach thereof or subsequent instance or breach.

**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.