

# Terms & Conditions

## **1. Applicability of These Terms and Conditions**

1.1 The terms and conditions set forth below shall govern all deliveries and services rendered by BioLife Solutions, Inc. ("BioLife") to the customer. They shall also apply, without a separate agreement to this effect being necessary, to all future transactions with the customer.

1.2 These terms and conditions shall apply to the exclusion of all other terms and conditions, BioLife shall not be bound by any terms or conditions contained in any purchase order, acknowledgement, acceptance or other documents submitted by customer which propose any terms or conditions in addition to or differing from the terms and conditions herein set forth, irrespective of whether any of the same are in written or electronic form, and objection is hereby made to any such terms and conditions of customer. BioLife's failure subsequently to object to such terms and conditions contained in customer's documents shall not be deemed a waiver of any of these terms and conditions herein set forth, which shall constitute the entire agreement between the parties. No amendment, deletion, supplement or change in these terms and conditions shall be binding upon BioLife unless separately and specifically approved in writing and signed by a duly authorized representative of BioLife.

1.3 These terms and conditions are subject to change without notice at any time, in our sole discretion.

## **2. Conclusion of Contracts; Offer Documents**

2.1 Our offers and quotations are always without obligation. Commissions and orders from the customer shall only become binding upon our written confirmation (including delivery notice or invoice).

2.2 Our field workers and sales personnel are not authorized to conclude oral agreements. Any oral commitments deviating from our offer, quotation or order confirmation shall only be valid if confirmed in writing and signed by a duly authorized representative of BioLife.

2.3 Verbal agreements made after execution of a contract must be confirmed in writing by a duly authorized representative of BioLife to be valid.

## **3. Performance; Delivery**

3.1 In the event the customer has to provide us with information, supply us with materials or meet other duties of cooperation for the execution of the order, it shall be essential that we be able to rely on the accuracy, completeness and proper quality of the information and materials provided and the complete fulfillment of the duties of cooperation. As long as the customer does not properly meet the above-mentioned duties, we shall be released from the obligation to perform. We reserve all further rights.

3.2 Representations as to deadlines for delivery of products or services are approximate only, unless we have given an express binding commitment in writing. Deadlines for deliveries and services shall begin to run when the order confirmation is given, but not before all technical issues and details relating to the order have been resolved. Deadlines shall not apply if the customer is in default with the fulfillment of its duties, in particular, with regard to the provision of materials, documents, exemptions or permits that have to be furnished by the customer, or with regard to any payments which must be made for the deliveries or services or previous deliveries or services or other cash due.

3.3 Delivery dates shall be deemed to have been met if, on or before this date, the products or the deliverables of the services have left our facilities or are ready for dispatch and the customer has been notified accordingly.

3.4 BioLife shall not be responsible for failure or delay in performance or delivery as the result of events of force majeure, including all revisions of statutory law, acts of governmental authority or any

agency or commission thereof, war, fire, flood, accidents, acts of God, terrorism, embargoes, acts of third parties, breakdown of equipment, shortages of material, labor of power, labor strikes, work stoppage or labor unrest, or any other cause beyond our reasonable control that renders the delivery of service substantially more difficult or impossible. This shall also apply if such events occur during a delivery delay or at a supplier. If any of the foregoing events occurs, we may make deliveries of the products and services proportionate to production and/or postpone the shipment of delivery period of the products and services to a reasonable time after the difficulty has ceased, or we may, at our option, upon due notice given to customer after the commencement of any such event, declare the agreement terminated and all rights and liabilities of BioLife and customer, except with respect to products and services previously shipped or performed or in our inventory, shall cease and terminate. In no event we shall be liable to the customer for compensation or damages. We shall notify the customer without undue delay of the obstacle to performance and of its end.

3.5 Import, export and/or the transport of products outside of the United States shall be subject to the import and/or export regulations applicable in the United States, the country imported to, and in all other relevant jurisdictions, as the case may be. The customer shall be solely responsible for the procurement of relevant approvals and permits. However, at the customer's request and expense, we shall use our best efforts, to the extent commercially reasonable and economical, to obtain the approvals necessary for the export of the subject of the agreement and/or any other necessary documents from the domestic authorities. We reserve the right to determine whether we will sell and/or deliver products and/or services to customers and/or nationals of countries outside of the United States.

