GENERAL TERMS OF SALE

1. Definitions

“PRODUCTS”: The pharmaceutical PRODUCTS, medical devices and performance of services marketed by BIOM’UP, including, in particular, the special offers, packaging and information sheets, and listed in the current BIOM’UP catalog.

“BIOM’UP”: BIOM’UP S.A., a limited company with capital of 267 874 € headquartered at 8 allée Irène Joliot Curie 69800 Saint Priest (France), seller of the PRODUCTS.

“CLIENT”: Any physical person or legal entity placing an order with BIOM’UP, whether or not the CLIENT is the final user and/or the recipient of the PRODUCTS.

“GENERAL TERMS OF SALE”: For use with “BIOM’UP”: the purpose of which is to define the terms under which BIOM’UP promises to sell PRODUCTS to the CLIENT and by which the CLIENT promises to purchase PRODUCTS under the terms and conditions defined below.

2. Field of application

Solely for the purposes hereof, the provisions of the GTS are governed exclusively by these GTS, to the exclusion of any other document such as leaflets, catalogs, or documentation originating with BIOM’UP, which are given only for informational purposes and are not binding. The act of placing an order with BIOM’UP implies acceptance of these GTS, which prevail over any provision to the contrary, other than those explicitly agreed by BIOM’UP, even if any notification to the contrary is made to the CLIENT. BIOM’UP reserves the possibility to modify the content of these GTS at any time, even after the CLIENT's order, if such modifications are the result of the application of regulatory, legal, or technical standards, or of any legal application of the PRODUCTS.

4. Offers

That PRODUCTS are offered for sale by BIOM’UP does not constitute their endorsement by BIOM’UP. The choice of PRODUCT is the responsibility of the CLIENT alone, based on the use that it wishes to make of them. It remains solely responsible for the results obtained from their use. To carry out the verifications necessary for the safety of their purchase, the CLIENT must be in a position to verify the compatibility of the PRODUCTS ordered with their intended use. This clause is a pre-condition of the sales of PRODUCTS by BIOM’UP.

5. Orders

Orders are placed in any format, but in writing only or by any secure electronic means which BIOM’UP has made available to the CLIENT. The acceptance of the terms of the order by BIOM’UP is express and confirms the order by BIOM’UP or by confirmation of the order. No modification or cancellation of an order requested by the CLIENT can be considered unless it reaches BIOM’UP in writing before the PRODUCTS have been shipped. If any PRODUCTS are unavailable, the orders will be delivered as accepted only after the period of non-availability of the PRODUCTS has ended. The CLIENT is informed of this unavailability by any method.

6. Prices

In keeping with the legal constraints applicable to the PRODUCTS, they are sold at the rate current on the date of invoicing. Prices are quoted ex-works. BIOM’UP reserves the possibility to modify its pricing at any time.

8. Delivery - Shipping of risks

8.1. In case the PRODUCTS are sold to the CLIENT at the address given on the order. When provided, delivery times are to be taken for informational purposes only. BIOM’UP cannot therefore be held liable for delays. Delivery of the PRODUCT is being paid for by the CLIENT. BIOM’UP reserves the right to refuse delivery or to cancel an order in progress, regardless of the causes or consequences of such delays. The CLIENT promises not to delay receipt. Shipments are fulfilled strictly on the basis of availability and sequentially as orders are received. For any orders requiring special treatment, regardless of the amount, an additional fee of 20 €/pre-lot is invoiced.

9. Payment

9.1. Invoices are payable by the CLIENT with any method at the headquarters of BIOM’UP, net and without discount on presentation of the PRODUCTS. BIOM’UP reserves its right to refuse to deliver the PRODUCTS, even in case of introduction of third parties or of multiple defendants.

10. Reserve of property

BIOM’UP reserves ownership of the products delivered until full payment has been received for the price including principal, interest, and accessories under the terms provided in articles 2357 to 2372 of the Civil Code. The failure to observe any of the due dates or amounts due may delay the implementation of the reserve of property without prejudice to any prior notice or any kind.

11. Suspension/Cancellation

11.1. BIOM’UP reserves the possibility, by any means, of suspending and/or canceling an order by the CLIENT, particularly in the event that:

- of a non-payment or delay of all or part of the payment by the CLIENT of the price of one of its orders at the due date;
- of the failure by the CLIENT to meet any of its obligations.

11.2. The suspension or cancellation will take effect immediately upon receipt of the information cited in point 10.1 above, with no other prior notice or legal authorization required.

In such cases, BIOM’UP reserves the option to repossess PRODUCTS already delivered without prejudice to any damages.

12. Non conformity between the delivery and the order – Returns

12.1. The CLIENT must verify, at the time of delivery, the quality, quantities, reference numbers, and the compliance of the PRODUCTS delivered with the order.

Complaints concerning apparent flaws or non-compliance of the PRODUCTS delivered compared to the order (specifically, quantities or incorrect references) must be made within a period of eight days of delivery. Beyond this limit, no claim to have either with apparent defects or the compliance of the PRODUCTS can be received by BIOM’UP.

The CLIENT’s claim is deemed received by BIOM’UP only if the latter acknowledges receipt in writing.

12.3. The CLIENT must give the number of the delivery slip on the invoice.

The CLIENT must furnish evidence as to the truth of the non-compliance claimed. The CLIENT will leave the choice of how to verify this non-compliance to the discretion of BIOM’UP.

