

## CHART BIOMEDICAL LIMITED Terms & Conditions of Sale

**1. General** The terms and conditions contained herein and the Limited Warranty Statement referenced in Section 6, together with any additional or different terms contained in the final, written proposal, if any, provided to Purchaser by Chart Biomedical Limited ("**Seller**"), which proposal shall be incorporated herein and control over these terms and conditions to the extent it contains any conflicting terms and conditions, constitute the entire agreement (the "**Agreement**") between the parties with respect to the subject sale. Acceptance by Seller of Purchaser's purchase order is expressly limited to and conditioned upon Purchaser's acceptance of these Terms & Conditions of Sale, which may not be changed or waived except in writing signed by Seller. Any additional, inconsistent or different terms and conditions contained in Purchaser's purchase order or any other documents supplied by Purchaser are hereby expressly rejected. Unless the context otherwise requires, the term "**Equipment**" as used herein shall mean all goods, equipment, parts, and accessories sold to Purchaser by Seller. Unless the context otherwise indicates, the term "**Services**" as used herein shall mean labor, supervision, repair and project engineering services provided by Seller. As used herein, the term "**Purchaser**" shall mean only the party issuing the purchase order to Seller for Equipment or Services, regardless of whether or not the Purchaser is the end user of the Equipment or Services. All references to "days" herein shall mean calendar days unless otherwise stated.

**2. Payment Terms and Invoices** Unless a different payment schedule is agreed to in writing by Seller, payment terms are net 30 days. Late payments are subject to a 1.5% monthly late charge, calculated per diem. Any checks returned for non-sufficient funds and any stopped or reversed payments shall be subject to a fee. If required by Seller, Purchaser will cause an irrevocable letter of credit to be established in favor of Seller on a bank approved by Seller. Seller is entitled to charge costs associated with the letter of credit to Purchaser's account. Performance schedules are conditional upon receipt of the letter of credit within 30 days of award. Purchaser agrees to furnish Seller with any requested credit information. Purchaser's credit limit will be set at Seller's sole discretion and may be modified at any time based upon Purchaser's credit risk as determined by Seller. In the event that Purchaser's credit risk increases or Purchaser fails to pay timely, Seller is entitled to suspend performance and/or require alternate payment methods. Purchaser shall notify Seller of any items disputed in good faith relating to an invoice within 15 days after the invoice date in writing specifying the nature of the disputed item, but in no event is Purchaser entitled to withhold or set off any invoiced amounts without Seller's prior written approval. In the event it becomes necessary for Seller to refer Purchaser's account to a third party for collection or for Seller to take other enforcement action of this Agreement against Purchaser, Purchaser agrees to pay any and all attorney and arbitrator fees, lien filing fees, collection costs and legal expenses associated therewith incurred by Seller.

**3. Taxes** Federal, state, local, value added, sales and use, and other applicable taxes measured on the price of Equipment or Services in any legal system by any taxing authority are not included in the price unless otherwise agreed in writing by Seller. Purchaser acknowledges and is aware that there may be tax consequences that result from any participation in a rebate incentive program with Seller and that Purchaser may be required to pay income tax on the value of any rebates it receives through a rebate incentive program with Seller, if any. Seller is not responsible for remitting any taxes on Purchaser's behalf, or for providing Purchaser with tax-related documentation. Purchaser is solely responsible for ensuring that any taxes arising from its participation in a rebate incentive program, if any, is reported and paid to the appropriate tax authority.

**4. Time Limit** All quotations are valid for a period of thirty days, unless otherwise extended in writing by Seller. If this Agreement is delayed or suspended in whole or in part by Purchaser for more than 60 days, pricing shall either be subject to re-negotiation or the Agreement may be deemed cancelled for Purchaser's convenience and subject to Section 13, at Seller's sole option.

**5. Acceptance** Acceptance of Equipment occurs at point of Delivery. Acceptance of any Services provided hereunder occurs at completion.

**6. Limited Warranty, Exclusive Remedies and Indemnity** Seller agrees to, and shall provide to Purchaser, a limited warranty and exclusive remedies statement from the manufacturer relating to the Equipment sold hereunder ("**Limited Warranty Statement**"). Purchaser acknowledges receipt of the Limited Warranty Statement (which is also available from Seller upon request) and agrees to its terms. Seller warrants its Services against defects in workmanship for a period of ninety days after the date of their completion. *THE REMEDIES AND WARRANTIES STATED IN THE LIMITED WARRANTY STATEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES AND WARRANTIES GRANTED UNDER APPLICABLE LAW, INCLUDING WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE AND DESIGNS, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR*

*ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, WHICH ARE ALL HEREBY EXPRESSLY DISCLAIMED BY SELLER AND ALL EQUIPMENT MANUFACTURERS.* Purchaser agrees to defend, indemnify and hold Seller harmless from any third party claims arising out of the use, sale, or lease of the Equipment or Services and from all expenses, losses and other damages resulting from Purchaser's breach of any of the terms and conditions herein.

