



SPHERE FLUIDICS LIMITED
TERMS AND CONDITIONS OF SUPPLY
(CONSUMABLE GOODS)
UPDATED 2017 04 28

1. DEFINITIONS

In these Conditions, and elsewhere in the Contract:

Conditions	means these terms and conditions of supply;
Confidential Information	has the meaning given it in Clause 6.1;
Contract	means the contract between Sphere and Customer that incorporates these Conditions by reference (so that any reference to the Contract automatically incorporates a reference to these Conditions);
Customer	means the entity that has entered into the Contract with Sphere, under which Sphere is to supply the Goods;
Customer Order	means Customer's written acceptance of the Sphere Quotation;
Delivery Location	means the location for delivery of the Goods specified in the Sphere Quotation or otherwise agreed by the Parties;
Goods	means the chemicals, biochips, biological reagents or other consumable goods that are to be supplied by Sphere to Customer under the Contract, as described in the Sphere Quotation;
Goods Specification	means (a) any technical or other specification for the applicable Goods set out in or expressly referred to in the Sphere Quotation and (b) any description of the applicable Goods and their functionality or performance set out in manuals or instructions for use supplied by Sphere for such Goods;
IPR	means: any patent or other rights in inventions, copyright (including copyright in computer programs), design right, registered design right, database right or rights in know-how; any equivalent rights in any part of the world; and any applications for the registration of any such rights capable of registration in any part of the world;
Party	means Sphere or Customer; and Parties refers to both of them;
Sphere	means Sphere Fluidics Limited, a company registered in England and Wales with company number 07167872;
Sphere Quotation	means the written quotation provided to Customer by Sphere, offering to provide the Goods to Customer;

VAT	means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax;
Warranty Period	means the period of 6 months from the date of delivery;
writing	and cognate expressions include a reference to e-mail unless expressly provided to the contrary.

2. BASIS OF CONTRACT

- 2.1 **Sphere Quotation.** The Sphere Quotation constitutes an offer by Sphere to Customer to supply the Goods in accordance with the Sphere Quotation and these Conditions. Such offer may only be accepted by Customer accepting the Sphere Quotation, in writing by completing the acceptance form comprised in the Sphere Quotation, within 30 days of the date of the Sphere Quotation, or within such longer period as Sphere may in writing agree (for which e-mail will be sufficient).
- 2.2 **Contract.** At the time and on the date that Customer accepts the Sphere Quotation as above the Contract shall come into existence. The Contract consists in the Sphere Quotation, these Conditions and any other documents expressly incorporated into the Contract by reference.
- 2.3 **Exclusive terms.** The Contract constitutes the entire agreement between the Parties. Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Sphere which is not set out in the Contract. In particular, any samples, drawings, descriptive matter or advertising issued or published by Sphere are issued or published 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, except to the extent they are expressly incorporated into the Contract by reference.
- 2.4 **No other conditions.** These Conditions apply to the Contract to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade custom, practice, course of dealing or otherwise. In particular, if Customer places an order for the Goods (or any of them) that are the subject of the Contract and such order incorporates or refers to any other terms and conditions, such order shall be deemed to have been placed as a formality only and such other terms and conditions shall not apply.

3. SUPPLY, DELIVERY AND TIMING

- 3.1 **Supply of Goods.** Sphere agrees to supply the Goods to Customer, and Customer agrees to purchase the Goods from Sphere, on the terms of the Contract.
- 3.2 **Delivery.** Unless otherwise agreed in writing by the Parties (for which e-mail will be sufficient), Sphere shall deliver the Goods to the Delivery Location. Delivery of the Goods shall be completed upon the Goods' arrival at the Delivery Location.
- 3.3 **Timing.** Any dates quoted or otherwise agreed for delivery of Goods are approximate only, and the time of delivery is not of the essence. Sphere will however use its reasonable efforts to adhere to agreed dates for delivery of Goods.

