

STANDARD CONDITIONS OF HIRE

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this agreement.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: the date that the Lessee takes Delivery of the Equipment.

Delivery: the transfer of physical possession of the Equipment to the Lessee at the Site.

Deposit: the deposit amount (if any) set out in the Lessor's quote.

Equipment: the items listed in the Lessor's quote, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

Lessee: the person or firm which is hiring the Equipment.

Lessor: AVALON SCIENCES LIMITED incorporated and registered in England and Wales with company number 02147892

Rental Payments: the payments to be made by or on behalf of Lessee for hire of the Equipment as set out in the Lessor's quote.

Rental Period: the period commencing on the Commencement Date and ending on the date upon which the Equipment is returned to the Lessor in good and substantial repair in accordance with the Lessee's obligations under clause 6.

Total Loss: the Equipment is, in the Lessor's reasonable opinion damaged beyond repair, lost, stolen, seized or confiscated.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.4 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.5 A reference to **writing** or **written** includes fax and e-mail.

1.6 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.

1.7 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. EQUIPMENT HIRE

2.1 The Lessor shall hire the Equipment to the Lessee subject to the terms and conditions of this agreement.

2.2 The Lessor shall not, other than in the exercise of its rights under these conditions or applicable law, interfere with the Lessee's quiet possession of the Equipment.

3. RENTAL PAYMENTS AND DEPOSIT

3.1 The Lessee shall pay the Rental Payments for the Rental Period to the Lessor at the times and in the currency specified in the Lessor's quote by bank transfer to the Lessor's account.

3.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Lessee at the rate and in the manner from time to time prescribed by law.

3.3 All amounts due under these conditions shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

3.4 If the Lessee fails to make any payment due to the Lessor under these conditions by the due date for payment, then, without limiting the Lessor's remedies under clause 9, the Lessee shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds' base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Lessee shall pay the interest together with the overdue amount.

3.5 The Deposit is a deposit against default by the Lessee of payment of any Rental Payments or any loss of or damage caused to the Equipment. The Lessee shall if so required, on the date of this agreement, pay a deposit as specified in the Lessor's quote to the Lessor. If the Lessee fails to make any Rental Payments or causes any loss or damage to the Equipment (in whole or in part), the Lessor shall be entitled to apply the Deposit against such default, loss or damage. The Lessee shall pay to the Lessor any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within 30 Days of the end of the Rental Period.

4. DELIVERY

4.1 Delivery of the Equipment shall be made by the Lessor. The Lessor shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties. The Lessee is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Equipment as may be required from time to time and, if required by the Lessor, the Lessee shall make those licences and consents available to the Lessor prior to Delivery.

4.2 Title and risk shall transfer in accordance with clause 5 of this agreement.

4.3 The Lessee shall procure that a duly authorised representative of the Lessee shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Lessee has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for

which it is intended. If required by the Lessor, the Lessee's duly authorised representative shall sign a receipt confirming such acceptance.

5. TITLE, RISK AND INSURANCE

5.1 The Equipment shall at all times remain the property of the Lessor, and the Lessee shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this agreement).

5.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Lessee on Delivery. The Equipment shall remain at the sole risk of the Lessee during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Lessee (**Risk Period**) until such time as the Equipment is redelivered to the Lessor. During the Rental Period and the Risk Period, the Lessee shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Lessor may from time to time nominate in writing;
- (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Lessor may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
- (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Lessor may from time to time consider reasonably necessary and advise to the Lessee.

5.3 All insurance policies procured by the Lessee shall be endorsed to provide the Lessor with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Lessor's request name the Lessor on the policies as a loss payee in relation to any claim relating to the Equipment. The Lessee shall be responsible for paying any deductibles due on any claims under such insurance policies.

5.4 The Lessee shall give immediate written notice to the Lessor in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Lessee's possession or use of the Equipment.

5.5 If the Lessee fails to effect or maintain any of the insurances required under these conditions, the Lessor shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Lessee.

5.6 The Lessee shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Lessor and proof of premium payment to the Lessor to confirm the insurance arrangements.

6. LESSEE'S RESPONSIBILITIES

6.1 The Lessee shall during the term of this agreement:

- (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Lessor;
- (b) take such steps (including compliance with all safety and usage instructions provided by the Lessor) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- (c) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment and be responsible for any costs incurred by the Lessor in carrying out any repairs to the Equipment required to return the Equipment to its operating condition at the beginning of the Rental Period ;
- (d) make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of the Lessor. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Lessor immediately upon installation;
- (e) keep the Lessor fully informed of all material matters relating to the Equipment;
- (f) at all times keep the Equipment in the possession or control of the Lessee and keep the Lessor informed of its location and not permit the Equipment to be transferred to any country prohibited by the government of the United Kingdom;
- (g) permit the Lessor or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- (h) maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Lessor, together with such additional information as the Lessor may reasonably require;
- (i) not, without the prior written consent of the Lessor, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (j) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Lessor in the Equipment;
- (k) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Lessee shall notify the Lessor and the Lessee shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Lessor on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (l) not use the Equipment for any unlawful purpose;
- (m) ensure that at all times the Equipment remains identifiable as being the Lessor's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- (n) deliver up the Equipment at the end of the Rental Period or on earlier termination of this agreement at such address as the Lessor requires, or if necessary allow the Lessor or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment or in the event of a loss of the Equipment pay to the Lessor the full replacement cost of the Equipment; and

- (o) not do or permit to be done anything which could invalidate the insurances referred to in clause 5.
- 6.2 The Lessee acknowledges that the Lessor shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Lessee or its officers, employees, agents and contractors, and the Lessee undertakes to indemnify the Lessor on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Lessee to comply with the terms of this agreement.

