



## Terms of Agreement

### Introduction

These Terms of Agreement (hereinafter referred to as the "AGREEMENT") is made between Cryos International – USA, LLC, a Florida Limited Liability Company, located at 2200 N. Alafaya Trail, Suite 550, Orlando, FL 32826, USA (hereinafter referred to as "CRYOS") and the purchasing client (hereinafter referred to as "CLIENT"). CRYOS and the CLIENT are jointly referred to as the "PARTIES". This AGREEMENT supersedes any other agreements, expressed, implied or otherwise.

The AGREEMENT is the terms and conditions for the CLIENT's order (hereinafter referred to as the "ORDER"). The ORDER can consist of the following:

- Donor sperm and Donor eggs hereinafter jointly and separately referred to as the "DONOR GAMETES".
- Deposit of the CLIENT's own sperm, eggs and embryos, hereinafter jointly and separately referred to as the "STORED GAMETES".
- The CLIENT of STORED GAMETES is also referred to as the "DEPOSITOR".
- Other products are hereinafter referred to as the "PRODUCT".
- DONOR GAMETES, STORED GAMETES and PRODUCTS are jointly referred to as the "GOODS".

The AGREEMENT also applies to the PARTIES' agreement regarding delivery and transport of the GOODS as well as the PARTIES legal position in the event of damage to the packaging of the GOODS.

This AGREEMENT constitutes the entire agreement among the PARTIES related to the subject matter contained herein, and fully supersedes all prior or contemporaneous understandings of the PARTIES.

Written offers are valid for 30 days from the date of offer.

### GENERAL CONDITIONS

#### 1. Prices

Prices are according to CRYOS' current prices as they appear on CRYOS' website: <http://usa.cryosinternational.com>. CRYOS reserves the right to change prices without notice. Prices are exclusive of any value added taxes, sales taxes, or other city, county, state or federal taxes.

#### 2. Payment Terms

Professional CLIENTs (hospitals, physicians or other centers or persons who act for commercial purposes): Payment terms are net 14 (payment is due 14 days after date of invoice).

CRYOS reserves the right to refuse credit and ask for prepayment.

Private CLIENTs: Prepayment by credit/debit cards, bank transfers, checks or cash are accepted.

Private CLIENTs for STORED GAMETES: Payment terms are net 14 (payment is due 14 days after date of invoice).

The CLIENT pays CRYOS the total invoiced amount for the GOODS, transport, etc. when entering into this AGREEMENT. If the CLIENT mistakenly pays an amount that exceeds the invoiced amount, CRYOS is entitled to charge a fee for processing the refund.

#### 3. Information & Correspondence

The CLIENT accepts that all information and correspondence communicated to the CLIENT will be sent in English, via e-mail. CRYOS disclaims all responsibility if the information, whatever the reason is, does not reach the CLIENT. If the CLIENT does not have an e-mail address, the CLIENT can request that such information is sent by standard mail. CRYOS is entitled to charge a fee for standard mail service.

#### **4. Order Confirmation**

When the CLIENT submits an ORDER, CRYOS will send a confirmation to the CLIENT. When the ORDER is confirmed, this AGREEMENT becomes legally binding. In case of fault and deficiencies in the confirmation, the CLIENT is obliged to inform CRYOS about this without undue delay. In case of amendments to the ORDER, a new confirmation will be sent. In such cases, the latter confirmation will replace any earlier confirmations

#### **5. Property Right**

Delivered GOODS remain the property of CRYOS until CRYOS has received payment in full from the CLIENT for the total price of the GOODS including but not limited to delivery, transport and packaging.

#### **6. Delivery Terms**

Orders will be delivered to the CLIENT or the designated address DAP (Delivered at Place); according to Incoterms 2010 rules. This means door-to-door excluding any local customs formalities like customs clearance, import permits, duty and tax. If the GOODS are picked up at CRYOS, delivery is EXW (Ex Works).

