

# GENERAL CONDITIONS OF SALES

**All orders will be subject to the present General Conditions of Sales of bioMérieux Sweden AB, bioMérieux Suomi Oy, bioMérieux Norge AS and bioMérieux Denmark ApS, respectively. The Buyer is entering into an agreement/ordering from one of the above companies, which will hereinafter be referred to as bioMérieux. These conditions govern all orders placed by the Buyer (the end user) and shall prevail over any conditions of purchase, except in cases of express written consent of the bioMérieux Sales Department. The act of placing an order implies full acceptance of the General Conditions of Sales by the Buyer and waiver to its conditions of purchase, regardless of whether they are on its order, acknowledgement or correspondence.**

## 1 ) ORDERS

- To avoid errors, each order should specify:
  - product name and reference number
  - the addresses for delivery and invoicing
- bioMérieux's acceptance of any order shall be conditional upon creditworthiness of the Buyer. In particular, bioMérieux reserves the right to suspend the order if the situation of the Buyer visibly presents a risk with regards to the recovery of the outstanding debts of bioMérieux, or in case of unavailability of the Product.
- Concerning the participation in handling costs and delivery prices:
  - bioMérieux charges an administration fee on each order.
  - bioMérieux charges a dangerous goods fee for shipments that include products with UN numbers.
  - Express delivery costs, when such deliveries are requested, are charged to the customer.

## 2 ) SUBSCRIPTION CONDITIONS

- Adjustable subscriptions are available for usual and regular consumer goods.
- Notwithstanding the above, subscription shall be required for special products, cells, blood and red cells of animals.
- Given the special treatment of these Products, an additional cost per shipment shall be applied.

## 3 ) DELIVERIES

- Sales of Products shall be made DDP (Delivered Duty Paid, Incoterms 2010 ICC) to the delivery address specified by the customer in the order. The Products will not be delivered to specific departments or rooms inside the building, unless a special agreement has been made with bioMérieux Sales department.
- bioMérieux undertakes to provide the Buyer with the Products (instruments, reagents and disposables) indicated on the order accepted by bioMérieux. Products will be delivered and installed as specified in Buyer's purchase order accepted by bioMérieux.
- bioMérieux undertakes to deliver goods from stock without delay. In case of temporary unavailability, the customer will receive this information from bioMérieux. The shipment of the outstanding balance of the order shall be done within the frame of the following order.

## 4 ) PRICES

- Prices of Products are quoted net ex-works (Incoterms 2010- ICC).
- VAT shall be applicable to all sales for re-export unless evidence of exemption is supplied at the date of the order. Reagents, disposables and accessories prices are invoiced at the price in force at the date of delivery and in accordance to the agreed prices with bioMérieux Sales department.
- Unless otherwise expressly agreed by the Parties, all shipment costs and expenses are prepaid by bioMérieux and re-invoiced to the Buyer, even for partial shipments.

## 5 ) INVOICING

- Products are invoiced on the shipping date, at the price in force at the date of order. Unless otherwise informed by the Buyer, bioMérieux reserves its right to establish a deferred invoicing of the Products.
- Delay by the Buyer in challenging the invoiced amount within a period of 30 days from the date of the invoice shall be deemed acceptance thereof by the Buyer.

## 6 ) PAYMENT

- Payment shall be made within 30 days net following the invoicing date, by cheque or by bank transfer.
- A penalty is due by Buyer in case of late payment and is to be calculated from the day following the date of payment stated on the invoice. The amount of such penalty is calculated at the interest rate applied by the European Central Bank at its most recent refinancing operation with a eight point increase.
- In the case of failure by the Buyer to fulfil its payment obligations, bioMérieux reserves the right :
  - to remove immediately all the payment facilities and special commercial conditions previously granted;
  - to suspend or cancel, without notice and compensation, any current order;
  - to require, in order to perform any subsequent delivery, cash payment before each shipment, or any other means of payment chosen by bioMérieux;
  - to require immediate payment of the entire outstanding balance.
- Payment should be made by bank transfer to the bank account indicated on the invoice.

## 7 ) LEASE PURCHASE

In case of lease purchase, the funding agency shall assume the rights and obligations hereunder as Buyer, and shall guarantee the rights and obligations of the end-user.

## 8 ) OWNERSHIP RIGHTS AND PASSING OF RISK

- All products remain bioMérieux's property until full payment thereof by Buyer. In the event of non-payment by Buyer, bioMérieux reserves the right to recover or to make recover possession of the unpaid goods. bioMérieux shall retain the part of the price already paid as a compensation for the use of the goods. The promise to pay shall not be considered, for the purposes of this provision, as payment.
  - Notwithstanding the above, the Buyer is liable for all damage occurring to the Products or damage caused by the Products.
- In accordance with the Incoterms as per Article 3, risk of loss or damage are transferred from bioMérieux to the Buyer after delivery of such Products to the Buyer.
- The Buyer shall therefore ensure that its insurance covers the Products delivered from this time.

