

Trading terms and conditions of sale of BIOHIT HealthCare Ltd

1.

APPLICATION
These conditions apply to all contracts for the sale of goods by BIOHIT HealthCare Ltd ("The Company") whose legal address is Pioneer House, Pioneer Business Park, North Road, Ellesmere Port, Cheshire CH65 1AD, to any buyer ("The Customer") and prevail over and extinguish all terms and conditions of contract imposed or sought to be imposed by the Customer or implied by trade, custom, practice or course of dealing insofar as such terms and conditions are inconsistent therewith or additional thereto. Purported provisions to the contrary are hereby excluded. No alteration, exclusion or waiver of any of these conditions shall be effective or binding unless made in writing by a director of the Company.
2.

QUOTATION AND CONTRACT
- 2.1

A quotation by the company does not constitute an offer and may be revised or withdrawn at any time prior to the Company's acceptance of the Customer's order which shall constitute the offer.
- 2.2

The Customer's order whether verbal or written shall not be deemed to have been accepted by the company until written acceptance has been issued by the Company. Accepted orders are binding and may not be amended without the Company's consent.
- 2.3

The Company's acceptance of the Customer's order shall be conditional upon approval of the Customer's credit. Where such approval has not been given full payment must accompany the order.
3.

PRICES
- 3.1

Prices payable for the goods shall be the amount shown on the Company's priced advice note or invoice.
- 3.2

The Company may at any time revise prices to take into account any increase in the Company costs (including but not limited to the cost of raw materials, labour, transport or other overheads, any tax, duty or other levy and variation in exchange rates).
- 3.3

Unless otherwise specified VAT and any other tax or duties payable by the Customer shall be added to the price.
- 3.4

Zero rated VAT and VAT exempt orders must be accompanied by an official VAT exemption certificate. Where a VAT exemption certificate does not accompany an official purchase order claiming VAT exemption the Company shall apply a charge of VAT. Any attempt to reclaim VAT by the Customer after the invoice has been issued must be made in writing to the Company within 30 days of the date of invoice.
- 3.5

Any typographical, clerical or other error in any sales literature, quotation, price list, acceptance of offer, invoice, or other documentation or information issued by the Company, may be corrected without any liability on behalf of the Company.
- 3.6

Quotations expressed to be for a fixed price remain open for acceptance by the Customer within the period stated in the quotation or, if no period is stated, within 30 days of the date of the quotation irrespective of when the quotation is received by the Customer. All orders requesting discounts must be accompanied by a quotation number previously supplied.
- 3.7

Prices for Services are exclusive of travel or accommodation costs incurred in performing the Services unless other terms are expressly accepted in writing by an authorised officer of the Company.
4.

PAYMENT
- 4.1

Save as provided in Clause 2.3 and 16 hereof:
Payment of invoices shall be made in full without deductions or set-offs not later than 30 days of the date of invoice unless otherwise agreed in writing. Time shall be of the essence in relation to payment.
- 4.2

Any extension of credit to the Customer may be Withdrawn or altered at any time.
- 4.3

Interest shall be payable at the option of the company on overdue accounts at an annual rate of 2% p.a. above Lloyds Bank Base Rate to run from the due date for payment thereof until receipt by the Company of the full amount whether or not after judgement.
- 4.4

The Company can accept payment by electronic transfer, cheque, credit or debit card. No cash payments will be accepted.
- 4.5

Where the Customer does not have a credit account with the Company, the Products will not be delivered until The Company has received the amount due shown on the pro-forma invoice in full. At The Company's discretion credit accounts may only be opened after receipt of trade and bank references which are considered satisfactory by the Company.
- 4.6

All products remain in the title of the Company until full settlement is made. Claims arising from invoices must be made within seven working days of receipt of invoice.
5.

