

## TERMS AND CONDITIONS OF PRODUCT MATERIAL TRANSFER AND SUPPLY

These terms govern the sale, supply, and material transfer of products by BioCifer Pty Ltd ABN 48 610 848 532 of Level 8 East Wing, 451 Coronation Drive (The Wesley Hospital), Auchenflower QLD 4066 (**BioCifer**) to a product customer (**Customer**). BioCifer products are not supplied other than on these terms. Customers accept these terms by placing an order for products, or by accepting, retaining, unsealing or using products, once supplied. Customers who do not accept these terms must not order, accept, unseal or use BioCifer products.

### 1. DEFINITIONS

In these terms:

**ACL** means the Australian Consumer Law, as defined and applied in the *Competition and Consumer Act 2010* (Cth).

**ACL Guarantee** means a guarantee under the ACL that applies in relation to the supply of Products to the Customer (other than a guarantee under section 51, 52 or 53 of the ACL).

**Confidential Information** of BioCifer includes the Products and information about the Products, their composition and characteristics.

**GST and Tax Invoice** have the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Price** means the price notified by BioCifer to the Customer for each Product to be sold and supplied to the Customer.

**Product** means the BioCifer product(s) purchased by or supplied to the Customer by BioCifer.

**Product Handling Requirements** includes any Product storage, use and handling specifications and documentation provided or published by BioCifer, includes generally accepted or industry-standard storage, use and handling requirements for products of the same nature as the Products, includes regulatory requirements relating to the storage, use and handling of the Products, and also includes (if the Product is temperature controlled) correct and continuous temperature control of the Products.

### 2. TERMS OF SALE AND SUPPLY

These terms govern the sale, supply and material transfer of the Products to the Customer. These terms are the entire agreement between BioCifer and the Customer in relation to the sale, supply and material transfer of the Products. All other negotiations and documents purporting to impose terms about the sale or supply (including the terms of any order document provided by the Customer) are excluded.

These terms may not be waived or varied except in writing signed by BioCifer.

BioCifer may update these terms from time to time, and without notice to the Customer. Updated terms apply to orders placed after any such update.

### 3. PLACEMENT AND ACCEPTANCE OF ORDERS

Written orders for Products by a Customer, once placed, cannot be varied or withdrawn except by agreement with BioCifer.

Each order by a Customer for Products is subject to acceptance by BioCifer. Orders may be accepted by BioCifer by written notice, delivery of a Tax Invoice in respect of the order, or by supply of the Products ordered.

Cancellation of orders or return of Products for credit is subject to the prior written agreement of BioCifer which may be given or withheld at BioCifer's discretion and on such conditions as BioCifer requires.

### 4. PRICES AND GST

Pricing is expressed by BioCifer in Australian dollars and, unless otherwise stated, is exclusive of GST. If GST is applicable to the supply of Products to a Customer, BioCifer must provide a Tax Invoice in relation to that supply and the Customer must pay the GST applicable to the supply in addition to the stated price.

Prices are subject to change without prior notice. Prices may vary due to fluctuations in exchange rates, rates of freight, insurance, customs duties, shipping expenses, sorting and stacking charges, cartage, and cost of materials and production.

### 5. PAYMENT

Payment for Products must be made by the Customer upon receipt of BioCifer's invoice with product being shipped once full payment is received. Unless another arrangement is made, BioCifer may dispatch Products for delivery on an agreed deposit with balance due within 7 days after receipt of Product.

BioCifer may charge and accrue interest on overdue accounts at the Reserve Bank of Australia Cash Rate Target plus 4 percentage points. BioCifer may defer deliveries of further Products if any of a Customer's accounts are overdue.

### 6. DELIVERY

- a. BioCifer will endeavour to deliver Products to the Customer on an agreed delivery date. However, BioCifer is not liable for delay in delivery or for any loss or damage to the Customer arising from delays to delivery.
- b. BioCifer may make a reasonable charge for storage of Products if delivery instructions are not provided by the Customer or if delivery is required to be postponed for any reason.
- c. Packaging materials and method of consignment shall be at BioCifer's discretion. An additional charge may be made in respect of specific packaging, consignment or delivery requirements of the Customer.
- d. Risk in Products ordered passes to the Customer on delivery of Products to the Customer or otherwise in accordance with the Customer's delivery instructions. The Customer is taken to have accepted delivery of Products unless the Customer immediately notifies BioCifer of delivery failure, shortage or damage-in-transit.

- e. BioCifer reserves title in Products delivered to the Customer until payment for the Products is made by the Customer in full. The Customer must not deal with the Products inconsistently with this clause.

## 7. FORCE MAJEURE

If BioCifer is prevented from or delayed in performing any of its obligations by force majeure, including but not limited to industrial action or natural disaster, then BioCifer shall be excused from compliance with such obligations for as long as the force majeure continues. BioCifer must give notice to the Customer of the circumstances and their likely duration. If BioCifer is unable to provide the Products for 30 days after their planned delivery date then BioCifer may, by written notice, cancel the Customer's order and refund any payment made.