**7. Termination** No termination by Purchaser for default shall be effective unless, within 15 days after receipt by Seller of Purchaser's written notice specifying such default, Seller fails to initiate and pursue correction of such specified default.

**8. Excusable Delays** The schedule for Delivery of Equipment and performance of Services will be modified for delays resulting from causes beyond Seller's reasonable control, including but not limited to, acts of God, war, terrorism, strikes, restrictions of the United States Government or other governments having jurisdiction, delays in transportation, or inability to obtain necessary labor, materials, or manufacturing facilities.

**9. Delivery and Risk of Loss or Damage** Unless otherwise agreed in writing by Seller, all shipments are Ex Works Seller's warehouse with responsibilities as defined in INCOTERMS 2010, and the term "**Delivery**" as used herein occurs in accordance with INCOTERMS 2010. Notwithstanding anything to the contrary, all lead time quoted and accepted by Seller shall be from the date Seller accepts Purchaser's purchase order. If Seller agrees in writing to prepay transportation and transit insurance charges for the account of Purchaser, then Seller is entitled to include shipping, handling and any transit insurance charges on its invoice. Purchaser shall indemnify, defend and hold Seller harmless from any claims by freight carriers for Purchaser's failure to pay freight charges. Claims for shortages in or damage to shipment shall be deemed waived unless made in writing and received by Seller within 10 days after receipt of Equipment by Purchaser or its designated consignee. Delivery dates quoted are based on Seller's best estimate of a realistic time when shipment will be made, and are subject to change. Delivery dates will be confirmed on Seller's acceptance of any resulting order, and Seller will use its best efforts to meet such Delivery date. Seller may make early shipment or partial shipments and invoice Purchaser accordingly. Despite any agreement with respect to delivery terms or prepayment of transportation or transit insurance charges, the risk of loss or damage shall pass to Purchaser upon completion of Delivery or upon moving the Equipment into storage, whichever occurs first.

**10. Laws, Codes and Standards** Price and Delivery schedule are based on the applicable laws, codes, and standards stated in the Equipment specifications in effect as of the date of Seller's acceptance of the purchase order. If such laws, codes, and standards change, or if Purchaser changes the laws, codes, and standards stated in the Equipment specifications, and such change increases or decreases the cost of performing the work or impacts the Delivery schedule, then Seller will advise Purchaser of the same, and the parties shall promptly negotiate in good faith and mutually agree upon any modification to the order resulting from any such change.

**11. Title** Seller shall retain legal and beneficial title to the Equipment until all invoices for such Equipment have been paid in full. Until title passes to Purchaser, Purchaser shall keep the Equipment separate from goods belonging to the Purchaser or third parties and mark them as Seller's property, and shall allow Seller access to the premises to ensure that such requirements have been met. In the event of late payment, Seller reserves the right to enter onto Purchaser's or its customer's premises to repossess the Equipment upon written notice by Seller. Upon Seller's request, Purchaser shall complete and execute all documents required to affect Seller's rights under this clause.

**12. Installation and Field Service** Installation of Equipment furnished hereunder shall be by Purchaser, unless otherwise agreed to in writing by Seller's duly authorized representative. Field service will be provided on a per diem basis upon written authorization by Purchaser at Seller's rates in effect when such Services are provided. Purchaser will provide free and unrestricted access to Seller personnel, contractors, subcontractors, equipment and any other personnel necessary in order for Seller to complete the contracted work.

**13. Cancellation** Cancellation of any purchase order must be by written notice to Seller and will be subject to Seller's cancellation charges and fees, including but not limited to, all costs incurred through the date of cancellation, the cost for materials ordered that cannot be returned, return and cancellation fees, cost to process such cancellation, plus a reasonable profit.

