

GENERAL TERMS OF SALE

1. Definitions

"PRODUCTS." The pharmaceutical PRODUCTS, medical devices and performance of services marketed by BIOM'UP, including, as appropriate, packaging and information sheets, and listed in the current BIOM'UP catalogs.
"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," hereinafter "GTS." This contract agreed to between BIOM'UP and the CLIENT, 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

Sales by BIOM'UP 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 out 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 showing on purchase orders, potential terms of purchase, or on any other document issued by the CLIENT. Any additions, strikethroughs, modifications or deletions appearing on these GTS but not initiated for approval by BIOM'UP are null and void.
The fact that BIOM'UP does not, at some point, enforce any one of these GTS cannot be interpreted as meaning that it does not intend to enforce any of said GTS at a later date. In the event of specific agreements made contractually between BIOM'UP and the CLIENT, these agreements may depart from certain provisions of these GTS; however, the other provisions remain applicable so long as not contradictory. Any modification of the BIOM'UP GTS, or any acceptance by it of a specification or condition of any kind may be acted upon by the CLIENT only after a formal agreement has been signed. Under no circumstances may its consent be taken as tacit; it is always specific and in writing.

3. Products

BIOM'UP may modify the features of the PRODUCTS that it sells at any time, for any reason, regardless of which features are involved. These modifications may occur at any time, even after the CLIENT's order, if such modifications are the result of the application of standards, laws or regulations of any kind applicable to the PRODUCTS.

4. Offers

That PRODUCTS are offered for sale by BIOM'UP does not constitute their endorsement by BIOM'UP. The choice of PRODUCTS is the responsibility of the CLIENT alone, based on the use that it wishes to make of them. It remains solely responsible for this choice. It is the client's duty, if so desired, to carry out the verifications necessary to insure the compatibility of the PRODUCTS ordered with their intended use. This clause is a pre-condition of the sales of PRODUCTS by BIOM'UP.
BIOM'UP product offers are made on condition of availability of the PRODUCTS at the time the order is received.

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. Acceptance of the order by BIOM'UP is signified by the delivery of the PRODUCTS 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 deemed 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 pre-tax. BIOM'UP reserves the possibility to modify its pricing at any time.
All taxes, fees, duties, or other charge payable under French or foreign laws and regulations are payable by the CLIENT.
Unless by express prior agreement from BIOM'UP, a minimum order of 250 Euros is required. An additional flat fee of 20 Euros, plus VAT at the legal rate, will be charged as an administrative cost on any order of less than 250 Euros.
Shipping charges are to be paid exclusively by the CLIENT. For continental France and Monaco shipping and packaging by BIOM'UP will be covered by a standard rate charged by weight of the order shipped, that is, 20€ pre-tax for any order of less than 4Kg. For any order over 4KG, with a specific shipping method, or outside continental France and Monaco, shipping charges will be calculated based on destination, shipping method, and weight of the parcel.

7. Delivery

Delivery is made by presentation of the PRODUCTS by a shipper 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 them. Delays in delivery cannot give rise to any late fees, withheld payments, or damages, nor can they justify the refusal or cancellation of 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 flat charge of 20 Euros pre-tax will be made.
BIOM'UP may effect full or partial shipments. BIOM'UP is absolved of its obligation to fulfill orders during the occurrence of an event of force majeure making delivery impossible.

8. Shipping – Transfer of risks

8.1. Risks on the PRODUCTS as related to shipping are transferred to the CLIENT upon delivery.
8.2. The CLIENT promises to give its release to the shipper only upon having assured itself that the order is complete and the PRODUCTS are in good condition. If damaged or missing goods are noted, the CLIENT must make note of its reservations in writing on the delivery slip presented by the shipper, or by registered letter to the shipper with return receipt requested, with copy to BIOM'UP, within a maximum of three days following the delivery of the PRODUCTS.
8.3. Reserve of property on the PRODUCTS has no effect on the transfer of risks.

