

1. DEFINITIONS

In these conditions the following definitions apply:

“Buyer” means the purchaser of the Goods or Support Services.

“Contract” means the contract between the Supplier and the Buyer for the sale and purchase of the Goods and the provision of Support Services (if any) in accordance with these conditions.

“Delivery” means delivery of the Goods DAP to the Delivery Location (and “Deliver” and “Delivered” shall be construed accordingly).

“Delivery Location” means the site nominated by the Buyer as specified in the Contract.

“DAP” has the meaning given to that term in Incoterms 2010 (“Delivered at Place”).

“Goods” are those products as described in the Quote.

“Order” means the Buyer’s order for the Goods and/or Support Services as set out in the Buyer’s purchase order form.

“Quote” means the Supplier’s quotation for the supply of the Goods or Support Services.

“Software” means the software supplied by the Supplier as part of or in connection with the Goods, as specified in the Quote.

“Specification” means any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and the Supplier.

“Supplier” means Creoptix AG.

“Support Services” means the support services that may be purchased by the Buyer from the Supplier in connection with equipment Goods, as specified in a Quote.

“User Manual” means all user manuals, instructions and documents provided by the Supplier in connection with the Goods.

“Warranty Period” means the period of 12 months starting on the date of acceptance of the Goods pursuant to clause 7 below, or 24 months or 36 months in case “Warranty Extension” Support Services have been purchased by the Buyer, as specified in the Quote.



2. BASIS OF CONTRACT AND ORDERS

- 2.1. These conditions apply to the Contract to the exclusion of any other terms which are implied by trade, custom, practice or course of dealing. In particular, the Supplier hereby expressly objects to any standard terms and conditions of the Buyer. Such standard terms and conditions shall not become part of the Contract even if the Supplier does not object to them upon receipt or the Buyer places orders with reference to its standard terms and conditions.
- 2.2. The Order constitutes an offer by the Buyer to purchase the Goods and any Support Services in accordance with these conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Buyer, including delivery and invoice addresses, are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order (an "Order Confirmation") at which point the Contract shall come into existence.
- 2.4. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

3. PRICE

The price of the Goods and the Support Services shall be the price stated in the Quote. The price for the Goods stated is the net DAP price of the Goods, excluding any Value Added Tax, import duties or other local taxes that may be applicable. The Supplier is entitled to adjust the price stated to rectify any clerical errors or changes in specification, quantity, or place of Delivery.

4. DELIVERY

Unless otherwise agreed upon in writing, all delivery and service deadlines of the Company are not binding. The Goods will be deemed Delivered when they have arrived at the Delivery Location with proof of delivery. The Goods are shipped DAP.

5. PAYMENT

- 5.1. Amounts payable by the Buyer according to the Quote will fall due within 30 days of the date of the Supplier's invoice, unless otherwise agreed in writing.
- 5.2. In the event that payment due is not made to the Supplier within 60 days of the date of the invoice, the Buyer will pay interest on the amount due at a rate of 10 per cent per annum from the said due date until the time of actual payment.



6. PROPERTY

- 6.1. Title to the Goods shall not pass to the Buyer until the Supplier has received all payments due in respect of the Goods in full.
- 6.2. Upon the Supplier presenting reasonable evidence of a material and irreparable breach of this Contract by the Buyer and upon the Supplier's written demand, the Buyer will either:
 - (a) deliver the Goods to the Supplier; or
 - (b) permit the Supplier or its agents to enter upon the Buyer's premises in order to retake possession of the Goods.

7. EQUIPMENT INSTALLATION AND ACCEPTANCE TESTS

- 7.1. The Supplier will unpack and install equipment Goods at the Delivery Location, connect the Goods to utilities and recommission the Goods in accordance with its standard procedures.
- 7.2. Unless otherwise agreed, the Buyer will provide any necessary moving and lifting equipment and personnel to get the Goods to their final installation location, and shall ensure that the installation location is safe, secure and away from building work.
- 7.3. The Buyer will provide the utilities and environment specified in any pre-installation document provided by the Supplier and will be responsible for keeping the Goods safe and secure until they have been installed by the Supplier. The Supplier will not be liable for any delay or failure in installing the Goods, and reserves the right to invoice to the Buyer any non-refundable charges or expenses incurred thereby, to the extent caused by the Buyer failing to perform its obligations hereunder.
- 7.4. For equipment Goods, the Supplier will perform a system function test ("SFT"), in accordance with its standard test protocol and procedures and in the presence of the Buyer, to verify the operation of the Goods in accordance with the Specifications. If the Goods pass the SFT, the Buyer will immediately confirm this in writing and the Goods will be deemed accepted. If the Goods fail to pass any aspect of the SFT, the Supplier will use reasonable endeavours to rectify the problem in a timely manner and then repeat the SFT in accordance with this clause. If, prior to acceptance, the Supplier deems there to be a defect in the Goods that cannot be fixed, it may at its election replace the Goods for equivalent Goods for acceptance testing pursuant to this clause, or take back the Goods and refund any payments made to the Buyer.
- 7.5. Notwithstanding the foregoing, the Buyer will be deemed to have accepted the Goods if it makes any operational use of the Goods in the course of its business.



