



## GENERAL CONDITIONS OF SALE

### Interpretation

1. In these conditions:  
“**bioMérieux**” means bioMérieux Australia Pty Limited, ABN 18 007 122 527;  
“**Buyer**” means any person at whose request goods are supplied by bioMérieux;  
“**GST**” means tax that is payable under the GST Act;  
“**GST Act**” means A New Tax System (Goods and Services Tax) Act 1999 as amended;  
“**Product or Products**” means any goods including reagents, disposables and accessories, instruments and software supplied by bioMérieux to the Buyer under these conditions.

### General

2. The Buyer acknowledges and agrees that these terms and conditions apply to any order placed by the Buyer for Products and shall at all times prevail over any and all other conditions of a Buyer's order to the extent of any inconsistency (unless agreed otherwise in writing).

### Quotations and Prices

- 3.1 Unless otherwise agreed in writing, bioMérieux's quotations are valid for 30 days after the date of issue.
- 3.2 A quotation given by bioMérieux is not to be construed as being an offer by bioMérieux to sell and may be withdrawn by bioMérieux at any time.
- 3.3 Notwithstanding any quoted price, reagents, disposables and accessory prices are invoiced at the price in force at the date of shipping.
- 3.4 Prices quoted are subject to change without notice to the Buyer.
- 3.5 GST shall be payable on all sales unless evidence of exemption is supplied at the date of the order.
- 3.6 Unless otherwise agreed by the parties in writing, all shipment costs and expenses, including shipment costs and expenses in respect of partial shipments, are pre-paid by bioMérieux and re-invoiced to the Buyer.

### Orders

- 4.1 A Buyer may place an order for the supply of Products by outlining in writing to bioMérieux the:
  - a) product name and reference number;
  - b) address for delivery and invoicing; and
  - c) the Buyer's account number with bioMérieux.
  - d) quantity
  - e) required dispatch date
  - f) any other material information.
- 4.2 bioMérieux reserves the right to:
  - g) set minimum order quantities or minimum order values
  - h) set minimum lead times
  - i) make an item non-stocked or replenish to order from the overseas manufacturer.
  - j) supply product using the shortest unexpired shelf life available at the time unless otherwise agreed in writing
  - k) set an additional charge for customers requesting a single batch for individual, forward or scheduled orders
  - l) any changes to product orders (including quantity or batch) must be made in writing and respect the lead time and may incur a handling fee.
- 4.3 bioMérieux reserves the right to refuse to accept an order including the right to sell its Products solely to professionals authorised to provide biological analysis results.

- 4.4 An order will not be binding until accepted by bioMérieux in writing.

### Invoicing

- 5.1 Products are invoiced on the shipping date at the quoted price, as accepted by the Buyer. Unless otherwise advised by the Buyer, bioMérieux reserves its right to establish a deferred invoicing of the Products.
- 5.2 Failure by the Buyer to dispute an invoiced amount within a period of 14 days from the date of the invoice shall constitute acceptance of the invoice by the Buyer.

### Payment

- 6.1 bioMérieux may accept payment on credit terms at their discretion (subject to financial assessment of the Buyer). Buyer agrees to facilitate such assessment and provide necessary information in timely manner. In such a case payment shall be made within 30 days of the date of the invoice, by way of electronic funds transfers to a bank account, the details of which shall be provided by bioMérieux to the Buyer upon request.
- 6.2 Interest shall be payable for late payments from the date payment becomes due to the actual date of payment at the rate of 2% per annum above the base lending rate of HSBC.

### Deliveries

- 7.1 Products will be delivered and installed as specified in the Buyer's order.
- 7.2 bioMérieux may at its option deliver by instalments, and each instalment shall be treated as a separate contract. Lateness in delivery of Products shall not constitute a breach of contract and shall not entitle the Buyer to cancel any subsequent instalments or refuse to accept delivery of such instalments or otherwise treat the contract as repudiated.
- 7.3 bioMérieux shall provide the Buyer with reagents packed with a minimum residual shelf life, details of which shall be provided by bioMérieux to the Buyer upon request.
- 7.4 The Buyer acknowledges that delivery times provided by bioMérieux to the Buyer are estimates only, and bioMérieux shall not be liable for any loss, damage or delay occasioned to the Buyer arising from late provision or non-delivery of the Products.
- 7.5 Unless otherwise agreed in writing by bioMérieux, Customers requiring orders to be dispatched within one working day (i.e., within 24 hours of order receipt, excluding weekends and public holidays) will incur an urgent handling fee, as well as any additional Transport charges required by agreement with the customer to use a different shipping service.

