

BIOCHROM LIMITED

TERMS AND CONDITIONS OF SUPPLY

(EQUIPMENT, ANCILLARY SERVICES AND CONSUMABLES)

1. **DEFINITIONS**

In these Conditions, and elsewhere in the Contract:

Biochrom	means Biochrom Limited, a company registered in England and Wales with company number 03526954;
Biochrom Quotation	means the written quotation (if any) provided to the Customer by Biochrom, offering to provide the Goods and/or Services to the Customer which may include a term requiring the Customer to pay for the Goods and/or Services in advance of delivery or supply by Biochrom;
Biochrom Order Acknowledgement	means Biochrom's order acknowledgement (if any) sent to the Customer (normally by email) acknowledging receipt of the Customer Order and confirming the price of and estimated time of delivery of Goods and performance of Services ordered by the Customer. The Biochrom Order Acknowledgement may also confirm other matters such as a requirement for the Customer to pay for the Goods and/or Services in advance of delivery or supply by Biochrom;
Conditions	means these terms and conditions of supply;
Confidential Information	has the meaning given it in Clause 9.1;
Consumables	means the consumable items (such as buffers and reagents) that are to be supplied by Biochrom to the Customer under the Contract;
Contract	means the contract between Biochrom and the 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 Biochrom, under which Biochrom is to supply the Goods and/or Services;
Customer Order	means the Customer's purchase order for Goods and/or Services, whether or not in Writing;
Delivery Location	means the location for delivery of the Goods specified by Biochrom or otherwise agreed by the Parties;
Equipment	means the equipment that is to be supplied by Biochrom to the Customer under the Contract, excluding Spares;
Goods	means, as applicable, the Equipment (including any Software comprised therein or supplied therewith), Spares for Equipment, and Consumables that is or are to be supplied by Biochrom to the Customer under the Contract;

Goods Specification	means (a) any technical or other specification for the applicable Goods set out in or expressly referred to in the Biochrom Quotation or the Biochrom Order Acknowledgement and (b) any description of the applicable Goods and their functionality or performance set out in manuals or instructions for use supplied or made available by Biochrom for such Goods;
Incoterms®	means the standardised set of international contractual terms published by the International Chamber of Commerce, the current version of which is Incoterms® 2010;
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 Biochrom or the Customer; and Parties refers to both of them;
Services	means the services (such as installation of Equipment), if any, ancillary to the Goods that are to be supplied by Biochrom to the Customer under the Contract;
Software	means sequences of instructions to carry out a process in, or convertible into, a form executable by a computer, and fixed in any tangible medium of expression; but excludes source code or other source materials unless expressly agreed to the contrary in Writing by Biochrom;
Spares	means spare or replacement parts for Equipment;
VAT	means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax;
Warranty Period	means: (a) in respect of Equipment, the applicable warranty period published by Biochrom on the Website or, if different, stated in the applicable Biochrom Quotation, such period starting: (i) if the Equipment is installed by Biochrom, on the date that installation is completed; or (ii) if the Equipment is not installed by Biochrom, on the date of delivery of the Equipment to the Customer; (b) in respect of Spares, the applicable warranty period published by Biochrom on the Website or, if different, stated in the applicable Biochrom Quotation, such period starting on the date of delivery of the Spares to the Customer; and (c) in respect of Consumables which are stated on the Website to have a warranty, the applicable warranty period stated on the Website, such period starting on the date of delivery of the relevant Consumables to the Customer;
Website	means Biochrom's website at http://www.biochrom.co.uk or any replacement website; and
Writing	means in written form and cognate expressions include a reference to email unless expressly provided to the contrary.