8. SOFTWARE LICENCE

- 8.1. For “software license” goods as specified in the Quote, the Supplier grants the Buyer a non-exclusive, non-sublicenseable, transferable only in connection with the sale of the Goods in their entirety, for the term specified in the Quote or the full period of copyright in the Software, whichever is shorter, to use the Software in object code form to the extent necessary to use the Goods in the normal course of its business and in accordance with the User Manual.
- 8.2. In relation to scope of use of the Software:
- (a) “use of the Software” means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not “use” if the Software is licensed under this licence for use on each computer to which the Software is distributed;
 - (b) the Buyer may not use the Software other than as specified in this Contract without the prior written consent of the Supplier;
 - (c) the Buyer may make one backup copy of the Software for its lawful use provided that it records the number and location of all copies of the Software and take steps to prevent unauthorised copying;
 - (d) the Buyer shall not (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part. Buyer shall not create derivative works based on any element of the Software.
- 8.3. The Supplier warrants and undertakes that it is the legal and beneficial owner of the Software and that so far as it is aware it has obtained all necessary authorisations to licence the Software as set out in this clause.
- 8.4. The Software and any components are proprietary to Supplier and Buyer acknowledges that the Software is protected under applicable copyright and intellectual property laws, including trade secret laws, such as Directive 2009/24/EC in the European Union. The Supplier retains all intellectual property rights in the Software and any components. Any rights not expressly granted in this Contract are reserved by the Supplier. Buyer acquires no ownership or other interest in or to the Software or any components, subject to the limited use license set forth in this Contract.

9. DATA USE/PROTECTION

Supplier may collect certain Software application data such as error codes, function usage, and network traffic data such as IP address, URL, file type, filter result, virus id, files, records, metadata and any other network traffic sent to or received from Buyer through use of the Software (the “Use Data”). All such Use Data shall be anonymized by Supplier and Supplier shall use such Use Data only for legitimate business purposes in connection with analyzing, maintaining and improving its services and products. Supplier will not sell any Use Data to 3rd parties.



10. WARRANTY

- 10.1. The Supplier warrants that during the Warranty Period and subject to the Buyer using the Goods only in accordance with the User Manual, the Goods will conform in all material respects with the Specification. The Supplier's sole remedy for breach of this warranty is to repair at its own expense any material defects that have arisen in the Goods as a result of faulty design, workmanship, or materials so that the Goods conform in all material respects with the Specification or, at the Supplier's sole election, to replace the Goods or take back the Goods and refund a reasonable proportion of the price to the Buyer taking into account any use the Buyer has made of the Goods.
- 10.2. The Supplier may refuse any warranty claim where the failure has directly resulted from:
- a) the Goods not being used, stored or maintained in accordance with the procedures set out in the User Manual, pre-installation document and other documentation supplied by the Supplier; or
 - b) the Goods being repaired or modified or moved by someone other than the Supplier's own service personnel or authorised agents; or
 - c) wilful or negligent damage by an employee or agent of the Buyer, or other third party; or
 - d) use of labware other than that recommended or approved by the Supplier; or
 - e) installation of any computer hardware or software that the Supplier has not authorised and approved in writing. If the software requires certain local user groups and accounts on the PC, the Buyer undertakes not to delete these groups, nor modify the permissions granted to members of these groups; or
 - f) wear and tear arising out of normal and ordinary use.
- 10.3. The product warranty includes one scheduled maintenance visit during the initial warranty period of 12 months, and two scheduled maintenance visits per year for the following years in case "Warranty Extension" Support Services have been purchased by the Buyer.
- 10.4. Prior to any warranty work, the Buyer will ensure the Goods have been decontaminated from chemical or biological risks, according to the Supplier's or an equivalent decontamination procedure, and will advise the Supplier on any residual materials which could not be removed by cleaning, and provide information regarding any precautions to be taken prior or during a visit. The Buyer will provide visiting the Supplier personnel any special protective clothing necessary.
- 10.5. Unless otherwise specified in the Order Confirmation or Quotation, the warranty includes up to 40 hours of remote application support during the first 12 months. The mentioned remote support includes:
- a) assay development using buyer's data (excludes any wet-lab experiments);
 - b) software usage for assay design and data evaluation;
 - c) chip selection guidance.
- Any additional services can be purchased separately by the Buyer under the Creoptix Fee-for-Service offerings.



