

TERMS AND CONDITIONS OF TRADING

1. DEFINITIONS

In this document the following meanings shall be attributed:

"Buyer"	the person contracting with the Seller
"Contract"	this contract for the sale of the Goods
"Estimate"	the estimate (if any) given by the Seller to the Buyer for the supply of the Goods
"Goods"	the goods or services which the Seller is to supply in accordance with these conditions as specified in the Order
"Order"	the Buyer's order whether placed by post email fax online over the telephone or in person
"Quotation"	the quotation (if any) given by the Seller to the Buyer for the supply of the Goods
"Seller"	Bio-Technology Associates Limited, t/as Sinar Technology
"Terms"	these terms and conditions

2. BASIS AND FORMATION OF THE CONTRACT

2.1.1 The Seller shall sell and the Buyer shall buy the Goods.. Subject to Clause 2.1.2 no Contract shall come into existence until:

- (a) the Buyer's Order has been received by the Seller and
- (b) payment in full in cleared funds has been received by the Seller or the Seller has approved the Buyer for credit

2.1.2 In the case of orders for non quoted business or where an Estimate has been given the Contract shall be made when the Seller accepts the Order

2.2 These Terms shall govern the Contract to the exclusion of any other terms and conditions. They override any other terms which the Buyer may subsequently seek to impose and shall prevail over any inconsistent terms implied by trade custom, practice or course of dealing which are hereby excluded.

2.3. No variation of these Terms shall be binding upon the Seller unless agreed in writing by a Director of the Seller

2.4 The Seller's salesmen are not authorised to accept any offer or counter-offer made by the Buyer or make any representation agree any condition precedent enter into any collateral contract or to give advice. In entering in to this Contract the Buyer acknowledges that it has not relied on any representations except those contained in the Seller's manufacturers specification and tolerances whether printed or on the Seller's website but nothing in these Terms affects the liability of either party for fraudulent misrepresentation

2.5 Any forbearance or indulgence on the part of the Seller its servants or agents to enforce fully or at all any of the Terms shall not constitute a waiver of the Seller's rights and shall be entirely without prejudice to those rights

2.6 Once the Contract has been made the Buyer has no right to cancel or vary. If in the Seller's sole discretion the Seller accepts cancellation then without prejudice to the Seller's other rights and remedies the Buyer shall pay to the Seller a re-stocking charge of the higher of £50 or 15% of the Price. If in the Seller's sole discretion a variation is accepted the original contract shall stand until a written new or replacement order is received by the Seller and accepted in writing by the Seller

2.7 All Goods sold by the Seller are designed to perform within the stated tolerances (if any) published for the instrument in the Seller's brochures and on the Seller's website, to which the Buyer's attention is specifically drawn

3. SUB-CONTRACTING

3.1 The Seller shall be entitled to sub-contract the performance of the whole or part of the Contract with the Buyer

3.2 In any Contract in which these Terms are incorporated the Seller contracts for and on behalf of itself and its sub-contractors

4. DELIVERY

4.1 Delivery shall take place when the Goods are:-

- (a) collected by the Buyer from the Seller's premises or
 - (b) posted by the Seller or
 - (c) collected by a carrier from the Seller's premises or
 - (d) delivered by the Seller to a carrier
 - (e) delivered to the Buyer's premises
- as the case may be

4.2 Where the Seller agrees the Goods are to be delivered by post or delivery to a carrier the Seller shall be under no obligation under section 32(2) Sale of Goods Act 1979

4.3 Delivery dates mentioned in any negotiations quotation order or other document are approximate only and not of any contractual effect. The Seller shall not be liable for any expense loss or damage whatsoever arising directly or indirectly out of or in any other way connected with any delay in delivery. Late performance does not entitle the Buyer to reject the Goods terminate the Contract or withhold payment of any part of the Contract Price.

