

**TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS**
**1 Interpretation**

The following definitions and rules of interpretation apply in these Conditions.

**1.1 Definitions**

In the Contract, the following words and phrases have the meaning given below unless the context otherwise requires:

**Business Day** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours** means 9:00am – 5:00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

**Contract** means the contract between the Customer and the Supplier for the supply of Goods comprising of:

- (a) the Purchase Order;
- (b) the Contract Data; and
- (c) these Conditions.

**Contract Data** means the "Supply of Goods Agreement – Contract Data" for the relevant Purchase Order.

**Customer** means the company named as such in the Contract Data.

**Customer Materials** has the meaning set out in clause 3.2(g).

**Customer's Liability Cap** has the meaning given to it in the Contract Data.

**Delivery Date(s)** means the date(s) for delivery set out in the Delivery Schedule.

**Delivery Location(s)** means the address(es) for delivery set out in the Contract Data.

**Delivery Schedule** means the delivery schedule set out in the Contract Data.

**Description of Goods** means the description of the Goods set out in the Contract Data.

**Force Majeure Event** means an event which is beyond the reasonable control of the affected party and which could not have been prevented or avoided by the application of due diligence and reasonable foresight of the affected party and includes (insofar as it is beyond such

control) an event which falls into one or more of the following categories:

- (a) act of God, fire, flood, storm, earthquake, extreme adverse weather conditions;
- (b) war, hostilities, military action, riot, civil commotion, terrorism epidemic or pandemic; and
- (c) nuclear, chemical or biological contamination or sonic boom,

provided always that the mere shortage of material, equipment, labour or supplies or other consequence arising as a result of or in connection with the withdrawal of the United Kingdom from the European Union or as a result of or in connection with the COVID 19 virus will not constitute a Force Majeure Event.

**Good Industry Practice** means, at all times, the exercise of the highest degree of skill, care, prudence, efficiency, foresight and timeliness which would reasonably be expected from a person highly skilled and experienced in providing goods similar to the Goods.

**Goods** means the goods to be provided by the Supplier under the Contract, as set out in the Description of Goods.

**Group** shall have the meaning given to it in *section 1261 of the Companies Act 2006*.

**Intellectual Property Rights** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Laws** means any applicable law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), guidelines, guidance or industry code of practice, judgements of relevant courts of law and directives, delegated or subordinate legislation in force from time to time.

**Order Amendment** means an amendment to the Purchase Order and/or Contract Data

agreed between the parties and authorised by the Customer in writing, each such Order Amendment (where applicable) having precedence over any earlier Order Amendment.

**Price** means the price specified in the Contract Data.

**Purchase Order** means the purchase order issued by the Supplier in respect of the Goods.

**Supplier** means the company or entity named as such in the Contract Data.

**Term** shall be from the date of the Purchase Order until the date on which each party has performed its obligations under the Contract, unless the Contract is terminated earlier in accordance with clause 14, in which case the Term shall be deemed to be from the date of the Purchase Order to the date of termination in accordance with clause 14.

## 1.2 Interpretation

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing or written** includes email but excludes fax.

## 2 Basis of contract

- 2.1 The Supplier agrees to supply, and the Customer agrees to purchase the Goods in accordance with the Contract.
- 2.2 These Conditions and the terms set out in the Purchase Order and Contract Data apply to the Contract to the exclusion of any other terms that the Supplier may otherwise seek to impose or incorporate, or which are implied by Law, trade custom, practice or course of dealing. The Contract will not include any of the Supplier's terms and conditions relating to the supply of

goods, notwithstanding any references to such terms and conditions in any document.

2.3 Without prejudice to clause 2.2:

- (a) should the Contract be held to include the Supplier's terms and conditions then in the event of any conflict the Contract will prevail over the Supplier's terms and conditions; and
- (b) the Supplier hereby waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

2.4 The Contract and the rights of the Customer therein are for the benefit of the Customer and the Customer's Group.

## 3 Supply of Goods

3.1 The Supplier warrants and undertakes that the Goods shall:

- (a) conform to all descriptions, standards and specifications set out in the Description of Goods and any description, samples, patterns, drawings, plans and specifications, the Supplier may have referred to in the Contract (save for where these conflict with the Description of the Goods, in which case the Description of the Goods shall prevail);
- (b) be of satisfactory quality (within the meaning of the *Sale of Goods Act 1979*) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
- (c) be new (unless otherwise specified by the Customer in the Contract);
- (d) be free from defects in design, material and workmanship and remain so for 12 months after the delivery;
- (e) incorporate best quality goods, materials, standards and techniques, and goods and materials supplied and used in the Goods or transferred to the Customer, will be free from defects in workmanship, installation and design; and
- (f) comply with all applicable Laws.

