

BIOMÉRIEUX TERMS AND CONDITIONS

1. Orders

By placing an order, the parties agree to these terms and conditions ("Terms"), which, together with any links or attachments incorporated by reference, constitute the entire agreement regarding: (i) the sale of any consumables, instruments, software, services, or other items listed in the applicable Sales Quote ("Products"); and (ii) the purchase and use of the Products. These Terms supersede any prior or conflicting agreements or documents, including any terms and conditions contained in a purchase order or other document submitted to bioMérieux, Inc. ("Seller") by Customer (as defined in the applicable Sales Quote). Seller reserves the right to reject any purchase order prior to acceptance for any reason. A purchase order is considered accepted by Seller upon the earlier of: (a) Seller providing written acknowledgment of acceptance to Customer; or (b) delivery of the Products to the Customer. Orders may not be cancelled or modified without the Seller's prior written consent. "Agreement" means these Terms, the Sales Quote, and any document signed by the Parties referencing these Terms and a Sales Quote.

2. Price & Payment Terms

- 2.1. **Payment.** The price for the Products is in the applicable Sales Quote. Customer will pay for Products no later than thirty (30) days after the date of Seller's invoice. Payments are deemed made by Customer when received by Seller. Interest will accrue on any undisputed, unpaid balances due to Seller at a rate of 1.5% per month (or the maximum legal interest rate allowed by applicable law, if less) from and after the due date. Seller reserves the right to require full or partial payment in advance or provide other security to our satisfaction, if Seller reasonably believes that Customer's financial condition or payment history does not justify the payment terms otherwise specified. Unless approved in writing in advance by Seller, invoices shall be paid by cash, check, or ACH. Seller reserves the right to reject or accept credit card payments on a case-by-case basis. Customer is not entitled to abate or reduce payments, or to withhold, discount, or offset any amounts or charges against the amounts due to Seller under this Agreement for any reason.
- 2.2. **Taxes.** Customer Product prices do not include any taxes, duties, levies, or other government fees that may apply to Customer's order. If they apply, it will be Customer's responsibility to pay them. If Seller pays them, Seller will add them to Customer's invoice. If Customer is tax-exempt, Customer will provide Seller with a valid, signed certificate or letter of exemption for each respective jurisdiction.
- 2.3. **Other Costs.** Customer is responsible for all freight, insurance, handling fees, and other shipping costs, as applicable, and Product prices do not include such charges. If Seller pays such charges, Seller will add these to Customer's invoice.
- 2.4. **Discounts, Rebates, and Warranties.** The pricing for the Products may reflect or be subject to discounts, rebates, warranties or other price reductions, which Customer may be obligated under applicable laws to report to Medicare, Medicaid or other state, federal or private payers, and to make this information available to these entities for review. It is the parties' intent that any discounts, rebates, warranties or other price reductions received by Customer under these Terms comply with the federal Anti-Kickback Statute and other applicable federal and state law and, further, that any discounts provided under these Terms or any other discount purchase program satisfy the safe harbor regulations of the federal Anti-Kickback Statute (including, but not limited to, the warranties safe harbor and the discount safe harbor set forth in 42 C.F.R. §1001.952 (g) and (h), respectively). Seller will provide Customer with an invoice or statement detailing the applicable discounts, rebates, and warranties and will provide such other information that may be requested by Customer in order for Customer to meet its reporting obligations under applicable law.

3. Shipping

Customer shall be responsible for all freight, insurance, handling fees if applicable, and any other shipping-related costs incurred to the delivery point.