#### **7. Home Delivery & Pick Up**

Private CLIENTs are required to, and declare that they will read the safety instructions about handling and hazards of shipping with liquid nitrogen (LN2) and/or dry ice (CO2) which are supplied with the DONOR GAMETES and STORED GAMETES. CRYOS disclaims all responsibility for any damage caused by LN2 and CO2 and the CLIENT shall indemnify and hold CRYOS harmless against any personal injury, damages, or loss caused thereby while in the custody of the CLIENT and from the time it is shipped by the CLIENT to CRYOS.

#### **8. Delay**

If the GOODS are not delivered on time and if the delay is due to circumstances for which the CLIENT bears the risk including delay from the carrier, CRYOS disclaims all responsibility and the CLIENT loses the right to claim damages for delay.

#### **9. Faults and Deficiencies**

When the shipment is received from the carrier, the recipient is obligated to examine the GOODS for any fault and deficiencies, which may have occurred during transport. If the GOODS have been damaged during transport, the recipient is obligated to note such damages in writing to the driver at the time of delivery, and provide proof of this notification to CRYOS within 24 hours.

If the GOODS have any faults or deficiencies which were not visible when the GOODS were received, the CLIENT must inform CRYOS within 7 days after the fault or deficiency has been discovered by the CLIENT and no later than 14 days after delivery has taken place. Otherwise the CLIENT loses the right to claim the fault or deficiency.

CRYOS is only responsible for damage to the GOODS if the damage is due to faults, deficiencies or neglect caused by CRYOS.

If the GOODS include DONOR GAMETES and if the CLIENT has informed CRYOS, in writing and on time, of any existing faults or deficiencies for which CRYOS is responsible, CRYOS will replace the DONOR GAMETES. If CRYOS replaces within reasonable time, the CLIENT cannot demand a reduction of the purchase price or cancel the AGREEMENT.

#### **10. Nitrogen Tanks/Shipping Boxes**

The CLIENT must return any nitrogen tank and its shipping box without undue delay, as defined herein. The tank shall be deemed returned without undue delay if the nitrogen tank and its shipping box are returned within 7 days (small tank) or 12 days (large tank) after shipping date from CRYOS. If the tank and its shipping box have not been returned within the specified times, CLIENT shall pay CRYOS \$100.00 per week thereafter until CRYOS receives the tank.

The CLIENT is responsible for returning the nitrogen tank/box on time to CRYOS and in the same condition as at the time of delivery.

Nitrogen tanks/shipping boxes shall remain the property of CRYOS.

CRYOS is entitled to claim the full value from the CLIENT for a new tank and its shipping box if it is damaged or lost between delivery and pick up for return.

CRYOS is entitled to consolidate shipments in the event that more ORDERS from different CLIENTs have the same delivery address. All such CLIENTs are jointly and severally liable for the return and value of the nitrogen tank and its shipping box. Shipping costs on consolidated shipments will not be split or refunded

The CLIENT is aware of the fact that frozen DONOR GAMETES and STORED GAMETES are fragile products and thus it is strongly emphasized that the durability of the frozen DONOR GAMETES and STORED GAMETES is dependent on the storage facility and that it may be damaged if not used immediately after thawing.

#### **11. Other Responsibilities**

CRYOS does not guarantee that treatment with the DONOR GAMETES or STORED GAMETES will result in a pregnancy or if it does result in a pregnancy that the pregnancy will result in the birth of a healthy and viable child or children.

Despite detailed security precautions, there is always a minimal risk that DONOR GAMETES and STORED GAMETES are mixed, mislabeled or contaminated. In such cases, and if it can be documented that it is the fault of CRYOS, CRYOS will refund the direct costs of the DONOR GAMETES or the costs invoiced in relation to the storage of STORED GAMETES. CRYOS liability to CLIENT shall be limited to this refund only.

CRYOS disclaims all responsibility for any other circumstances including, but not limited to, fertility treatment, unwanted pregnancy, multiple pregnancies, spontaneous abortion, extra uterine pregnancy, stillborn, expenses for medicine, transport and travel expenses, accommodation, loss of profit, sales or income, loss of time and clientele, or ensuing costs or other direct or indirect losses or expenses which may be the result of delays, fault or deficiencies whether CRYOS is responsible for this or not. This also includes circumstances caused by force majeure or other circumstances which are beyond CRYOS' influence such as strikes, lockouts, transport difficulties, detention, goods retained at customs, confiscation, war, martial conflicts or civil unrest, vandalism, terrorism, radioactivity or natural disasters.

