



SPHERE FLUIDICS LIMITED
TERMS AND CONDITIONS OF SUPPLY
(DESIGN/DEVELOPMENT CONSULTANCY SERVICES)
UPDATED 2017 04 28

1. DEFINITIONS

In these Conditions, and elsewhere in the Contract:

Conditions	means these terms and conditions of supply;
Confidential Information	has the meaning given it in Clause 7.2;
Contract	means the contract between Sphere and 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 Sphere, under which Sphere is to supply the Services;
Customer Order	means Customer's written acceptance of the Sphere Quotation;
Deliverables	means items to be produced in the Services and delivered to Customer by Sphere, as described in the Sphere Quotation;
Existing CDA	means any confidentiality/non-disclosure agreement between the Parties entered into in relation to discussions leading to the Contract that is identified in the Sphere Quotation as an Existing Confidentiality Disclosure Agreement (CDA);
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 Sphere or Customer; and Parties refers to both of them;
Services	means the design/development services that are to be supplied by Sphere to Customer under the Contract, as described in the Sphere Quotation;
Sphere	means Sphere Fluidics Limited, a company registered in England and Wales with company number 07167872;
Sphere Quotation	means the written quotation provided to Customer by Sphere, offering to provide the Services to Customer;
VAT	means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax;

writing and cognate expressions include a reference to e-mail unless expressly provided to the contrary.

2. BASIS OF CONTRACT

- 2.1 **Sphere Quotation.** The Sphere Quotation constitutes an offer by Sphere to Customer to supply the Services in accordance with the Sphere Quotation and these Conditions. Such offer may only be accepted by Customer accepting the Sphere Quotation, in writing by completing the acceptance form comprised in the Sphere Quotation, within 30 days of the date of the Sphere Quotation, or within such longer period as Sphere may in writing agree (for which e-mail will be sufficient).
- 2.2 **Contract.** At the time and on the date that Customer accepts the Sphere Quotation as above the Contract shall come into existence. The Contract consists in the Sphere Quotation, 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. Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Sphere which is not set out in the Contract.
- 2.4 **No other conditions.** These Conditions apply to the Contract to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade custom, practice, course of dealing or otherwise. In particular, if Customer places an order for the Services (or any of them) that are the subject of the Contract and such 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. SERVICES AND DELIVERABLES

- 3.1 **Supply of Services.** Sphere agrees to supply the Services to Customer, and Customer agrees to purchase the Services from Sphere, on the terms of the Contract.
- 3.2 **Delivery of Deliverables.** Sphere shall deliver the Deliverables to Customer at such location as the Parties agree. Delivery of the Deliverables shall be completed upon the Deliverables' arrival at the delivery location.
- 3.3 **Risk.** The risk in the Deliverables shall pass to Customer upon completion of delivery.

4. OBLIGATIONS OF SPHERE

4.1 Performance. Sphere:

4.1.1 shall perform the Services with reasonable care and skill; and

4.1.2 shall assign to the Services personnel with the appropriate levels of expertise and experience.

Unless expressly stated to the contrary in the Sphere Quotation, Sphere does not guarantee (and shall not be obliged) through the Services or otherwise under the Contract to achieve any technical specification(s) agreed between the Parties in relation to any Deliverable, and any such technical specification(s) shall be deemed to be a target only. Sphere will however use all reasonable efforts to achieve such technical specification(s).

- 4.2 **Timing.** Any dates quoted or otherwise agreed for performance of Services or delivery of Deliverables are approximate only, and the time of performance and delivery is not of the essence. Sphere will however use its reasonable efforts to adhere to agreed dates for performance of Services and delivery of Deliverables.
- 4.3 **Subcontracting.** Sphere may in its absolute discretion subcontract performance of Services under the Contract. However Sphere shall remain responsible for any subcontracted Services as if it had not subcontracted them.

5. COOPERATION BY CUSTOMER

- 5.1 **Cooperation.** Customer shall promptly provide to Sphere such information, access to personnel, access to premises and other cooperation as is specified in the Sphere Quotation or otherwise reasonably required by Sphere in connection with performance of its obligations under the Contract.
- 5.2 **Consequences of failure to cooperate.** If and to the extent that failure by Customer to comply with its obligations under the Contract results in Sphere being unable to perform its obligations, Sphere shall not be liable for that failure. If and to the extent that such failure by Customer results in Sphere incurring extra costs or expending extra time or effort in connection with performance of Services, Customer shall pay to Sphere additional amounts calculated in accordance with Sphere's normal practices at the applicable time.