- 3.1. **Consumables and Instruments not requiring installation by Seller.** Seller ships these Products FOB Origin. Title and risk of loss or damage passes to Customer upon delivery to a carrier, at which point, Customer is responsible for all loss or damage to the Products. However, Seller's warranty coverage also begins when such Products are delivered to a carrier, and Customer may submit a warranty claim if Products are lost or damaged during shipment. No loss or damage will relieve Customer from its payment obligations under these Terms. After a warranty claim for loss or damage during shipping, any proceeds from insurance on the Products will be paid to Seller.
- 3.2. **Instruments requiring installation by Seller.** Seller ships these Instruments FOB Destination. Title and risk of loss or damage to such Products remain with Seller until the Products are delivered to Customer's designated location, at which point they pass to Customer.
- 3.3. Unless Customer requests that Products be shipped under its own account, Seller will deliver the Products to a common carrier for shipping, based upon Seller's standard shipping practices, to the address designated by Customer. Seller may ship in one or more lots, in which case, each lot will be deemed a separate sale. Seller will not be liable for any failure or delay in shipping. If applicable, Customer shall be responsible for obtaining all necessary import or export licenses or permits for the Products. In the event of a shortage, Seller reserves the right to allocate inventories and production in its sole discretion.

4. Returns and Claims

Seller must pre-authorize all Product returns. Customer shall, in the event of lost, damaged, or defective Products, notify Seller in writing within five (5) business days of delivery and Seller will authorize any return as applicable, provided such damage or defect has not been caused by Customer's improper storage, handling, misuse, failure to use reasonable care, or failure to adhere to the Product label. If Customer fails to notify Seller within the five (5) day period, Seller will deem the Products accepted. In such event, any further issues shall be governed by Customer's warranty rights listed herein.

5. Product Use

- 5.1. **Permitted Uses.** Customer shall: (i) use all Products leased, purchased, or sold hereunder in accordance with its instructions for use by end-users, as specified on Product labels or inserts affixed to, included digitally, or accompanying the Products, ("Permitted Uses"); (ii) maintain, use, and store the Products as provided in their labeling or other written instructions; and (iii) not misuse any Product. Customer is solely responsible for its and its authorized users' use of any Product and shall indemnify, defend, and hold Seller harmless from and against any claim, demand, cause of action, or liability asserted by any third party

or government agency arising from or related to the use, possession, or operation of the Products inconsistent with their Permitted Uses or applicable laws.

- 5.2. Applicable Law and Regulations. Customer and its authorized users must always be and remain in full compliance with all applicable laws, rules and regulations, including, without limitation, those promulgated by state medical agencies and certification boards, relating to use of the Products and hold all such licenses, permits, or other authorizations that may be required for the purchase and operation of the Products. Customer shall ensure that all authorized users have the requisite training and skill required to use the Products, consistent with the Permitted Uses and any applicable law. Customer acknowledges that reagents or panels purchased by Customer ("Consumables") and equipment purchased by Customer ("Instruments") are specifically designed and manufactured to operate together. Customer agrees that it will only use bioMérieux Consumables with bioMérieux Instruments. Customer will store Consumables in accordance with Seller's storage and handling instructions (or, absent such instructions, in accordance with generally accepted industry customs and standards), including all temperature and climate control standards and other requirements under applicable laws.
- 5.3. Third Party Purchases. Customer represents that it (i) is not leasing or purchasing the Product on behalf of a third party, (ii) is not leasing or purchasing the Product to resell or distribute the Product to a third party, (iii) is not leasing or purchasing the Product to export the Product from the country to which Seller shipped the Product pursuant to the ship-to address designated by Customer at the time of ordering (the "Ship-To Country"), and (iv) will not export the Product out of the Ship-To Country.

6. Limited Warranty and Service

- 6.1. BioFire Products. Seller warrants the BioFire Products in accordance with the following applicable warranties:

- 6.1.1. Limited Warranty: https://www.biomerieux-usa.com/sites/subsidiary_us/files/warranty_-_standard_0.pdf
- 6.1.2. Extended Warranty for Instruments: https://www.biomerieux-usa.com/sites/subsidiary_us/files/warranty_-_extended_0.pdf

- 6.2. Non-BioFire Products. Seller warrants Non-BioFire Instruments and associated Consumables in accordance with the following applicable warranties:

- 6.2.1. Instruments. Seller warrants the Instruments to the Customer for a period of one (1) year after Products are installed at the Customer's site (the "Warranty Period") against defects in material and workmanship and failures to conform to Seller's specifications in effect on the date of installation. Installation includes Seller's issuance of a Proof of Installation, a written document signed by both parties confirming that the Instrument(s) has been delivered, installed at the designated site, and verified by Seller to be operating in accordance with applicable specifications.