4. RISK AND TITLE

- 4.1 **Risk.** The risk in the Goods shall pass to Customer upon completion of delivery.
- 4.2 **Title.**
- 4.2.1 Title to the Goods shall not pass to Customer until Sphere has received payment in full (in cash or cleared funds) for the Goods and any other goods or any services that Sphere has supplied to Customer; and upon payment of all such sums title to the Goods shall pass to Customer.
- 4.2.2 Until title to the Goods has passed to Customer, Customer shall: (a) store the Goods separately from all other goods held by Customer so that they remain readily identifiable as Sphere's property; (b) not remove, deface or obscure any

identifying mark or packaging on or relating to the Goods; (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Sphere's behalf from the date of delivery; (d) notify Sphere immediately if it becomes subject to any of the events listed in clauses 10.1.3 through 10.1.9; and (e) give Sphere such information relating to the Goods as Sphere may require from time to time.

4.2.3 Subject to clause 4.2.4, Customer may use the Goods in the ordinary course of its business (but not otherwise) before title to them passes to Customer.

4.2.4 If before title to the Goods passes to Customer it becomes subject to any of the events listed in clause clauses 10.1.3 through 10.1.9 then, without limiting any other right or remedy Sphere may have: (a) Customer's right to use the Goods in the ordinary course of its business ceases immediately; and (b) Sphere may at any time: (i) require Customer to deliver up all Goods in its possession; and (ii) if Customer fails to do so promptly, enter any premises of Customer or of any third party where the Goods are stored or believed by Sphere to be stored, in order to recover them.

5. FINANCIAL

5.1 **Amounts payable.** The amounts to be paid by Customer to Sphere under the Contract shall be the amounts specified in the Sphere Quotation, subject as follows:

5.1.1 The price of the Goods stated in the Sphere Quotation is EX WORKS (Incoterms 2010).

5.1.2 Sphere shall also be entitled to charge Customer any other amounts payable by Customer under the terms of the Contract.

5.2 **Payment.** Customer shall pay all amounts payable by it within 30 days of the date of Sphere's invoice, unless different payment terms are stated in the Sphere Quotation or have otherwise been agreed in writing by the Parties; in which case Customer shall pay such amounts in accordance with those payment terms.

5.3 **Manner and currency of payment.** Customer shall pay all monies becoming due to Sphere under the Contract by electronic transfer to a bank account nominated by Sphere or by such other means as Sphere may reasonably require. It shall pay them in Pounds Sterling or in such other currency as is specified in the Sphere Quotation, and shall pay them in full without any withholding or deduction because of any set-off, counterclaim, abatement or otherwise.

5.4 **VAT.** All sums becoming due to Sphere under the Contract are exclusive of any VAT, which (in the case that Sphere is obliged by law to charge VAT) Customer shall pay in addition against Sphere's VAT invoices.

5.5 **Overdue amounts.** In addition to any other right or remedy that Sphere may have, if any amount due to Sphere is not paid on time:

5.5.1 if required by Sphere, Customer shall pay interest on the overdue amount at the rate from time to time prescribed by or pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. The interest period shall run from the due date for payment until receipt of the full amount by Sphere, whether before or after any judgement;

5.5.2 Sphere may without liability withhold any Goods in its possession or under its control until receipt of the full amount by Sphere, together with any interest charged as above; and

5.5.3 Customer shall upon demand by Sphere reimburse Sphere all costs and expenses (including legal fees on a full indemnity basis) incurred by Sphere in recovering overdue amounts from Customer.

6. CONFIDENTIALITY

6.1 **Confidentiality of Confidential Information.** Each Party agrees to maintain secret and confidential all information obtained from the other Party, whether pursuant to the Contract or prior to and in contemplation of it, and all other information that it may acquire from the other in the course of the Contract, to respect the other's proprietary rights in such information, to use it exclusively for the purposes of or as contemplated by the Contract, and to disclose it only to such persons to whom and to

the extent that such disclosure is reasonably necessary for such purposes. In the Contract, and subject to Clause 6.2, the information referred to in the immediately preceding sentence is called **Confidential Information**. Without limiting the scope of Confidential Information, it shall include: (a), subject to Clause 6.2, and as Confidential Information of Sphere, all know-how and other information concerning Sphere's products, services, software and otherwise Sphere's business at any time disclosed to Customer by Sphere; and (b), as Confidential Information of both Parties, the terms of the Contract.