**14. Intellectual Property and Confidentiality** Unless otherwise agreed to in writing signed by Seller's duly authorized representative, all right, title and interest in any inventions, developments, improvements or modifications of the Equipment and Services made by Seller or Purchaser as a result of the Agreement shall exclusively remain with Seller. Any design, reports, plans, drawings, standards, specifications or other information submitted to Purchaser by Seller ("**Seller Documents**") were developed at Seller's expense and shall remain Seller's exclusive property. Without the express prior written consent of Seller, Purchaser shall not copy or disclose Seller Documents to any third party, and shall not use them for any purpose other than to install, own, operate, and maintain the subject Equipment or to use the Services, including, without limitation, use with any other project, or for the completion of the project contemplated by this Agreement by others. Seller Documents are not suitable

for use on any other agreement or project and any reuse of Seller Documents without the express written consent of Seller will be at the sole risk of Purchaser, and Purchaser shall indemnify, defend and hold Seller harmless from any and all claims arising from Purchaser's reuse of Seller Documents. Upon Seller's request at any time, Purchaser shall promptly return all Seller Documents. If Seller's Equipment is held to infringe a United States patent in effect as of the date of this Agreement (other than any infringement resulting from Seller's compliance with Purchaser's designs, specifications or instructions or from the use of the Equipment in combination with other materials or the operation of any process), then Seller may at its option procure for Purchaser the right to use the Equipment, modify or replace it with non-infringing Equipment; refund the purchase price allocable to the infringing Equipment, or settle or otherwise terminate said actions on behalf of Purchaser. The foregoing is Seller's entire liability and Purchaser's sole remedy for patent infringements of the Equipment. Purchaser shall defend, indemnify and hold Seller harmless from all expenses, losses and other damages resulting from any actual or alleged infringement of intellectual property rights arising from Seller's compliance with Purchaser's designs, specifications or instructions, from the use of the Equipment in combination with other materials, or from the operation of any process. All references to "days" herein shall mean calendar days unless otherwise stated.

**15. Assignment** This Agreement may not be transferred or assigned by Purchaser by operation of law or otherwise without the prior express written consent of Seller. Any transfer or assignment by Purchaser of any rights, duties or obligations without Seller's consent shall be void.

**16. Limitation of Liability** *NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, IN NO EVENT SHALL SELLER, ITS AFFILIATES, SUPPLIERS AND SUBCONTRACTORS BE LIABLE TO PURCHASER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME COSTS, COST OF DELAYS, OR FOR ANY PENALTIES, WHETHER ANY SUCH CLAIM FOR THE SAME IS BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SELLER'S TOTAL LIABILITY ARISING OUT OF THIS AGREEMENT FOR ANY CLAIMS WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE, OR FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY DESIGN, SALE, INSTALLATION, OPERATION OR USE OF THE EQUIPMENT OR PERFORMANCE OF ANY SERVICES UNDER THIS AGREEMENT, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID TO SELLER BY PURCHASER FOR THE SPECIFIC EQUIPMENT OR PART THEREOF OR FOR THE SERVICES GIVING RISE TO THE CLAIM.*

**17. Export Sales and Compliance with Trade Laws** In no event shall Seller be required to export or deliver any technical information, data or Equipment if such export or Delivery is then prohibited or restricted by any law or regulation of the U.S. Government, including departments, agencies and subdivisions thereof or of any other applicable governmental agency of any country having jurisdiction, including the country in which the Equipment or Services to be sold will be installed, used, or performed. Should Seller's performance of its obligations hereunder be prohibited by any applicable governmental agency, in whole or in part, or if the exportation or importation of the Equipment which is the subject of this Agreement be precluded because of the inability to obtain an export or import license within a reasonable time, as appropriate, then Seller's obligations hereunder shall be terminated at Seller's option, and Seller shall be entitled to reasonable cancellation charges. Unless otherwise agreed in writing by Seller, Purchaser accepts all responsibility for exporting and importing any Equipment sold hereunder outside of the U.S., will be the exporter of record and importer of record, and will be responsible for filing any documents, obtaining any licenses required by the U.S. or other government agencies, and paying all duties and taxes necessary for exportation and importation. Purchaser agrees not to export, re-export or import any Equipment, technical information or data of Seller without full compliance with U.S. and other laws of countries having jurisdiction and shall cause the end user of Equipment or Services to comply with such applicable laws. Purchaser warrants and represents that it is in full compliance with all such applicable export and import laws, including but not limited to, the International Traffic In Arms Regulations, the Export Administration Regulations, and all U.S. anti-boycott and embargo regulations, and Purchaser shall provide Seller with such written assurances of compliance as requested by Seller from time to time. Specifically, Purchaser agrees not to export, re-export, sell or lease any Equipment or components thereof or technical data supplied by Seller to a prohibited person, to a

prohibited country, or for a prohibited use under the U.S. or any other applicable trade laws. Purchaser agrees to indemnify and hold Seller harmless from and against any and all damages and expenses (including attorneys' fees) resulting from Purchaser's violation of applicable export and import regulations.

