

# Aquabio Limited

## Terms & Conditions of Tender & Sale

### DEFINITIONS

1. The 'Company' means Aquabio Limited and the 'Customer' means the person/persons or Company who buy or agrees to buy goods and/or services.

2. Except as hereinafter provided the offer contained on the face of or annexed to this document is subject to these terms and conditions is deemed to be incorporated in any Contract made between the Company and the Customer.

3. No variation of any of these terms or conditions shall be binding upon the Company unless made in writing and signed by a person authorised by the Company. Acceptance of this offer shall otherwise be made thereto.

4. All drawing specifications and other technical information provided by the company are confidential and the Customer shall not without the previous written consent of the company disclose to a third party any information given by reason of this offer or any resulting Contract. All descriptive matter specifications drawing particulars of weight dimensions and samples submitted with this offer are approximate.

5. Unless the Company agrees otherwise in writing the prices quoted may be adjusted by the company without notice prior to completion by the Company of its obligations under the Contract in respect of:

(i) changes in rates of wages or other payments made to the Company's workforce, overheads or indirect expenses, the prices of materials, or cost of transport or services.

(ii) the cost of conforming or complying with any statute, bye-law statutory instrument, order or other similar regulation.

(iii) extra costs incurred by the Company for which the company is not responsible.

(iv) work outside the Company's normal working hours by agreement with a Customer, chargeable at current Company rates.

6. Unless expressly provided, dates of despatch delivery erection or performance by the company shall not be of the essence of any Contract made pursuant to this offer. Where time is expressly made the essence of any contract the company shall not be liable for any breach to that term by any act or default of the Customer or by any other cause whatsoever reasonably beyond the control of the Company. Periods of time provided for shall commence from the date of acceptance, receipt of final approval of drawings whichever is the latest time.

7. Prices do not include the following:

(i) Packing and transport costs unless agreed in writing, as above, when all wooden packing cases and the like must be returned to the Company's works at the Customers expense and in good condition within one month of receipt or must otherwise be paid for in full.

(ii) lighting, fuel or heating, water and electric current on the site.

(iii) fees for District Surveyors, Insurance Inspectors and other similar functionaries.

(iv) inspection and tests of goods sold for the work performed other than the inspection and tests specified.

(v) rates or similar impost of Local Authorities in respect of the Company's temporary accommodation on site where the work is performed.

(vi) stripping or removal of old materials.

(vii) scaffolding or craneage, unloading facilities to be provided by the Customer.

In the absence of express provision in the Contract any or all of the above expenses shall become payable as though they were monies due under the Contract.

8. The Company's and Suppliers manufactured goods are carefully inspected and where practicable submitted to standard tests at the company's works before despatch. Arrangements to view standard tests can be made by the Customer by appointment, confirmed in writing at the date of acceptance of the company's offer. If no arrangements are made the standard tests where practicable, will proceed in the Customer's absence. If provision is made for the Customer to attend the inspection or the tests and the Customer fails to attend after being given seven days notice by the Company then the inspection or the tests will be made by the company in the absence of the Customer and the company shall be deemed to have complied with the provisions of the Contract. All implied warranties as to the efficiency of the Company's standard or specified tests are hereby excluded. All tests must be made at the Company's works or suppliers unless otherwise provided.

9. All implied conditions and warranties, in respect of goods sold and delivered or work performed under the Contract are expressly excluded from this contract, but if any goods sold or delivered or work performed by the Company under the Contract is within twelve months of delivery (or such shorter period as may be provided by the Manufacturer's warranty where the goods are not manufactured by the Company) found to be defective by reason of faulty manufacture or bad workmanship and written notice thereof is given within such period to the Company, the Company will repair or in its absolute discretion replace, such goods or work free of charge but the Company shall in no case be liable to the Customer for any delay, loss in use, loss of profit, loss to other contracts, or any consequential loss or damage of whatever kind howsoever any of the same shall have been caused. The Company shall not be responsible for the removal, or return of the goods from/to site for repair or replacement or any temporary services associated with any repair and/or replacement. The Company accepts no liability for performance figures unless specifically guaranteed subject to the recognised tolerance and rejection limits applicable to such figures.

