



# 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. 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 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 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 must include :
  - product name and reference number
  - customer number /the addresses for delivery and invoicing
  - bioMérieux's acceptance of any order shall be conditional upon creditworthiness of Buyer. In particular, bioMérieux reserves the right to suspend the order if the situation of 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.
  - bioMérieux charges a minimum order fee for orders with value below 600 EUR
  - bioMérieux charges an express fee and express delivery costs, when such deliveries are requested.

### 1.1 additional services

bioMérieux proposes to its customers some additional services such as monolot delivery, providing temperature records for transport from the local warehouse to the customer facility and sending Certificates of Analyses by mail (pdf format). Prices and conditions for these services will be provided upon request.

## 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 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 Buyer, even for partial shipments.
- Prices are subject to change in case:
  - Changes in the cost of raw materials used in the manufacture of Goods;
  - Changes in labour costs at the manufacturing site (including inflation impacting finished goods production prices),
  - Changes in the cost of utilities or other overhead costs associated with the manufacture of the Goods,
  - Any published economic data such as relevant price indexes,
  - Changing's costs due to manufacturing and quality improvement,
  - Currency impact/variations.

## 5) INVOICING

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

## 6) PAYMENT

- Payment shall be made within thirty (30) days net following the invoicing date.

- 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 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 TRANSFER 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, Buyer is liable for all damage occurring to the Products or damage caused by the Products.
- In accordance with the Incoterms as per Section 3), risks of loss or damage are transferred from bioMérieux to Buyer after delivery of such Products to Buyer. 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. 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

- 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.
- 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 judgment, if the Products shall be replaced.

## 11 ) WARRANTIES

### a) Reagents :

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

The compliance of the reagents with the specifications indicated on the package insert is guaranteed until expiry date.

### b) Instruments

bioMérieux warrants the Instrument to 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 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 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.



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bioMérieux warranty is valid to Buyer's original site of installation only. Any transhipment 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 Buyer's hardware, is expressly excluded.

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 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.

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

In any event, 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 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 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 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 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

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, 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. 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 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 law, 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 organized, as provided for by WEEE directive 2012/19/EU and any local implementations thereof in the country in which the bioMérieux selling company is located.

The obligations of Buyer (in particular in connection with decontamination) to which 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 Buyer at his request. 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 Buyer's negligence and/or any breach of its abovementioned obligations will entitle bioMérieux to a compensation.

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. 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. Buyer shall take all necessary precautions thereafter.

Moreover, bioMérieux assumes no responsibility for the software compatibility with the hardware of 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 Buyer's responsibility to set up a protection plan for all the data of its information system (computing resources of Buyer) against future risks.

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 Buyer's computer hardware.

## 15) PERSONAL DATA

### a) Client's personal data

Client accepts that identity, address and telephone details of individuals issued from its resources are used by bioMérieux and other entities of the bioMérieux group, in conformity with the provisions of local personal data laws and regulations, in particular those in force in the European Union. Such personal data is for the exclusive use of the bioMérieux group, in order to better address Client's requirements and questions. In accordance with applicable laws and regulations, individuals (data subjects) from Client (i) have the right to access, object, modify, rectify, request copy of, transmit to another controller, their personal data, as well as (ii) the right to be forgotten. For these purposes, individuals (data subjects) from Client can contact bioMérieux's global Data Privacy/Protection Officer ([privacyofficer@biomerieux.com](mailto:privacyofficer@biomerieux.com)).

### b) Patient data

Within the framework of warranty, maintenance or quality control operations on the systems sold by bioMérieux, Client grants access to bioMérieux to Client's patient personal data for the period of time required in order to perform the abovementioned operations. According to applicable laws and regulations and after reception of written instruction from Client, bioMérieux undertakes to set up, from the beginning of the operations, appropriate devices and safety procedures, so as to guarantee the safety, the integrity and the confidentiality of Client's patient data.

### c) Personal data processor

If bioMérieux elects to subcontract all or part of the processing or of the hosting of Client's personal data or patient personal data, bioMérieux is authorized (i) to engage any other processor without prior specific written authorization from Client as the data controller, except the obligation for bioMérieux to inform the Client of any intended changes concerning the addition or replacement of other processors, thereby giving the Client as the data controller the opportunity to object to such changes in accordance with article 28 (2) of the GDPR, and undertakes (ii) to ensure that the aforementioned subcontractors have entered into confidentiality agreements, (iii) to take appropriate measures to ensure the security processing or hosting services, (iv) to only hire sub-contractors, if any, with the prior written consent of Buyer as the data controller and under a written contract, (v) to assist Client as the data controller, in providing data subjects access to their personal data, and allowing data subjects to exercise their personal rights in accordance with the applicable personal data protection laws and regulations, (vi) to assist Client as the data controller, in meeting



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its own obligations in relation to the security of processing, the notification of personal data breaches, and data protection impact assessment, if any, (vii) to delete or return all personal data to Client as the data controller, as requested, at the end of the agreement with bioMérieux, (viii) to submit to audits or inspections as required and (ix) to cause any subcontractor to immediately notify bioMérieux global Data Privacy/Protection Officer ([privacyofficer@biomerieux.com](mailto:privacyofficer@biomerieux.com)) if it is asked by Client or any other persons to do anything which may infringe upon applicable personal data protection laws and regulations. Please find below link to the list of bioMérieux sub-processors: <https://www.biomerieux.com/en/data-processors-list>.

## **16) ASSIGNMENT**

- 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 Buyer shall be deemed an assignment, which requires written consent from bioMérieux.
- 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.**