## 9 ) TRACEABILITY

The technical specificities of products sold by bioMérieux require compliance with traceability rules. Consequently, bioMérieux reserves the right to sell its Products solely to professionals authorized to provide biological analysis results. The Buyer undertakes to comply with all traceability rules which apply to the Products ordered. bioMérieux will not be liable for non-compliance with traceability rules after delivery of its products to the site specified by Buyer.

## 10 ) CLAIMS

- The Buyer shall have checked the incoming parcel and within three (3) days from the delivery report to the bioMérieux order department any missing or damaged products.
- The Buyer shall check the incoming parcel directly on arrival and if any damage is visible from outside it must be written down on the delivery note at arrival.
- Claims must be sent to bioMérieux Customer service as soon as possible upon notice. No product returns shall be accepted without bioMérieux's prior written consent. bioMérieux shall decide, at its sole judgement, if the Products shall be replaced.

## 11 ) WARRANTIES

### a) Reagents :

bioMérieux's reagents are intended for *in vitro* use.

The conformance of the reagents to the specifications indicated in the package insert is guaranteed until their expiry date.

### b) Instrument

bioMérieux warrants the Instrument to the Buyer against defects in material and workmanship and defects arising from failure to conform to the user's manual applicable on the date of installation, and as provided to the Buyer, for the period of one (1) year from the date of installation, when the certificate of installation or equivalent is signed.

bioMérieux agrees to correct or have corrected by a third party designated by bioMérieux, either by repair or at its election, by replacement, any such defect found on examination to have occurred, when the Instrument has been used under normal operating conditions and maintained in accordance with the instructions provided by bioMérieux such as, but not limited to, written instructions, package insert and user's manuals, during such one (1) year warranty period, provided bioMérieux is promptly notified in writing upon discovery of such defect by the Buyer.

Disposables and replacement items with a normal life expectancy of less than one (1) year such as, but not limited to, batteries, lamps and tubing are excluded from this warranty.

bioMérieux warranty is valid to the Buyer's original site of installation only. Any transshipment VOIDS this warranty unless bioMérieux facilitates the relocation of the Instrument.

### c) Software

bioMérieux warrants that the Software (other than the one embedded in the Instrument) will be in accordance with the descriptions and specifications in the documentation accompanying such Software for a period of ninety (90) days from the date of installation under normal use and conditions. During this warranty period, bioMérieux agrees to provide technical support of the Software by correcting any deficiency of the Software and, in no case, by redesigning the Software.

Software developed by and the property of third parties is warranted to be in accordance with the descriptions and specifications in the documentation accompanying such Software by bioMérieux and by its software publishers.

Any other warranty, such as covering performance or results linked with their use, or such as warranty for compatibility with the Buyer's hardware, is expressly excluded.

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bioMérieux will evaluate warranty claims upon receipt of written notification. Firstly, bioMérieux will make a remote diagnosis and if possible, will correct the defect. Secondly, if needed, onsite evaluations will be initiated. Thirdly, if repair cannot be made on the Buyer's site, the Instrument shall be repaired in bioMérieux premises. Transportation costs will be at bioMérieux's expense. The return of the Instrument to bioMérieux can only be done after bioMérieux's written approval.

The Buyer will provide access to bioMérieux, in a timely manner, to any technical support, facilities, hardware, software or information in the Buyer's possession necessary for bioMérieux to complete such work. bioMérieux will correct such stated defects.

In any event, the Buyer is under an obligation to insure that the Instrument and/or Software is maintained in accordance with the instructions provided by bioMérieux such as, but not limited to, written instructions, package insert and user's manuals and in accordance with local standards during the warranty period of the concerned Products.

Preventive maintenance is not included in the warranty but rather a part of the imposed maintenance associated with the obligations of the buyer.

Notwithstanding the foregoing, this warranty will not apply to the extent the Instrument and/or Software does not conform to and/or function in accordance with the applicable written technical documentation as a result of a defect arising from (i) any act or omission of the Buyer, (ii) any corporation, joint stock company or any other entity or organization of any kind (other than bioMérieux or any person under the express direction of bioMérieux) making any revisions or modifications to the Instrument and/or Software after its provision to the Buyer, (iii) the malfunction of any Buyer-supplied or Buyer-authorized third-party software or equipment, (iv) Buyer operation of the Instrument and/or Software other than in accordance with applicable documentation or design, or on hardware not recommended, supplied or approved by bioMérieux, or (v) the occurrence of any Force Majeure event such as, but not limited to, fire, electrical current variation, flood and defect in the installation environment of the Instrument and/or Software.

THE WARRANTY OF bioMérieux SET FORTH ABOVE AND THE OBLIGATIONS AND LIABILITIES OF bioMérieux THEREUNDER ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES, WARRANTIES, GUARANTEES OR LIABILITIES, EXPRESSED OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY PRODUCTS DELIVERED HEREUNDER bioMérieux WARRANTY SHALL ONLY APPLY TO PRODUCTS PURCHASED BY THE BUYER FROM bioMérieux.

This warranty shall not be extended or altered except by a written agreement signed by bioMérieux.

## 12 ) LIABILITY

- bioMérieux accepts no liability for any damage incurred through misuse or incorrect storage of Products.