Customer's sole and exclusive remedy for a breach of this warranty is, at Seller's sole discretion, the repair or replacement of any defect confirmed by Seller to have occurred under normal use and service during the Warranty Period, provided that Customer promptly notifies Seller in writing upon discovery of such defect.

- 6.2.2. Consumables. Seller warrants Consumables will conform with the specifications set forth in the applicable Product insert through the shelf-life expiration date listed on the applicable packaging or provided elsewhere. Customer shall promptly notify Seller of any Consumables which are found to be in breach of the above warranty. Upon verification by Seller, Customer's sole and exclusive remedy for said non-conforming Consumables shall be for Seller to either replace or, alternatively, in Seller's sole discretion, issue a credit note equal to the purchase value of the defective Consumables.

- 6.2.3. Warranty Services. Seller warrants that the maintenance or repair services ("Services") to be performed hereunder shall conform to Industry standards. If any covered repair is performed during the final thirty (30) days of the Warranty Period, bioMérieux warrants that specific repair or service for an additional thirty (30) days from the date it is performed, even if the Warranty Period has expired. Customer's sole and exclusive remedy for a breach of this warranty is repair or replacement of the Instrument by bioMérieux.

- 6.2.4. Exclusions. The above-mentioned warranties shall not apply to: (a) normal wear and tear; (b) accident, disaster, or any force majeure event; (c) misuse or negligence; (d) external causes, including but not limited to power failures or electrical surges; (e) products sold "as is"; (f) repair service, alteration, or modification of the Instrument by any person other than the authorized service representative of Seller; (g) operation outside stated environmental or use specifications; (h) operation with unapproved software, materials, or other products; or (i) failure to operate and maintain the Instrument in accordance with any Seller instruction or applicable law. Disposables and replacement items with a normal life expectancy of less than one (1) year such as batteries, lamps, bulbs, and card trays are excluded from this warranty.

- 6.2.5. Service Agreement. If Customer purchases a Service Agreement providing service coverage beyond the one (1) year standard warranty, or is requesting warranty services, said Services shall be governed by the additional Service Agreement Addendum available at: https://www.biomerieux-usa.com/sites/subsidiary_us/files/clinical_service_addendum.pdf

The Warranty is facility specific and does not transfer if the Product is moved to another facility unless Seller conducts or authorizes such move in writing. Customer acknowledges and agrees Customer has not relied on any other statement, promise, representation, or warranty made by or on behalf of Seller which is not expressly set forth in the Terms.

THE WARRANTIES AND REMEDIES SET FORTH AND INCORPORATED BY REFERENCE IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES OF ANY NATURE WHATSOEVER. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER MAKES NO FURTHER, AND HEREBY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES WHATSOEVER, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, ANY PRODUCT, REAGENT, INSTRUMENT, SOFTWARE, THIRD PARTY LICENSES, OR ANY SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INTERFERENCE, LACK OF INFRINGEMENT OF THIRD PARTY RIGHTS, OR WHICH MAY ARISE FROM COURSE OF DEALING OR USAGE OF TRADE, OR REGARDING THE COMPATIBILITY OR INTEROPERABILITY OF THE PRODUCT, INSTRUMENT, OR SOFTWARE WITH OTHER EQUIPMENT, LICENSES, DEVICES, PROPERTY, OR ACCESSORIES WHICH CUSTOMER USES WITH OR CONNECTS TO THE PRODUCTS, OR THAT PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS.

7. Software

- 7.1. Scope. The license below applies to application software incorporated into or embedded within the Instrument ("Application Software") and the related documentation provided by Seller to Customer ("Documentation"); provided that such Application Software is not subject to a third-party end user license agreement. Customer and its authorized users obtain no right, title or interest in or to the Application Software or Documentation, except for the limited license granted hereunder, and Seller and its licensors reserve all rights not expressly granted.