- 3.2 The Supplier shall:
- (a) ensure, at all times, that it has and maintains all licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;
  - (b) perform its obligations under the Contract in accordance with Good Industry Practice;
  - (c) be capable of all standards of performance specified by the Customer;
  - (d) co-operate with the Customer in all matters relating to the Goods, and comply with all instructions of the Customer;
  - (e) comply with all applicable Laws;
  - (f) observe all applicable health and safety rules and regulations, and all other security requirements;
  - (g) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and
  - (h) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business.

#### 4 Right to inspect

- 4.1 The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 4.2 If, following such inspection or testing, the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings and warranties at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 4.3 The Customer may conduct further inspections and tests after the Supplier has carried out such remedial actions.

#### 5 Delivery

- 5.1 The Supplier shall ensure that:
- (a) the Goods are properly packaged and are secured in such manner as to enable them to reach their destination in good condition;
  - (b) each delivery of the Goods is accompanied by a delivery note which includes:
    - (i) the "PO Number" (as specified on the Purchase Order);
    - (ii) the date of the Purchase Order;
    - (iii) the type and quality of the Goods (including the code number of the Goods, where applicable);
    - (iv) special storage instructions (if any); and
    - (v) if the Goods are being delivered by instalments, the outstanding balance of the Goods remaining to be delivered.
- 5.2 The Supplier shall deliver the Goods:
- (a) in accordance with the Delivery Schedule; and
  - (b) at the Delivery Location(s).
- 5.3 The Supplier shall, when delivering the Goods:
- (a) comply with the Customer's site rules or other regulations at the premises; and
  - (b) keep the Customer's premises where the Goods are delivered, free and clear of all debris.
- 5.4 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location(s).
- 5.5 Title and risk in the Goods shall pass to the Customer on completion of delivery in accordance with this clause 5.

## 6 Force majeure

6.1 Where either party is delayed or prevented from performing its obligations under the Contract by a Force Majeure Event:

- (a) the affected party shall notify the other party as soon as reasonably possible with details of the Force Majeure Event, its effect on the relevant obligations and its estimated duration;
- (b) the affected party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event upon the performance of its obligations under the Contract;
- (c) to the extent that any Goods have already been delivered prior to the occurrence of the Force Majeure Event, the Customer shall pay the pro rata Price for those Goods delivered, but shall be free to obtain goods of the same or a similar nature to those which are suspended or delayed from any other person or organisation during the Force Majeure Event.

6.2 Subject to clause 6.3, as soon as reasonably possible following the end of the Force Majeure Event the Supplier shall notify the Customer and the Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event, unless agreed otherwise by the parties.

6.3 If any Force Majeure Event prevents the Supplier from delivering the Goods within 14 days of the Delivery Date(s) the Customer may terminate the Contract by giving not less than 30 days' notice to the Supplier. If the suspension comes to an end during the termination notice period, the notice of termination shall remain effective unless withdrawn by the Customer.

6.4 The Supplier shall not be relieved from liability where:

- (a) the Force Majeure Event is caused by its (or its sub contractors) neglect, failure to take reasonable precautions against the relevant Force Majeure Event, wilful act or omission, or is caused by its employee(s), sub contractors or suppliers; or
- (b) a reasonable supplier should have anticipated and provided for the cause in question (including by the performance of business continuity and disaster recovery procedures that would have complied with Good Industry Practice).

## 7 Price and payment

7.1 The Price of the Goods:

(a) excludes amounts in respect of value added tax (**VAT**), which the Supplier shall ensure is separately and specifically identified on the Purchase Order; and

(b) includes every cost and expense in relation to the Goods and delivery to the Customer, including without limitation, the cost of manufacture, packaging, insurance, and the carriage of Goods.

7.2 No extra charge shall be effective unless agreed in writing with the Customer.

7.3 The Supplier may invoice the Customer for the Price plus VAT identified in accordance with clause 7.1(a) within 30 days after the completion of delivery in accordance with clause 5 of these Conditions.

7.4 The Supplier shall include in each invoice:

- (a) the "PO Number" (as specified on the Purchase Order);
- (b) the date of the Purchase Order;
- (c) the invoice number;
- (d) the Supplier's VAT registration number;
- (e) all supporting information required by the Customer to verify the accuracy of the invoice; and
- (f) the details of any differences between the invoice and any Purchase Order, Contract Data or Order Amendment which have been subsequently agreed between the parties.

7.5 In consideration of the supply of the Goods by the Supplier, the Customer shall pay the undisputed invoiced amounts within 30 days of receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier. The Customer shall not have any liability for delays in payment caused by the Supplier's failure to comply with the invoicing instructions set out in clauses 7.3 and 7.4.

7.6 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## 8 Intellectual property rights

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Goods (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.
- 8.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty free, perpetual and irrevocable licence to use all Intellectual Property Rights (excluding in the respect of the Customer Materials) necessary for the purpose of using the Goods.
- 8.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy any materials provided by the Customer to the Supplier for the Term of the Contract for the purpose of providing the Goods to the Customer.
- 8.4 All Customer Materials are the exclusive property of the Customer.