9. Payment

9.1. Invoices are payable by the CLIENT using any method at the headquarters of BIOM'UP, net and without discount on the order. As a reminder, we here cite the Law of Modernization of the Economy, or LME, no. 2008-776 of August 4, which set a maximum deadline for payment of 45 days end of month, or 60 calendar days.
9.2. In the event of a change in the CLIENT's situation for any reason whatsoever, of an irregularity or delay in payment, or of a change in the law, BIOM'UP will have the option to modify the payment periods allowed or to require guarantees, including for orders in progress.
9.3. The possibility of a complaint does not absolve the CLIENT from paying each invoice by its due date.
9.4. In the event this provision is not observed, increased late fees will be due with no reminder necessary. By law, the minimum late fee is increased to 3 times the legal rate. Furthermore, the supplemental penalty shall be equal to the refinancing rate of the European Central Bank plus 10 points.
9.5. Should legal action be necessary in order to obtain payment of the amounts remaining due, BIOM'UP would have the right, without prejudice to legal fees, to claim compensation for damage suffered. Possible recovery costs will be payable by the CLIENT.
Invoice amounts may in no case be reduced by the CLIENT by any amounts to which it may be entitled from BIOM'UP.

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 2367 to 2372 of the Civil Code.
The failure to observe any of the due dates or amounts due may lead to the implementation of the reserve of property without requiring any prior notice of any kind.
These provisions do not impede transfer to the CLIENT, as of delivery, of the risks of loss and deterioration of the products sold as well as damages to which they might give rise.

11. Suspension/Cancellation

11.1 BIOM'UP reserves the possibility, by any written means, of suspending and/or canceling an order by the CLIENT particularly in case 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;
b) failure by the CLIENT to meet any of its obligations.
11.2 The suspension or cancellation will automatically 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 in writing within a period of eight days of their delivery. Beyond this limit, no claim having to do 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 In its claim, the CLIENT must give the number of the delivery slip or the order number.
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 shipping methods 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 PRODUCTS returned.

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 responsible for 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 professional standards, 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 alone to insure that the PRODUCTS comply 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. The CLIENT must also verify that the PRODUCTS received and their packaging are intact and undamaged.
13.2. Since the PRODUCTS have a limited useful life, the CLIENT is responsible for using the PRODUCTS before their expiration date.
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. Save for any public legal provision, 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 guarantees 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 or damages and on condition that the CLIENT notify BIOM'UP of the defect 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 the storage or use of the PRODUCTS not in compliance with these GTS;
- of the fair wear and tear of the PRODUCTS or of improper storage conditions;
- of PRODUCTS received in unsealed packaging and which have not been returned by the CLIENT;
- of an abnormal, improper or unsuitable use of the PRODUCTS or one not compatible with the PRODUCTS;
- 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 expressly accepted in writing by BIOM'UP, include errors or were not complete.
13.8 BIOM'UP cannot be held liable in any claims or legal action pertaining to the PRODUCTS and resulting from or related to the advertising, promotion, modifications, improper use or suitability or the misuse of the PRODUCTS or other negligence, or unjustified conduct on the part of the CLIENT, its employees, representatives or agents.
13.9 In light of the requirements for traceability of the PRODUCTS incumbent upon BIOM'UP and the CLIENT, should the CLIENT decide to transfer the PRODUCT purchased from BIOM'UP to a third party unknown to the latter, the liability for the use of this PRODUCT by the third party will rest entirely with the CLIENT. Nevertheless, for obvious safety reasons, the CLIENT promises, by the acceptance of these GTS, to insure the continuity of the traceability of 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 removal or recall of any the PRODUCTS. The CLIENT shall keep records sufficient to permit it to conduct such a removal or recall.
13.11 The CLIENT promises to share with BIOM'UP, in writing and without delay, 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 either to the CLIENT or any third parties.

14. Trademarks and intellectual property rights - resale of PRODUCTS

BIOM'UP, as well as all the symbols and distinctive titles borne by the PRODUCTS are registered trademarks the use of which is not transferred to the CLIENT by this contract. These GTS imply no transfer of patent license or of any other industrial property right whatsoever or of any right of marketing and/or distribution by BIOM'UP in favor of the CLIENT over 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

These GTS are subject to French law. All disputes pertaining to these GTS will be submitted to the Commercial Court of Lyon, even in cases of introduction of third parties or of multiple defendants.