6. FINANCIAL

- 6.1 **Amounts payable.** The amounts to be paid by Customer to Sphere under the Contract shall be the amounts specified in the Sphere Quotation. In addition to the fees for the Services, Sphere shall also be entitled to charge Customer for any reasonable travel, accommodation and subsistence expenses incurred by Sphere in connection with the Services. Sphere shall also be entitled to charge Customer any other amounts payable by Customer under the terms of the Contract.
- 6.2 **Payment.** Customer shall pay all amounts payable by it within 30 days of the date of Sphere's invoice, unless different payment terms are stated in the Sphere Quotation or have otherwise been agreed in writing by the Parties; in which case Customer shall pay such amounts in accordance with those payment terms.
- 6.3 **Manner and currency of payment.** Customer shall pay all monies becoming due to Sphere under the Contract by electronic transfer to a bank account nominated by Sphere or by such other means as Sphere may reasonably require. It shall pay them in Pounds Sterling or in such other currency as is specified in the Sphere Quotation, and shall pay them in full without any withholding or deduction because of any set-off, counterclaim, abatement or otherwise.
- 6.4 **VAT.** All sums becoming due to Sphere under the Contract are exclusive of any VAT, which (in the case that Sphere is obliged by law to charge VAT) Customer shall pay in addition against Sphere's VAT invoices.
- 6.5 **Overdue amounts.** In addition to any other right or remedy that Sphere may have, if any amount due to Sphere is not paid on time:
- 6.5.1 if required by Sphere, 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 Sphere, whether before or after any judgement;
 - 6.5.2 Sphere may without liability suspend performance of the Services until receipt of the full amount by Sphere, together with any interest charged as above; and
 - 6.5.3 Customer shall upon demand by Sphere reimburse Sphere all costs and expenses (including legal fees on a full indemnity basis) incurred by Sphere in recovering overdue amounts from Customer.

7. CONFIDENTIALITY

- 7.1 **Existing CDA.** The Contract terminates and supersedes the Existing CDA with effect from the date the Contract is entered into. However:
- 7.1.1 such termination shall not affect any rights or liabilities accrued under the Existing CDA at the date of termination; and
 - 7.1.2 all information that was disclosed by either Party to the other under the Existing CDA and fell within the scope of information required under the Existing CDA to be treated as confidential shall be deemed to be Confidential Information and accordingly shall be treated as such in accordance with the terms of this Clause 7.

7.2 **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 7.3, 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 7.3, and as Confidential Information of Sphere, all know-how and other information concerning Sphere's products, services, software and otherwise Sphere's business at any time disclosed to Customer by Sphere; (b) the information referred to in Clause 7.1.2; and (c), as Confidential Information of both Parties, the terms of the Contract.

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

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

7.3.2 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

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

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

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

7.5.1 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 7; and

7.5.2 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.

7.6 **Period of application.** This Clause 7 shall continue in force for a period of 5 years from the date the Contract is entered into.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 **Ownership.** All IPR in or arising from the Services, and any other IPR in the Deliverables, shall be owned by Sphere.

8.2 **Licences.**

8.2.1 If the Services are or include design for Customer of a novel biochip or cartridge then, subject to and with effect from payment by Customer to Sphere of all sums due under the Contract, Customer shall have a non-exclusive, perpetual, fully paid-up and royalty-free licence under all IPR of Sphere in such design, to make and to have made biochips or cartridges in accordance with such design or any derivative thereof.

8.2.2 If the Services are or include development for customer of novel cell lines, biological agents, emulsions or specialist chemicals then, subject to and with effect from payment by Customer to Sphere of all sums due under the Contract, Customer shall have a non-exclusive, perpetual, fully paid-up and royalty free licence under all IPR of Sphere in such cell lines, biological agents or specialist chemicals, to make and to have made cell lines, biological agents, emulsions or specialist chemicals the same as those developed under the Contract, or any derivative thereof.

- 8.2.3 If the Services are or include development for customer of software, databases or instrumentation then, subject to and with effect from payment by Customer to Sphere of all sums due under the Contract, Customer shall have a non-exclusive, perpetual, fully paid-up and royalty free licence under all IPR of Sphere in such software, databases or instrumentation the same as those developed under the Contract, or any derivative thereof.
- 8.2.4 In relation to any other Deliverables produced in the Services, and supplied by Sphere under the Contract, Customer shall have a non-exclusive, perpetual, fully paid-up and royalty-free licence under all IPR of Sphere in each such Deliverable, to use and reproduce it for its intended purpose.
- 8.2.5 All rights not expressly granted in this Clause 8.2 are reserved to Sphere or its licensors.

8.3 **Third party IPR.**

- 8.3.1 Sphere shall inform Customer if during the period that it is performing the Services its personnel engaged in performing the Services become aware of any IPR of a third party that they are aware will or may be infringed by use or exploitation by Customer of the Deliverables or other results of the Services. In such case the Parties may agree changes to the Services, or Customer may seek a licence, to avoid the infringement or potential infringement.
- 8.3.2 Notwithstanding Clause 8.3.1 or anything else in the Contract:
 - 8.3.2.1 it is and shall not be part of the Services to be provided by Sphere, to carry out any searches or to make any enquiries as to the existence of such IPR that will or may be so infringed;
 - 8.3.2.2 Sphere makes no representation and gives no warranty concerning non-infringement of IPR of third parties; and
 - 8.3.2.3 in no circumstances shall Sphere have any responsibility for, or liability in respect of, infringement or alleged infringement of any IPR caused by or connected with the direct or indirect use or exploitation of any Deliverables or other results of the Services.