2. BASIS OF CONTRACT

- 2.1 **Biochrom Quotation.** If Biochrom issues a Biochrom Quotation, the Biochrom Quotation constitutes an offer by Biochrom to the Customer to supply the Goods and/or Services in accordance with the Biochrom Quotation and these Conditions. Such offer may only be accepted by the Customer accepting the Biochrom Quotation, in Writing by completing the acceptance form comprised in the Biochrom Quotation, within 30 days of the date of the Biochrom Quotation, or within such longer period as Biochrom may in Writing agree. At the time and on the date that the Customer accepts the Biochrom Quotation as above the Contract shall come into existence. The Contract consists of the Biochrom Quotation, these Conditions and any other documents expressly incorporated into the Contract by reference.
- 2.2 **Biochrom Order Acknowledgement.** If Biochrom does not issue a Biochrom Quotation then Biochrom will issue a Biochrom Order Acknowledgement in response to the Customer Order. The Biochrom Order Acknowledgement does not constitute acceptance of the Customer Order but constitutes an offer by Biochrom to the Customer to supply the applicable Goods and/or Services to the Customer in accordance with the Biochrom Order Acknowledgement and these Conditions. Such offer will be deemed to be accepted by the Customer when the Customer accepts delivery of any Goods or supply of any Services that are the subject of the applicable Customer Order. At the time and on the date that the Customer accepts such offer as above, the Contract shall come into existence. The Contract consists of the Biochrom Order Acknowledgement, 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. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Biochrom which is not set out in the Contract. In particular, any samples, drawings, descriptive matter or advertising issued or published by Biochrom are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services 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 the Customer seeks to impose or incorporate, or which are implied by trade custom, practice, course of dealing or otherwise. In particular, if any Customer 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 AND DELIVERY

- 3.1 **Supply of Goods.** Biochrom agrees to supply the Goods to the Customer, and the Customer agrees to purchase the Goods from Biochrom, on the terms of the Contract.
- 3.2 **Delivery.** Unless otherwise agreed in Writing by the Parties, Biochrom 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 **Return of Goods.** If, after delivery of the Goods to the Delivery Location, the Customer wishes to return any of the Goods to Biochrom the Customer may do so by sending the Goods to Biochrom's place of business at the Customer's risk and cost. Following safe receipt of the returned Goods and provided that the Customer has paid for the returned Goods Biochrom shall refund the Customer for the price of the returned Goods less a 're-stocking fee' equal to fifteen (15) per cent. of the price of the returned Goods.

4. RISK AND TITLE

- 4.1 **Risk.** The risk in the Goods shall pass to the Customer upon delivery of the Goods to the Delivery Location (unless the Goods are to be delivered subject to Incoterms® in which case risk in the Goods shall pass to the Customer as set out in the relevant Incoterms®).

4.2 **Title.**

- 4.2.1 Title to the Goods shall not pass to the Customer until Biochrom has received payment in full (in cash or cleared funds) for the Goods and any other goods or services that Biochrom has supplied to the Customer; and upon payment of all such sums title to the Goods shall pass to the Customer.
- 4.2.2 Until title to the Goods has passed to the Customer, the Customer shall: (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Biochrom'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 Biochrom's behalf from the date of delivery; (d) notify Biochrom immediately if it becomes subject to any of the events listed in clauses 13.1.3 through 13.1.9; and (e) give Biochrom such information relating to the Goods as Biochrom may require from time to time.
- 4.2.3 Subject to clause 4.2.4, the Customer may use the Goods in the ordinary course of its business (but not otherwise) before title to them passes to the Customer.
- 4.2.4 If before title to the Goods passes to the Customer it becomes subject to any of the events listed in clauses 13.1.3 through 13.1.9 then, without limiting any other right or remedy Biochrom may have: (a) the Customer's right to use the Goods in the ordinary course of its business ceases immediately; and (b) Biochrom may at any time: (i) require the Customer to deliver up all Goods in its possession; and (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored or believed by Biochrom to be stored, in order to recover them.

5. **SERVICES AND CUSTOMER OBLIGATIONS**

- 5.1 **Customisation.** If specified in the Biochrom Quotation or Biochrom Order Acknowledgement, Biochrom will customise the Equipment in the manner specified. Unless so specified, the Equipment to be supplied will be in accordance with the applicable standard specification of such Equipment supplied by Biochrom.
- 5.2 **Installation.** If specified in the Biochrom Quotation or Biochrom Order Acknowledgement, Biochrom will install the Equipment at the Delivery Location or at such other location as the Parties may agree in Writing.
- 5.3 **Training.** If specified in the Biochrom Quotation or Biochrom Order Acknowledgement, Biochrom will provide training to Customer personnel in the use of the Goods. Such training will be provided at such location, over such period, at such time and to such Customer personnel as are specified in the Biochrom Quotation or Biochrom Order Acknowledgement or are otherwise agreed in Writing by the Parties.
- 5.4 **Technical support.** In respect of certain Equipment, a Biochrom technician will, within the Warranty Period, undertake one preventative maintenance visit to the location at which such Equipment was installed, to check that the Equipment is functioning correctly. Otherwise, unless specified to the contrary in the Biochrom Quotation or Biochrom Order Acknowledgement, or otherwise agreed in Writing by the Parties, Biochrom will not provide any technical support to the Customer in relation to use of any Goods.

