

## 1. **General**

1.1. Definitions: *Buyer* means the person, firm, company or other organization who or which has ordered Products or Services from the Company or has rented products from the Company. *Buyer Materials* means all designs, drawings, specifications and any goods or physical materials supplied by the Buyer in connection with any of the Products and/or Services. Unless otherwise agreed in writing, all Buyer Materials will be provided at the Buyer's expense. *Company* means Covaris Ltd. *Contract* means the agreement arising between the Buyer and Company for the sale and purchase of Products or Services between the Company and the Buyer, including any service plan purchased by Buyer in accordance with the these Terms and Conditions. *Order* means a request from the Buyer to buy Products and/or Services. *Order Acknowledgement* means confirmation provided by the Company to the Buyer that the Order has been accepted. *Products* means all goods manufactured and supplied by the Company and all equipment manufactured or supplied by the Company which are of a capital nature, including without limitation, instruments, computers, printers and non-expendable accessories and parts. *Services* means all advice given and services performed by the Company for Buyer, including the processing of Buyer- Materials by the Company using Company equipment and/or personnel, whether at a Company facility or a Buyer facility, and all services performed pursuant to any service plan purchased by Buyer. *Covaris Software* means all software that is pre-loaded and installed on the Products, other than Third Party Software. *Documentation* means all user documentation provided by the Company to the Buyer for the Products. *Third Party Software* means all third party software and documentation provided by the Company to the Buyer in connection with the Products.

1.2. The Company's sale of the Products and Services to the Buyer is subject to these Terms and Conditions of Sale (these "Terms and Conditions"), and by purchasing the Products or Services the Buyer accepts and agrees to be bound by such Terms and Conditions. To the extent any terms of these Terms and Conditions are not applicable to the Products and/or Services purchased by Buyer, such terms will not apply.

## 2. **Prices and Quotations**

2.1. The price of the Products and Services will be the Company's price exclusive of any sales taxes. All quotations issued by the Company for the supply of Products and Services shall remain open for acceptance for the period stated in the quotation or, if none stated, for ninety (90) days of the date of the quotation. In all other cases, prices payable are those currently in effect, but are subject to change without notice.

2.2. An Order from the Buyer for any Products and/or Services is an offer by the Buyer to buy the Products and/or Services under these Terms and Conditions. The Company's acceptance of any offer from the Buyer is expressly made conditional upon the Buyer's acceptance of these Terms and Conditions and the Company will only be deemed to have accepted an Order and created a binding contract when the Company issues the Buyer an Order Acknowledgement at which time the Contract between the Company and the Buyer will come into existence.

2.3. Once an Order Acknowledgment has been issued, the Company shall not modify prices at any time before delivery to the Buyer unless to reflect any changes resulting from any alteration in or addition to the Buyer's requirements. Unless otherwise agreed to in writing, extra charges will be made for all applicable handling, freight, content, packaging, insurance or other similar costs. The Buyer is liable for all taxes other than taxes on the Company's income.

## 3. **Payment**

3.1. Unless otherwise agreed to in writing or for services, payment in full shall be made to the Company in the currency invoiced no later than thirty (30) days from the date of invoice.

3.2. In the event of late payment the Company reserves the right to (i) suspend deliveries and cancel any of its outstanding obligations, (ii) charge interest at an annual rate equal to 8% (or if lower, the maximum interest rate permitted under applicable law) on all unpaid amounts calculated on a day to day basis until the actual date of payment, and (iii) seek any other remedies available under the law. The Buyer is liable for any fees, including legal and collection fees, that the Company may incur in its efforts to collect any late payments from the Buyer.

## 4. **Changes**

Subject to prior notice, the Company reserves the right to make any change to the specification of the Products which does not materially affect the installation, performance, or price thereof. The Buyer shall confirm or cancel any outstanding order promptly on receipt of such notice. If the Company does not receive a cancellation notice from the Buyer within seven (7) days of the Company's notice to the Buyer of a change in a specification, the Buyer shall be deemed to have accepted such change.

## 5. **Delivery**

5.1. The Company will select the method of shipment and the carrier to be used, unless otherwise agreed upon in a Contract. Unless otherwise agreed, shipment will be EXW (Incoterms 2000) Company's shipping point for all destinations. The Company will not be responsible for any loss or damage to the Products following delivery to the carrier. At the request of the Buyer, the Company may provide insurance coverage for the Products during transit for the benefit of the Buyer, at the Buyer's cost.