- 7.2. License. Seller hereby grants to Customer a royalty-free, non-exclusive, non-transferable license without power to sublicense, to use Application Software and Documentation for Permitted Uses solely in connection with the Instrument, and only for Customer's own internal business purposes.
- 7.3. Restrictions. Customer agrees not to (i) sell, transfer, license, loan or otherwise make available Application Software or Documentation in any form to third-parties, (ii) disassemble, decompile or reverse engineer Application Software, (iii) copy, modify, alter or otherwise change or supplement Application Software or Documentation without Seller's prior written consent, or (iv) alter or remove any legal or proprietary notice in or on Application Software or Documentation.
- 7.4. Termination. Any violation of the restrictions in Section 7.3 or failure by Customer to comply with the software updates in Section 7.5 will, in Seller's sole discretion, void the license and all warranties granted herein in connection with the Products, Instruments, and Consumables. This license shall automatically terminate when Customer's lawful possession of the Instrument ceases, unless earlier terminated pursuant to contract or law. Immediately upon termination, Customer shall (i) cease all use of Application Software and Documentation, and (ii) return and/or permanently delete all Application Software and Documentation as well as any copies made.
- 7.5. Software Updates. Customer accepts full responsibility to manage and maintain: (i) all critical operating system patches to minimize risk of exposure of the Instrument to cyber threats; and (ii) the latest Software Updates, upon being provided with same by Seller or an applicable third party.
- 7.6. Third Party Software. The warranty provisions set forth in these Terms will not apply to third-party owned software products that Seller provides to Customer. Seller agrees, however, to assign to Customer any warranty rights Seller may receive from any third-party supplier to the extent the original developer or third-party supplier allows.

8. Remote Services

Where applicable, Seller hereby grants Customer non-exclusive, non-transferable, and limited access to VILINK ("VILINK") to assist with the following:

- 8.1. Instrument Support. Seller may remotely access the Instrument to (i) investigate, troubleshoot, diagnose, or resolve Instrument errors or performance issues and (ii) provide training and assistance to Customer. Each VILINK remote access session can only be initiated upon Customer's express authorization.
- 8.2. Operational Data Management. Seller may collect technical, operational, and other non-personal data related to the use or performance of the Instrument to monitor performance and for other related analytical, statistical, or benchmarking purposes. Seller may use such non-personal data for (i) improving and enhancing Products or Services, (ii) research and development related to new products, features, or services, and (iii) other internal business and operational purposes.
- 8.3. Software Update Delivery. Seller may deliver patches, modifications, enhancements, corrections, and/or security improvements to the Software ("Software Updates"). Seller's obligation under this Section is limited to the remote delivery of the Software Updates to the Instrument. Customer shall be responsible to install the Software Updates on the Instrument.
- 8.4. Fees. Customer acknowledges failing to implement VILINK may, at Seller's discretion, result in up to a 20% increase in Services or Extended Warranty costs. For VITEK MS PRIME, additional fees shall apply. Furthermore, if a service dispatch is required that could have otherwise been avoided with the implementation of VILINK, Seller reserves the right to charge a dispatch fee based on its then prevailing rates.