6. **OBLIGATIONS OF BIOCHROM**

- 6.1 **Performance.** Biochrom shall:
 - 6.1.1 perform the Services with reasonable care and skill; and
 - 6.1.2 assign to the Services personnel with the appropriate levels of expertise and experience.

6.2 **Timing.** Any dates quoted or otherwise agreed for delivery of Goods or supply of Services are approximate only, and the time of delivery or supply is not of the essence. Biochrom will however use its reasonable efforts to adhere to agreed dates for delivery of Goods or supply of Services.

6.3 **Subcontracting.** Biochrom may in its absolute discretion subcontract performance of Services under the Contract. However Biochrom shall remain responsible for any subcontracted Services as if it had not subcontracted them.

7. COOPERATION BY CUSTOMER

7.1 **Cooperation.** The Customer shall promptly provide to Biochrom such information, access to personnel, access to premises and other cooperation as is specified in the Biochrom Quotation or Biochrom Order Acknowledgement or otherwise reasonably required by Biochrom in connection with performance of its obligations under the Contract. If Biochrom is to install any Equipment then, prior to installing the Equipment, Biochrom will inform the Customer of the environmental and other requirements that must be satisfied at the installation location and (without limiting the scope of this clause) the Customer must ensure that such requirements are met.

7.2 **Consequences of failure to cooperate.** If and to the extent that failure by the Customer to comply with its obligations under the Contract results in Biochrom being unable to perform its obligations, Biochrom shall not be liable for that failure. If and to the extent that such failure by the Customer results in Biochrom incurring extra costs or expending extra time or effort in connection with supply of Goods or performance of Services, the Customer shall pay to Biochrom additional amounts calculated in accordance with Biochrom's normal practices at the applicable time.

8. FINANCIAL

8.1 **Amounts payable.** The amounts to be paid by the Customer to Biochrom under the Contract (which may include the price of the Goods, fees and expenses/disbursements) shall be the amounts specified in the Biochrom Quotation or Biochrom Order Acknowledgement or, if not specified in the Biochrom Quotation or Biochrom Order Acknowledgement, shall be the amounts specified in the Customer Order, (in any such case) subject as follows:

8.1.1 the price of the Goods stated in the Biochrom Quotation or Biochrom Order Acknowledgement takes account of any agreed Incoterms®;

8.1.2 in addition to the fees for the Services (if any), Biochrom shall also be entitled to charge the Customer for any reasonable travel, accommodation and subsistence expenses incurred by Biochrom in connection with the Services; and

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

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

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

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

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

8.5.1 if required by Biochrom, the 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 Biochrom, whether before or after any judgement;

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

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

9. **CONFIDENTIALITY**

9.1 **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 9.2, 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 9.2, and as Confidential Information of Biochrom, all know-how and other information concerning Biochrom's products, services, software and otherwise Biochrom's business at any time disclosed to the Customer by Biochrom; and (b) as Confidential Information of both Parties, the terms of the Contract.

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

9.2.1 prior to receipt thereof from one Party was in the possession of the other and at its free disposal; or

9.2.2 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

9.2.3 is or becomes generally available to the public through no act or default of the recipient Party or its employees, subcontractors or agents.

9.3 **Mandatory disclosures.** If and as soon as a Party becomes aware that it may be obliged by any applicable law 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.

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

9.4.1 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 9; and

9.4.2 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.

9.5 **Period of application.** This Clause 9 shall continue in force for a period of 5 years from the date the Contract is entered into.

