

TERMS AND CONDITIONS OF SALE

Please read these terms before ordering any Goods from BioClad. These terms govern how BioClad provide Goods to the Customer to the exclusion of any other terms and conditions or terms which are implied by trade, custom, practice or course of dealing.

1 Definitions and interpretation

In these Conditions the following definitions apply:

Antimicrobial Specification means the reduction of microbes in accordance with the certificate of analysis on BioClad's website;

BioClad means BioClad Limited, registered in England and Wales with company number 06689182;

Care Instructions means the care instructions contained in the full product installation guide on BioClad's website;

Conditions means BioClad's terms and conditions of sale set out in this document;

Contract means the agreement between BioClad and the Customer for the sale and purchase of Goods;

Customer means the person who purchases the Goods from BioClad and whose details are set out in the Order;

Defect any defects which arise as a result of or are caused by BioClad's breach of clause 9.1 and "Defective" shall have the same meaning;

Force Majeure Event means any event(s) which are beyond a party's reasonable control and which are preventing or delaying that party from performing its obligations under the Contract including any act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; epidemic or pandemic; interruption or failure of supplies of power, fuel, water, materials, transport, equipment or telecommunications service; any labour or trade dispute, industrial action, strike or lockout; but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

Goods means the goods as set out or referred to in the Order Confirmation and to be supplied by BioClad to the Customer;

Location means the address(es) for delivery of the Goods as set out in the Order;

Order means an order for the Goods placed by the Customer and accepted by BioClad as set out in the Order Confirmation;

Order Confirmation means the order confirmation sent by BioClad to the Customer;

Price has the meaning given in clause 6.1;

Special Terms means any additional terms, which are agreed in writing between BioClad and the Customer and which are set out or referred to in the Order Confirmation;

Specification means the description, instructions or specification of the Goods set out or referred to in the Order Confirmation;

VAT means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

2 Orders

2.1 Prices specified in a quotation provided by BioClad will be valid for 28 days from the date of quotation, unless otherwise stated on the quotation. BioClad does not guarantee those Prices where an Order is placed by the Customer after that period.

2.2 After placing an Order, BioClad may (at its discretion) accept the Order by sending the Order Confirmation to the Customer.

2.3 The Contract between BioClad and the Customer will be formed at the point that BioClad sends the Order Confirmation to the Customer.

2.4 The Contract will consist of these Conditions together with the details set out or referred to in the relevant Order, Order Confirmation and (where relevant) any Special Terms. These documents represent the entire agreement between BioClad and the Customer.

3 Specifications

3.1 It is the Customer's sole responsibility and obligation to ensure that:

3.1.1 the Goods it selects and orders are suitable for the Customer's intended purpose or application;

3.1.2 any Specification (including any measurements) is complete and accurate and any Goods prepared in accordance with the Specification will be fit for the purpose for which the Customer intends to use them;

3.1.3 the Specification or any instructions will not result in the infringement of any intellectual property rights of a third party, or in breach of any applicable law or regulation.

3.2 BioClad shall not be responsible for the suitability of Goods supplied in accordance with the Customer's Specification.

3.3 BioClad shall have no liability for any failure or faults that arise as a result of use or application of the Goods outside the stated Specification or the operational / functional parameters of the Goods or in contravention of the Care Instructions.

3.4 Any specifications, data, illustrations, descriptions, samples, literature or statements as to suitability, performance or otherwise relating to the Goods and any material on BioClad's website, in any catalogues, price lists, or other trade literature given by BioClad shall be given in good faith but are illustrative only and do not form part of the Contract or constitute representations.

4 Delivery

4.1 BioClad shall use its reasonable endeavours to meet delivery dates but such dates are approximate only. Time of delivery is not of the essence and BioClad shall not be liable for any costs or losses arising as a result of a delayed delivery.

4.2 The Order shall specify whether the Goods are to be:

4.2.1 delivered by BioClad to the Location and on the date(s) specified in the Order; or

4.2.2 made available for collection by the Customer at BioClad's warehouse. The Customer shall collect the Goods within the period specified in the Order Confirmation.