3.6 In the event we negligently delay delivery or service, we shall be liable for the customer's losses for each complete week of delay in the maximum amount of 0.5 percent of the value of the delivery or service, but an aggregate maximum of 5 percent of the value of the part of the total delivery or service that cannot be used at the time required or for the purpose designated in the agreement as a result of the delay. This limitation shall not apply if our liability is due to intentional misconduct or gross negligence. Any degree of fault on the part of the customer shall be taken into account.

3.7 If the customer fails to accept delivery or negligently breaches other obligations to cooperate with us, we shall be entitled to compensation for any loss that we may suffer as a consequence, including any additional expenses or costs that we may incur as a result of the delay.

3.8 We shall be entitled to make partial deliveries unless it would be commercially unreasonable to expect the customer to accept such partial deliveries. Each partial delivery may be invoiced separately.

#### **4. Shipment; Risk**

4.1 Unless otherwise agreed in writing, shipments of products and/or deliverables of services shall be FOB BioLife's facility or that of its contract manufacturer.

4.2 Title and risk of loss or damage to the products and/or deliverables of services, as well as the obligation to bear any costs relating thereto, shall pass to the customer upon BioLife's making delivery to a carrier at BioLife's facility or its contract manufacturer in good condition, consigned to customer, or as customer may direct. This shall also apply in the event of partial deliveries. If the shipment is delayed as a result of instructions from the customer or due to customer's fault, in particular, because customer has failed to give proper instructions in due time, risk shall pass to the customer upon notification that the merchandise is ready for shipment.

4.3 Any shipment shall be made on behalf of the customer. This shall also apply if, owing to individual arrangements, we bear the costs of shipment or have the shipment insured or mount or set up the products on the customer's premises. We shall not be liable for damage and loss during transport. In particular, any damage and loss shall not release the customer from the obligation to pay the purchase price in full. If the customer has not given any special orders relating to shipment, we shall have the shipment sent via the best route at our discretion. At the customer's request, which must be communicated in writing upon order placement, we shall take out transport insurance for the shipments on behalf, and at the expense, of the customer. We shall be entitled to name ourselves as beneficiary. We shall only be responsible to take that care customarily taken when

choosing the insurer for the transport.

4.4 If shipment is delayed due to the customer's fault, BioLife may, at its discretion, after the expiration of a grace period of one week either arrange for shipment at the expense and risk of the customer or provide for storage of the products and charge the storage costs to customer. In case of storage, BioLife shall be entitled to charge the customer a monthly storage and handling fee in the minimum amount of 0.5 percent of the invoiced purchase price for each month of delay. We reserve the right to assert a claim for higher storage costs in the event such higher costs are incurred.

## **5. Limited Warranty**

5.1 BioLife's products are manufactured and all services are rendered with due care and in accordance with applicable statutory laws and regulations. Owing to the complexity of biotechnological products, materials and procedures, it cannot be guaranteed that our products or services function without defects in all applications, environments and/or combinations. For this reason, BioLife does not assume any guarantee or liability to the effect that our products or the results of our services are appropriate in each individual case for the specific purpose intended by the customer. Subject to the limitations of this Section 5 and unless otherwise expressly provided, BioLife warrants only that the products and services will conform to BioLife's published specifications for such products and services in effect at the time of order acceptance, or any analysis certificate presented with the product or service result.

5.2 Any samples, measurements and product/service details contained in catalogues, price lists, brochures and/or quotations presented to the customer only constitute an approximate guide and may under no circumstances be understood as an assurance of properties in terms of a guarantee. We reserve the right to make any changes thereto which we consider necessary in our absolute discretion. In the event BioLife and the customer wish to agree on a guarantee in an individual case, contrary to the above, this must be done expressly and in writing signed by a person with requisite authority at BioLife.

5.3 BioLife's sole liability, and customer's sole and exclusive remedy, pursuant to any claim of any kind against BioLife, including without limitation any claim in contract, negligence or strict liability, shall be, at BioLife's option, (a) replacement of any non-conforming products or re-performance of any non-conforming services (or such portion thereof as may reasonably be required to be re-performed) until completion or (b) a refund of the payments allocable to the non-conforming products or services.