4.4 Any claim for non-delivery must be in writing and received by the Seller within 10 days of

the invoice date and must quote the relevant invoice number

4.5 The Seller reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment

4.6 If the Buyer refuses or fails to take delivery of Goods tendered in accordance with the Contract:

4.6.1 the Seller shall be entitled to immediate payment in full for the Goods so tendered and to store the same at the risk of the Buyer

4.6.2 the Buyer shall in addition to the purchase price pay all costs of such storage and any additional costs including insurance incurred as a result of such refusal or failure

4.6.3 The Seller shall without prejudice to its other remedies be entitled after the expiration of one month from the date of such refusal or failure to dispose of the Goods in such manner as the Seller may determine

4.7 The Buyer's attention is drawn to clause 8

5. RISK AND TITLE

5.1 Risk in the Goods passes to the Buyer upon delivery as set out in clause 4 except in the case of Goods to be shipped abroad when unless otherwise agreed risk passes to the Buyer as soon as the Goods have left the Seller's warehouse

5.2 If the Goods are destroyed prior to the same being paid for by the Buyer the Buyer shall receive the proceeds of any insurance as trustee for the Seller such proceeds to be in diminution of the amount owed by the Buyer to the Seller under the Contract

5.3 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Terms property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods plus VAT and interest due

5.4 Until such payment has been made the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee clearly marked as the Seller's property and save where they have been attached to or affixed to other Goods products or structures separately from any other assets and properly stored insured and protected

5.5 Until such time as the property in the Goods passes to the Buyer the Seller may at any time require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith enter on the Premises of the Buyer or any third party where the Goods are stored and repossess the Goods

5.6 If the Buyer:

5.6.1 shall make default in payment or breach its obligations under this contract or shall cease or threaten to cease to carry on business; or

5.6.2 shall enter in to a Deed of Arrangement; or

5.6.3 shall make any voluntary arrangement with its creditors; or

5.6.4 shall fail to comply with any statutory demand served on it under the Insolvency Act 1986; or

5.6.5 becomes subject to an administration order; or

5.6.6 shall be the subject of any judgment or distress proceedings; or

5.6.7 (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of and followed by a reconstruction or amalgamation); or

5.6.8 shall be the subject of the presentation of a petition for the winding up of the Buyer or the appointment of an Administrator; or

5.6.9 an encumbrancer takes possession; or

5.6.10 shall have a receiver appointed (whether by the Court or out of Court) of the whole or any part of the Buyer's property; or

5.6.11 if the Seller reasonably apprehends that any of the events mentioned above is about to occur and notifies the Buyer accordingly the Seller shall be entitled to:

5.6.12 cancel the Contract or suspend any deliveries or work under the Contract without any liability to the Buyer; and

5.6.13 in respect of Goods delivered or services rendered but not yet paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary; and

5.6.14 the Seller shall be entitled to treat the Contract as repudiated and recover damages for breach of Contract

5.6.15 require the Buyer to re-deliver the Goods or any of them to the Seller on demand

5.6.16 re-sell the Goods or any of them and apply the proceeds towards the Price and/or the Seller's losses

5.6.17 enter the premises of the Buyer or any third party where the Goods are stored and repossess the Goods or any of them

5.6.18 dismantle any machinery product items or equipment into which the Goods or any of them have been incorporated without liability for any loss occasioned thereby and the Buyer shall be responsible for all the Seller's costs and expenses in connection with so doing

5.7 Should the Buyer alter the Goods by subjecting them to any manufacturing process or incorporating them into another product or mixing them in any way then the resulting product ("altered

goods") will pass into the ownership of the Seller until payment due under all contracts between the Seller and the Buyer has been made in full and all the Seller's rights hereunder shall extend to the altered goods

5.8 In the event of sale or hire of the Goods or the altered goods (as defined above) by the Buyer in the ordinary course of its business the Buyer shall assign its rights to recover the selling price or hire charges from the third parties concerned to the Seller and the Seller shall have the right to trace all proceeds of sale or hire charges received by the Buyer through any bank or other account maintained by the Buyer

6. PRICE

6.1 Subject to this clause and clause 12 (export sales) the price shall be the price specified in the Quotation. Where no price has been specified the price shall be the price stated in the Seller's current price list at the date the Contract is made

6.2 Subject to clause 6.4 all Quotations are valid for 30 days only after which time they may be altered by the Seller without giving notice to the Buyer

6.3 Unless otherwise stated all prices quoted are exclusive of packing delivery installation training etc and VAT

6.4 The Seller reserves the right to vary any Contract price at any time to take account of:

6.4.1 to reflect any increase in cost to the Seller which is due to any factor outside its control including but not limited to increases in raw material costs, exchange rate variations, surcharges on delivery, changes in applicable rules and regulations or variable expenses

6.4.2 any alteration in the specification upon which the Contract is based

6.4.3 special deliveries or part deliveries or any other variation of the original order made at the request of the Buyer

6.4.4 any additional work which is required by any aspect of the state or condition of the place of delivery unless the Seller was aware of such aspect when its Quotation was given