**18. Compliance with Anti-bribery Laws** Purchaser warrants and represents that it is familiar with the requirements of the U.S. Foreign Corrupt Practices Act and other similar anti-bribery laws, including without limitation, the OECD Antibribery Convention and the UK Bribery Act, that it has not and will not violate those laws as may be amended from time to time, and that it neither has nor will it offer, make, or agree to make, directly or indirectly, any gift or payment of any kind or any political contribution in violation of such laws. Purchaser shall provide Seller with such written assurances of compliance with such laws as requested by Seller from time to time. Any payment, offer of payment, or agreement to make a payment that is contrary to the laws of the United States or the laws of the country in which it is made, or any other payment in conflict with this clause, will constitute a material breach of this Agreement, and any obligation of Seller hereunder shall automatically terminate upon such breach without further liability to Seller. Purchaser agrees to indemnify and hold Seller harmless from and against any and all damages and expenses (including attorneys' fees) resulting from Purchaser's violation of the requirements referenced in this Section.

**19. Governing Law and Arbitration** This Agreement (including the Limited Warranty Statement) and any claim, controversy or dispute arising under or related to the Agreement, the relationship of the parties, and the interpretation and enforcement of the rights and duties of the parties is exclusively governed by the laws of England and Wales, excluding its conflicts of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods. Purchaser waives all causes of action arising under this Agreement after one year from the date of the occurrence of the event giving rise to any such claim, waives any sovereign immunity claims or defenses, and consents to and will not contest personal jurisdiction in the local courts of London. Except for account collection disputes, any disputes, controversies or claims arising out of or relating to this Agreement, or the breach thereof which cannot be resolved amicably within 60 days, shall be settled by binding arbitration. This agreement to submit to binding arbitration shall be specifically enforceable under the prevailing arbitration law. The award of the arbitrator shall be final, and a judgment may be entered upon it by any court having jurisdiction. A party desiring to invoke this arbitration provision shall serve written notice upon the other of its intention to do so and the name of an impartial individual who is knowledgeable in matters pertaining to Seller's industry to serve as an arbitrator. If the other party objects within 15 days to the arbitrator proposed, and the parties fail to agree on an arbitrator within 30 days thereafter, then the arbitrator shall be appointed by the arbitration tribunal. The arbitration shall be conducted in accordance with the International Arbitration Rules then prevailing of the International Centre for Dispute Resolution. Unless the parties agree otherwise, all arbitrations shall be conducted and all related documents submitted shall be in the English language in London, England, and the arbitrator shall apply the substantive governing laws as specified above. All awards granted by the arbitrator shall be final and binding on the parties, and shall include interest from the date of any breach or default and from the date of the award until paid in full. Judgment may be entered on any award or decision of the arbitration panel by either party in a court of competent jurisdiction. The arbitrator may grant emergency interim relief according to the applicable arbitration rules, and shall award costs, fees and other expenses of the arbitration, including reasonable attorney's fees, to the party not in default. If Purchaser fails to promptly assume Seller's defense when requested to do so as required under this Agreement, then Seller may defend with counsel of its own choice at the expense of Purchaser.

**20. Miscellaneous** With the exception of fraudulent misrepresentations, the Agreement as defined in Section 1 (including the Limited Warranty Statement) constitutes the complete and exclusive agreement between Seller and Purchaser and there are no agreements, understandings, restrictions, warranties, or representations between Seller and Purchaser other than those set forth herein. If any provision, or any part thereof, of this Agreement is found by any court or governmental agency of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, then such provision shall be deemed revised and applied to the maximum extent allowed by applicable law, and such invalidity or unenforceability shall not affect the remainder of such provision or any other provision here which shall remain in full force and effect. All obligations herein shall survive termination, expiration or completion of this Agreement. No term or condition is intended for the benefit of any third party, and Seller and Purchaser do not intend any term or condition to be enforceable by a third party, including any end user of Equipment or Services, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. Seller's failure on any occasion to insist on strict performance of any term or condition hereof shall not constitute a waiver of compliance with such term or condition on any other occasion or a waiver of any default. References to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it. The headings used throughout are for convenience only and shall be given no legal effect. Fax copies shall be given the full force and effect as an original.