5.2. If the Buyer fails to accept delivery of the Products within a reasonable period being no more than 7 days after receiving notice from the Company that they are ready for delivery, the Buyer shall nevertheless pay for the Products as provided in Section 3 above and the Company, in its sole discretion, may dispose of or store the Products at the Buyer's expense.

5.3. The Company will use commercially reasonable efforts to avoid delay in delivery on the notified delivery date(s). Failure to deliver by the specified date(s) will not be a sufficient cause for cancellation, nor will the Company be liable for any direct, indirect, consequential or economic loss due to delay in delivery.

5.4. The Buyer shall promptly and thoroughly inspect all Products shipped by the Company for damage and shortage before signing the carrier receipt, and note the nature and extent of such damage or shortage directly on such receipt. In the event of either obvious or concealed damage, the Buyer must notify the Company within three (3) working days in writing of the delivery date, retaining both goods and damaged packaging for possible inspection by the carrier. In the event the carrier does not issue a damage call tag, the Buyer shall return such damaged goods to the Company, or send such goods to a third party as directed by the Company, packaged carefully and freight pre-paid by the Buyer, for the Company's inspection. The Company will determine, at its sole discretion, whether the Products were damaged at the time of shipment F.O.B. Company's shipping point or CIP place of destination. The Company's sole obligation shall be, at its option, to replace or repair any Products damaged at such shipping point, or refund the net invoice price, provided the above conditions have been met. Such replacement, repair or refund and, together with any applicable remedies set forth in Section 10, will be Buyer's sole and exclusive remedy for any Product damaged at the shipping point.

5.5. Where delivery of any Product requires an export license or other authorization before shipment, the Company shall not be responsible for any delay in delivery due to delay in, or refusal of, such license or authorization.

#### **6. Risk and Title**

The Buyer shall bear the risk of loss to the Products after delivery to the carrier. Title to the Products shall pass to the Buyer on delivery to the carrier. Title will not pass to Buyer during the rental period. The Buyer shall not remove any labeling from the Products or packaging. Title to Products will not pass to the Buyer until it has paid all money owed to the Company (whether or not then due and whether or not owing in respect of the Products supplied). Until title passes, the Buyer shall hold the Products as bailee for the Company. The Buyer may, (even though title to any Products remains with the Company) sell the Products in the ordinary course of its business, in its name, as principal and not as agent for the Company, provided that if the Buyer sells any Products to which the Company retains title the Buyer may only do so on terms that it will retain title until it has received payment for those Products, and the Buyer shall hold the title retained by it and the proceeds of sale of the relevant Products on trust for the Company. So long as title to any Products remains with the Company, the Buyer shall keep the Products in a way which will enable them to be readily identified as belonging to the Company. If a contract for Products is terminated or repudiated, or if circumstances exist entitling the Company to treat any contract for Products as terminated or repudiated, the Company or its representatives may enter the Buyer's premises and repossess them. The Company shall be entitled to payment for the Products notwithstanding that it retains title to the Products.

#### **7. Returns and Exchanges**

7.1. Except as set forth in paragraph 5.4, Products may only be returned for reasons other than damage to Products or the failure of Products to satisfy the warranty set forth in Section 10 solely at the Company's option and with the Company's prior authorization. The Company, in its sole discretion, may authorize such a return, provided that (i) the Products to be returned have not been damaged or used, and are in a resalable condition, (ii) the Products to be returned are of current design and finish and are in current production (e.g., were not custom-made or from a special order), and (iii) proof of purchase is established for such returned Products. Any returned Products must be shipped properly to the Company's address within thirty (30) days from the date of invoice.

7.2. Pursuant to Section 7.1, authorized Products may be returned for exchange or credit. Reagent kits may not be returned for exchange or refund. A restocking charge will be applied to all Products so returned for exchange or credit.

7.3. Failure to ship trade-in, demo, or other products that need to be returned to the Company's address in the period stated in the contract or agreement, and if none stated, by thirty (30) days, will result in an invoice to the buyer in the amount of the value of said product.

#### **8. Services**

8.1. Where the Company is to provide Services, the Buyer shall ensure that adequate and safe facilities exist at its premises and that the Company is properly notified of any relevant regulations.

8.2. Where the Company is to provide Services involving the processing of Buyer Materials using Company equipment (whether performed at a Buyer facility or at a Company facility), Buyer will verify the contents of all materials to be processed and indicate whether Buyer believes the processing to be performed may cause damage or otherwise pose a hazard to Company personnel and/or equipment. "Processing" may include subjecting the Buyer Materials to acoustic treatment, or mechanical crushing or other physical disruption of the Buyer Materials.