As such, Buyer shall ensure the respect of :

- the storage conditions written on the Products packaging or set forth in the package inserts

- The Buyer or its representative shall take all measures to ensure that instruments, reagents and software are used in compliance with legal requirements and standards, including the installation of instruments and performance analysis. As an expert/a man skilled in the art, the Buyer shall use the instruments in strict compliance with the recommendations of bioMérieux and shall remain liable for any interpretation and any use of results provided. The Buyer guarantees bioMérieux against any third party action on the consequences of using non-compliant Products.

- bioMérieux's liability for any and all losses or damages resulting from any cause whatsoever, including alleged negligence, shall in no event exceed the purchase price of the Product in respect of which the claim is made, or at the election of bioMérieux the repair or replacement of such Product plus associated freight charges. For the avoidance of doubt, bioMérieux's warranty expressly excludes any possible labour and transport costs involved in the repair of an Instrument.**

IN NO EVENT SHALL bioMérieux BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER THE BUYER'S CLAIM IS IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE.

## 13 ) WASTE MATERIAL

Unless anything to the contrary, whether expressly agreed by bioMérieux or due to a mandatory local rule, the Buyer is responsible for notifying bioMérieux so that the collection, treatment, recovery and environmental sound disposal for the Waste Electrical and Electronic Equipment can be organised, as provided for WEEE directive (2002/96/EC) and any local implementations thereof in the country in which the bioMérieux selling company is located.

The obligations of the Buyer (in particular in connection with decontamination) to which the Buyer will necessarily have to conform, are defined in the user's manual of the concerned system. The conditions of disposal of these systems, as well as the price rates related to these services will be communicated to the Buyer at his request. The Buyer as keeper of the equipment will be responsible for the integrity of the system and for its disposal at bioMérieux benefit. Every expense incurred or damage undergone caused by the Buyer's negligence and/or any breach of its abovementioned obligations will entitle bioMérieux to a compensation.

The Buyer expressly agrees that in case of resale of any Instrument supplied by bioMérieux and/or transfer of the Instrument in any way, within the framework of a loan or a rent for free or for a fee, or a donation or any other terms, on the national territory or any other territory, then bioMérieux will be released de facto, without any other condition, of its obligations of financing and organization of the elimination of the aforementioned waste material. bioMérieux undertakes to communicate any necessary information about the concerned Instruments. The Buyer will be completely responsible for the good documentary, technical and administrative management and will not hold bioMérieux liable for any damaging consequence, expenses, legal actions from third party including involved authorities in case of wrongful execution of this obligation.

## 14 ) SOFTWARE

- Software included in the price list is subject to a non-exclusive license agreement : software programs can neither be reproduced, modified nor transferred without bioMérieux's agreement.

- Software sold by bioMérieux is free from any known viruses at the date of manufacture. The Buyer shall take all necessary precautions thereafter.

- Moreover, bioMérieux assumes no responsibility for the software compatibility with the hardware of the Buyer.

- On the delivery date, Software supplied by bioMérieux are virus free. bioMérieux interventions are done through tools protected by updated antivirus software. It is the Buyer's responsibility to set up a protection plan for all the data of its information system (computing resources of the Buyer) against future risks.

- The Buyer has to make sure of the compatibility of his computer hardware with those proposed by bioMérieux. bioMérieux cannot be held responsible for any contamination by virus. In addition, bioMérieux reserves the right to invoice complementary services due to contamination existing in the Buyer's computer hardware.

## 15) PERSONAL DATA PROTECTION

Personal data of the Buyer (in particular its address and telephone details) collected are subject to processing's which have been declared to bioMérieux. The Buyer accepts that its personal data are used exclusively by bioMérieux and other entities of the bioMérieux group, in conformity with the provisions of The European Data Protection Directive 95/46/EC. The Buyer has the right to access, modify and rectify such data. For this purpose, the Buyer can contact its account manager.

Within the framework of warranty operations of the systems sold by bioMérieux or the quality control of these systems, the Buyer grants access to bioMérieux to the patients personal data for a required period of time in order to perform the abovementioned operation. According to the patient confidentiality regulations applicable in the country in which the bioMérieux selling company is located and The European Data Protection Directive above and after reception of the written instruction of the Buyer, bioMérieux undertakes to set up, from the beginning of the operation, appropriate devices and safety procedures, so as to guarantee strictly the safety; the integrity and the confidentiality of the data pertaining to the Buyer.

## 16) ASSIGNMENT

- The Buyer shall not assign or transfer the agreement or any of its rights and obligations arising hereunder, or any order covered hereunder, to any other party, including to an Affiliate, without prior written consent of bioMérieux. Any change in the ownership or control of the Buyer shall be deemed an assignment, which requires written consent from bioMérieux.

- The Buyer acknowledges that bioMérieux can transfer the order or be subject to a change of control for the benefit of a third party.

## 17 ) APPLICABLE LAW

- These conditions of sales are governed by and construed in accordance with the laws of Sweden, Norway, Denmark and Finland.

- Any dispute shall be settled by the Courts of the country in which the bioMérieux selling company is located, which shall have exclusive jurisdiction, even in case of multiple defendants or claim for contribution from a third party.