### Dangerous Goods

- 8 Products classified as dangerous goods under the Dangerous Goods (Road and Rail Transport) Act 2008, or any equivalent legislation shall incur an additional fee.

### Lease Purchase

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

BIOMÉRIEUX AUSTRALIA PTY LTD  
ABN 18 007 122 527

PO Box 599, NORTH RYDE, NSW BC 1670 Tel: 1800 333 421  
Ground Floor, 2 Richardson Place, NORTH RYDE, NSW 2113



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### Passing of Risk

- 10 The risk in any Products and liability for any loss or damage shall pass to the Buyer as soon as the Products are delivered at place (DAP) by bioMérieux or any sub-contractor of bioMérieux to the agreed destination in preparation for unloading by the Buyer.

### Ownership Rights

- 11.1 All Products remain the property of bioMérieux until full payment has been received by bioMérieux.
- 11.2 If payment is not received by bioMérieux in accordance with the invoice issued by bioMérieux to the Buyer and within the payment period, bioMérieux;
- a) Reserves the right to recover possession of any unpaid Products; and
  - b) Shall retain that amount of the price already paid by the Buyer as compensation for the use of the Products.

### Traceability Requirements

- 12.1 The Buyer undertakes to comply with all traceability requirements which apply to the Products ordered.
- 12.2 bioMérieux will not be liable for the non-compliance by the Buyer with traceability requirements after delivery of the Products to the Buyer.

### Claims

- 13.1 The Buyer shall have 2 days from the date of delivery of Products to report to bioMérieux any missing or damaged Products.
- 13.2 Claims for missing or damaged Products must be made in writing by the Buyer and sent to:  
[orders.anz@bioMérieux.com](mailto:orders.anz@bioMérieux.com)  
within 2 days of receipt of the Products by the Buyer.
- 13.3 No Product returns shall be accepted without the prior written consent of bioMérieux.

### Warranties

#### 14.1 Reagents:

- 14.1.1 bioMérieux's reagents are intended for in vitro use only.
- 14.1.2 The conformity of reagents as outlined in the specifications indicated in the package insert is guaranteed until their expiry date.
- 14.1.3 bioMérieux shall provide the Buyer with reagents packed with a minimum residual shelf life, details of which shall be provided by bioMérieux to the Buyer upon request.

#### 14.2 Instruments

- 14.2.1 bioMérieux warrants to the Buyer that instruments are free of defects in material and workmanship and defects arising from failure to conform to the user's manual applicable on the date of installation, and as provided to the Buyer, for the period of 1 year from the date of installation and when the certificate of installation or equivalent is signed.
- 14.2.2 bioMérieux agrees to either repair or replacement, any defect notified promptly in writing to bioMérieux by the Buyer within the 1-year warranty period.
- 14.2.3 If the instrument cannot be repaired at the Buyer's site, the instrument shall be repaired at the premises of bioMérieux with transportation costs being borne by bioMérieux.

- 14.2.4 bioMérieux must provide its written consent for the return of instruments.

#### 14.3 Software

- 14.3.1 bioMérieux warrants that the software (other than the software embedded in the instrument) will be in accordance with the descriptions and specifications outlined in the documentation accompanying the software for a period of 90 days from the date of installation. During this warranty period bioMérieux agrees to provide technical support for the software by correcting any deficiencies in the software but in no way, by redesigning the software.

- 14.3.2 bioMérieux warrants those interventions are done using tools which are protected by updated antivirus software.

#### 14.4 General

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

- 14.4.2 bioMérieux will evaluate warranty claims upon receipt of written notification as follows:

- a) Make remote diagnosis and if possible, will correct the defect;
- b) If required, conduct an onsite evaluation within 3 business days, excluding public holidays.

- 14.4.3 The Buyer will provide access to bioMérieux to any technical support, facilities, hardware, software or information in the Buyer's possession necessary, in a timely manner, necessary for bioMérieux to carry out any repairs and bioMérieux will correct any defect, the subject of a warranty claim, at no additional cost to the Buyer as soon as practicable.