## 8. PRODUCT WARRANTY

- a. Subject to these terms, BioCifer warrants to the Customer that the Products supplied to the Customer under these terms will be free from defects in materials and workmanship that are notified to BioCifer within 90 days following the date the Products are delivered by BioCifer to the Customer.
- b. This warranty does not apply to Products not treated in compliance with Product Handling Requirements.
- c. If a defect occurs under this clause, the Customer must notify BioCifer by email to [admin@biocifer.com](mailto:admin@biocifer.com) or by telephone to 1800 539 199, including details of the defect, relevant purchase order or invoice number, and item, batch and/or serial number. The Customer must also if requested by BioCifer return the relevant Product or part to BioCifer.
- d. In response to a defect notified under this clause, BioCifer may verify that the relevant Product is defective. BioCifer will then, in its sole discretion, either:
  - i. replace the Product or defective part (including delivery costs);
  - ii. refund the purchase price of the defective Product or defective part to the Customer; or
  - iii. advise the Customer of the reasons why the defect is not a valid warranty claim under this clause.
- e. If BioCifer determines that a claim is not a valid warranty claim under this clause, the Customer must reimburse delivery and other costs incurred by BioCifer in its investigations of the claim.
- f. This warranty is in addition to any statutory warranties or guarantees available to the Customer by law that cannot be excluded by these terms.

## 9. LIABILITY

- a. Any condition, warranty or representation in respect of the Products implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded to the maximum extent permitted by law.
- b. The Customer acknowledges that BioCifer has not represented that the Products are fit for the Customer's particular purposes, and that the Customer has not relied on the skill or judgement of BioCifer in relation to the purpose for which the Customer acquires the Products. The Customer accepts responsibility for determining that the Products are suitable for the Customer's particular purposes.
- c. BioCifer is not liable for any indirect or consequential loss or damage suffered by the Customer or any other person, however caused, including but not limited to loss of revenue, profit, business, goodwill or reputation, or liability to another person.
- d. Nothing in these terms is to be interpreted as modifying or excluding the application of any State or Federal legislation, including the ACL, applicable to the supply of the Products, which cannot be so modified or excluded.
- e. Where the ACL applies, note: *"our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."*
- f. If one or more ACL Guarantees apply, BioCifer's liability for failure to comply with such ACL Guarantees is limited to one of the following (at the discretion of BioCifer):
  - i. the replacement of the Product or the supply of an equivalent Product;
  - ii. the repair of the Product;
  - iii. the payment of the cost of replacing the Product or of acquiring equivalent Product; or
  - iv. the payment of the cost of having the Product repaired.

## 10. PRODUCT RISK AND INDEMNITY

The Customer must comply, and must ensure its personnel and agents comply, with Product Handling Requirements.

The Customer assumes all risk and liability for loss, damage or injury to any persons or property arising from its possession and use of the Products.

The Customer shall keep BioCifer, and its officer and related bodies corporate indemnified against all losses, claims, damages or liabilities of whatsoever nature including, without limitation, claims for death, personal injury, damage to property and consequential loss, which arise in connection with a breach of these terms by the Customer or the acts or omissions of the Customer or its personnel or agents.

## 11. INTELLECTUAL PROPERTY RIGHTS

The Customer acknowledges and agrees that the Products may be the subject of, or the output of, intellectual property rights in Australia and elsewhere. The Customer must not analyse, reverse-engineer, reproduce, or otherwise exploit the Products or their manner of manufacture, other than to use the Products for its own internal purposes. No intellectual property rights are assigned or licensed under this agreement, except as expressly indicated under clause 12.

The Customer must not alter or remove any Product marking, including any marking relating to intellectual property rights.

## **12. MATERIAL TRANSFER TERMS AND CONFIDENTIALITY**

BioCifer grants the Customer a non-exclusive, non-transferable right to use the Products for the Customer's own internal purposes. The Customer is not authorised to, and must not, on-sell or on-supply the Products to any other person without the prior written consent of BioCifer. The Customer must keep the Products at the site to which they were originally delivered.

The Customer must not disclose, or allow the disclosure, of any Confidential Information of BioCifer, and must limit the use of any such information within the Customer's organisation to such of its personnel who have a need to know the information for the purpose of the Customer's authorised use of the Products.

The Customer must not make or authorise any publication relating to BioCifer's Confidential Information without the prior written consent of BioCifer

## **13. COMPLIANCE**

The Customer must comply with all regulatory requirements applicable to the Products, once delivered. The Customer must ensure that all regulatory necessary information, notices or warnings are supplied to its personnel and agents who may handle the Products.

## **14. MISCELLANEOUS**

- a. Queensland law applies to these terms. The parties submit to the non-exclusive jurisdiction of the Queensland Courts and the Courts of appeal from those Courts.
- b. This agreement may be altered only in writing signed by each party.
- c. Neither party may assign or purport to assign this agreement or any right or obligation under this agreement.
- d. Each party must pay its own costs of negotiating, preparing and performing this agreement.
- e. Any taxes, duties or charges levied in connection with this agreement must be paid by the Customer.
- f. A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the terms of this agreement continue in force.
- g. The parties are independent contractors. This agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- h. No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver.
- i. This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior agreements or understandings between the parties in connection with its subject matter