- 4.3 The Goods shall be deemed delivered:
- 4.3.1 on unloading the Goods at the Location if delivered in accordance with clause 4.2.1; or
- 4.3.2 on loading the Goods if collected by the Customer in accordance with clause 4.2.2.
- 4.4 The Customer shall be responsible for unloading the Goods at the Location and shall provide appropriate equipment and use its own labour force. If BioClad's employees or representatives assist or undertake loading/unloading, they shall be deemed to be the Customer's agent and neither they nor BioClad shall be liable for any loss or damage caused as a result.
- 4.5 BioClad reserves the right to charge an additional fee if its delivery vehicle is kept waiting for longer than 30 minutes at the Location, or is obliged to return without completing the delivery or if BioClad's staff or representatives unload Goods (in accordance with clause 4.4 above).
- 4.6 BioClad reserves the right to decline to deliver if:
- 4.6.1 it believes that it would be unsafe, unlawful or unreasonably difficult to do so; or
- 4.6.2 the Location (or the access to the Location) is unsuitable for access by BioClad's vehicle(s).
- 4.7 BioClad shall be responsible for loading the Goods if being collected by the Customer at BioClad's warehouse.
- 4.8 BioClad shall not be liable for any delay in or failure of delivery of the Goods caused by:
- 4.8.1 the Customer's failure to: (i) provide access to the Location for delivery, (ii) prepare the Location as required for delivery or (iii) provide BioClad with adequate instructions for delivery; or
- 4.8.2 the Customer's failure to collect the Goods from BioClad's premises (where applicable).
- 4.9 If BioClad is unable to deliver the Goods as anticipated at clause 4.6.1 or if the Customer fails to collect the Goods within the relevant time period, BioClad may at its discretion store the Goods pending delivery. In such event, the Customer shall pay all storage and re-delivery costs and expenses, together with any insurance costs, incurred by BioClad. Failure to collect or to accept delivery of the Goods is not a valid ground for non-payment by the Customer.
- 4.10 If the Customer fails to take delivery or to collect the Goods within 7 days after notification by BioClad, BioClad without prejudice to its other rights under these Conditions, reserves the right to resell or otherwise dispose of part or all of the Goods not delivered or collected and to charge the Customer for all costs and expenses incurred by BioClad in connection with the non-delivery, resale and/or disposal of the Goods.
- 4.11 BioClad may deliver Goods by instalments. Any delay, defect or discrepancies in delivery of an instalment shall not entitle the Customer to cancel any other instalment.
- 5 Changes and Returns**
- 5.1 The Customer may only change the Order or the Specification after the Order Confirmation has been sent by BioClad, if such change is agreed in writing by BioClad and (where applicable) any additional costs or variation in Price are agreed by the parties.
- 5.2 BioClad will refund or exchange non-Defective Goods on the following basis:
- 5.2.1 the Customer has contacted BioClad and obtained a Return Merchandise Authorisation ("RMA");
- 5.2.2 all returns are made within 28 days of receipt of the Goods and within 7 days of receipt of the RMA;
- 5.2.3 Goods to be returned must be in the original packing and be unused. No refund will be given in respect of Goods that have been used, cut, damaged or are not in a re saleable condition; and
- 5.2.4 a re-stocking fee of 2.5% of the value of the returned Goods is payable by the Customer and will be deducted from any refund.
- 5.3 Returning the Goods will be at the Customer's cost and any original delivery cost will not be refunded.
- 5.4 The following cannot be returned:
- 5.4.1 Goods that have been specially cut to the Customer's size/requirements;
- 5.4.2 Goods sealed for health protection or hygiene purposes, which have been unsealed; and
- 5.4.3 Goods which become mixed inseparably with other items after their delivery.
- 5.5 Any refunds are made by the same method as the original payment was made. BioClad will endeavour to process any refunds within 28 days of receipt by BioClad of the returned Goods.
- 6 Price**
- 6.1 The price for the Goods shall be as set out or referred to in the Order Confirmation and is exclusive of VAT (or equivalent sales tax).
- 6.2 The Price is exclusive of packaging and delivery unless otherwise stated in the Order Confirmation.
- 7 Payment**
- 7.1 The Customer shall pay all invoices before the agreed payment date set out on the Order Confirmation or (if applicable) in accordance with the terms of the Customer's credit arrangement with BioClad. BioClad reserves the right to suspend or cancel delivery of the Goods and withhold all further supplies under any other contract if payment is not received by the due date.
- 7.2 The Customer shall pay all amounts due in full without deduction, counterclaim or set-off.
- 7.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date BioClad may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of Barclays Bank PLC from time to time in force. Interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 7.4 BioClad may (at its discretion) set and vary credit limits with the Customer from time to time. Where such credit arrangements are in place, BioClad reserves the right to suspend deliveries if the Customer exceeds any agreed credit limit until such time as the Customer reduces its balance of credit to the appropriate limit.
- 8 Risk and Title**
- 8.1 Risk in the Goods shall pass to the Customer on delivery in accordance with these Conditions.
- 8.2 Title to the Goods shall pass to the Customer on payment in full and cleared funds for the Goods and any other sums owed by the Customer to BioClad under any Contracts.
- 8.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 8.3.1 hold the Goods as bailee for BioClad;
- 8.3.2 store the Goods separately from all other material in the Customer's possession;
- 8.3.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
- 8.3.4 insure the Goods from the date of delivery (or deemed delivery): (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting BioClad's interest on the policy;
- 8.3.5 ensure that the Goods are clearly identifiable as belonging to BioClad;
- 8.3.6 not remove or alter any mark on or packaging of the Goods;