- 14.4.4 This warranty will not apply to the extent the Products do not conform to and/or function in accordance with the applicable written technical documentation as a result of a defect arising from:

- a) any act or omission of the Buyer;
- b) any revision or modifications made to the Products of any kind or nature (other than by bioMérieux or any person under the express direction of bioMérieux) by the Buyer or on behalf of the Buyer;
- c) the malfunction of any Buyer-supplied or Buyer-authorized third-party software or equipment;
- d) Buyer operation of the Products other than in accordance with applicable documentation or design, or on hardware not recommended, supplied or approved by bioMérieux; or
- e) Any force majeure event in relation to the installation of the Products.

- 14.4.5 This warranty shall have no effect:

- a) In relation to disposables and replacement items which have a life expectancy of less than 1 year included, but not limited to, any batteries, lamps and tubing in the Products;
- b) In respect to any Products which have been relocated without facilitation by bioMérieux; and
- c) In respect to any Products which have not been used under normal operating conditions and maintained in accordance with the written instructions, packaging inserts and user's manuals provided by bioMérieux.



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### Buyer's Acknowledgement

- 15.1 Software included in the price list is subject to a non-exclusive license agreement.
- 15.2 Software programs cannot be reproduced, modified or transferred without the written consent of bioMérieux.
- 15.3 bioMérieux assumes no responsibility for the software compatibility with the Buyer's hardware.
- 15.4 Software supplied by bioMérieux is warranted to be free of viruses as at the date of delivery.
- 15.5 bioMérieux will not be held responsible for any contamination of the Buyer's computer/hardware whatsoever.
- 15.6 bioMérieux reserves the right to invoice complementary services provided to the Buyer by bioMérieux due to contamination existing in the Buyer's computer hardware.

### Limitation of Liability

- 16.1 bioMérieux's liability for a breach of an express warranty, a condition or warranty implied by Schedule 2 of the Competition and Consumer Act 2010 (Cth) ("CC Act") (other than s51, s52 and s53) is limited to:
  - 16.1.1 In the case of goods, any one or more of the following:
    - 16.1.1.1 The replacement of Products or the supply of an equivalent Products;
    - 16.1.1.2 The repair of Products; or
    - 16.1.1.3 The payment of the cost of repairing or replacing Products or of acquiring an equivalent Products.
  - 16.2 Where the Product is not manufactured by bioMérieux the guarantee of the manufacturer of those goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Product. bioMérieux agrees to assign to the Buyer, on request made by the Buyer the benefit of any warranty or entitlement to the Product that the manufacturer has granted to bioMérieux under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- 16.3 bioMérieux is not liable for and the Buyer releases bioMérieux from any claims in respect of faulty or defective goods based on specifications supplied by the Buyer unless such specifications have been wholly prepared by bioMérieux and the responsibility for any claim has been specifically accepted by bioMérieux in writing. In any event bioMérieux's liability under this paragraph is limited strictly to the replacement of defective goods in accordance with para 16.1 of these conditions.
- 16.4 Except as provided in these conditions and the extent allowable by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the services or goods for any purpose or as to design, materials, workmanship or otherwise are expressly excluded [Please note that this mandatory wording is not intended to exclude bioMérieux's right to rely on s64A of the CC Act where it is appropriate to do so].
- 16.5 bioMérieux is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind in relation to the supply of Products, arising from the negligence of bioMérieux or in any way whatsoever.

### Waste Material

- 17.1 Save anything to the contrary expressly agreed to by bioMérieux or to the extent prohibited by law, the Buyer is responsible for the cost and collection of, treatment, recovery and environmental sound disposal of the Product, pursuant to the Protection of the Environment Operations Act 1997 (NSW) or any other relevant legislation.
- 17.2 The Buyer expressly agrees that in the event of re-sale of any Products supplied by bioMérieux and/or transfer of any Product in any way, including a loan or a rent for free or for a fee, or donation or on any other terms, bioMérieux will be released of any obligation regarding the cost and/or elimination of the waste material. The Buyer will be solely responsible for the documentary, technical and administrative management of the removal of the waste material. The Buyer indemnifies bioMérieux against any claims, damages or loss arising from any act or omission of the Buyer or the Buyer's agents, employees, contractors or assigns in relation to the maintenance and /or removal of the waste material.

