



TERMS AND CONDITIONS OF SALE

1 DEFINITIONS

- 1.1 In these Conditions the following words shall have the following meanings:
"Acknowledgement" shall mean the Company's written acceptance of the Customer's order for the Goods (if any).
"Conditions" shall mean the terms and conditions set out below as varied from time to time by the Company.
"Contract" shall mean the written agreement concluded between ZyGEM and the Customer, including any specification or other documents that are expressly incorporated into it, and incorporating these terms and conditions.
"Company" shall mean Zygem (UK) Limited (registered in England number 10152115) with offices at The Innovation Centre, Southampton University Science Park, Venture Road, Chilworth, Southampton, SO16 7NP.
"Customer" shall mean the company firm or individual purchasing the goods.
"Goods" mean any or all of the goods being purchased, including Hardware, consumables and chemistry as defined herein, if applicable.
"Hardware" shall mean PDQeX machine, Phytogem grippers and/or punches.
"Online Purchase" shall mean a purchase of the Goods using the Company website.
"Price" shall mean the price payable by the Customer as stated in the Quotation or in the case of an Online Purchase, as stated on the Company website.
"Quotation" shall mean the Company's written Quotation (including those provided in email format) for the Goods (if any).

- 1.2 In the Contract references to (i) any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced; (ii) the masculine include the feminine and the neuter and vice versa; (iii) the singular include the plural and vice versa; and (iv) Clauses are references to the clauses set out in these terms and conditions. The headings to these terms and conditions are for guidance only and will not affect their interpretation.

2 TERMS OF CONTRACT

- 2.1 The Company shall sell the Goods exclusively on and subject to these Conditions and no other terms, conditions, warranties, undertakings or representations express or implied shall apply to the Contract. In the event that any order or any other document produced by the Customer purports to incorporate into the Contract any terms or conditions other than these Conditions, delivery of the Goods by the Company shall in each case be deemed to be made on the condition that such delivery constitutes an offer to the Customer by the Company to enter into the Contract only subject to these Conditions which shall be deemed to be accepted by the Customer on his taking delivery of the Goods.
2.2 No variation of these Conditions shall be effective unless it is expressly made or confirmed in writing by the Company.
2.3 These terms and conditions shall override and precedence over any other terms and conditions in any document or other communication of/with the Customer used in concluding the Contract with the Company.

3 QUOTATION

- 3.1 Quotations issued by the Company are subject to these Conditions and unless previously withdrawn, the Customer may place orders upon a Quotation issued by the Company during the period stated in the Quotation or if no period is stated, for a period of 30 days after the date the Quotation is issued.
3.2 The Company has the right to accept or refuse orders in respect of the Goods.

4 SUPPLY OF GOODS

- 4.1 Unless otherwise stated in the Contract, prices are for delivery Ex-Works (in accordance with Incoterms 2010) at Company's place of business or that of its subsidiary where stock is being dispatched from. Any period of time stated for delivery or for compliance with any other Contractual obligations of the Company are estimates only and in any event the Company accepts no responsibility for loss or damage resulting from delay or failure to notify the Customer of any such delay.
4.2 Changes in requirement relating to any aspect of the Contract will entitle the Company to vary any estimates of time for delivery of the Goods.
4.3 All dates quoted or referred to in the Acknowledgement for delivery of the Goods are estimates only given in good faith and the Company gives no warranty or representation as to its ability to meet such dates. The Company will use its reasonable endeavours to meet delivery dates but shall be under no liability whatsoever for any delay in delivery. In the event of a delay exceeding one month the Customer shall have the right to cancel the order in which event the Company's sole liability shall be to refund the Price or part thereof for the undelivered Goods. Any refund shall be using the same method as payment.
4.4 Time of delivery shall not be of the essence of the Contract.

5 PRICES

- 5.1 Company will charge the Customer for all delivery charges where delivery is not arranged by the Customer. Such costs may include, but not be limited to, courier charges, insurance costs, special handling charges and packaging costs. Agreed changes in the specifications or changes in any taxes, exchange rates, duties or levies charged on or in relation to the Goods will be charged separately.
5.2 Unless otherwise stated in the Quotation, prices are quoted exclusive of VAT, duties or local sales taxes.

6 TAXES AND DUTIES

- Any use tax, sales tax, excise tax, duty, inspection or testing fee, or any other tax, fee or charge imposed by any governmental authority shall be paid by the Customer in addition to the prices quoted or invoiced. If the Customer has any exemption certificates relating to any tax, fees or charges then it must supply these to the Company at the time the order is placed. If the Company is required to pay any such tax, fee or charge, then the Customer shall immediately reimburse the Company for the full amount paid.