- 10.6. DISCLAIMER OF OTHER WARRANTIES, EXCEPT AS OTHERWISE PROVIDED IN THIS CONTRACT, AND TO THE EXTENT ALLOWABLE BY APPLICABLE LAW, BUYER ACKNOWLEDGES IN ALL OTHER REGARDS THAT THE GOODS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.
- 10.7. BUYER FURTHER ACKNOWLEDGES SUPPLIER DOES NOT WARRANT THAT 1) THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS, 2) THE SOFTWARE IS NOT VULNERABLE TO FRAUD OR UNAUTHORIZED USE, 3) THE SOFTWARE WILL CONTAIN EVERY URL ADDRESS OR APPLICATION THAT SHOULD POTENTIALLY BE BLOCKED, 4) ADDRESSES AND APPLICATIONS CONTAINED IN THE SOFTWARE WILL BE APPROPRIATELY FORMATTED OR 5) THE FEATURES OR FUNCTIONALITIES OF THE SOFTWARE WILL BE AVAILABLE AT ANY TIME IN THE FUTURE.
- 10.8. BUYER ACKNOWLEDGES AND AGREES THAT SUPPLIER WILL HAVE NO LIABILITY WHATSOEVER FOR CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITES, OR PROCEEDINGS RESULTING FROM 1) THE USE OF THE SOFTWARE BY BUYER OR THIRD PARTIES, 2) SECURITY BREACHES, 3) EAVESDROPPING, INTERCEPTION, FAILURE OF DELIVERY OR LOSS OF DATA SENT, STORED, OR RECEIVED USING THE SOFTWARE. THESE LIMITATIONS APPLY EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OR ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. SUPPORT SERVICES

- 11.1. The Supplier will commence the Support Services for successive rolling 12-month periods subject to complete payment in advance of the Support Services Fees and the Support Services termination provisions below.
- 11.2. The Buyer will pay the fees for the Support Services as set out in the Quote (the "Support Services Fees").
- 11.3. All site visits will be prearranged and require advance authorisation from the Buyer. The Buyer may cancel a site visit by giving three week's prior notice in writing to the Supplier. In the event a site visit is cancelled by the Buyer, the Supplier will re-schedule the visit for the next mutually agreeable date. Any non-refundable charges or expenses incurred by the Supplier as a result of such cancellation will be settled according to written agreement. The Supplier shall have no liability for failing to provide the Support Services as a result of the Buyer's failure to authorise a site visit or to allow the Supplier access to its premises or Goods as required by the Supplier.
- 11.4. Upon completion of a site visit, the Buyer is required to countersign the Supplier's engineer's report if the information in the report is correct and the equipment has been left in a satisfactory state prior to the engineer's departure. If the Buyer does not sign the report and does not provide written objection to it within twenty (20) business days after the Supplier provides the Buyer with the report, the report shall be deemed as approved.



- 11.5. Prior to any Support Services, the Buyer will ensure the Goods have been decontaminated from chemical or biological risks, according to the Supplier's or an equivalent decontamination procedure, and will advise the Supplier on any residual materials which could not be removed by cleaning, and provide information regarding any precautions to be taken prior or during a visit. The Buyer will provide visiting the Supplier personnel any special protective clothing necessary.
- 11.6. The Buyer and the Supplier will endeavour to agree a mutually convenient time for the Preventive Maintenance visits (as defined in the Quotation) according to the time planning recommended by the Supplier.
- 11.7. Goods not maintained by the Supplier immediately prior to the commencement of the Support Services must be in a condition acceptable to the Supplier, determined in its sole discretion. Where there has been lapse between the Warranty Period or previous service cover and the commencement of Support Services the Supplier reserves the right to execute a Preventive Maintenance visit prior to commencement of Support Services, the costs of which shall be paid by the Buyer.
- 11.8. Any charges associated with the inspection or bringing the Goods to an acceptable condition shall be paid by the Buyer at the Supplier's hourly rates then in effect as a condition to the commencement of the Support Services. Any such payments shall be accepted by Buyer in writing.
- 11.9. The Supplier shall be under no obligation to repair, replace, rectify or recover function lost or impaired Goods of Software arising from abnormal working conditions, misuse, or any of the reasons defined in Clause 10.2 of these conditions.
- 11.10. Unless the Goods are within the Warranty Period, any costs associated with repairs that can not be resolved within a regular Preventive Maintenance visit shall be paid by the Buyer at the Supplier's hourly rates and material prices then in effect. Any such payments shall be accepted by Buyer in writing.
- 11.11. After the end of the Support Services, the Buyer will pay the fees for any service support. The Support Services do not include any Software application support, except for "Warranty Extension" Support Services according to clause 10.5.
- 11.12. Unless otherwise specified in the Quotation, the Supplier shall respond within the time specified in the Contract to any support inquiry by the Buyer, for initiating resolution of the support inquiry.