DELIVERY AND CARRIAGE
- 5.1

The Company will make every effort to deliver the Goods within the time agreed. The Company shall not be held responsible for delays caused by anything beyond our reasonable control. Any special delivery requirements must be notified to us in writing at the time of placing the order. The Company shall have the right at their discretion to make a reasonable charge for special handling and/or delivery.
- 5.2

Unless otherwise expressly agreed the Company may effect delivery in one or more instalments and where delivery is effected by instalments, each instalment shall be treated as a separate contract.
- 5.3

Deliveries offered ex-stock are subject to the Goods being available at the date of receipt of an order from the Customer.
- 5.4

No claim for damage or shortages will be considered unless the Company is notified in writing within 2 working days of receipt, failing which proper delivery shall be conclusively presumed to have been made. In the event of breakage, all packaging and damaged Goods must be retained for inspection.
- 5.5

In the event of non-delivery, the Company must be notified in writing within 5 days of receipt of the invoice.
- 5.6

If the Customer refuses or fails to take delivery of goods tendered in accordance with the contract, the Company shall be entitled to immediate payment in full for the goods so tendered. All storage and transit and incidental costs incurred by the Company as a result of such refusal or failure shall be for the Customer's account.
6.

RISK
- 6.1

The risk in the Goods shall pass to the Customer;

(i)

on orders for delivery within the United Kingdom, upon delivery to the Customer or upon Installation if this has been expressly agreed in writing.

(ii)

on orders for delivery Outside the United Kingdom, upon delivery FOB to the port notified by the Customer or under FCA terms at point of handover to the Customer's agent, otherwise as per current Incoterms, dependent upon the terms agreed prior to shipment.
- 6.2

Notwithstanding delivery and the passing of risk in the Products, or any other Provision of these Conditions, the property in the Products will not pass to the Customer until the Company has received full cash or cleared fund payment for the products and any associated charges.
- 6.3

All products remain in the title of the Company until full settlement is made.
7.

PACKAGING CHARGES
- 7.1

The Company reserves the right to add a reasonable charge for packing pallets or containers or for the delivery of products in pack sizes which differ from those offered in our catalogue. Split deliveries of orders requested by the Customer may also incur an additional carriage charge. Delivery charges will be applied to deliveries unless specifically agreed in writing.
8.

TITLE RESERVATION
- 8.1

Title of the goods shall not pass to the Customer until payment in full of the price thereof. Until such payment the Customer shall have possession of the goods as bailee for the Company and shall ensure that the goods are stored in such a way as to enable them to be identified as the property of the Company.
- 8.2

The Company reserves the right to repossess any goods in respect of which payment is overdue and thereafter to resell the same and for this purpose the Customer hereby grants an irrevocable right and license to the company to enter upon all or any of its premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to the Company's other rights.
9.

RETURN OF GOODS
- 9.1

The Customer must contact the Company to discuss a return within 30 days of receipt of the Goods and prior to returning the Goods to the Company. A copy of the original delivery note must be attached to the package to ensure the return can be speedily processed. The Company cannot accept responsibility for loss or damage to Goods being returned unless the Company arranged collection. If the return is as a result of a mistake of the Company, or the Goods supplied by the Company were defective, there is no charge to the Customer for the return. Where Goods are returned for any reason other than set out in Clause 9.1 or 15, the Company reserves the right to make a charge against the Customer of 15 percent of the invoiced value of the Goods as a contribution towards the costs incurred by the Company for inspection, re-stocking and administration. Return delivery charges shall be at the cost of the Customer, unless agreed in advance. Acceptance of return of Goods is discretionary to the Company and decided on a case by case basis.
- 9.2

The Customer is responsible for ensuring that Goods returned to the Company are free from biological, chemical and radioactive hazard. The Company reserves the right to refuse to accept Goods which present a hazard to the Company's employees or which may infringe the Health & Safety at Work Act or which are without a signed certificate that effective disinfection and/or decontamination has been carried out.
- 9.3

The return of incorrectly ordered Goods that are Temperature controlled or susceptible to biological contamination will not normally be accepted for return.
10.

INSTRUMENT SERVICE
- 10.1

Workmanship and spare parts fitted during service or repair procedures are warranted against failure for a period of 12 months subject to Clause 15.2.
- 10.2

Service turn-around times expressed or implied verbally or in writing do not constitute a guarantee of return within the period and are an indication of intent only.
- 10.3

The Customer is responsible for ensuring that instruments presented to our field technicians are free from biological, chemical and radioactive hazard. The Company reserves the right to refuse to work on instruments which present a hazard to our employees or which may infringe the Health & Safety at Work Act, or which are without a signed certificate that effective disinfection and/or decontamination has been carried out.
- 10.4

The Customer or his representative or agent at the site of any on-site service clinics is responsible for providing adequate safety equipment and welfare facilities to our technicians. Failure to do so may result in our services being withdrawn and costs incurred for loss of work and expenses being charged accordingly.
- 10.5

All printed statements of achieved specifications concerning the calibration services provided and undertaken are warranted at location and time of testing only. Complaints against our stated achieved test results will not be considered unless any subsequent comparative testing is shown to have been undertaken in similarly strictly controlled conditions and environment.
11.