8.3. If in the Company's sole discretion, the Company determines that the performance of Services presents a hazardous condition for Company personnel and/or equipment, or Buyer fails to provide, or identify a source for the Buyer Materials suitable for the performance of Services, the Company may refuse to perform any further such Services. Upon refusal to perform Services, the Company shall return the Buyer Materials, if any, including Buyer Materials that may have been processed.

#### **9. Restricted Use, Health, Safety and Waste**

9.1. The Buyer will abide by all use restrictions pertaining to the Products, as set forth herein, in the Company's catalogue or on the Product and accompanying Documentation, and the Buyer will not use the Products in contravention of any such restrictions. Unless otherwise provided in writing by the Company, the Buyer will only use the Products for the

Buyer's internal research use. Without limiting the foregoing, the Buyer shall not: (i) use the Products in a manufacturing process or in manufactured products, (ii) use the Products in medical or clinical applications, or (iii) use the Products to provide commercial services for or on behalf of a third party. Buyer will comply with all regulatory requirements related to the Buyer's use of Products. The Buyer shall not make, use, modify, reproduce, disassemble, decompile, reverse engineer, translate, reconstruct or improve the Products, or practice any intellectual property rights of the Company, except as explicitly provided hereunder.

9.2. The Buyer shall ensure that (i) the specification of the Products is safe for the intended use, (ii) the Products are handled in a safe manner and (iii) any waste originating from the Products is disposed of in accordance with any relevant laws and regulations.

#### **10. Warranty; Technical Support.**

10.1. Except as explicitly set forth in these Terms and Conditions, the Company makes no warranty, condition or other terms with respect to the Products or Services, expressed or implied, and delivers its Products "as is". The Company specifically disclaims any implied warranty of, title, noninfringement or fitness for a particular purpose. No representation or warranty, including but not limited to statements of quality, suitability for use or performance, whether made by employees or the Company or its distributors, will be considered a warranty or representation by the Company for any purpose or create any liability on the part of the Company. The Company hereby expressly disclaims, and Buyer hereby expressly waives, any warranty regarding results obtained through the use of the Products or performance of the Services, including without limitation any claim of inaccurate, invalid, or incomplete results.

10.2. Except as explicitly set forth in these Terms and Conditions, the Company will be under no obligation whatsoever to provide any repair, refund or replacement, or any other remedy, to any user of the Company's Products, under any theory of liability, whether or not sounding in tort, property, warranty, contract or otherwise. In no event will the Company be liable to any user of the Company's products for any damages whatsoever, whether or not direct, special, indirect, incidental or consequential, or in the nature of additional costs, lost revenue or lost profits.

10.3. Notwithstanding 10.1 and 10.2, and to the extent such warranties are not able to be disclaimed, the Company herein provides all warranties to its customers as necessary to comply with applicable laws, but only to the extent such warranties are not able to be disclaimed by the Company.

10.4. The Company warrants that when used in accordance with any Documentation or written instructions and under normal operating conditions, the Products shall be free of defects in materials and workmanship for one (1) year from the date of original delivery. The Buyer must notify the Company in writing with the warranty period of its claim of any such defect and perform basic diagnostics and component replacement with telephone support from Company personnel. If the Company determines that any Product, or component thereof fails to satisfy the warranty set forth in this Section 10.4, the Company's sole obligation shall be to repair or replace such component at its expense and within a reasonable period of time, as determined by the Company. The limited warranty set forth in this Section 10.4 shall be void to the extent of damages that result from (i) accidents, abuse, misuse (including, as applicable, operating a Product without an appropriate amount of water), improper maintenance or repair, or misapplication (ii) unauthorized attachments or modifications to a Product or (iii) use of a Product with software other than Covaris Software or Third Party Software. For the avoidance of doubt, in all events, removing or tampering with the safety enclosure of a Product will void the limited warranty set forth in this Section 10.4. Further, notwithstanding anything else contained herein, the limited warranty set forth in this Section 10.4 is limited to the original purchaser and is not transferable.

10.5. An extended warranty on Products may be available for purchase by the Buyer.

10.6. The Company warrants that all Services will be carried out with reasonable care and skill. The Company's sole liability for breach of this warranty shall be at its option to give credit for or re-perform the Services in question. This warranty shall only extend for a period of sixty (60) days after the completion of the Services.

#### **11. Limitation of Liability**

11.1. The Company shall have no liability, including under any warranties contained in Section 10, arising from: any Buyer Materials; fair wear and tear; willful damage or negligence of the Buyer or its employees or agents; abnormal working conditions at the Buyer's premises; failure to follow the Company's instructions (whether oral or in writing); misuse or alteration or repair of the Products without the Company's approval; or if the total price for the Products has not been paid.

