



PHAGENESIS LIMITED STANDARD TERMS AND CONDITIONS OF SUPPLY

1 DEFINITIONS

- 1.1 "Base Station" means a Phagenyx Base Station.
- 1.2 "Order" means an order for Goods by the Customer and acknowledged by the Seller in accordance with clause 2.2.
- 1.3 "Contract" means the contract between the Seller and the Customer for the sale and purchase of Goods incorporating these Terms and.
- 1.4 "Delivery Date" means the date specified to the Customer by the Seller to when the goods are to be delivered.
- 1.5 "Force Majeure Event" has the meaning given in clause 9.
- 1.6 "Goods" means the goods that the Customer agrees to buy from the Seller as set out in an order.
- 1.7 "List Price" means the list of the prices of the Goods maintained by the Seller as amended from time to time.
- 1.8 "Seller" means Phagenesis Limited, Unit 18, Enterprise House, Manchester Science Park, Manchester M15 6SE.
- 1.9 "Single Patient Device" means the Phagenyx catheter.
- 1.10 "Terms and Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.11 Any reference to a statutory provision shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2 CONDITIONS

- 2.1 These Terms and Conditions shall apply to the Contract for the sale of Goods by the Seller to the Customer to the exclusion of all other terms and conditions including any terms or conditions that the Customer may purport to apply under any purchase order, confirmation of order or similar document or which are implied by trade, custom, practice or course of dealing.
- 2.2 any order shall constitute an offer by the Buyer to purchase Goods pursuant to these Terms and Conditions and shall be deemed to be accepted when the Seller either issues its standard order confirmation or its invoice or delivers the Goods (whichever occurs first), at which point the Contract shall come into existence. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 Any variation to the Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing and signed by the Seller.
- 2.4 The Contract constitutes the whole agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller, which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced

for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for 6 months from its date of issue.

3 PRICE AND PAYMENT

3.1 The price of the Goods shall be as set out in the List Price, or such other price as the parties may agree in writing.

3.2 The price of the Goods shall be invoiced on delivery.

3.3 The Seller may, by giving notice to the Customer at any time up to 7 days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

3.3.1 any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

3.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or

3.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Seller adequate or accurate information or instructions.

3.4 The price of the Goods is exclusive of any analogous sales tax, carriage, freight, postage or insurance costs, which shall be invoiced to the Customer unless otherwise specified in a quotation.

3.5 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of Goods.

3.6 The Customer shall pay the invoice in full and in cleared funds within 30 days from the date of invoice. Payment shall be made to the bank account nominated by the Seller. Time of payment is of the essence.

3.7 If the Customer fails to make any payment due to the Seller under the Contract by the due date for payment ("due date"), then the Customer shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

3.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Seller to the Customer.

4 THE GOODS

4.1 The quantity of the Goods shall be as set out in the Order.

4.2 The Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

5 THE DELIVERY OF THE GOODS

5.1 Unless otherwise agreed, delivery of the Goods shall take place at the address specified in the order ("Delivery Location") by the Delivery Date. The Customer shall make all necessary arrangements to take delivery of the Goods whenever they are tendered for delivery.

5.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

5.3 The Delivery Date specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the Contract. The Seller shall not be liable for any delay in delivery of the Goods that is caused by Force Majeure Event or the Customer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.4 The Customer shall notify the Seller of any order discrepancies within 24 hours of receipt of delivery.

5.5 Where Goods supplied by the Seller have been supplied in sterile packaging, these will not be accepted back for return, unless the Goods are faulty. This is due to the potential risk of contamination or damage to sterile packaging/seals whilst the Goods are out of its control.

5.6 If the Customer fails to take delivery of the Goods within 7 days of the Seller notifying the Customer of the Delivery Date then except where such failure or delay is caused by a Force Majeure or the Seller's failure to comply with its obligations under the Contract:

5.6.1 delivery of the Goods shall be deemed to have completed at 9.00am on the third business day after the Delivery Date; and

5.6.2 the Seller shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.7 If after 20 days after the Delivery Date the Customer has not taken delivery of them, the Seller may resell or otherwise dispose of part of the Goods and, after deducting reasonable storage and selling costs account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

6 TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Seller has been paid in full for the Goods.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;

6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Seller's property;

6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

6.3.5 notify the Seller immediately if it becomes subject to any of the events listed in clause 8.2; and

6.3.6 give the Seller such information relating to the Goods as the Seller may require from time to time.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.2, or the Seller reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7 QUALITY

7.1 Subject as expressly provided in the Contract, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

BASE STATION WARRANTY

7.2 The Seller warrants that on delivery and for a period of 5 years from the date of delivery ("Base Station Warranty Period"), the Base Station shall:

7.2.1 conform in all material respects with its description;

7.2.2 be free from material defects in design, material and workmanship; and

7.2.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

7.2.4 be fit for any purpose held out by the Seller.