12. INTELLECTUAL PROPERTY RIGHTS

The Buyer acknowledges that the Supplier owns all intellectual property rights in the Goods, the Software and the Support Services and no rights are granted to the Buyer in respect thereof except as expressly set out in these conditions and to use the Goods and modify them as necessary to operate according with intended use.



13. FORCE MAJEURE

Neither party shall be liable to the other for failure or delay in the performance of its obligations under this Contract to the extent that this is caused by matters beyond the reasonable control of the party affected, provided that the affected party shall:

- (a) promptly give written notice to the other stating such event and how its performance of its obligations have been prevented or delayed;
- (b) use its best endeavours to restore its ability to perform its obligations under this Contract; and
- (c) mitigate the effects of the event and continue to perform such obligations as are not affected by it.

14. CANCELLATION

Cancellation of the Buyer of a duly acknowledged Order for Goods can be made up to 24 hours after receipt of Order Confirmation.

15. LIMITATION OF LIABILITY

- 15.1. The Supplier shall not have any liability in connection with the Goods or any Support Services for losses or damages which may be suffered by the Buyer (or any person claiming under or through the Buyer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories: special/ consequential damage even if the Supplier was aware of the circumstances in which such special damage could arise; loss of profits; loss of anticipated savings; loss of business opportunity; loss of goodwill; loss or corruption of data; or loss or corruption of any compounds or materials.
- 15.2. The total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this Contract or any collateral contract, shall in no circumstances exceed the value of the Goods on which the Buyer's claim is based.
- 15.3. The Buyer agrees that, in entering into this Contract, it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Contract.
- 15.4. Except as expressly stated in this Contract, all terms, conditions and warranties implied by statute, conduct or otherwise are hereby excluded to the fullest extent permitted by law.
- 15.5. Nothing in this Contract shall exclude or purports to exclude the Supplier's liability for death or personal injury caused by its negligence, or for fraud or fraudulent misrepresentation, or for any other liability that cannot be excluded or limited by law.



16. TERMINATION

This Contract will remain in effect until the later of the expiry of the Warranty Period and the termination or expiry of the Support Services. Clause 8, 12, 13, 15, 18 and 19 of this Contract shall survive the expiry or termination of this Contract howsoever arising.

17. EXPORT CONTROLS

The Buyer shall comply with all applicable export controls and all other applicable laws and regulations in connection with the use of the Goods.

18. APPLICABLE LAW AND DISPUTE RESOLUTION

- 18.1. This Agreement shall be governed by and construed in accordance with the substantive laws of Switzerland, excluding the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG), as amended from time to time.
- 18.2. If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("Dispute") then the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the Sales Manager of the Supplier and Purchasing Manager of the Buyer, or their delegates, shall attempt in good faith to resolve the Dispute;
 - (b) if the Sales Manager of the Supplier and Purchasing Manager of the Buyer, or their delegates are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Managing Director of the Supplier and Managing Director of the Buyer, or their delegates, who shall attempt in good faith to resolve it; and
 - (c) if the Managing Director of the Supplier and Managing Director of the Buyer, or their delegates, are for any reason unable to resolve the Dispute within 30 days of it being referred to them each Party shall be entitled to submit the Dispute to court. All Disputes shall be resolved by the ordinary courts in Zurich, Switzerland. In addition, Creoptix shall be entitled, at its sole opinion, to bring proceedings to any other Court which is competent by law, e.g. to the Courts at the domicile/seat of the Buyer.

19. GENERAL

- 19.1. A waiver by either party of any term or condition of this Contract in one instance shall not be deemed or construed to be a waiver of such term or condition for any similar instance or of any subsequent breach. All rights, remedies, undertakings and obligations herein are cumulative.



- 19.2. Neither party will use the name of the other or any of its employees for advertising or publicity purposes without its or their respective consents.
- 19.3. The Supplier represents and undertakes that it is entering this Contract as principal and not as agent for any other party. Nothing in this Contract shall create or be deemed to create a partnership or relation of principal and agent between the parties.
- 19.4. Any notices or other communications to be given under this Contract shall be given in English in writing to the parties at the addresses specified in the Quote or such other addresses as may be agreed between the parties in writing from time to time.