6.5 Where an Estimate has been given the price is not fixed and shall be a fair and reasonable sum based upon the actual work and costs and expenses involved in performing the Contract

7. TERMS OF PAYMENT

7.1 Subject to clause 7.2 the price is payable in cleared funds when the Contract is made

7.2 If the Seller agrees to give credit this is on condition that payment in full is made within 30 days of the date of the Seller's invoice. The Seller

may withdraw credit facilities forthwith if any monies are not paid on their due date

7.3 The Buyer shall have no right of set-off statutory or otherwise

7.4 Receipts for payment will be issued only on request

7.5 The Seller reserves the right to demand security for payment at any time before continuing with or delivering any order

7.6 If the Buyer fails to pay the Seller any amount on its due date then the outstanding sum shall carry interest at the rate of four per cent above Barclays Bank plc base rate from time to time in force from the due date until payment both before and after judgment

8. DESCRIPTION; QUALITY; DAMAGE TO GOODS

8.1 The Buyer shall examine the Goods forthwith upon delivery and it is the responsibility of the Buyer in all cases to establish any loss or damage

8.2 Any claims that the Goods are damaged or are not in accordance with the order must be communicated in writing to the Seller within 72 hours of delivery. All communications must quote the Seller's despatch note number. The Goods and their packaging must be preserved by the Buyer intact pending investigation by the Seller. **No claim may be made unless the delivery note was endorsed with a description of the alleged defect/deviation and signed at the time of delivery or unless the delivery note has been endorsed 'Goods received but not checked' and signed it at the time of delivery**

8.3 If the Buyer fails to notify/report/endorse in accordance with these Terms Goods of the quality and quantity specified in the despatch note or invoice shall be deemed to have been delivered to the Buyer and the Buyer shall be bound to pay for the same in accordance with the Contract

9. EXCLUSION CLAUSES/LIABILITY

9.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification and published tolerances at the time of delivery and will be free from defects in material and workmanship for the following periods from delivery (as appropriate):

9.1.1 complete units – 12 months

9.1.2 all other items including but not limited to:
Service spares)
Replacement parts) 90 days
Consumables)

9.2 The above warranty is given by the Seller subject to the following conditions:

9.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising

- from any drawing, design or specification supplied by the Buyer;
- 9.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse, alteration or repair of the Goods without the Seller's approval or breach by the Buyer of any of the Buyer's obligations under this Contract;
- 9.2.3 the Seller shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date for payment
- 9.2.4 the above warranty does not extend to parts materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller
- 9.2.5 investigations by the Seller of warranty claims shall take place at the Seller's premises and it is the duty to the Buyer at its risk and expense to return the Goods, clean and decontaminated for such purpose unless the seller in its sole discretion agrees to carry out such investigations in the field
- 9.2.6 the provisions of clause 2.7
- 9.3 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law
- 9.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the Buyer are not affected by these Conditions
- 9.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the seller shall be entitled to repair or replace the Goods (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the price of the Goods (or a proportionate part of the price) **but the Seller shall have no further liability to the Buyer**
- 9.6 Except in respect of death or personal injury caused by the Seller's negligence **the Seller shall not be liable to the Buyer** by reason of any representation (unless fraudulent) or any implied warranty condition or other term or any statutory or duty at common law or under the express terms of

the Contract **for loss of profit or for any indirect special or consequential loss or damage costs expenses or other claims for compensation whatsoever** (whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer **and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods**

9.7 The Buyer shall fully indemnify the Seller against all claims and demands made upon the Seller by reason of any loss injury or damage for which the Seller is not liable hereunder

10. FORCE MAJEURE

10.1 The seller accepts no liability for any failure to perform this Contract arising from circumstances outside the Seller's control. Non exhaustive illustrations of these circumstances are Act of God war riots explosion abnormal weather conditions fire flood strikes lockouts Government action or regulations (UK or otherwise) delay by suppliers accidents and shortage of materials labour or manufacturing facilities

10.2 If the Seller is prevented from performing the Contract in the above circumstances it shall notify the Buyer of that fact in writing

10.3 In the circumstances preventing delivery are still continuing 3 months from and including the date the Seller sends such notice then either party may give written notice to the other cancelling the Contract. Such written notice must be received whilst the circumstances are still continuing

10.4 If the Contract is cancelled in this way the Seller shall refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount which the Seller is entitled to claim from the Buyer) but the seller accepts no liability to compensate the Buyer for any further loss or damage caused by the failure to deliver