5.4 THE LIMITED WARRANTY IN SECTION 5.1 ABOVE IS EXPRESSLY IN LIEU OF ANY AND ALL OTHER WARRANTIES AND BIOLIFE HEREBY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION (A) ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR (B) ANY IMPLIED WARRANTY THAT ANY USE OF THE PRODUCTS OR SERVICES WILL NOT VIOLATE OR INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHTS OF THIRD PARTIES, WITH RESPECT TO THE PRODUCTS OR SERVICES, OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 5.1 ABOVE.

## **6. Inspection, Acceptance, and Storage**

6.1 The customer shall inspect the products promptly upon delivery and shall give written notice to BioLife specifying any alleged non-conformance, defect, damage, or shortage. The customer shall be deemed to have accepted the products as having been delivered in accordance with the relevant contract and as being free from any defect, damage, shortage, or any other deficiency whatsoever, unless such notice has been given in writing and received by BioLife by (a) seven (7) working days after customer's receipt of delivery of the products, in the case of any non-conformities or deficiencies reasonably ascertainable by visual inspection or routine testing procedures, or (b) seven (7) working days after customer learns of the facts giving rise to the claim, in the case of any other non-conformities or deficiencies not reasonably ascertainable by visual inspection or routine testing procedures. Customer's failure to give notice of any claim within the applicable time period specified above, shall be deemed an absolute and unconditional waiver of such claim, irrespective of whether

the facts giving rise to such claim shall have been discovered or whether processing or use of the products shall have then taken place.

6.2 BioLife reserves the right to inspect and test the product to which objection has been made in each case of a notification of defects by customer. The customer shall give us reasonable time and opportunity for such inspection. Upon our request, the customer shall return to us at our expense the item to which objection has been made. If customer's notification of defects proves to be unjustified, customer shall be obligated to reimburse us for all costs incurred in this context (e.g., inspection costs, travel costs and shipment costs) upon submission of receipts.

6.3 Defects of partial deliveries shall not entitle customer to reject the remainder of the contractual quantity unless customer can prove that it would be commercially unreasonable for customer to accept only a part of the delivery under these circumstances.

6.4 As a condition of BioLife providing any warranty for its products, Customer must immediately upon receipt, and continually while in its possession, store the products at 2-8°C in a dark environment.

## **7. Use**

7.1 Products sold or otherwise delivery by BioLife must only be used for the purposes and in accordance with the usage instructions stated on the product package and/or the applicable product use statement. In particular, BioLife's products are for research use only and are not to be used, neither directly nor indirectly, for therapeutic or diagnostic purposes unless (a) the product has been expressly approved for such purposes by BioLife, (b) such use is permitted under the statutory law applicable to the customer, and (c) all required permits have been granted by the appropriate regulatory agency or other competent authority. The customer shall be solely responsible for ensuring that the customer's intended use of the products does not violate statutory law and that all required permits have been granted.

7.2 Customer shall handle and use the results of the products in conformity with (a) good laboratory practice, (b) all applicable laws and regulations, guidelines and decisions of judicial or regulatory bodies and (c) any patent and other proprietary rights of third parties.

7.3 Products with use-by dates may only be used subject to the use-by dates stated on the product package and are only warranted for the use by such dates, and only if the customer can provide written confirmation of its compliance with BioLife's storage instructions for the product(s).

## **8. No Resale**

Except as otherwise agreed in writing by BioLife's authorized representative, the purchase or other delivery of BioLife products only conveys to the customer the non-transferable right for customer to use the delivered products in compliance with the applicable product use statement. Unless otherwise authorized under a commercial license from BioLife, no right to resell the products, or any portion of them, in any way, shape or form, including as a component of another product, is conveyed.

## **9. Limitation of Liability and Remedy**

9.1 BIOLIFE SHALL NOT IN ANY EVENT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION PROPERTY DAMAGE, LOST PROFITS OR OTHER ECONOMIC LOSS, ARISING IN CONNECTION WITH CUSTOMER'S USE OF OR INABILITY TO USE THE PRODUCTS OR SERVICES, OR BIOLIFE'S FAILURE TO PERFORM THE SERVICES IN ACCORDANCE WITH THE LIMITED WARRANTY SET FORTH IN SECTION 5 ABOVE. THIS LIMITATION OF LIABILITY WILL APPLY UNDER ANY LEGAL THEORY AND REGARDLESS OF THE FORM OF ACTION, INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND, EVEN IF BIOLIFE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, AND SHALL ALSO APPLY IN THE EVENT OF LOSSES CAUSED BY THE BREACH OF DUTIES IN CONTRACT NEGOTIATIONS.