### Personal Data Protection

- 18.1 The Buyer accepts that its personal data will be used by bioMérieux and other entities of the bioMérieux group, in accordance with the provisions of the Privacy and Personal Information Protection Act 1998 ("PPIP Act"). This data is for the exclusive use of bioMérieux. In accordance with PPIP Act the Buyer has the right to access, modify and rectify such data. For this purpose, the Buyer can contact its account manager.
- 18.2 Within the framework of warranty operation of the systems sold by bioMérieux or the quality control of these systems, the Buyer grants bioMérieux access to the patient's personal data for a required period of time in order for bioMérieux to perform the abovementioned operation. After receipt of written consent from the Buyer, bioMérieux undertakes to set up, from the beginning of the warranty operation period, appropriate devices and safety procedures so as to guarantee the safety, integrity and confidentiality of the data pertaining to the Buyer according to PPIP Act.

### Assignment

- 19.1 The Buyer shall not assign or transfer this contract or any of its rights and obligations arising under these terms, or any order, to any other party, including to an affiliate, without the prior written consent of bioMérieux.
- 19.2 Any change in the ownership or control of the Buyer shall be deemed an assignment which requires the written consent of bioMérieux.
- 19.3 The Buyer acknowledges that bioMérieux can assign or transfer this contract or any order and bioMérieux can be subject to a change of control for the benefit of a third party.



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### Notices

- 20 Any notice required or contemplated by these terms and conditions shall be deemed to have been duly given if it is in writing, properly addressed and delivered personally or mailed by registered or certified mail or by prepaid post to the Buyer or bioMérieux at their respective addresses for service or such other address nominated by a party in writing.

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### Waiver

- 21 The rights of bioMérieux under these terms and conditions shall not be prejudiced in any way should bioMérieux consent to grant the Buyer an extension of time or other indulgence.

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### Severability

- 22 If any provision of these terms and conditions are deemed by a court of law to be void, invalid or unenforceable then such provision shall be severed from these terms and conditions and the remaining provisions shall remain full force and effect.

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### Separate Contract

- 23 Each order agreed between bioMérieux, and the Buyer constitutes a separate contract for the supply of the Product and unless otherwise permitted in the contract, the breach of any one such contract shall not be grounds for termination of any other contract so formed between the parties.

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### Force Majeure

- 24 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of bioMérieux or the Buyer either party is unable to perform, in whole or in part, any obligation under this contract, that party is relieved of their obligations to the extent and for the period that it is so unable to perform and is not liable to the other party in respect of such inability, however an obligation to pay money is never excused by such circumstances.

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### Goods and Services Tax

- 25.1 Words and terms used in this clause where they are defined in the GST Act shall have those meanings.
- 25.2 Unless specifically described as including GST all fees, rates, charges and prices indicated in this contract are exclusive of GST.
- 25.3 The Buyer must pay to bioMérieux any GST payable in respect of any taxable supply made to the Buyer by bioMérieux on that taxable supply.
- 25.4 If the sale is a taxable supply and GST has not been included in the tax invoice, bioMérieux will provide the Buyer with a tax invoice for GST which may be issued in addition to any other invoice for that taxable supply.
- 25.5 The GST must be paid at the same time as the payment of the fees, prices, charges or any other amount payable in respect of the taxable supply.

### Applicable Law

- 26.1 These conditions of sales are governed by and construed in accordance with the laws of Australia.
- 26.2 Any dispute shall be settled by the Courts of New South Wales (Australia) which Courts shall have exclusive jurisdiction, even in the case of the multiple defendants or claims for contribution from a third party

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### DAFF Biosecurity requirements for culture media product

- 27.1 DAFF Biosecurity imposes a condition on our import permit for Dehydrated Culture Media (DCM) that prepared media manufactured using the imported DCM must be limited to *in vitro* laboratory studies (or *in vivo* use in laboratory organisms only) unless approved by DAFF Biosecurity for specific *in vivo* use in non-laboratory organisms. DAFF Biosecurity also require that all users adhere to the current handling and disposal procedures for laboratory products stated in the current AS/NZS 2243 Safety in Laboratory standard. These conditions are in place to ensure prepared media is not being used in any way that is associated with therapeutic manufacture (e.g., vaccines) or *in vivo* use in non-laboratory organisms (e.g. chickens, sheep, cattle etc.) without their approval
- 27.2 More information regarding the DAFF Biosecurity restrictions can be found on their website:  
<http://www.daff.gov.au/aqis/import/biological/in-vivo>