CRYOS disclaims all responsibility for damage to real estate and personal and movable property including either finished goods produced by the CLIENT or goods involving produced parts.

CRYOS disclaims all responsibility for damage caused by frozen DONOR GAMETES and STORED GAMETES, CO<sub>2</sub>, or LN<sub>2</sub> such as leakage, spillage, loss or damage caused by storage of LN<sub>2</sub> under pressure.

CRYOS disclaims all responsibility for any damage, which may be the result of transmitted diseases or unwanted or unknown hereditary conditions contained in the DONOR GAMETES or STORED GAMETES.

Without limiting the generality of the foregoing, CRYOS specifically disclaims any implied warranty regarding any straws, including the implied warranty of merchantability and the implied warranty of fitness for a particular purpose.

#### **12. Waiver of Claim and Indemnification**

The CLIENT expressly releases, indemnifies, defends and holds harmless CRYOS, its agents, employees, officer, directors, shareholders, representatives, independent contractors, customers, successors and affiliates to the fullest extent permitted by law from and against any claims, loss, damage, expenses, liabilities, demands, offsets, causes of actions and attorney's fees arising out of

or in any way relating to this AGREEMENT, including, but not limited to the collection, freezing, sale, purchase, storage, shipping, release, loss, damage or destruction of the GOODS.

### **13. Online Account**

In order to purchase DONOR GAMETES, make a reservation of DONOR GAMETES or to manage your STORED GAMETES, the CLIENTs must create and register on online account with CRYOS. It is the CLIENT's responsibility to keep the registered contact data on the account updated. The username and password to the account is personal and private. The CLIENT will keep and protect the username and password in such a way, that no one except the CLIENT has access. If the username and password is given by the CLIENT to other persons or organizations, any actions on the CLIENT's account is the CLIENT's responsibility and the CLIENT holds CRYOS harmless for any liability or additional costs arising out of or in any way relating to this AGREEMENT as per the terms of Waiver of Claims and indemnification in this AGREEMENT.

### **14. Disputes**

Any dispute between the PARTIES, which may originate from this AGREEMENT, must be sought resolved in the first place by means of negotiation in which the PARTIES shall endeavor in good faith to reach an amicable solution.

If the PARTIES cannot reach an agreement through negotiation no later than 6 weeks after commencement of the negotiations, CLIENT and CRYOS agree to submit the dispute to mediation with a certified mediator. Either CLIENT or CRYOS may initiate the mediation by sending the other party a demand for mediation. If CLIENT and CRYOS are not able to agree on a mediator, CLIENT or CRYOS may request that the Orange County Bar Association of Orange County, Florida appoint a mediator. The cost of mediation shall be borne by the parties equally.

These terms and conditions shall be governed by and construed in accordance with the laws of the State of Florida and the laws of the United States of America. Any disputes relating to these terms and conditions shall be subject to the exclusive jurisdiction of the courts of the State of Florida.

CRYOS and the CLIENT agree that the Circuit Court of the 9<sup>th</sup> Judicial Circuit or the U.S. Federal Court of the Middle District of Florida shall be the only venues in which an action may be filed to adjudicate any dispute between the CLIENT and CRYOS, whether based on the breach of this AGREEMENT, violation of any statutory or common laws, or for any other reason. The CLIENT consents to these Courts exercising personal jurisdiction over CLIENT.

The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement.

### **15. Authority to Sign (Only Applicable for Professional CLIENTs)**

I declare that I am authorized to sign for the CLIENT.

### **16. Legal Age (Only Applicable for Private CLIENTs)**

I declare that I am of legal age.

## **DONOR GAMETES**

### **17. Reservation of DONOR GAMETES**

DONOR GAMETES are reserved for the period ordered by the CLIENT. An order confirmation for the reservation will be sent to the CLIENT.