9.2 BioLife's liability for breach of warranty or for any loss or damage resulting from any other cause whatsoever, including alleged negligence, shall not exceed the lesser of (i) the cost of correcting any

non-conformity in the products or services or (ii) the cost of replacing the products or re-performing the services. In no event (including unenforceability of the above limitations and independent of any failure of essential purpose of the limited warranty and remedies provided hereunder) shall BioLife's aggregate liability for damages hereunder exceed the purchase price or fee paid or to be paid for the specific products or services to which the particular claim relates. The parties acknowledge that the limitations set forth in this Section 9 are integral to the prices charged and that, were BioLife to assume any further liability other than as set forth herein, such prices would of necessity be set substantially higher. Customer expressly agrees that this limitation of damages and remedies shall constitute the exclusive remedies and measure of damages available to customer and all other remedies and measure of damages which might otherwise be available under the law of any jurisdiction are hereby waived by customer.

9.3 Without limitation to the generality of the foregoing limitation, BioLife shall not be liable for any damage or loss caused by the improper or unapproved use of the products. Customer shall defend, indemnify and hold harmless BioLife from and against any and all losses, costs and expenses, including without limitation reasonable attorneys' fees, in any way arising out of or relating to (a) any use of the products not in compliance with the uses stated in Section 7 above, (b) any failure of customer to comply with good laboratory practice, laws, regulations, guidelines or decisions in the handling or use of the products, (c) any violation or infringement of any patent or other proprietary rights of third parties by customer in the handling or use of the products, or (d) any other use or misuse of the products by customer.

9.4 The limitations set forth in this Section 9 shall not restrict or exclude our liability for death or personal injury cause by negligence on the part of our executive employees or on the part of our vicarious agents. Further, nothing set forth herein shall restrict or exclude our liability based on intentional misconduct or gross negligence on or part, on the part of our executive employees or on the part of our vicarious agents, or our liability resulting from mandatory product liability laws or other mandatory statutory laws and regulations, as applicable.

## **10. Payment Terms**

10.1 The full amount of each invoice in respect of the deliveries and services provided by BioLife hereunder shall be paid net 30 days from the date of BioLife's invoice unless otherwise stated on the invoice. The customer may not withhold payment of any amounts due to BioLife by reason of any claim to a right of set-off or counterclaim or for any other reason, unless to the extent the customer's counterclaims have been affirmed finally and absolutely in a court judgment, are undisputed or are acknowledged by us.

10.2 Payment by check or bill of exchange will be effective only after these instruments have cleared and been paid. Any discounts and expenses shall be borne by customer. Any check or remittance received from or for the account of customer may be accepted and applied by BioLife against any indebtedness owing by customer, without prejudice to, or the discharge of, the remainder of any such indebtedness regardless of any condition, provision, statement, legend or notation appearing on, referring to or accompanying any check or remittance.

10.3 BioLife reserves the right to assess a late fee at a rate equal to the interest paid by us for drawing on a corresponding bank loan, but at least at a rate of 8 percentage points above the then-current basic interest rate per annum as set forth by the Federal Reserve Bank or, if lower, the maximum amount permitted by applicable law, on all amounts not paid when due, calculated on a daily basis beginning with the first day following the invoice due date.

10.4 At any time, when in BioLife's opinion the financial condition of customer so warrants, or if customer fails to make payment when due or otherwise defaults hereunder, BioLife may change any terms of payment, suspend any credit previously extended to customer, require partial or full payment in advance and delay shipment until such terms are met, and pursue any other remedies available at law. In such event, if customer refuses to accept such changes, or in the event of bankruptcy or insolvency of customer or in the event any proceeding is brought by or against customer under any bankruptcy or insolvency laws or their equivalent, BioLife may cancel any order

then outstanding and/or terminate the contract with immediate effect without any liability to customer or others on its part and recover any products and/or deliverables held by the customer which remain the property of BioLife and enter upon the customer's premises for that purpose.

10.5 In the event of discontinuation of payments by the customer, collection and discount charges shall be borne by the customer. The customer shall pay discount charges, stamp duties, default interest immediately. We shall not be responsible to make timely presentation, protest, or notification or return of bills of exchange in the event they are dishonored.