### 10. DELIVERY

(a) when delivery is affected by the Company, the Customer shall accept delivery of the goods on arrival at the Customer's works, when risk in the goods shall pass to the Customer. The Customer shall notify the Company and the carrier in writing (otherwise then upon the carriers documents) of damage in transit mis-delivery of any discrepancy immediately on arrival. The Customer must notify the Company and the carrier in writing of non delivery within six days when delivery was to be effected by post, 21 days by road transport or rail and five days by the Company's vehicles, in all cases from the date of despatch advised to the Customer.

(b) where delivery is effected by the Customer's vehicles or is arranged by the Customer risk in the goods shall pass to the Customer on delivery on the carrier.

(c) the Customer warrants that any necessary unloading facilities will be available at the place of delivery.

(d) without prejudice to the Company's other rights should the Customer for any reason fail to accept delivery of the goods on arrival the Company shall be entitled at the Customer's risk and expense to store the goods and/or to procure or effect storage elsewhere for the goods.

(e) where goods are sold f.o.b. the risk in the goods shall pass to the Customer immediately the goods are over the ship's tail and the Company shall be under no obligation to give the Customer the notice specified in section 32(3) of the Sale of Goods Act 1970.

11. Without prejudice to the Company's other rights should the Customer for any reason fail or refuse to accept delivery of the goods or any instalment or part thereof within 30 days of the due date, the Company shall be entitled to invoice the Customer at monthly intervals until actual delivery for an amount equal to the rate of 4% per annum above the Base Rate of Barclays Bank Plc from time to time in force of the selling price of such delivery instalment or part and the Customer shall pay such invoices within 14 days of the Customer's receipt thereof. The Customer shall not be entitled to set off the amounts of such invoices in reduction of the selling price invoiced to the Customer upon actual delivery which shall be payable in full accordance to these conditions.

### 12. EXTRA COSTS

Should extra costs be incurred by the Company through it's clients instructions or lack of instructions, interruptions, delays non-release of equipment, foundations, free issue materials etc unusual hours or conditions, mistakes or work for which the Company is not responsible, such extra costs incurred shall be added to the Contracts accordingly.

### 13. PROGRESS CLAIMS

Value of orders over £1,000, the Company reserves the right to submit progress claims monthly as and when materials come to hand and work proceeds.

14A. Goods sold and delivered and work performed either wholly or in part by the Company under this contract together with any additional expense or costs arising under any of these conditions and thereby becoming payable shall be invoiced by the Company to the Customer and payment of the accounts of each such invoice shall be made net cash not later than 30 days from the date of such invoice.

14B. The customer shall not be entitled to withhold payment of any amount payable under the contract to the Company because of any disputed claim of the Customer in respect of defective goods or any other alleged breach of the contract, nor shall the Customer be entitled to set off against any amount payable under the contract the Company any monies which are not then presently payable by the Company or for which the Company disputes liability. In the event of the Customer failing to make any payment as aforesaid in 12 and 14A within the time limits:

(1) the Customer's total indebtedness to the Company shall become immediately due and payable.

(2) All sums outstanding including those within the sub-clause 14B above shall carry interest at 4% per annum above the basic rate of Barclays Bank Plc for the time being current until payment.

(3) The Company may furthermore suspend further work or deliveries until such payment is made with interest without prejudice to the Company's right to regard this Contract at an end and the Company shall not be liable for any loss whatsoever incurred thereby.

14C. No forbearance or additional time granted by the Company under this contract shall be construed as a waiver by the Company of any of its right hereunder:

14D. The Company shall have a general lien in respect of all or any outstanding accounts of the Customer in the possession of the company's servants or agents and wherever situated.