The reservation period can always be extended. Prior to expiration, CRYOS will send a reminder to the CLIENT with information that the reservation is due to expire. Renewal is done online with the use of CLIENTs username and password. By renewing the reservation, the CLIENT accepts that the conditions for storage will be according to the Terms of Agreement in place at the time of the renewal. A confirmation for renewal will be sent to the CLIENT.

If the received payment is lower than the outstanding amount, CRYOS is entitled to reduce the selected period of time proportionally.

If payment is not received by the due date, CRYOS has the right to cancel any reservation.

When the CLIENT wants reserved DONOR GAMETES delivered, the delivery is ordered online with the use of the CLIENT's username and password. If the CLIENT does not have access to the internet, a Delivery Statement form must be completed and sent to CRYOS together with a copy of the CLIENT's ID card (passport, driver's license or similar). Payment for the shipment is at the cost of the CLIENT.

When the CLIENT wants to terminate the reservation, the termination is ordered online with the use of the CLIENT's username and password. If the CLIENT does not have access to the internet a Termination Statement form must be filled out and sent to CRYOS together with a copy of the CLIENT's ID card (passport, driver's license or similar).

When the reservation is terminated, the purchase price less the agreed percentage of the reserved DONOR GAMETES still located at CRYOS will be refunded. Payment for any remaining reservation period will not be refunded. In case of mass termination within a selected period, CRYOS can postpone the payment until the end of the selected reservation period. If all the reserved DONOR GAMETES have been delivered, the reservation is automatically terminated.

Exchange of reserved DONOR GAMETES can only take place by terminating as per above and by performing a new purchase.

CRYOS will keep in force an insurance policy covering the value of the reserved DONOR GAMETES and the value of the reservation period. The insurance will provide coverage in the event of thawing, fire, theft, and water damage. In other circumstances or accidents, in which CRYOS is or is not responsible, CRYOS disclaims all responsibilities. CRYOS keeps an agreement in force with another licensed tissue establishment to take over storage of the reserved DONOR GAMETES, if CRYOS, for any reason is not be able to continue storing the reserved DONOR GAMETES.

#### **18. Parent Declaration (Only Applicable for Private CLIENTs)**

The CLIENT guarantees to claim parenthood and to look after and consider the child/children, which may be the result of treatment with DONOR GAMETES according to the AGREEMENT, as their own legal child/children.

#### **19. Anonymity & Non-Anonymity**

The donors are either Anonymous or Non-Anonymous. The CLIENT understands and accepts that Anonymous donors must remain anonymous forever. The CLIENT guarantees that no attempts will be made to search for or to trace donors or other recipients or offspring related to the donors. If, regardless of this, the CLIENT initiates such a search or trace, the CLIENT is obligated to exempt CRYOS from any demand raised against CRYOS regardless of whether the search, directly or indirectly, has resulted in tracing the donor or other recipients or offspring related to the same donor.

If the donor is Non-Anonymous, CRYOS will disclose the identity of the donor to the child itself and nobody else and only at the donor child's request and only once the child has reached the age of 18. The child must document, or render probable, that he/she is the result of treatment with DONOR GAMETES from a specific Non-Anonymous donor from CRYOS. As a condition of disclosure, the donor in question must be informed prior to the donor or the child being informed.

The CLIENT understands that the donor may have initially agreed to meet the child, but CRYOS has no responsibility whether the donor will actually do so in the future.

#### **20. Pregnancy Registration**

In order not to exceed any national quotas regarding the number of pregnancies/children/families per donor, the CLIENT is obligated to register the pregnancy as soon as the pregnancy has come to the knowledge of the CLIENT. Pregnancies are registered online with the use of the CLIENT's username and password.

The CLIENT must also register if the pregnancy is a sibling (the CLIENT already has a child with the same donor) and if the pregnancy is terminated (biochemically, spontaneous abortion, extra uterine pregnancy or stillborn).