## **11. Intellectual Property Rights**

11.1 BioLife is the owner of all intellectual property rights and all other rights related to the product(s).

11.2 The customer is prohibited from attempting to reverse engineer, alter, re-manufacture, and all other activity to learn the chemical composition, formula, manufacturing process, or any other secret information about the product(s).

## **12. Confidentiality**

12.1 The term "Confidential Information", as used herein, shall include all scientific, technical, business, or financial information disclosed by BioLife to customer, including any information learned by customer during any visit to BioLife's facilities. This Agreement shall not apply to Confidential Information or of any portion of such information which a customer can show by presenting adequate evidence:

(a) Is now or later made known to the public through no default by customer of its obligations under this Agreement; (b) Was in its rightful possession prior to the earliest disclosure by BioLife, as evidenced by written documents in customer's files; (c) Is rightfully received by customer from a third party having no obligation of confidentiality to BioLife; (d) Is independently developed by customer or by persons who did not have access to Confidential Information.

12.2 Customer agrees to hold in confidence and not publish or disclose to any third parties any of the Confidential Information without the prior written consent of BioLife, and not to use the Confidential Information for any purpose except for using the products and/or the results of the services. Customer agrees to use the same degree of care (and in any event not less than reasonable care) to safeguard the confidentiality of the Confidential Information that it uses to protect its own secret information, and to keep the Confidential Information in a secure location at all times.

12.3 Customer agrees to limit any disclosure of the Confidential Information only to those of its directors, officers, employees, and outside professional advisors (including consultants, independent contractors, and the like) or of any entity controlled, controlling, or under common control with customer ("Affiliate"), who have a need to know and who are bound by obligations of confidentiality and non-use at least as restrictive as set forth herein, and to advise such persons of customer's obligations hereunder.

12.4 In case customer is required to disclose Confidential Information in order to comply with laws, regulations or court order, customer shall disclose such Confidential Information only to the extent necessary for such compliance, provided, however, that customer shall give BioLife prompt written notice of such requirement or request to disclose Confidential Information so that BioLife may seek an appropriate protective order, and customer shall use its best efforts to secure confidential treatment of the Confidential Information to be disclosed.

12.5 Customer shall return any and all tangible Confidential Information provided to it by BioLife, including without limitation any materials, documents, plans, drawings, data carriers of whatever kind, and any copies thereof, to BioLife immediately upon BioLife's written request, provided, however, that customer may retain one copy thereof in the confidential, restricted access files of its legal counsel for the purpose of determining any continuing obligation and only in connection with that purpose.

12.6 No warranties or representations are made by BioLife for Confidential Information. Customer should rely on Confidential Information at its own risk. Customer expressly recognizes that ANY AND ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS".

12.7 In the event of breach, or a threatened breach of the provisions of this Section 12 by customer,

BioLife shall be entitled to an injunction restraining customer from committing such breach without showing or proving any actual damage sustained and without posting a bond thereof.

### **13. Data Privacy Protection**

We shall treat all personal data relating to the customer confidentially. BY PLACING ORDERS, THE CUSTOMER CONSENTS TO THE STORAGE AND FORWARDING OF PERSONAL DATA FOR THE PURPOSE OF CREDIT REVIEW, COLLECTION OF DEBTS AND NOTIFICATIONS UNDER ANY APPLICABLE LAWS AND REGULATIONS.

### **14. Notices**

Notices and other communications hereby required or contemplated shall only be effective if delivered in writing to the party for whom intended at its designated "Invoice Address" if to customer or the BioLife contact address if to BioLife, either by (a) personal delivery, (b) postage prepaid, return receipt requested, registered or certified mail, (c) internationally recognized overnight courier (such as UPS, FedEx, or DHL), or (d) facsimile with a confirmation copy sent simultaneously by any of the other methods described above. Notice by registered or certified mail shall be effective on the date officially recorded as delivered to the intended recipient by return receipt or equivalent, and in the absence of such record of delivery, the effective date shall be presumed to have been the fifth (5th) business day after deposit in the mail. Notices delivered in person or sent by courier shall be effective on the date of personal delivery. Notices delivered by facsimile shall be deemed to be effective on the date sent. Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized representative of the party to whom it was given.