9. Limitation of Liability

- 9.1. General Limitation. NOTWITHSTANDING ANYTHING IN THE TERMS, CUSTOMER DOCUMENTATION, SALES QUOTE, PURCHASE ORDER, MASTER AGREEMENT OR ANY ANCILLARY AGREEMENT (COLLECTIVELY THE "DOCUMENTS") TO THE CONTRARY, SELLER'S CUMULATIVE LIABILITY TO CUSTOMER, OR ITS EMPLOYEES, AGENTS, CUSTOMERS, OR INVITEES, OR ANY THIRD PARTIES, IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING OUT OF OR RELATED TO, WITHOUT LIMITATION, THE DOCUMENTS, PRODUCTS, OR PRODUCT PERFORMANCE SHALL BE EXPRESSLY LIMITED TO THE PURCHASE PRICE PAID BY CUSTOMER IN CONNECTION WITH THE SPECIFIC PRODUCT(S) WHICH ARE THE PROXIMATE CAUSE OF ANY SUCH LIABILITY.
- 9.2. Consequential Damages. NOTWITHSTANDING ANYTHING IN THE DOCUMENTS TO THE CONTRARY, SELLER SHALL NOT BE LIABLE TO CUSTOMER, OR ITS EMPLOYEES, AGENTS, CUSTOMERS, OR INVITEES, OR ANY THIRD PARTIES, IN ANY INSTANCE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF BUSINESS, PROFITS, GOODWILL OR OPPORTUNITY, LOSS OF ANY DATA, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY MADE HEREIN.
- 9.3. Exceptions to Limitations. The limitations set forth in this section shall not apply with respect to: (i) injury to a person and/or tangible property arising from the willful misconduct or gross negligence of Seller; (ii) fraud or (iii) to the extent such disclaimer is prohibited under applicable law. Customer acknowledges and agrees Seller has entered into the arrangement in reliance upon the disclaimers of warranties and limitations of liability in these Terms and that the same form an essential basis of the bargain between the parties.
- 9.4. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES, COSTS, EXPENSES, OR OTHER LIABILITIES RELATED TO CUSTOMER'S USE OF THE PRODUCTS OUTSIDE ITS PERMITTED USES.

10. Termination

This agreement may be terminated by either party upon written notice of any of any material breach of these Terms, unless the breaching party cures said breach within thirty (30) days after the non-breaching party's receipt of written notice (or immediately upon written notice if such event is not curable). Upon the termination of this Agreement, Seller may (i) accelerate, and declare as immediately due and payable, the outstanding balance of all payments due under this agreement and (ii) Customer shall return any Seller owned Instrument to Seller unless otherwise agreed to in writing. Seller shall have the right to recover all reasonable and proximate damages suffered by reason of such termination, including reasonable attorneys' fees.

11. Export Controls

The Products, including hardware, application Software, Services, and any related technology, provided to the Customer may be subject to applicable export control laws and regulations including, without limitation, the United States Export regulations. Customer agrees that Products will not be used, in their entirety or in part, directly or indirectly in support of activities, sectors and destinations restricted or prohibited by the United States, the European Union, or any other applicable jurisdiction, except as authorized under applicable laws and regulations. Products will only be used for clinical military use when authorized under applicable laws

and regulations and with prior authorization of Seller. Products will not be used in activities relating to biological, chemical, or nuclear weapons or applications. Customer agrees that Products will not be used directly or indirectly, sold, re-exported or incorporated into products for the direct or indirect benefit of any person or entity named on any applicable government's denied or restricted party list.

12. Intellectual Property

Many of the Products are covered by U.S. patents, patents pending, or their foreign counterparts, owned or licensed by Seller or affiliates, which may be viewed at www.biomerieux-usa.com/patents. Notwithstanding anything to the contrary in this Agreement, nothing contained herein will be deemed, construed or interpreted as a grant, transfer, or conveyance to Customer or any third party, expressly or by inference, of any right, title or interest in, or license or right to use, any, all or any portions of Seller's inventions, patents, know-how, processes or procedures, technology, copyrights or trademarks, or other intellectual property, other than the right to use the Products for Permitted Uses only. Customer shall not: (i) have any ongoing right to be supplied with, or to manufacture or to have manufactured, any quantities of Products or Third Party Software beyond those ordered in accordance with the terms and conditions of this Agreement; (ii) modify, copy, translate, enhance, reverse engineer, decompile, disassemble, create derivative works based upon, sublicense, resell, or convey in any manner any Product or Third Party Software or any component thereof to any third party anywhere in the world; or (iii) remove, modify, change, cover, or otherwise obscure from the Products any labels, trademarks, copyright, or other proprietary notices or legends. Any breach by Customer of this section shall entitle Seller to terminate this agreement or any Purchase Order upon receipt of written notice to Customer.