LABORATORY SERVICES
- 11.1

Analytical and laboratory services for research projects are supplied according to individual service agreements between the Company and the Customer.
- 11.2

Analytical and laboratory services for clinical use are only available to healthcare professionals. The Company will not, without the prior written consent of a healthcare professional, provide any analytical and laboratory services to members of the public. It shall be the responsibility of the Customer to ensure that the Goods shall be suitable for the particular application and for use under the particular conditions for which they are purchased.
- 11.3

Any order received by the Company from The Customer for the provision of Analytical and laboratory services for clinical use shall only be accepted upon receipt of written confirmation from the Customer that a healthcare professional has agreed to receive test results on behalf of the Customer. The Company reserves the right to refuse to deliver test results to the Customer. For the avoidance of doubt, test results from analytical and laboratory services shall only be sent to a healthcare professional.
- 11.4

The Customer may cancel the contract at any time up to and including the 14th (fourteenth) working day after the day on which the Products are delivered to the Customer (the "Cancellation Period") by notifying the Company in writing by email to cs@biohithealthcare.co.uk or to the addresses set out at the beginning of these Terms and Conditions.
- 11.5

The Customer may not cancel the contract if they have received the Products and returned their test sample to us and the sample has undergone analysis within the 14 day Cancellation Period.
- 11.6

Should the Customer cancel the contract before or after they have received any Products The Customer is responsible for the disposal of the Products at their own cost and risk.
- 11.7

Should the Customer cancel the Contract within the Cancellation Period and subject to clause 11.5, the Company will re-credit the Customer the amount debited for their order for the Products within 30 days of receiving the Customer's written notice of cancellation.
12.

THIRD PARTY RIGHTS
- 12.1

The Customer shall indemnify the Company against any and all liabilities, claims and costs incurred by or made against the Company as a direct or indirect result of carrying out any work required to be done on or to the goods in accordance with the requirements or specifications of the Customer involving any infringement or alleged infringement of any rights of any third party.

- 12.2

The Company's liability to the Customer in the event of goods infringing or being alleged to infringe the rights of any third party shall be subject to the limits specified in Clause 15 hereof. In the event that goods are or may be the subject or patent copyright, trade mark or other third party rights the Company shall be obliged to transfer to the Customer any such title as the Company may have.
13.

SPECIFICATION
All drawings, designs, dimensions and specifications provided to the Customer are approximate only and intended merely to present a general idea of goods described therein and the Company Shall have no liability in respect of any deviation therefrom. The Company is continually seeking to improve upon the goods and therefore reserves the right without notice and without affecting the validity of or incurring liability under this contract to make such changes of detail in material and dimensions, specifications and design it considers desirable. The Company accepts no responsibility for any errors, omissions or other defects in any drawings, designs or specifications and catalogues not prepared by the Company and the Company shall be indemnified by the Customer against any and all liabilities and expenses incurred by the Company arising therefrom.
14.

CONFIDENTIALITY AND DATA PROTECTION
- 14.1

All information that is provided by the Company to the Customer in written or oral form which is not at the time of providing such information demonstrably available in the public domain will be held and safeguarded by the Customer as confidential information and shall disclose the Confidential Information which it receives only to those individuals within its organization that reasonably need to have access to the Confidential Information for purposes of the discussions between the parties or to consultants or non-employees retained by one party, but only if such persons are legally bound to protect the confidentiality of the Confidential Information.
- 14.2

The Parties agree that where such processing of personal data takes place the Customer shall be the Data Controller and the Company shall be the Data Processor as defined by the General Data Protection Regulation (GDPR) as amended. The Company shall only process Personal data to the extent reasonably required to fulfil its contractual obligations per these terms and conditions. The Company shall not retain Personal Data for any period longer than necessary for the fulfilment of the contract and shall refrain from sharing the Customer's Personal Data with any other party without express written consent from Customer. The Company's Privacy Policy sets out its commitment to data protection and can be found at www.biohithealthcare.com/uk/privacy-policy.
15.