11. BUYER'S OBLIGATIONS

11.1 Before using the Goods the Buyer must:

(a) read the operating instructions supplied with the Goods

(b) regularly check the calibration of the Goods in accordance with the operating instructions and good laboratory practice

(c) make and keep a dated written record of the test results

11.2 The Buyer agrees to provide access for the employees and vehicles of the Seller its sub-contractors and carriers on or into the Buyer's property for the purpose of delivering Goods to the Buyer and neither the Seller its sub-contractors or

carriers nor any of their respective employees shall be liable for any loss injury or damage caused whether negligently or otherwise to any property by or arising out of the entry of such employees or vehicles on or into the Buyer's property or any consequential loss or damage arising therefrom

11.3 Delivery if undertaken by the Seller is so undertaken on the condition that adequate labour and facilities will be made available by the Buyer at the Buyer's expense to carry out prompt and safe unloading at the place at which delivery is requested by the Buyer and that it will not be necessary to dismantle the Goods or any part or parts thereof in order to instal them in the place requested by the Buyer

11.4 The Buyer shall be responsible for giving to employees and/or sub-contractors of the Seller adequate instructions in relation to the installation of the Goods. Any increase in the cost to the Seller due to the Buyer's neglect or default in failing to do so shall be paid by the Buyer. In any circumstances in which the Seller attends at the Buyer's premises the Buyer shall provide a safe working environment and shall ensure that any Goods to be inspected or worked on shall be easily accessible, safe to use, clean and decontaminated

11.5 It is the Buyer's responsibility to ensure and satisfy himself that the Goods to be supplied and the work to be carried out comply with all relevant local bye-laws and/or regulations. The Seller cannot accept any responsibility or liability relating to or arising from any failure in such compliance

11.6 The Buyer hereby warrants that where work is to be done by the Seller to the Buyer's specification or at the Buyer's request all material supplied to the Seller by the Buyer under the Contract contains nothing which is libellous or deemed unlawful and the use or publication thereof will not infringe the intellectual property rights or any other rights of any third party or breach any law bye-law or regulations

11.7 The Buyer will keep the Seller fully indemnified against all losses actions claims demands proceedings costs and damages arising out of or in any way connected with any breach by the Buyer of its obligations hereunder or any loss injury or damage for which the Seller is not liable hereunder

12. EXPORT TERMS

12.1 Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of INCOTERMS shall have the same meaning in these terms but if there is any conflict between the provisions of INCOTERMS and these Terms the latter shall prevail

12.2 Where the Goods are supplied for export from the United Kingdom the provisions of this

clause 12 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Terms

12.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them

12.4 If the Seller agrees to accept payment by letter of credit payment of all amounts due to the Seller shall be made by an irrevocable letter of credit in a form acceptable to the Seller to be opened by the Buyer in favour of the Seller and confirmed by a bank in the United Kingdom acceptable to the Seller within 14 days after the Contract is concluded, all charges payable to be for the Buyer's account. Any variation to this clause must be agreed by the Seller in writing before the Contract is concluded and the letter of credit opened

12.5 The applicable price list shall be the Seller's Export Sales Price List

13. GENERAL

13.1 Relationship of the Parties: Both the Seller and the Buyer are independent contractors and the parties acknowledge that neither of them is an agent or partner of the other for any purpose and that each of them is entirely without authority to act on behalf of the other in any manner. The Seller shall not be responsible to third parties for any claim arising out of the activities of the Buyer and the Buyer shall indemnify the Seller against any such claims

13.2 Costs: The Buyer shall repay to the Seller forthwith on demand all expenses costs or charges incurred as a result of or in any way connected with any breach of these Terms or the Contract by the Buyer including but not limited to legal costs on an indemnity basis

13.3 Notices: Any notice required or permitted to be given by either party to the other under these terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice

13.4 Assignment: The Buyer may not assign transfer charge let or sub-let or otherwise deal with its rights and obligations under these Terms without the consent of the Seller in writing

13.5 Severability: The invalidity of any of the Terms or any part of any Term shall not affect the validity of the remainder

13.6 Acceptance: Acceptance by the Buyer of the Goods implies acceptance of these Terms

13.7 Headings: The headings in this document are for ease of reference only and shall not affect its construction

13.8 Governing Law: These Terms shall be governed by and construed in accordance with the Laws of England and the Seller and the Buyer hereby submits to the jurisdiction of the English Courts