9. **LIABILITY**

9.1 **Certain warranties excluded.** Sphere does not represent or warrant that:

- 9.1.1 it will through the Services achieve any technical specification agreed between the Parties in relation to any Deliverable, except to the extent expressly stated to the contrary the Sphere Quotation; or
- 9.1.2 biochips, cartridges, novel cell lines, biological agents, emulsions, specialist chemicals, software or instrumentation made in accordance with any results of the Services will conform with applicable laws or regulations in any territory in which they are used (Sphere provides technical expertise and it is exclusively the responsibility of Customer to ensure that any such item, and any use of the Deliverables and other results of the Services, shall comply with all applicable laws and regulations); or
- 9.1.3 biochips, cartridges, novel cell lines, biological agents, emulsions, specialist chemicals, software or instrumentation made in accordance with any results of the Services will function or perform as required or expected in all environments or in any particular environment, except to the extent expressly stated to the contrary in the Sphere Quotation.

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

- 9.2.1 negligence resulting in death or personal injury;
- 9.2.2 fraudulent misrepresentation or other fraud;
- 9.2.3 wilful default; or

9.2.4 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 Sphere's liability shall be read subject to this Clause 9.2.

9.3 **Limitations of liability.** Subject to Clause 9.2:

9.3.1 Sphere shall not in any circumstances be liable for any of the following arising out of or in connection with the Contract: (a) loss of profit or other financial loss; (b) loss of market, loss of goodwill or reputation; (c) loss of or damage to cells or other materials stored, processed or analysed through use of the Deliverables or any other results of the Services; or (d) any indirect or consequential loss or damage whatsoever arising out of or in connection with the Contract; and

9.3.2 Sphere's total liability in respect of all causes of action arising out of or in connection with the Contract shall be limited to £5,000.

9.4 **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.

9.5 **Force Majeure.**

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

9.5.2 If Sphere is affected by Force Majeure it shall:

9.5.2.1 notify Customer in writing of the Force Majeure and the actual or expected effects of it; and

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

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

10. TERMINATION

10.1 **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:

10.1.1 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;

10.1.2 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;

10.1.3 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;

10.1.4 a resolution is passed, or an order is made, for the winding up of the other Party;

- 10.1.5 an order is made for the appointment of an administrator or an administrator is appointed over the other Party;
 - 10.1.6 the other Party makes an assignment for the benefit of creditors, a voluntary arrangement with its creditors or becomes subject to an administration order;
 - 10.1.7 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);
 - 10.1.8 the other Party ceases or threatens to cease to carry on all or substantially all of its business; or
 - 10.1.9 anything analogous to any of Clauses 10.1.3 through 10.1.7 occurs in relation to the other Party in any foreign jurisdiction.
- 10.2 **Material breach partially defined.** Without limiting the scope of Clause 10.1.1, a breach of either of Clauses 6 or 7 shall be deemed a material breach.

11. CONSEQUENCES OF TERMINATION

- 11.1 **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.
- 11.2 **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 6, 7, 8, 9, 11, 12, 13 and 14 shall survive any termination of the Contract.
- 11.3 **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.

12. NON-SOLICITATION

- 12.1 **Definitions.** In this Clause 12 **Key Employee** means an employee who is not employed in an administrative or secretarial capacity and the loss of whom would have a material detrimental effect on the business of the applicable Party or, as the case may be, a subcontractor of the applicable Party.
- 12.2 **Restrictions on solicitation etc.** Neither Party shall:
 - 12.2.1 during the period that the Contract is being performed; or
 - 12.2.2 for a period of 9 months after performance of the Contract has been completed, or the earlier termination of the Contract (as the case may be);

directly or indirectly seek to solicit or entice away for employment or other engagement any Key Employee of the other Party or of any subcontractor of the other Party under the Contract with whom (in either case) the first Party had material contact or dealings in connection with the Contract.

13. MISCELLANEOUS

- 13.1 **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.
- 13.2 **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 (e-mail is not sufficient).

- 13.3 **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.
- 13.4 **Assignment.**
- 13.4.1 Sphere 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.
- 13.4.2 Subject to Clause 13.4.1, 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.
- 13.4.3 The Contract shall bind and shall continue in force for the benefit of any permitted assignee of either Party.
- 13.5 **Notices.**
- 13.5.1 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.
- 13.5.2 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.
- 13.5.3 A notice required to be given under the Contract shall not be validly given if sent by e-mail.
- 13.5.4 The provisions of this Clause 13.5 shall not apply to the service of any proceedings or other documents in any legal action.
- 13.6 **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.
- 13.7 **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 Customer or in any acceptance of a Sphere Quotation, or in any other documentation issued by Customer, shall have any effect. No terms or conditions not expressly set out in the Contract form part of it.
- 13.8 **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.
- 13.9 **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.

13.10 **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.

14. **GOVERNING LAW AND DISPUTE RESOLUTION**

14.1 **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.

14.2 **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.