10. **INTELLECTUAL PROPERTY RIGHTS**

10.1 **Ownership.**

10.1.1 All IPR in the Goods is and shall be owned by Biochrom or its third party suppliers or licensors.

10.1.2 All IPR in or arising from the Services shall be owned by Biochrom.

10.2 **Licences.** In respect of any Software comprised in the Goods or supplied with them:

10.2.1 any such Software which is proprietary to any third party is supplied subject to any licence terms imposed by that third party, and the Customer must comply with those licence terms. If no express licence terms are imposed, the Customer shall be deemed to have such non-exclusive licence as is reasonably required to use the applicable Software as part of or in conjunction with the applicable Equipment, in accordance with the normal use of that Equipment;

10.2.2 any such Software which is proprietary to Biochrom is supplied subject to a non-exclusive licence on the following terms:

10.2.2.1 the Customer is licensed to use such Software as reasonably required as part of or in conjunction with the applicable Equipment, in accordance with the normal use of that Equipment; and

10.2.2.2 to the extent that such acts may lawfully be prohibited, the Customer shall not decompile or otherwise reverse engineer such Software; and

10.2.3 rights not expressly granted in respect of any Software comprised in the Equipment or supplied with it are reserved to Biochrom or its licensors.

11. **WARRANTIES**

11.1 **DOA Goods.** Any Goods that upon delivery to the Customer do not comply, or that within 30 days of delivery to the Customer cease to comply, with the applicable warranty, below, in this Clause 11, will be considered “dead on arrival” (**DOA**). Biochrom will at its cost and without charge replace or repair such Goods, and will bear the cost of shipping for return of such Goods to Biochrom and of delivery of replacement or repaired Goods to the Customer. However the choice of whether to repair or replace such Goods shall be Biochrom’s and the Customer must not return any Goods to Biochrom without Biochrom’s prior agreement.

11.2 **Equipment warranty.** Biochrom warrants that the Equipment shall, when properly stored, installed, commissioned, used and maintained:

11.2.1 conform to and perform in all material respects in accordance with the applicable Goods Specification; and

11.2.2 be free from material defects in design, materials and workmanship.

11.3 **Spares warranty.** Biochrom warrants that the Spares shall, when properly stored, installed and used:

11.3.1 conform to and perform in all material respects in accordance with the applicable Goods Specification; and

11.3.2 be free from material defects in design, materials and workmanship.

11.4 **Consumables warranty.** Biochrom warrants that, to the extent that any Consumables are referred to on the Website as having an applicable warranty, such Consumables shall, when properly stored and used, conform to and perform in all material respects in accordance with the applicable Goods Specification.

11.5 **Remedy for breach.** Subject to Clause 11.6, if:

11.5.1 the Customer gives notice in Writing during the applicable Warranty Period and within a reasonable time of discovery that some or all of the Goods do not comply with the warranty in, as the case may be, Clause 11.2 (*Equipment warranty*), Clause 11.3 (*Spares warranty*) or Clause 11.4 (*Consumables warranty*);

11.5.2 if it so requests, Biochrom is given a reasonable opportunity of examining such Goods; and

11.5.3 the Customer (if asked to do so by Biochrom) returns such Goods to Biochrom's place of business at the Customer's risk and cost,

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

11.6 **Exceptions.** Biochrom shall not be liable for the Goods' failure to comply with the applicable warranty if:

11.6.1 the Customer makes any further use of such Goods after giving notice in accordance with Clause 11.5;

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

11.6.3 the Customer modifies or repairs such Goods without the prior written consent of Biochrom;

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

11.6.5 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 Biochrom; or

11.6.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

11.7 **No other liability.** Except as provided in this Clause 11, Biochrom shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in, as the case may be, Clause 11.2 (*Equipment warranty*), Clause 11.3 (*Spares warranty*) or Clause 11.4 (*Consumables warranty*).

11.8 **Application of warranty.** This Clause 11 shall apply, for the remainder of the applicable Warranty Period, to any repaired or replacement Goods supplied by Biochrom under Clause 11.5.

12. **LIABILITY**

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

12.1.1 negligence resulting in death or personal injury;

12.1.2 fraudulent misrepresentation or other fraud;

12.1.3 wilful default; or

12.1.4 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 Biochrom's liability shall be read subject to this Clause 12.1.