7 PAYMENT

- 7.1 Invoices shall be issued upon shipment of the Goods.
7.2 Unless otherwise stated in the Quotation, payment is due 30 days from the date of invoice.
7.3 In respect of Online Purchases, payment must be made prior to shipment.

- 7.4 In no case shall any dispute concerning any item or separate part of the Goods or work or any further contractual obligation of the Company to the Customer affect the Customer's obligation in respect of payments for other parts if any part or instalment of the Price is not paid when due, or work on the Goods is held up for any reason attributable to the Customer, or the Customer incurs bankruptcy, insolvency, liquidation or the appointment of a Receiver, the full Price of the Goods less any sums already paid in respect of the Goods shall immediately become due and payable by the Customer and the Company may at its option cancel the Contract or cancel or suspend despatch of the Goods.
7.5 Without prejudice to any other right of the Company, all overdue payments shall carry interest at the rate of two per cent per month or part month on the amount or amounts by the time being outstanding.

8 DESPATCH AND DELIVERY

- 8.1 Unless otherwise stated in the Quotation, or where the Customer provides its own freight company account details, delivery will be effected by despatch using a reputable carrier service as soon as is practicable, to the address specified by the Customer at the time of the order.
8.2 Customer is responsible for arranging insurance for the Goods during transit.
8.3 Where a delivery attempt is made but not completed because the Customer is not available to sign for the Goods, the Company shall have the right to permit the carrier service organisation to return the Goods to their depot for subsequent collection by the Customer. This does not constitute non-arrival for the purposes of clause 8.1 below.

9 INSPECTION AND DEFECTIVE GOODS

- 9.1 The Customer shall be responsible for inspecting the Goods on arrival and shall notify the Company immediately if there is any damage, discrepancy or shortage or within 7 days after receipt of notice of despatch in the event of non-arrival.
9.2 The Company reserves the right at its sole discretion to decide whether Goods are defective.
9.3 Defective Goods will be replaced or rectified by the Company as originally ordered or if rectification or replacement is not practicable the Company will credit the value of the Goods at the issued invoice Price.
9.4 Claims made under 9.3 above must be made in writing to the Company within 7 days of the date of delivery or within 10 days of a failed delivery attempt as described in clause 8.3 above.
9.5 The Company shall not be liable for any loss damage or expense whatsoever and howsoever arising from any defect save as detailed in 9.3 above.
9.6 Defects discovered in any delivery shall not entitle the Customer to rescind the remainder of any Contract.
9.7 All carriage charges hereunder are the responsibility of the Company.
9.8 The Company shall be entitled to withhold delivery of any Goods if payment in respect of previous deliveries of Goods is due and outstanding.

10 INSTALMENTS

- 10.1 The Company shall at its sole discretion be entitled to make delivery of the Goods in one or more instalments and without prejudice to the provision any of these Conditions each delivery of an instalment of the Goods shall form a severable part of the Contract.

11 PROPERTY RISK AND INSURANCE

- 11.1 The Goods shall remain the property of the Company until the Company has received the full amount of the price from the Customer. So long as the Goods remain the property of the Company and the Customer is in default of any obligation under this Agreement the Company shall have the right with or without prior notice to the Customer to re-take possession of the Goods and for that purpose to enter any premises occupied by the Customer and on such re-taking of possession this Agreement shall be terminated but without prejudice to the rights of the Company to enforce any other or additional remedy existing at the time of termination in respect of such default.
11.2 The risk in the Goods shall pass to the Customer upon delivery, thereafter the Customer shall be responsible for the satisfactory care and protection of the Goods and shall take out at its own expense adequate and comprehensive all risks cover on the Goods (with a note of the Company's interest endorsed thereon) until the Customer has received payment of the Price in full.
11.3 Where risk in the Goods has passed to the Customer the Company shall be under no liability whatsoever in respect of the goods.

12 TITLE IN THE GOODS

- 12.1 The legal title to the goods shall not pass to the Customer until all sums due or payable by the Customer to the Company, whether in respect of the Goods or otherwise, have been received by the Company. Until such time, the Customer shall act as bailee of and in a fiduciary capacity for the Company and shall further, in respect of Goods in its possession, (i) store the Goods separately from any other goods so as to be identifiable as the property of the Company; (ii) be responsible for any loss or damage to the Goods howsoever caused; (iii) not to sell, pledge, assign, charge or otherwise dispose of the goods or any interest therein.
12.2 At any time prior to the legal title in the Goods passing to the Customer, the Company may require the Customer to return the Goods to the Company at any time on demand and/or permit the Company, its servants or agents at any time without notice to enter the Customer's premises and retake possession of the Goods.