LIABILITY AND WARRANTY
- 15.1

Subject to Clause 9, the Company warrants that the Goods will be free from defects in materials and workmanship for the Warranty Period. The Warranty Period will be stated in the product insert, catalogue, brochure, leaflet or quotation for such Goods and will commence from the date on which the Goods are dispatched by the Company or the date of commissioning by the Company, if later. Where the Warranty Period is not stated it will be for 12 months. This does not apply to consumable products or products with a shelf life of less than 12 months.
- 15.2

The Warranty in Clause 15.1 is given by the Company subject to the following conditions;
- 15.2.1

The Company shall not be liable to the Customer

(i)

for any defect in the Products arising from fair wear and tear; wilful damage, negligence of the Customer or its employees or agents, abnormal working conditions or failure to follow the Company's installation, user, storage, operating or maintenance instructions.

(ii)

for shortages in quantity delivered unless the Customer notifies the Company of any claim for short delivery within 2 days or receipt of the goods;

(iii)

for damage to or loss of the goods or any part thereof in transit (where the goods are carried by the Company's own transport or by a carrier on behalf of the Company) unless the Customer shall notify the Company of any such claim within 2 days of receipt of the goods or receipt of the Company's advice of consignment whichever shall be the earlier;

(iv)

for defects in the goods caused by an act of neglect or default of the Customer or of any third party;

(v)

for other defects in the goods unless notified to the Company within 2 days of receipt of the goods by the Customer.
- 15.3

Return of products for inspection when warranty repair or replacement is claimed shall be at the Customer's expense unless otherwise agreed in writing.
- 15.4

The Company may at its option make good any shortage or non-delivery and/or as appropriate replace or repair any goods found to be damaged or defective.
- 15.5

The Company's aggregate liability to the Customer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the defective, damaged or undelivered goods determined by net price invoiced to the Customer in respect of any occurrence or series of occurrences.
- 15.6

Subject to the foregoing all conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the goods are hereby excluded and the Company shall be under no liability to the Customer for any loss, damage or injury direct or indirect, resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Company, its employees or agents. Nothing in these Conditions excludes or limits the liability of BIOHIT for death or personal injury caused by BIOHIT's negligence or fraudulent representation, any liability under the Consumer Protection Act 1987, or for any other matter the liability for which cannot be limited by law.
- 15.7

Except for any warranties expressly set out in these Terms and Conditions any warranties, conditions or representations whether implied by statute or otherwise shall be excluded to the fullest extent permitted by law
16.

INSOLVENCY AND DEFAULT
- 16.1

If the Customer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or if (being a company) an order is made or a resolution is passed for the winding up of the Customer (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver is appointed of any of the Customer's assets or undertakings or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager, or which entitle the court to make a winding up order, or if the Customer takes or suffers any similar or analogous action in consequence of debt or comments any breach or this or any other contract between the Company and Customer, the Company may without prejudice to any of its other rights stop any goods in transit and/or suspend further deliveries and/or determine the rights of the Buyer under Clause 8 hereof and/or by notice in writing to the Customer determine the contract.
17.

EXPORT SALES
- 17.1

Notwithstanding the provisions of Clause 4, 5 and 6 hereof:
In any case where goods are sold CIF or FOB or on the basis of other international trade term the meaning of such term contained in Incoterms 2010 as revised from time to time shall apply except where inconsistent with any of the provisions contained in these Conditions in which case these Conditions shall prevail.
- 17.2

Unless otherwise agreed the price of the goods shall be secured by an irrevocable letter of credit satisfactory to the Company established by the Customer in favour of the Company and confirmed by a United Kingdom Bank, acceptable to the Company immediately upon receipt of the Company's acceptance of offer. The minimum value of the order for Letter of Credit payment is £1,200. On orders below this value, there shall be a minimum handling charge of £200.00 applied to the transaction. This figure may be increased should additional exceptional costs be incurred. All such transactions shall be conducted with bank charges outside the U.K. for the Customer, unless otherwise agreed in writing. The letter of credit shall valid for at least 6 months or such longer period as shall have been estimated by the Company for delivery. The Company shall be entitled to payment on presentation to such United Kingdom Bank of the documents specified by the Company or as herein stipulated.
- 17.3