7. WARRANTY

7.1 The Lessor warrants that the Equipment shall substantially conform to its specification (as made available by the Lessor), be of satisfactory quality and fit for any purpose held out by the Lessor. The Lessor shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself during the Rental Period, provided that:

- (a) the Lessee notifies the Lessor of any defect in writing within ten (10) Business Days of the defect occurring;
- (b) the Lessor is permitted to make a full examination of the alleged defect;
- (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Lessor's authorised personnel;
- (d) the defect did not arise out of any information, design or any other assistance supplied or furnished by the Lessee or on its behalf; and
- (e) the defect is directly attributable to defective material, workmanship or design.

7.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Lessor, the Lessee shall be entitled only to such warranty or other benefit as the Lessor has received from the manufacturer.

7.3 If the Lessor fails to remedy any material defect in the Equipment in accordance with clause 7.1, the Lessor shall, at the Lessee's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it).

8. LIABILITY

8.1 Without prejudice to clause 8.2, the Lessor's maximum aggregate liability for breach of this agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the total amount of the Rental Payments.

8.2 Nothing in this agreement shall exclude or in any way limit:

- (a) either party's liability for death or personal injury caused by its own negligence;
- (b) either party's liability for fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be excluded by law.

8.3 This agreement sets forth the full extent of the Lessor's obligations and liabilities in respect of the Equipment and its hiring to the Lessee. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Lessor except as specifically stated in this agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this agreement, whether by statute, common law or otherwise, is expressly excluded.

8.4 Without prejudice to clause 8.2, neither party shall be liable under these conditions for any:

- (a) loss of profit;
- (b) loss of revenue
- (c) loss of business; or
- (d) indirect or consequential loss or damage,

in each case, however caused, even if foreseeable.

9. TERMINATION

9.1 Without affecting any other right or remedy available to it, the Lessor may terminate this agreement with immediate effect by giving notice to the Lessee if:

- (a) the Lessee fails to pay any amount due under these conditions on the due date for payment;
- (b) the Lessee commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified do so;
- (c) the Lessee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the Lessee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Lessee with one or more other companies or the solvent reconstruction of the Lessee;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Lessee (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Lessee with one or more other companies or the solvent reconstruction of the Lessee;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Lessee (being a company);
- (g) the holder of a qualifying floating charge over the assets of the Lessee (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the Lessee or a receiver is appointed over the assets of the Lessee;

- (i) a creditor or encumbrancer of the Lessee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Lessee's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the Lessee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(c) to clause 9.1(i) (inclusive);
- (k) the Lessee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

9.2 This agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

10. CONSEQUENCES OF TERMINATION

10.1 Upon termination of this agreement, however caused:

- (a) the Lessor's consent to the Lessee's possession of the Equipment shall terminate and the Lessor may, by its authorised representatives, without notice and at the Lessee's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
- (b) without prejudice to any other rights or remedies of the Lessee, the Lessee shall pay to the Lessor on demand:
 - (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 3.4;
 - (ii) any costs and expenses incurred by the Lessor in recovering the Equipment and/or in collecting any sums due under these conditions (including any storage, insurance, repair, transport, legal and remarketing costs);
 - (iii) in the event of a Total Loss a sum equal to the replacement cost of the Equipment.

10.2 Upon termination of this agreement pursuant to clause 9.1, any other repudiation of this agreement by the Lessee which is accepted by the Lessor or pursuant to clause 9.2, without prejudice to any other rights or remedies of the Lessor, the Lessee shall pay to the Lessor on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period.

10.3 The sums payable pursuant to clause 10.2 shall be agreed compensation for the Lessor's loss and shall be payable in addition to the sums payable pursuant to clause 10.1(b). Such sums may be partly or wholly recovered from any Deposit.

10.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

11. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under these conditions if such delay or failure result from events, circumstances or causes beyond its

reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.

12. ASSIGNMENT AND OTHER DEALINGS

This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under these conditions.

13. ENTIRE AGREEMENT

13.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.2 Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

14. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. NO PARTNERSHIP OR AGENCY

15.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

15.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

16. THIRD PARTY RIGHTS

No one other than a party to this agreement shall have any right to enforce any of its terms.

17. NOTICES

17.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number.

17.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) if sent by fax, at 9.00 am on the next Business Day after transmission.

17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18. WAIVER

No failure or delay by a party to exercise any right or remedy provided under these conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under these conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

20. SEVERANCE

20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

20.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. GOVERNING LAW

This agreement 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 accordance with the law of England and Wales.

22. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