11.2. The Company's liability:

- a) for death or personal injury caused by Company's negligence or the negligence of Company's employees or agents;
  - b) for breach of any condition as to title or quiet enjoyment implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods or Services Act 1982;
  - c) for fraudulent misrepresentation;
- is excluded or limited by this agreement, even if any other term of this agreement would otherwise suggest that this might be the case.

11.3. Subject to clause 11.2, the Company does not accept any liability under or in relation to these Terms and Conditions or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any:

- a) loss of profits;
- b) loss of sales;

- c) loss of turnover;
- d) loss or damage to business.
- e) indirect, special or consequential loss or damage,

and for the purposes of this clause, the term "loss" includes a partial loss or reduction in value as well as a complete loss or total loss.

11.4. Subject to clauses 11.2 and 11.3, the Company's total liability arising from or in connection with these Terms and Conditions and in relation to anything which the Company may have done or not done in connection with these Terms and Conditions (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to the greater of (a) an equal amount to the total amount paid or payable by Buyer under the Contract or (b) GBP 1000.00.

## **12. Intellectual Property Rights**

12.1. Where the Buyer supplies designs, drawings, or specifications to the Company to enable it to manufacture non-standard or custom made Products, the Buyer warrants that such manufacture will not infringe the intellectual property rights of any third party. All intellectual property rights and goodwill in any such designs, drawings or specifications shall be owned by the Buyer and the Buyer grants the Company a limited license to such designs, drawings or specification to allow the Company to manufacture such non-standard or custom made products.

12.2. All intellectual property rights and goodwill in the Products and Services, including any inventions, trade secrets, know how or other intellectual property developed or otherwise discovered in processing of Buyer Materials or the provision of other Services, shall at all times remain vested in, be owned by, and inure to the benefit of the Company. The Buyer hereby assigns, and agrees to assign, to the Company any rights the Buyer may obtain in and to the Products and Services.

## **13. Indemnification**

Except to the extent the claim arises as a result of the gross negligence of the Company, the Buyer shall indemnify and hold the Company harmless from and against any and all claims, damages, losses, costs, fees, expenses and other liabilities of whatever nature that the Company suffers or incurs (i) by reason of the Buyer's breach of Section 9.1, (ii) arising in connection with the Buyer's use of the Products or materials provided by the Company in connection with performing Services, (iii) alleging that the use to which the Products are put infringes or misappropriates the intellectual property rights of any third party, (iv) alleging that the use of the Buyer Materials infringes or misappropriates the intellectual property rights of any third party, or (v) arising out of the performance of Services by the Company on Buyer Materials to the extent such liability results from use of or exposure to a hazardous material provided by the Buyer.

## **14. Insolvency**

If in respect to the Buyer:

- a) a meeting of creditors of the Buyer is held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) is proposed by or in relation to the Buyer;
- b) a chargeholder, receiver, administrative receiver or other similar person taking possession of or is appointed over to any distress, execution or other process is levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of the Buyer;
- c) it ceases to carry on its business or is deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986 except that, for the purposes of this agreement, the reference to £750 in section 123 (1) of that Act shall be construed as a reference to £1,000;
- d) it or its directors or the holder of a qualifying floating charge of any of its creditors gives notice of their intention to appoint or make an application to the court for the appointment of, an administrator;
- e) a petition is advertised or a resolution is passed or an order is made for the administration or the winding-up, bankruptcy or dissolution of the Buyer;
- f) the happening in relation to the Buyer of an event analogous to any of the above in any jurisdiction in which the Buyer is incorporated or resident or in which it carries on business or has assets,

the Company shall be entitled on written notice to immediately terminate these Terms and Conditions.

## **15. Force Majeure**

15.1. The Company shall not be liable in respect of the non-performance of any of its obligations to the extent such performance is prevented by any circumstances beyond its reasonable control including but not limited to strikes, lock outs or labor disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, acts of terrorism, revolution, riot, civil commotion, war or civil war, plant breakdown, computer or other equipment failure and inability to obtain equipment.

15.2. If an event of force majeure exceeds one month the Company may cancel all Contracts without liability.

## **16. Licenses**

16.1. The Buyer will not load onto or use any software with the Products except the Covaris Software and the Third Party Software. The Buyer agrees that all Covaris Software and Third Party Software is licensed to the Buyer, and not sold. Subject to these Terms and Conditions, the Company hereby grants the Buyer a limited, non-exclusive, non-transferable, royalty-free, non-sublicenseable, worldwide license to use the Covaris Software solely for operating the Products as permitted under these Terms and Conditions and for no other purpose.