Should the Customer fail when requested by the Company and within the time specified by the Company to take any action necessary on its part for delivery and/or Shipment of the goods then:

(i)

the Company shall be entitled by way of delivery to store the goods in a warehouse at the expense and risk of the Customer;

(ii)

the price shall become immediately payable;

(iii)

if payment is secured by letter of credit the Company shall be entitled to payment on presentation of the copy sales invoice and the warehouse receipt; and

(iv)

the Company shall be entitled after the expiration of 3 months from the date upon which the price became payable to dispose of the goods in such manner as the Company may determine without accounting to the Customer thereafter.
- 17.4

Section 32(2) of the Sale of Goods Act 1979 shall not apply. The Company shall not be required to give the Customer the notice specified in Section 32(3) of that Act.
18.

GENERAL
- 18.1

Failure by the Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such rights, nor operate so as to bar the exercise or enforcement any time or times thereafter.
- 18.2

Any notice hereunder shall be deemed to have been duly given if sent by pre-paid first class post, facsimile or email to the party concerned at its last known address. Notices sent by first class post shall be deemed to have been given on the date of dispatch.
- 18.3

The contract shall in all respects be governed by and construed in accordance with the laws of England and the parties hereby submit to the jurisdiction of the English courts.
19.

SUITABILITY OF GOODS
- 19.1

It shall be the responsibility of the Customer to ensure that the Goods shall be suitable for the particular application and for use under the particular conditions for which they are purchased. Product information and publicity material supplied by the Company or the Company's supplier which indicates the suitability of the Goods for particular applications is intended for general guidance only. Suitability may be dependent upon operating and other conditions over which the Company has no control.
20.

ASSIGNMENT
- 20.1

The Customer will not, without the prior written consent of the Company assign, transfer, mortgage, charge, declare a trust or deal in any other manner with the contract or any of its rights and obligations under or arising out of the contract (or any document referred to in it), or purport to do any of the same.
- 20.2

The Customer will not sub-contract or delegate in any manner any or all of its obligations under the contract to any third party or agent.
21.

TERMINATION
- 21.1

Without affecting any other rights that it may be entitled to, the Company may give notice in writing to the Customer terminating the contract immediately in the event of the Customer committing a material breach of any material term of the contract.
22.

FORCE MAJEURE
- 22.1

In the event that either party is prevented from performing or complying with the terms of the Contract as a result of any contingency beyond its reasonable control, including but not limited to any actions of governmental authorities or agencies, war, hostilities between nations, civil commotions, riots, national industry strikes, lockouts, sabotage, shortages in supplies, energy shortages, and Acts of Nature such as typhoons, floods, fire, hurricanes, earthquakes, tsunamis or any other similar causes beyond the control of the Parties, and without their negligence, no party will be responsible for any delay or failure of performance hereunder for so long as such conditions prevent such performance, provided that if such failure continues for a period of more than six (6) months, any party hereto will have the right to forthwith terminate the contract upon giving fourteen (14) days' written notice to the other party. Such termination will be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination. In the event of any such occurrence, the Party immediately affected thereby will give prompt written notice to the other Party specifying the Force Majeure event complained of and will use its best efforts to overcome or resolve such impediment to the performance of the contract.
23.

GOVERNING LAW
- 23.1

Any dispute or claim arising out of or in connection with the contract or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with English law.
24.

ENTIRE AGREEMENT
- 24.1

These Terms and Conditions (and any document referred to in it) constitutes the whole contract between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 24.2

The Customer acknowledges that, in entering into the contract (and any document referred to in it), it has not relied on, and will have no rights or remedies in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the contract. Nothing in this Clause 24 will limit or exclude any liability for fraud.
25.

NOTIFICATIONS
- 25.1

Any notification and/or notice mentioned in the present must be served by one party upon the other in writing by e-mail or facsimile transmission to the contacts set out in the Contract.