## 9 Insurance

During the Term of the Contract and for a period of not less than 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, all insurances required by Law and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## 10 Confidentiality

- 10.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.
- 10.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.2; and
  - (b) as may be required by Law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 Neither party shall use the other party's confidential information for any purpose other

than to perform its obligations under the Contract.

## 11 Customer remedies

- 11.1 If the Supplier fails to deliver the Goods in accordance with the Delivery Schedule, and/or does not comply with the undertakings and warranties set out in clauses 3.1 and/or 3.2 then, without limiting or affecting other rights or remedies available to it, the Customer may at any time:
- (a) terminate the Contract with immediate effect by giving written notice to the Supplier;
  - (b) reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
  - (c) refuse to accept any subsequent attempted delivery of the Goods;
  - (d) require the Supplier to repair or replace any rejected Goods, or to provide a full refund in respect of any rejected Goods (if paid);
  - (e) recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and/or
  - (f) claim damages for any other costs, loss and/or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

11.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

11.3 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## 12 Indemnity

12.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

- (a) any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights;

- (b) loss or damage to property (including property belonging to the Customer or for which it is responsible);
- (c) any claims made against the Customer in respect of personal injury or death of any person; and/or
- (d) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods,

in each case arising out of, or in connection with, the Contract and/or the Goods, including without limitation the performance or non-performance by the Supplier of its obligations under the Contract.

### 13 Limitation of liability

13.1 Subject to clause 13.2, and without prejudice to the Customer's liability to pay the Price, the Customer's aggregate liability to the Supplier, arising out of or in connection with the Contract, including in respect of any and all termination liabilities, shall be limited to the Customer's Liability Cap.

13.2 Nothing in the Contract shall operate to exclude or limit the Customer's liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury;
- (c) any liability for breach of statutory duty or liability for a breach of Law; or
- (d) any other liability which cannot be excluded or limited by Law.

### 14 Termination

#### Customer rights to terminate

14.1 Without limiting or affecting any other right or remedy available to it, the Customer may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier:
  - (i) if the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - (ii) if the Supplier commits a breach of clause 3.2(e); or

- (iii) if the Supplier has committed persistent breaches of the Contract, whether or not such breaches are of a similar nature; or
- (iv) in accordance with clause 11.1(a); or
- (v) if the Customer is entitled to terminate the Contract in accordance with clause 14.2 below;

(b) on not less than 30 days written notice to the Supplier in accordance with clause 6.3; or

(c) for convenience by giving the Supplier 30 days' written notice.

#### Mutual rights to terminate

14.2 Without limiting or affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so; or
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under part A1 of the *Insolvency Act 1986*, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

### 15 Consequences of termination

15.1 On termination of the Contract for any reason or on expiry of the Term, the Supplier shall promptly discontinue all work on the Contract and return all Customer Materials to the Customer. If the Supplier fails to do so, then the

	Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.		the prior written consent of the Customer.
15.2	Subject to clause 13, on termination of the Contract by the Customer pursuant to clause 14.1(c) or where the Supplier has terminated the Contract pursuant to clause 14.2(a), the Customer shall pay to the Supplier, an amount equal to the aggregate of (without double counting):	16.4	<b>Subcontracting</b>
	(a) the value of any unpaid and undisputed invoices; and		The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
	(b) an amount equal to the value of the Price in respect of the Goods delivered in accordance with the Contract, but not invoiced for.	16.5	<b>Entire agreement</b>
15.3	Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.	16.6	<b>Variation</b>
15.4	Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.		Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
<b>16</b>	<b>General</b>	16.7	<b>Waiver</b>
16.1	<b>Monitoring and audit</b>		(a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
	The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Goods, and shall allow the Customer to inspect such records at all reasonable times on request.		(b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by Law shall prevent or restrict the further exercise of that or any other right or remedy.
16.2	<b>Duty of care</b>	16.8	<b>Severance</b>
	The Supplier acknowledges that it owes a duty of care to the Customer and it shall provide the Goods in accordance with this duty of care.		If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity or enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under this clause 16.8, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provisions.
16.3	<b>Assignment and other dealings</b>		
	(a) The Customer may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.		
	(b) The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without		

**16.9 Notices**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case), or such other address as may be notified to the other party in writing from time to time; or
  - (ii) sent by email to:  
  
**Supplier:** the email address set out in the Contract Data; and  
  
**Customer:**  
notices@bio-capital.co.uk.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9:00am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause 16.9 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**16.10 Third party rights**

- (a) Subject to clause 2.4, the Contract does not give rise to any rights under the *Contracts (Rights of Third Parties) Act 1999* to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**16.11 Governing law**

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**16.12 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.