13. Regulatory

Each party agrees to comply with all laws applicable to its business operations, in all material respects, including without limitation, all laws and regulations regarding the collection, use and storage of health information, the Health Insurance Portability and Accountability Act of 1996, as amended by (a) Subtitle D of the Health Information Technology for Economic and Clinical Health Act, any regulations promulgated thereto, and all similar applicable state laws. Each Party shall immediately notify the other after receipt of final notice of exclusion from any Federal Health Care Program. To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the "Act") and the regulations promulgated thereunder are applicable to the Terms, and until the expiration of four (4) years after the last sale of the Products pursuant to the Terms, Seller shall make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of the Terms and any books, documents, records and other data of Seller that are necessary to verify the nature and extent of the costs incurred by Customer in purchasing such Products. If Seller carries out any of its duties under the Terms through a subcontract with a related organization involving a value or cost of ten thousand dollars (\$10,000) or more over a twelve-month period, Seller shall cause such subcontract to contain a similar clause.

14. Miscellaneous Provisions

- 14.1. [PHI](#). Customer agrees not to send any electronic protected health information (PHI) to Seller unless required by Seller. Customer shall ensure that to the extent that an Instrument contains PHI, Customer will remove such PHI from the Instrument prior to its return to Seller. Customer shall provide Seller with and shall assist Seller in obtaining all error and other information generated through use of the Products, as reasonably requested by Seller. Customer acknowledges and agrees that Seller shall have the right to use such information, provided that such use follows applicable laws and regulations.
- 14.2. [No Assignment](#). This agreement may not be transferred or assigned by Customer in whole or in part, to a third party, including an affiliate of Customer. Any attempted assignment or transfer shall be null, void, and invalid. Seller may delegate, at its sole discretion, to any sales agent or distributor all of Seller's duties pertaining to distribution of Products or related activities under the Agreement, so long as any such sales agent or distributor is authorized by Seller.
- 14.3. [Governing Law](#). These Terms will be interpreted according to the laws of the State of Utah without application of conflict of laws principles. Any legal action or proceeding related to this Agreement shall be brought exclusively in the state or federal courts located in Salt Lake City, Utah. The parties hereby consent to the personal jurisdiction and venue of such courts and waive any objections to the convenience of this forum. The United Nations Convention on the International Sales of Goods will not apply to the transactions under these Terms.
- 14.4. [Uncontrollable Circumstances](#). Neither party will be responsible or liable for failing to perform any obligations under these Terms to the extent caused by circumstances beyond its reasonable control.
- 14.5. [Vision Suite](#). Customer's purchase or use of FIREWORKS, TRENDS, CLARION, or MAESTRIA is subject to the BIOMÉRIEUX VISION SUITE General Terms & Conditions, as well as the Additional Terms applicable to the purchase or use of the specific software solution. All terms can be found at: <https://www.biomerieux.com/corp/en/our-offer/hospital-laboratory/specialty/connectivity-and-data/terms-and-conditions.html>
- 14.6. [No Waiver; Invalidity](#). A waiver or modification by Seller of any condition or obligation of Customer hereunder shall not be construed as a waiver or modification of any other condition or obligation and no such waiver or modification granted on any one occasion shall be construed as applying to any other occasion.
- 14.7. [Confidentiality](#). Customer shall keep confidential any non-public information, including commercial information (e.g. prices), or instructions received from Seller as a result of discussions, negotiations, and other communications between the parties in relation to Seller's Products or Services. All such confidential information shall remain Seller's exclusive property.
- 14.8. [Requirement to Reduce to Writing](#). These Terms may only be modified in a writing signed by Customer and Seller which expressly states the intent to modify these Terms.
- 14.9. [Severability](#). Each clause of these Terms is distinct and severable. If any provision under the Terms is declared unenforceable, the other provisions herein will remain in full force and effect. Any provision of these Terms that by its nature is reasonably intended to survive beyond termination or expiration shall survive.