12.2 **Limitations of liability.** Subject to Clause 12.1:

12.2.1 Biochrom shall not in any circumstances be liable for any of the following arising out of or in connection with the Contract, whether directly or indirectly: (a) loss of profit or other financial loss; (b) loss of market, loss of goodwill or reputation; (c) loss of or damage to materials processed or analysed through use of the Equipment; (d) loss or damage arising from use of Goods with any equipment, Software, parts or accessories not supplied by or approved in Writing by Biochrom; (e) loss or damage arising from repairs to or modifications to Equipment or Spares made by any person other than Biochrom without Biochrom's prior written approval; or (f) any indirect or consequential loss or damage; and

12.2.2 Biochrom's total liability in respect of all causes of action arising out of or in connection with the Contract shall be limited to: (a) repairing or replacing defective Goods, or refunding the price of the defective Goods in full, subject to and in accordance with Clause 11; and (b) in addition, an amount equal to the price of the Goods (and, to the extent that the relevant cause of action relates to the Services, the fees for the Services) paid by the Customer.

12.3 **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.

12.4 **Force Majeure.**

12.4.1 Biochrom shall not be considered in breach of the Contract, or liable for any loss or damage which may be suffered by the Customer, as a direct or indirect result of the performance of any of Biochrom's obligations under the Contract being prevented, hindered or delayed by reason of circumstances or events beyond Biochrom's reasonable control (**Force Majeure**).

12.4.2 If Biochrom is affected by Force Majeure it shall:

12.4.2.1 notify the Customer in Writing of the Force Majeure and the actual or expected effects of it; and

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

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

13. **TERMINATION**

13.1 **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:

13.1.1 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;

- 13.1.2 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;
- 13.1.3 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;
- 13.1.4 a resolution is passed, or an order is made, for the winding up of the other Party;
- 13.1.5 an order is made for the appointment of an administrator or an administrator is appointed over the other Party;
- 13.1.6 the other Party makes an assignment for the benefit of creditors, a voluntary arrangement with its creditors or becomes subject to an administration order;
- 13.1.7 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);
- 13.1.8 the other Party ceases or threatens to cease to carry on all or substantially all of its business; or
- 13.1.9 anything analogous to any of Clauses 13.1.3 through 13.1.7 occurs in relation to the other Party in any foreign jurisdiction.

In addition to any other right or remedy of Biochrom, Biochrom may terminate the Contract by giving written notice to the Customer having immediate effect if any credit checks carried out by Biochrom in relation to the Customer indicate, in Biochrom's opinion, that Biochrom should not extend to the Customer any credit, or the amount of credit that Biochrom anticipates that it will or may extend to the Customer, taking into account not only the Contract but other contracts between the Parties.

- 13.2 **Material breach partially defined.** Without limiting the scope of Clause 13.1.1, a breach of either of Clauses 8 or 9 shall be deemed a material breach.

14. **CONSEQUENCES OF TERMINATION**

- 14.1 **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.
- 14.2 **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, 8, 9, 10, 11, 12, 14, 15 and 16 shall survive any termination of the Contract.
- 14.3 **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.

15. **MISCELLANEOUS**

- 15.1 **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.

- 15.2 **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 (email is not sufficient).
- 15.3 **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.
- 15.4 **Assignment.**
- 15.4.1 Biochrom 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.
- 15.4.2 Subject to Clause 15.4.1, 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.
- 15.4.3 The Contract shall bind and shall continue in force for the benefit of any permitted assignee of either Party.
- 15.5 **Notices.**
- 15.5.1 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.
- 15.5.2 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.
- 15.5.3 A notice required to be given under the Contract shall not be validly given if sent by email.
- 15.5.4 The provisions of this Clause 15.5 shall not apply to the service of any proceedings or other documents in any legal action.
- 15.6 **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.
- 15.7 **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 the Customer or in any other documentation issued by the Customer shall have any effect. No terms or conditions not expressly set out in the Contract form part of it.
- 15.8 **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.
- 15.9 **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.

15.10 **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.

16. **GOVERNING LAW AND DISPUTE RESOLUTION**

16.1 **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.

16.2 **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.