7.3 Subject to clause 7.6, if:

7.3.1 the Customer gives notice in writing to the Seller during the Base Station Warranty Period within a reasonable time of discovery that a Base Station does not comply with the warranty set out in clause 7.2;

7.3.2 the Seller is given a reasonable opportunity of examining such Base Station; and

7.3.3 the Customer (if asked to do so by the Seller) returns such Base Station to the Seller's place of business at the Seller's cost, the Seller shall, at its option, repair or replace the defective the Base Station, or refund the price of the defective Base Station in full.

SINGLE PATIENT DEVICE WARRANTY

7.4 The Seller warrants that on delivery and until the expiry date set out on the device ("Single Patient Device Warranty Period"), the Single Patient Device shall:

7.4.1 conform in all material respects with its description;

7.4.2 be free from material defects in design, material and workmanship; and

7.4.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

7.4.4 be fit for any purpose held out by the Seller.

7.5 Subject to clause 7.6, if:

7.5.1 the Customer gives notice in writing to the Seller during the Single Patient Device Warranty Period within a reasonable time of discovery that a Single Patient Device does not comply with the warranty set out in clause 7.4;

7.5.2 the Seller is given a reasonable opportunity of examining such Single Patient Device; and

7.5.3 the Customer (if asked to do so by the Seller) returns such Single Patient Device to the Seller's place of business at the Seller's cost, the Seller shall, at its option, replace the defective the Single Patient Device, or refund the price of the defective Single Patient Device in full.

7.6 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 7.2 and 7.4 in any of the following events:

7.6.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 7.3 or 7.5 (as the case may be);

7.6.2 the defect arises because the Customer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

7.6.3 the Customer alters or repairs such Goods without the written consent of the Seller;

7.6.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

7.6.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

7.7 Except as provided in this clause 7, the Seller shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause

7.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

7.9 The Terms and Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

8 LIMITATION OF LIABILITY

8.1 Nothing in these Terms and Conditions shall limit or exclude the Seller's liability for:

8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

8.1.2 fraud or fraudulent misrepresentation;

8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

8.1.4 defective products under the Consumer Protection Act 1987.

8.2 Subject to clause 8.1:

8.2.1 the Seller shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

8.2.2 the Seller's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

9 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event and that party shall be entitled to a reasonable extension of its obligations. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

10 SEVERANCE

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

11. BUYER'S INSOLVENCY OR INCAPACITY

11.1 If the Customer becomes subject to any of the events listed in clause 11.2, or the Seller reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Seller without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

11.2 For the purposes of clause 11.1, the relevant events are:

11.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act

1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

11.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

11.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

11.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;

11.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

11.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

11.2.7 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

11.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

11.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2.1 to clause 11.2.8 (inclusive);

11.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;

11.2.11 the Customer's financial position deteriorates to such an extent that in the Seller's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

11.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12 MISCELLANEOUS

12.1 All communications between the parties about the Contract shall be in writing and delivered by pre-paid first class post, by hand or by email to the party's registered office, principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice. In the absence of evidence of earlier receipt, any notice shall be deemed to be duly served:

12.1.1 if sent by first class post, two working days after posting;

12.1.2 if delivered personally, when left at the relevant address; or

12.1.3 if sent by email, one working day after transmission.

The provisions of this condition shall not apply to the service of any proceedings or other documents in legal action, which shall be in writing and delivered by pre-paid registered post.

12.2 Save as required to be disclosed by law:

12.2.1 where the Customer is an NHS body, both parties, their employees and agents shall at all times keep confidential and secret and shall not disclose to any person the price or specification relating to the Goods (unless otherwise published); or

12.2.2 where the Customer is not an NHS body, both parties, their employees and agents shall at all times keep confidential and secret and shall not disclose to any person any information, materials or documents acquired in connection with the Contract which concerns the other party, its employees or business, unless disclosed other than due to a failure of the relevant party to comply with the Contract. On termination of the Contract, howsoever caused, the parties' obligations contained in this condition 12.2 shall remain in effect.

12.3 Neither party, its employees, agents or subcontractors, shall offer, promise or give, or request, agree to receive or accept any financial or other advantage as an inducement or reward for the improper performance by either party of any relevant function or activity, nor shall they offer, promise or give any financial or other advantage to any person with the intention of inducing or influencing that person for the purposes of obtaining or retaining business or an advantage in the conduct of business for such party. For the avoidance of doubt, both parties agree to comply with any relevant UK or international anti-bribery legislation (including the Bribery Act 2010 and the Foreign Corrupt Practices Act) and any other industry or organisational codes of conduct applicable to such party.

12.4 Each right or remedy of the Seller under these conditions is without prejudice to any other right or remedy of the Seller.

12.5 On termination of the Contract, howsoever caused, all obligations which are expressed to remain in effect shall survive termination of the Contract, together with such conditions the survival of which is implied or is necessary for the interpretation or enforcement of the Contract.

12.6 A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.7 No waiver or forbearance by the Company (whether express or implied) in enforcing any of its rights under these conditions shall prejudice its right to do so in the future.

12.8 The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.

13 GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with the Law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.