16.2. Subject to these Terms and Conditions, the Company hereby grants the Buyer a limited, non-exclusive, royalty-free, non-transferable, non-sublicenseable, worldwide license to use, reproduce, display, distribute and modify and create derivative works of all or any portion or portions of the Documentation solely for purposes of creating new versions of the Documentation and to distribute such Documentation solely for use in connection with operating the Products as permitted under these Terms and Conditions.

16.3. No rights are granted to, and the Buyer shall not, save as permitted by applicable law, produce copies of, reverse-engineer, reproduce, disassemble, decompile, modify, reconstruct, or create any derivative works based upon the Covaris Software or Documentation. In addition, the Buyer shall not rent, lease, sublicense, loan, transfer or otherwise transfer any rights to the Covaris Software or the Documentation, or alter, remove or obscure any trademark, logo, copyright or other proprietary notices or labels on or embedded in the Covaris Software or the Documentation.

16.4. The Buyer acknowledges and agrees that its use of any Third Party Software is subject to the terms and conditions of separate license agreements supplied by the applicable third party licensor of such Third Party Software. The Buyer agrees to comply with the terms of any such license agreement.

16.5. The Buyer also acknowledges that the Covaris Software may be subject to US export control laws, including the US Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. The Buyer agrees to comply strictly with all such laws and regulations.

16.6. The Buyer shall not disclose, provide or otherwise make available the Covaris Software or Documentation, to any other party, or permit other individuals to use the Covaris Software or Documentation, except employees and agents of the Buyer who use it on the Buyer's behalf and are made subject to these Terms and Conditions.

#### **17. Governing Law; Jurisdiction**

17.1. These Terms and Conditions and all Contracts shall be governed by the laws of England and Wales.

17.2. The Courts of England and Wales shall have exclusive jurisdiction in respect of any claim or dispute which may arise under this Agreement.

17.3. Notwithstanding the provisions of clause 17.2, either party may bring proceedings in the courts of any other state which have jurisdiction for reasons other than the parties choice, for the purpose of seeking:

- a) an injunction, order or other non-monetary relief (or its equivalent in such other state); and/or
- b) any relief or remedy which, if it (or its equivalent) were granted by the courts of England and Wales, would not be enforceable in such other state.

17.4. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

#### **18. General**

18.1. Unless otherwise explicitly set forth in a Contract, these Terms and Conditions shall take precedent in the event of any inconsistencies with a Contract.

18.2. The Buyer may not assign these Terms and Conditions or any Contract, in whole or in part, without the Company's prior written consent. Any attempt to assign these Terms and Conditions or any Contract other than as permitted above will be null and void. The rights and liabilities of the Company and Buyer hereunder will bind and inure to the benefit of their respective successors and assigns.

18.3. Any notice under these Terms and Conditions will be in writing and delivered by personal delivery, overnight courier, or certified or registered mail, return receipt requested or email, and will be deemed given upon personal delivery, two (2) days after deposit with overnight courier or five (5) days after deposit in the mail or twenty-four (24) hours after the party who provides notice receives delivery receipt confirmation. Notices will be sent to the Company or Buyer at its address and to the designee set forth in the applicable Contract or such other address and designee as the Company or Buyer may specify in writing pursuant to this Section.

18.4. Nothing in these Terms and Conditions will be construed to imply a joint venture, partnership, or agency relationship between the Company and Buyer, and the Company will be considered an independent contractor when performing Services.

18.5. Except as explicitly set forth herein, no failure or delay by the Company or Buyer in exercising any right, power, or remedy under these Terms and Conditions shall operate as any waiver of any such right, power, or remedy.

18.6. If any provision of these Terms and Conditions or a Contract is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. The Company and Buyer agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

18.7. The Buyer shall not export, directly or indirectly, any Product without first obtaining an export license from the U.S. Department of Commerce or other agency of the U.S. Government, as required. The Company will comply with all import and trade laws and regulations as applicable.

18.8. These Terms and Conditions, together with the Contract, constitutes the complete and exclusive agreement between the Company and Buyer with respect to the subject matter hereof, superseding any prior agreements and communications (both written and oral) regarding such subject matter. Nothing in these Terms and Conditions or any Contract limits liability for fraud or fraudulent misrepresentation.

18.9. No party other than the parties to these Terms and Conditions shall have the right to enforce any term of these Terms and Conditions.

*End of document*