15. The price does not include any Value Added Tax or any duty or any other tax by whomsoever payable which is payable under or by virtue of any Act of Parliament, European Law or under any regulations made thereunder and which will be added to the price in appropriate cases.

16. The Customer shall provide for the security of the Company's property and partially completed works and for such lighting and heating that may be necessary to meet statutory and/or safety requirements.

17. In the event of a supplier or other dependee of the Company falling into administration or liquidation in respect of the contract, the Company reserves the right to continue the related works by whatever means to avoid delay or encumbrance of the contract.

18. Official representatives of the Company shall have free access to the site at all times and suitable dry area shall be provided for the erection of the company's huts, site workshops etc, as required.

19. Until full payment has been received by the Company for all goods whatsoever supplied at any time by the company to the Customer:

(a) property in the goods shall remain in the Company,

(b) should the goods (or any of them) be converted into a new product whether or not such a conversion involves the admixture of any other goods or thing whatsoever and in whatever proportions the conversions shall be deemed to have been effected on the Company's behalf and the Company shall have the full legal and beneficial ownership of the new product.

(c) Subject to (d) and (e) below the Customer shall be at liberty to sell the goods and the new products referred to in (b) above in the ordinary course of business on the basis that the Company shall have the full legal and beneficial ownership of the goods and such new products and that the proceeds of sale thereof shall be the Company's property for whom the Customer shall account on demand until the Company have been paid in full.

(d) The Company may at any time revoke the Customer's power of sale by notice to the Customer if the Customer is in default for longer than seven days in the payment of any sum whatsoever due to the Company (whether in respect of the goods or any other goods supplied at any time by the Company to the Customer or for any reason whatsoever) or if the company have bone fide doubts as to the solvency of the Customer.

(e) the Customer's power of sale shall automatically cease if a receiver or administrator is appointed over any of the assets of the undertaking of the Customer or a winding up order is made against the Customer or the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or calls a meeting of or makes any arrangement or composition with creditors or commits any act of bankruptcy

(f) upon determination of the Customer's power of sale under (d) and (e) above shall place the goods and the new products at the Company's disposal and the company shall be entitled to enter upon any premises of the Customer for the purpose of removing the goods and new products and to remove such goods and new products from the premises (including severance from the realty where necessary).

20. The Company has drawn up these Conditions of Sale having considered the provisions of the Unfair Contract Terms Act 1977 as amended and considers them to be fair and reasonable and its prices are based on contracts made under these conditions. In the event that the Customer considers any of these terms to be unreasonable he must inform the Company before entering into any contract otherwise he will be deemed to have accepted that these conditions are fair and reasonable.

21. In the event that, for any reason, any provision or provisions in these conditions or any part thereof is or is held to be void, unenforceable or otherwise invalid, any contract made which incorporates these conditions shall continue to be fully binding and all other conditions herein, including the remainder of any condition where the effect of some part thereof is avoided shall remain full effective.

22. No contract for sale which is subject to these conditions may be assigned by the Customer without the prior written consent of the Company.

23. For the purpose of these conditions the expressions "holding company" and "subsidiary" shall have the meaning attributed to them by Section 736 of the Companies Act 1985.

24. The provisions of these conditions shall remain in full force and effect notwithstanding that the parties obligations under any contract may have been performed or discharged.

25. Any dispute difference or question in regard to any matter or thing whatever nature arising out of this Contract or in connection therewith shall be referred to the arbitration or single Arbitrator to be appointed in default of agreement with the President for the time being of the Institution of Mechanical Engineers in London in accordance with provisions of the Arbitration Act 1979 or any statutory modification or re-enactment thereof which may for the time being be in force.

26. No cancellation of any other unilateral repudiation of the Contract shall be valid unless accepted in writing by the Company and signed by a person authorised by the Company.

27. The Contract shall in all respects be construed and operate in conformity with English Law. If any of these conditions or any part thereof is rendered void or unenforceable by any legislation to which it is subject, it shall be so void and unenforceable to that extent and no further.