6.2 **Certain information not Confidential Information.** Confidential Information excludes information which:

- 6.2.1 prior to receipt thereof from one Party was in the possession of the other and at its free disposal; or
- 6.2.2 is subsequently disclosed to the recipient Party free of any obligations of confidentiality by a third party who has not derived it directly or indirectly from the other; or
- 6.2.3 is or becomes generally available to the public through no act or default of the recipient Party or its employees, subcontractors or agents.

6.3 **Mandatory disclosures.** If and as soon as a Party becomes aware that it may be obliged by any applicable laws or competent authority to disclose any Confidential Information of the other Party, then it shall (if it lawfully can) so notify the other and shall at the request and cost of the other provide to the other such assistance as the other may reasonably require in taking lawful steps to limit or prevent the disclosure.

6.4 **Obligation to pass on obligations of confidentiality.** Each Party shall:

- 6.4.1 procure that all persons to whom it discloses any Confidential Information of the other shall be made aware of and subject to obligations of confidentiality and non-use reflecting this Clause 6; and
- 6.4.2 use its best efforts to enforce such obligations.

A breach by any of such persons of any of such obligations shall be deemed to be a breach of the Contract by such Party.

6.5 **Period of application.** This Clause 6 shall continue in force for a period of 5 years from the date the Contract is entered into.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 **Ownership.** All IPR in the Goods is and shall be owned by Sphere or its third party suppliers or licensors.

8. WARRANTIES

8.1 **Warranty.** Sphere warrants that the Goods shall when properly stored and used:

- 8.1.1 conform to and perform in all material respects in accordance with the applicable Goods Specification; and
- 8.1.2 be free from material defects in design, materials and workmanship.

8.2 **Remedy for breach.** Subject to Clause 8.3, if:

- 8.2.1 Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty in Clause 8.1;
- 8.2.2 Sphere is given a reasonable opportunity of examining such Goods; and
- 8.2.3 Customer (if asked to do so by Sphere) returns such Goods to Sphere's place of business at Customer's risk and cost;

Sphere shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full.

- 8.3 **Exceptions.** Sphere shall not be liable for the Goods' failure to comply with the warranty in Clause 8.1 if:
- 8.3.1 the defect arises because Customer failed to follow Sphere's oral or written instructions as to the storage or use of the Goods or (if or to the extent there are none) good trade practice;
 - 8.3.2 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - 8.3.3 the defect arises as a result of use of such Goods with any equipment, Software, parts or accessories not supplied by or approved in writing by Sphere;
 - 8.3.4 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

8.4 **No other liability.** Except as provided in this Clause 8, Sphere shall have no liability to Customer in respect of the Goods' failure to comply with the warranty set out in Clause 8.1.

8.5 **Application of warranty.** This Clause 8 shall apply to any replacement Goods supplied by Sphere under Clause 8.2.

9. LIABILITY

9.1 **Certain liability not limited.** Nothing in the Contract shall be taken to exclude or restrict the liability of Sphere for:

- 9.1.1 negligence resulting in death or personal injury;
- 9.1.2 fraudulent misrepresentation or other fraud;
- 9.1.3 wilful default; or
- 9.1.4 any matter for which it would be unlawful to exclude or restrict liability.

All provisions of the Contract that have as their object or effect the exclusion or limitation of Sphere's liability shall be read subject to this Clause 9.1.

9.2 **Limitations of liability.** Subject to Clause 9.1:

- 9.2.1 Sphere shall not in any circumstances be liable for any of the following arising out of or in connection with the Contract: (a) loss of profit or other financial loss; (b) loss of market, loss of goodwill or reputation; (c) loss of or damage to cells or other materials stored, processed or analysed through use of the Goods; (d) loss or damage arising from use of Goods with any equipment, Software, parts or accessories not supplied by or approved in writing by Sphere; (e) loss or damage arising from modifications to Goods made by any person other than Sphere without Sphere's prior written approval; or (f) any indirect or consequential loss or damage; and
- 9.2.2 Sphere's total liability in respect of all causes of action arising out of or in connection with the Contract shall be limited to: (a) replacing defective Goods, or refunding the price of the defective Goods in full, subject to and in accordance with Clause 8; and (b) in addition, no more than £500.