When entering into this AGREEMENT, the CLIENT accepts that CRYOS is entitled to continue contacting the CLIENT until the result of the treatment has been registered. If, due to the relationship of the CLIENT, it is not possible to register the result of the treatment, CRYOS is entitled to seek information from the clinic where the DONOR GAMETES were delivered, if any.

The CLIENT can check on CRYOS's website if the quota for each donor has been reached. The quota is calculated as the number of pregnancies registered minus siblings and abortions. The CLIENT should be aware that the quota is only indicative. CRYOS disclaims all responsibility if pregnancies are not registered, if pregnancies are registered twice or incorrectly, if the quota in the country in question is calculated differently, or if CRYOS does not know the quota or calculation methods of the country in question.

## **21. Reports and Information Regarding Genetic Conditions**

If the CLIENT receives information about genetic conditions, including hereditary diseases, syndromes, multiple and isolated malformations, associations, etc., as a result of using DONOR GAMETES, the CLIENT is obliged to inform CRYOS about this immediately so CRYOS can take the necessary action in relation to other CLIENTs, authorities, etc. The CLIENT agrees to provide the necessary information by filling out the website form Report of Conditions, so CRYOS is able to make a diagnosis. If the CLIENT is a private person, the CLIENT hereby gives CRYOS the right to obtain relevant information from the CLIENT's and the child's medical files. The CLIENT also agrees to give blood samples in order to verify the diagnosis.

If CRYOS receives information as per above, the information will be assessed and if relevant the donor will be put on hold and it will be assessed if the information is related to the DONOR GAMETES. Subsequently, the DONOR GAMETES is either released for sale or registered with conditions.

The CLIENT agrees that CRYOS may send notices about conditioned donors for confirmed, delivered and reserved ORDERS of DONOR GAMETES. If the ORDER includes a delivery address (typically the clinic) which is different from the invoice address and if there is an e-mail address connected to this delivery address, the CLIENT agrees that CRYOS may send such information to this e-mail address as well. For ORDERS of DONOR GAMETES such information will only be sent up to two (2) years after date of order unless in cases where CRYOS finds special reason to prolong this period.

In case a DONOR is under investigation for genetic conditions, CRYOS is obligated to cancel or postpone shipping of confirmed ORDERS. DONOR GAMETES from conditioned donors can only be delivered if the CLIENT accepts a special online declaration form. If the CLIENT wants to terminate a reservation of a conditioned donor, this can be done as per above.

CRYOS is not responsible for offering any medical advice or consultancy in relation to donors with conditions, but recommend that CLIENTs seek guidance and advice from local medical/genetic specialists.

## **22. Cancellation and Change of ORDERS**

As long as shipments have not taken place, confirmed ORDERS can be cancelled. A 25% cancellation fee will apply. In case of changes to a confirmed and processed ORDER, CRYOS is entitled to charge the CLIENT a fee that corresponds with the actual costs related to the change and any other reasonable fees and costs required to ensure compliance with this AGREEMENT.

### **23. Transfer of AGREEMENT**

If the CLIENT is not the final recipient, the CLIENT is obligated to transfer the content of this AGREEMENT to the recipient who is subsequently treated with the DONOR GAMETES, or to anyone who subsequently purchases the DONOR GAMETES from the CLIENT. If the transfer of this AGREEMENT has not taken place in such cases, the CLIENT holds CRYOS harmless for any liability or additional costs arising out of, or in any way relating to this AGREEMENT as per the terms of Waiver of Claims and indemnification in this AGREEMENT.

### **24. Other Issues**

CRYOS declares that DONOR GAMETES delivered are released for clinical use according to one or several Standards, as described on CRYOS' website. For instance, donors and DONOR GAMETES are selected, screened and comply with the prevailing rules at the time of donation. If the Standard of the DONOR GAMETES ordered does not meet the requirements in the CLIENTs country/jurisdiction, CRYOS disclaims all responsibility.