13 LIEN

- 13.1 The Company shall have a general lien over any of the Customer's goods or property in its possession from time to time for all sums due from Customer to the Company.
13.2 On the expiration of seven days' notice in writing to the Customer, the Company shall be entitled to sell or otherwise dispose of any of the Customer's goods or property over which it has a lien and to apply any proceeds received towards payment of such sums due.

14 SPECIFICATION AND PERFORMANCE DATA

- 14.1 Any performance figures quoted or referred to in any specification or other document provided by the Company are estimates only.
14.2 The Company reserves the right on the sale of any Goods to make before delivery any alteration to or departure from the specification or design of the Goods provided that it shall not to a material extent adversely affect the performance of the Goods or the quality of the workmanship or the materials used. All specifications, drawings and technical documents

- issued by the Company either before or after conclusion of the Contract are issued solely for the Customer's use in connection with the Goods and shall not be copied, reproduced or communicated to any third party without the Company's express consent in writing.
- 14.3 In no event shall the Company be liable in respect of any claim arising out of any of the Goods proving not to be fit and suitable for any purpose other than that notified to the Company by the Customer prior to ordering and confirmed by the Company in the Acknowledgement to the Customer.
- 15 WARRANTY**
- 15.1 The Company warrants that the Goods shall perform substantially in accordance with the product documentation and be free from defects in materials or workmanship for a period of three (3) months from the date of delivery to the Customer, except in the case of Hardware purchased, whereby the warranty period shall be twelve (12) months from delivery. The Company shall at its sole option repair, replace, grant a credit or refund in respect of any of the Goods which are found to be defective within the respective periods, provided that the Customer gives written notice to the Company, within the three months, or twelve months in respect of Hardware, setting out the nature of any such defect(s), the serial number(s) of the goods supplied, the invoice number and date. The Customer acknowledges that the Goods, except in the case of Hardware, are perishable.
- 15.2 The foregoing warranty shall not cover damage necessitated or caused otherwise than by defects in materials or workmanship including that damage necessitated or caused by fair wear and tear or by improper use, installation or repair, improper storage or working conditions, neglect, alteration, tampering, incorporation into another product, accidental or deliberate damage by the Customer or any third party.
- 15.3 Unless otherwise agreed by the Company, the foregoing warranty shall not apply to any replacement parts supplied by the Company under this warranty for the Goods, instead the warranty period applicable to the original Goods shall apply.
- 15.4 The foregoing warranty shall not be available for the benefit of any person other than the Customer.
- 15.5 Where only part of the Goods is found to be defective, the company shall only be under an obligation to repair or grant a credit in accordance with the foregoing warranty in respect of that part found to be defective.
- 15.6 The Customer shall give access and full co-operation to the Company to carry out its obligations under this warranty and in particular, without limitation to the generality of the foregoing, shall if so requested by the Company, return the Goods subject to this warranty to the Company at the Customer's expense.
- 15.7 The cost of returning to the Customer any Goods found to be defective and replaced or repaired by the Company under the foregoing warranty shall be borne by the Company.
- 15.8 Any Goods returned to the Company and replaced shall become the Company's property.
- 15.9 The Customer shall not return the Goods to the Company without the prior written consent of the Company. Authorisation to return Goods must be requested in writing whereupon instructions for the return will be issued to the Customer.
- 15.10 It is entirely at the Company's discretion to authorise the return of the Goods and the Company reserves the right to reject the return of Goods if upon receipt by the Company they are in the opinion of the Company defective or damaged through no fault of the Company. In such event the Customer shall be responsible for any costs incurred by the Company in investigating and re-delivering the returned Goods.
- 15.11 In the event the Customer requests a repair to be undertaken on Hardware which is outside the warranty period or has been damaged or is defective as a result of no fault of the Company, the Company will provide an estimate to the Customer for the cost of the repair or replacement which will be subject to separate contractual arrangement.
- 16 AUTHORISED USES AND HANDLING, ETC**
- 16.1 The sale of the Goods by the Company to the Customer conveys only a right to use the Goods in accordance with the product documentation. The Customer warrants that it will properly test, and use (and, to the extent expressly authorised by the Company, market and sell) any Goods in accordance with the terms agreed between the parties and in any event, using no less than the practices of a reasonable person who is suitably qualified and experienced in handling material like the Goods.
- 16.2 The Customer shall comply with all applicable national, state, provincial, and local laws and regulations applicable to the handling and use of the Goods.