9.3 **Scope of limitations of liability.** Any provision of the Contract that has as its object or effect the exclusion or limitation of liability shall, unless expressly stated to the contrary in that provision, operate to exclude or limit liability on whatever basis incurred, whether for breach of contract, in tort (including negligence), breach of statutory duty or otherwise.

9.4 **Force Majeure.**

- 9.4.1 Sphere shall not be considered in breach of the Contract, or liable for any loss or damage which may be suffered by Customer, as a direct or indirect result of the performance of any of Sphere's obligations under the Contract being

prevented, hindered or delayed by reason of circumstances or events beyond Sphere's reasonable control (**Force Majeure**).

9.4.2 If Sphere is affected by Force Majeure it shall:

9.4.2.1 notify Customer in writing of the Force Majeure and the actual or expected effects of it; and

9.4.2.2 use all reasonable efforts to resume performance and continue performance of the affected obligations.

9.5 **Sphere's employees and subcontractors etc.** Under no circumstances shall Customer make any claim against any directors, officers, employees, subcontractors or agents of Sphere, or against any other persons connected with Sphere, in any manner under or in connection with the Contract.

10. TERMINATION

10.1 **Termination for cause.** In addition to any other right or remedy of such Party, either Party may terminate the Contract by giving written notice to the other Party having immediate effect if:

10.1.1 the other Party commits any material breach of any of the terms of the Contract which in the case of a breach capable of remedy is not remedied by such Party within 28 days of the date of a notice to it specifying the breach and requiring its remedy;

10.1.2 the other Party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

10.1.3 the other Party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

10.1.4 a resolution is passed, or an order is made, for the winding up of the other Party;

10.1.5 an order is made for the appointment of an administrator or an administrator is appointed over the other Party;

10.1.6 the other Party makes an assignment for the benefit of creditors, a voluntary arrangement with its creditors or becomes subject to an administration order;

10.1.7 the other Party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or to assume the obligations imposed on the other Party under the Contract);

10.1.8 the other Party ceases or threatens to cease to carry on all or substantially all of its business; or

10.1.9 anything analogous to any of Clauses 10.1.3 through 10.1.7 occurs in relation to the other Party in any foreign jurisdiction.

10.2 **Material breach partially defined.** Without limiting the scope of Clause 10.1.1, a breach of either of Clauses 5 or 6 shall be deemed a material breach.

11. CONSEQUENCES OF TERMINATION

11.1 **Accrued rights.** Termination of the Contract (however arising) shall be without prejudice to the rights of the Parties accrued prior to termination or to any other right or remedy of either Party.