Despite the examination of an extensive number of conditions and diseases in both the donor as well as the DONOR GAMETES, there is always a minimal risk that infectious or hereditary diseases such as HIV, hepatitis, syphilis, gonorrhea, chlamydia, HTLV I/II, cytomegalovirus, Tay-Sachs, thalassemia, cystic fibrosis, sickle cell, familial Mediterranean fever, Gaucher's disease, thalassaemia, Canavan's disease, familial dysautonomia, congenital adrenal hyperplasia, carnitine transporter deficiency are transmitted with DONOR GAMETES. However, it is CRYOS' assessment that the risk of transmission of hereditary diseases is always lower than in the general population.

In case CRYOS is informed about transmissible or heredity diseases or unknown or unwanted heredity conditions in the DONOR GAMETES after the ORDER has been confirmed (irrespectively of whether the ORDER has been delivered or not), and if this is not due to faults or deficiencies for which CRYOS is responsible, CRYOS disclaims all responsibility.

CRYOS declares that when DONOR GAMETES in this AGREEMENT are sold, it is not the gametes themselves that are sold but the related processing and work, such as the selection and testing of the donor, manufacturing of documents and the handling, freezing, storage, marketing, administration, etc. of the gametes.

Information in the donor's extended profile as well as the photos are provided by the donor. It is CRYOS's sincere belief that the data is correct, but CRYOS disclaims any liability in the unlikely event the data provided should not be correct.

## **STORED GAMETES**

### **25. Analysis and Confirmation**

CRYOS performs an analysis of each ejaculate of STORED SPERM in order to evaluate the quality and the fertilization abilities. CRYOS will evaluate and recommend if more ejaculates should be stored.

When the DEPOSITOR's GAMETES are stored, a confirmation with the storage details and storage period will be sent to the DEPOSITOR.

### **26. Renewal**

The storage period can always be renewed. Prior to expiration, CRYOS will send a reminder to the DEPOSITOR with information that the deposit is due to expire. Renewal is done online with the use of CLIENT username and password. By renewing, the DEPOSITOR accepts that the conditions for storage will be according to the Terms of Agreement in place at the time of the renewal. A confirmation of the renewal will be sent to the DEPOSITOR.

If payments received are lower than the outstanding amount, CRYOS is entitled to reduce the selected period of time proportionally. If proper payment is not received in due time CRYOS has the right to cancel the storage of STORED GAMETES.

## **27. Disposition**

The DEPOSITOR has the sole right of disposition of the STORED GAMETES.

If the DEPOSITOR passes away during the storage period and if CRYOS is made aware of this, the DEPOSITOR's STORED GAMETES will, unless in case of testamentary disposition and only if CRYOS is informed about this, be destroyed without any undue delay and this AGREEMENT will automatically be terminated.

If the DEPOSITOR has made a valid testamentary disposition of the STORED GAMETES, and if CRYOS has received the testament, the beneficiary will take over the DEPOSITOR's rights and position according to this AGREEMENT. We recommend DEPOSITORS who want to make testamentary disposition to seek legal advice.

The heirs of the DEPOSITOR have no rights over the DEPOSITOR's STORED GAMETES according to this AGREEMENT unless in case of a testament.

## **28. Delivery**

When the DEPOSITOR wants the STORED GAMETES delivered, the delivery is ordered online with the use of the CLIENT username and password. Alternatively a Delivery Statement form can be filled out and sent to CRYOS together with a copy of the DEPOSITOR's ID card (passport, driver's license or similar).

Payment for the shipment is at the cost of the DEPOSITOR.

## **29. Termination**

When the DEPOSITOR wants to terminate the storage, the termination is ordered online with the use of the CLIENT username and password. Alternatively a Termination Statement form can be completed and sent to CRYOS together with a copy of the DEPOSITOR's ID card (passport, driver's license or similar).

If the storage is not renewed, the AGREEMENT is automatically terminated and the STORED GAMETES will be destroyed. If all the STORED GAMETES have been delivered, the AGREEMENT is automatically terminated. Payment for any remaining storage period cannot be refunded.

## **30. Backup**

CRYOS keeps an agreement in force with another licensed tissue establishment to take over the STORED GAMETES, if CRYOS is not able to continue storing the STORED GAMETES.