- 16.3 Unless otherwise expressly specified and authorised by the Company, the Customer acknowledges that the Goods are intended for in vitro diagnostic or in vitro research and development purposes only and are not to be used for any other purposes including, but not limited to, unauthorised commercial purposes, ex vivo or in vivo therapeutic purposes, in foods, drugs, devices or cosmetics of any kind, or for consumption by or use in connection with or administration or application to humans or animals. The Customer acknowledges that the Goods have not been tested for safety or efficacy, unless expressly stated in the documentation accompanying the products.
- 17 LIABILITY**
- 17.1 The aggregate liability of the Company to the Customer under the Contract, whether arising in contract, through negligence, breach of duty or otherwise, shall at no time exceed the total sum payable by the Customer to the Company under the Contract. This limitation shall not apply to liability for death and personal injury caused by the Company's negligence.
- 17.2 The Company shall not be responsible to the Customer for any indirect or consequential or economic loss whatsoever, including but not limited to, loss of business, use, profits, future contracts or anticipated savings or any claim made against the Customer by any third party.
- 17.3 The Company shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any the Customer information or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.
- 17.4 Except in respect of the liability of the Company for death or personal injury as stated in 17.1 above, no action whatsoever (regardless of forms of procedure) arising out of the Contract or in connection with the Goods may be brought by the Customer more than six months after the Customer becomes aware of, or should reasonably become aware of, the facts constituting the cause of action.
- 17.5 Both parties shall maintain and effect at their own expense for the duration of the Contract such insurances as required by any applicable law and as appropriate in respect of its obligations herein.
- 18 INDEMNITY**
- 18.1 The Customer shall indemnify and hold the Company harmless against all losses, damages and expenses (including legal fees) that may be incurred as a result of any claim (whether in contract, tort, including negligence, or otherwise) by the Customer or its officers, agents, employees or customers, whether direct or indirect, in connection with the use or resale of any products, or by reason of breach by the Customer of or failure to perform any of its obligations under this Contract, except to the extent caused by a breach by the Company of the express warranty provided in clause 15.1.
- 19 FORCE MAJEURE AND FRUSTRATION**
- 19.1 The Company shall:
- (a) in any event not be liable for loss or damage; and
- (b) be entitled to cancel or rescind the Contract;
- if the performance of its obligations under the Contract is in any way adversely affected by any cause whatsoever, beyond the Company's control, including but not limited to, the delays of default of suppliers or the default of any sub-contractor, war, strike, blockade, dispute, flood, accident to plant or machinery, shortage of materials or labour.
- 20 DEFAULT OR INSOLVENCY OF THE CUSTOMER**
- 20.1 If the Customer commits any breach of the Contract or suffers any distress or execution upon its property or assets which is not paid out or discharged within fourteen days or has a receiver appointed over its assets or an incumbrancer take possession of any of its property or if a resolution or petition to wind up the Customer is passed or presented or the Customer ceases to threaten to cease to carry on business the Company shall have the right (without prejudice to any other remedies) to cancel the Contract and to withhold or suspend delivery of the Goods. In the event of such cancellation by the Company the Customer shall indemnify the Company against all loss (including loss of profit) costs (including costs of labour and materials) and all expenses suffered by the Company by reason of the cancellation.
- 21 ASSIGNMENT**
- 21.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 21.2 Company may assign the Contract or any part of it to any person, firm or company.
- 22 THIRD PARTY**
- 22.1 A person who is not a party to this Contract has no rights, express or implied, under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- 23 BUSINESS ETHICS**
- 23.1 Each party shall comply with the provisions of the Bribery Act 2010 and any other anti-corruption and anti-bribery laws, legislation, regulations or directives ("Anti-Corruption Legislation") which apply to its business or which apply in the place where the Contract is performed. Each party will not, and will procure that its employees, subcontractors, agents and representatives will not, engage in any activity, practice or conduct which would constitute an offence under any applicable Anti-Corruption Legislation.
- 24 EXPORT**
- 24.1 Company shall use reasonable endeavours to obtain necessary UK export or other licences required in order to sell and export the Goods.
- 24.2 In the event that such export licences are not granted or are revoked, then such event shall be deemed to be a Force Majeure event under clause 19 and Company shall have no liability to the Customer for completing sale of any Goods affected by such export licences, or for any loss, expense of damage whatsoever suffered by the Customer.
- 25 WAIVER**
- 25.1 The failure of either party hereto to exercise or enforce any right under this Contract shall not be deemed to be a waiver thereof nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 26 SEVERABILITY**
- 26.1 In the event that any term, condition or provision of this Contract shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions and provisions of this Contract which shall continue to be valid to the fullest extent permitted by law.
- 27 HEADINGS**
- 27.1 Headings are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Contract.
- 28 GOVERNING LAW**
- 28.1 This Contract, and the rights and liabilities of the parties hereunder, shall be governed by the substantive laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English courts for the resolution of all disputes arising out of this Agreement.