12.4. No Product may be returned without the prior written agreement of BIOM’UP. Once the return is agreed to, return shipments will be specified to the CLIENT. Risks involved in the return are the responsibility of the CLIENT.

12.5. Returns accepted by BIOM’UP will be honored by the replacement free of charge, in the same quantities, of a PRODUCT recognized by BIOM’UP as noncompliant with the order, or, at BIOM’UP’s option, by refund of the amounts committed corresponding to the returned merchandise, exclusive of any compensation or damages, and after inspection by BIOM’UP of the returned goods.

13. Responsibility and guarantee

13.1. It is the duty of the CLIENT to ascertain that the attributes of the PRODUCTS allow for their use in the way and under the conditions intended by the CLIENT. It is here recalled that, as an essential condition of sale, the CLIENT is alone to verify the usage of the PRODUCTS and devices supplied by BIOM’UP and for their suitability to the use to which they are put. The CLIENT is alone responsible for seeing to it that the PRODUCTS purchased are compatible with any and all other products or equipment with which they may come into contact, whether direct or indirect, that their use complies with all standards and regulations, and that they are compatible with the conditions under which the PRODUCTS are to be used. It is alone responsible for the observance of proper safety precautions. In this regard, it is incumbent upon the CLIENT to ensure that the PRODUCTS are used solely with the safety rules for the usage intended. The CLIENT must comply with all laws, regulations and/or directives applicable to the use of the PRODUCTS.

13.2. The CLIENT must also verify that the PRODUCTS delivered and received are in good condition. If damaged or missing goods are noted, the CLIENT must make note of its observation on the delivery slip.

12.6. BIOM’UP is not liable for any damages suffered. Possible recovery costs will be payable by the CLIENT.

13.3. In particular the CLIENT must insure that its premises and storage conditions are appropriate for the proper conservation of the PRODUCTS and include the safety guarantees required by current regulations and professional standards. No guarantee is provided in this regard by BIOM’UP.

13.4. Delivery, of any legal nature, the obligations of BIOM’UP are limited to the sale and delivery of PRODUCTS complying with the requirements of current regulations applicable in France for this category of PRODUCTS, exclusive of any use to which they may be put, which remains the responsibility of the CLIENT.

13.5. The PRODUCTS are covered by the legal guarantee alone. At most, the guarantee by BIOM’UP shall be limited to the replacement without charge, in the same quantities, of the Product recognized defective by BIOM’UP, exclusive of any compensation for damage, loss and/or damage to any other products or equipment, or the CLIENT or any third party which may result immediately on its discovery, by any written means within the legal period of guarantee. Defective PRODUCTS will be returned to BIOM’UP following the same procedure as that used for PRODUCTS not in compliance with the order, as provided for in article 12 above.

13.6. BIOM’UP is not liable for the unsuitability, defects or deterioration of, or caused by, the PRODUCTS as a result of:

- of the storage use of the PRODUCTS not in compliance with these GTS;
- of the insufficient, improper, or defective use of the PRODUCTS, of which the CLIENT is notified in writing;
- of the non-compliance with the order;
- of the use of the PRODUCTS not in compliance with the order;
- of any direct or indirect contact of the PRODUCTS with any material, product or equipment belonging to the CLIENT;
- of a modification of the PRODUCTS;
- of negligence, lack of supervision or maintenance;
- of the reuse of a single-use Product, of the modification or any improper or non-compliant use of a Product. These improper uses, failures or alterations are excluded from any guarantee.

The liability of BIOM’UP cannot be invoked in regard to any of these situations.

13.7. Any liability on the part of BIOM’UP is precluded in the event that technical specifications which may have been provided by the CLIENT, and even by BIOM’UP itself, are not observed by the CLIENT. The CLIENT must bear the risk of failure of the PRODUCTS caused by the CLIENT, its employees or representatives.

13.8 BIOM’UP cannot be held liable in any claims relating to the PRODUCTS and resulting from or relating to the advertising, promotion, advice, assistance or use, intervention of the PRODUCTS or of any of its employees, representatives or agents.

13.9 In light of the requirements for traceability of the PRODUCTS, it is incumbent upon BIOM’UP to authenticate all the data concerning the PRODUCTS that it has purchased from BIOM’UP in compliance with all current regulations.

13.10 Upon notice from BIOM’UP the CLIENT shall strictly comply with BIOM’UP’s reasonable instructions regarding return or recall of any of the PRODUCTS. The CLIENT shall keep records sufficient to permit it to conduct such a recall or recall.

13.11 The CLIENT promises to share with BIOM’UP, in writing and within a reasonable period, any suspicious information which it may have received or which may have come to its attention concerning the PRODUCTS.

13.12 BIOM’UP does not guarantee under any circumstances any indirect and/or intangible damages of any kind which may have been caused by the PRODUCTS or transferred to the CLIENT or to any third parties.

14. Trademarks and intellectual property rights - resale of PRODUCTS

BIOM’UP is the sole owner of all the trademarks and intellectual property rights relating to the PRODUCTS and all intellectual property rights relating to the use of which is not transferred to the CLIENT by the contract. These GTS imply no transfer of patent license or of any other industrial property right whatsoever to the CLIENT. The CLIENT is not transferred any of the PRODUCTS or any part of the PRODUCTS transferred. Any PRODUCT resale must be submitted for prior agreement from BIOM’UP and will be done under the general terms of BIOM’UP.

15. Applicable law - attribution of jurisdiction

All disputes pertaining to these GTS shall be submitted to the Commercial Court of Lyon; even in cases of introduction of third parties or of multiple defendants.