- 11.2 **Survival of certain terms.** All terms of the Contract which in order to give full effect to their meanings need to survive termination of the Contract shall do so. In particular Clauses 4, 5, 6, 8, 9, 11, 12 and 13 shall survive any termination of the Contract.
- 11.3 **Other consequences.** Upon any termination of the Contract each Party shall within 14 days return to the other or, if instructed by the other in writing, destroy or delete all documents or records (in any form) and materials recording or otherwise embodying any Confidential Information of the other Party.
12. **MISCELLANEOUS**
- 12.1 **Announcements/publicity.** Neither Party shall issue any press release or other announcement, or otherwise publicise the relationship between the Parties embodied in the Contract, except with the prior written approval of the other Party. Such approval may be given, withheld or conditioned in the other Party's absolute discretion.
- 12.2 **Variation.** No addition, amendment to or modification of the Contract shall be effective unless it is in writing and signed by the duly authorised representative of each Party (e-mail is not sufficient).
- 12.3 **Severability.** If any part of the Contract is found to be invalid or unenforceable then such part of the Contract shall be deemed removed from the Contract, but without affecting the remainder of the Contract. However in that event the Parties shall in good faith negotiate and endeavour to agree valid and enforceable replacement terms that as nearly as possible achieve their original intent embodied in the removed part.
- 12.4 **Assignment.**
- 12.4.1 Sphere may without consent assign its rights and obligations under the Contract to any person to whom it transfers all or substantially all of its business and assets.
- 12.4.2 Subject to Clause 12.4.1, neither Party shall without the prior written consent of the other (which shall not unreasonably be withheld or delayed) assign any of its rights or obligations under the Contract.
- 12.4.3 The Contract shall bind and shall continue in force for the benefit of any permitted assignee of either Party.
- 12.5 **Notices.**
- 12.5.1 Any notice to be given under the Contract shall be in writing and shall be delivered personally, or sent by facsimile transmission or by commercial courier, to the Party required to receive the notice at its address as set out in the Contract or as may otherwise be specified by the relevant Party by notice in writing to the other Party.
- 12.5.2 Any notice shall be deemed to have been duly received: (a) if delivered personally, when left at the recipient Party's address, marked for the attention of an officer or employee of the recipient Party known to the Party giving notice; or (b) if sent by facsimile transmission, at 9.00 am on the next business day (in the recipient's location) after sending, marked for the attention of such officer or employee, with correct transmission confirmed; or (c) if delivered by commercial courier, marked for the attention of such officer or employee, on the date and at the time that the courier's delivery receipt is signed.
- 12.5.3 A notice required to be given under the Contract shall not be validly given if sent by e-mail.
- 12.5.4 The provisions of this Clause 12.5 shall not apply to the service of any proceedings or other documents in any legal action.
- 12.6 **Waiver.** No delay by a Party in exercising any right or enforcing any provision of the Contract shall be deemed a waiver of such right or provision.
- 12.7 **Entire agreement.** The Contract supersedes any arrangements, undertakings, promises or agreements made or existing between the Parties prior to or simultaneously with the Contract and relating to the subject-matter of the Contract, and

constitutes the entire understanding between the Parties in relation to the subject-matter of the Contract. Without limiting the scope of the immediately preceding sentence, no terms and conditions incorporated into or referred to in any Customer Order placed by Customer or in any acceptance of a Sphere Quotation, or in any other documentation issued by Customer, shall have any effect. No terms or conditions not expressly set out in the Contract form part of it.

- 12.8 **No partnership, etc.** The Contract shall not constitute the Parties partners or either Party the agent of the other for any purpose. The Parties are independent contractors.
- 12.9 **Interpretation.** The headings and captions in the Contract (including those at the beginning of Clauses) are for convenience only and shall not affect its interpretation; all references to Clauses are references to clauses in these Conditions; references to a **person** shall be deemed to include an individual, a company, a partnership or an unincorporated business or other body, whether or not it has separate legal personality; references to a statute or other legislation shall be deemed to include any modification, extension or re-enactment thereof for the time being in force; references importing the singular shall include the plural and vice versa; and words such as **in particular, including, for example, such as** and **etc.**, or other words indicating that examples falling within more general wording follow, shall not be construed as limiting in any way the scope of the corresponding more general wording.
- 12.10 **Third party rights.** All provisions of the Contract that purport to limit or exclude the liability of a Party are intended also to be for the benefit of all directors, officers, employees, subcontractors and agents of such Party, and of any other persons connected with that Party, and shall accordingly be enforceable by each of them as well as or instead of by the applicable Party, and on the basis that any limit on the liability of a Party shall apply to that Party and all those other persons in the aggregate. Subject to the immediately preceding sentence, the Contract is not intended to confer rights on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, and no term of the Contract may be enforced by any person who is not a party to the Contract.

13. **GOVERNING LAW AND DISPUTE RESOLUTION**

- 13.1 **Governing law.** The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in all respects in accordance with the laws of England and Wales.
- 13.2 **Dispute resolution.** The Parties shall endeavour to resolve any dispute arising out of or in connection with the Contract by negotiation between their representatives who have the authority to resolve the dispute. The Parties may agree to try and resolve such dispute through mediation, expert determination or other means appropriate to the dispute; and neither Party shall unreasonably refuse to take part in such process. The Parties irrevocably agree that any dispute arising out of or in connection with the Contract or its subject matter or formation (including any non-contractual dispute or claim) that is not resolved by other means shall be subject to the exclusive jurisdiction of the courts of England and Wales.