- 8.3.7 inform BioClad immediately if it becomes subject to any of the events or circumstances set out in clauses 13.1.1-13.1.3; and
 - 8.3.8 on reasonable notice permit BioClad to inspect the Goods during the Customer's normal business hours and provide BioClad with such information concerning the Goods as BioClad may request from time to time.
 - 8.4 Notwithstanding clause 8.2, the Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 13.1.1-13.1.3 has occurred or is likely to occur.
 - 8.5 If the Customer resells the Goods in accordance with clause 8.4, title to the Goods shall pass to the Customer immediately prior to the resale.
 - 8.6 If, at any time before title to the Goods has passed to the Customer, the Customer informs BioClad, or BioClad reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 13.1.1-13.1.3, BioClad may:
 - 8.6.1 require the Customer at the Customer's expense to re-deliver the Goods to BioClad; and
 - 8.6.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.
- 9 Quality on Delivery**
- 9.1 BioClad warrants that, on delivery: (i) the Goods shall comply with their description on or referred to in the Order Confirmation (which includes the quantity, colour and finish) and (where relevant) the Specification; and (ii) are free from material defects in design, material and workmanship.
 - 9.2 At the point of delivery, the Customer shall satisfy itself that the Goods delivered comply with the Order (including in respect of quantity, type, colour and finish) and will inspect them for any apparent Defects and damage. The Customer shall sign the delivery note and notify BioClad immediately if there is any discrepancy in delivery.
 - 9.3 If the Customer believes that Goods are Defective, the Customer shall inform BioClad in writing within a reasonable time of discovery of the Defect and no later than 36 hours of such discovery.
 - 9.4 BioClad shall, at its option, repair, replace or refund the Price paid by the Customer for any Defective Goods, provided that the Customer:
 - 9.4.1 has not not used, changed or modified any of the Goods;
 - 9.4.2 provides BioClad with sufficient information in writing as to the nature and extent of the alleged Defects or discrepancies;
 - 9.4.3 gives BioClad a reasonable opportunity to examine the relevant Goods; and
 - 9.4.4 returns the relevant Goods or makes them available for collection at BioClad's order.
 - If the Customer fails to notify BioClad in accordance with these requirements, it will not be entitled to reject the Goods and will be deemed to have accepted the Goods in accordance with the Contract.
 - 9.5 The provisions of these Conditions, including the warranties set out in clause 9.1, shall apply to any Goods that are repaired or replaced under the terms at this clause 9.
 - 9.6 BioClad shall not be liable for any Defect:
 - 9.6.1 which arises by reason of wilful damage or negligence by the Customer or a third party;
 - 9.6.2 to the extent caused by the Customer's failure to comply with industry standards or good practice, the Care Instructions or any other instructions given by BioClad in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
 - 9.6.3 to the extent caused by BioClad following any Specification or requirement of the Customer in relation to the Goods; or
 - 9.6.4 where the Customer modifies any Goods without BioClad's prior consent or, having received such consent, not in accordance with industry standards or good practice or BioClad's instructions.
- 10 Warranty**
- 10.1 Any Goods incorporating BioCote® technology are sold with a lifetime warranty in respect of their Antimicrobial Specification.
 - 10.2 For the purposes of clause 10.1 above, "lifetime" means for so long as the environment where the Goods are installed (i) remains in its original state and (ii) is used for the same purpose and in the same way as when the Goods were sold. The Customer must notify BioClad of any structural, mechanical, or other changes of use of the environment when making a claim under this warranty and BioClad reserves the right to reject a claim by the Customer if it fails to do so.
 - 10.3 The warranty offered in clause 10.1 shall only apply:
 - 10.3.1 if the Customer completes and returns a Warranty Registration Form to BioClad within 30 days of delivery;
 - 10.3.2 if the installation of the Goods was carried out by a BioClad authorised and registered installer (as confirmed by BioClad); and
 - 10.3.3 for the benefit of the Customer and can be assigned to third parties only with BioClad's prior written consent.
 - 10.4 If the Customer believes that the Antimicrobial Specification is no longer being met by the Goods, it must complete a warranty submission form (available on request from BioClad) and return this to BioClad for evaluation. The evaluation and testing costs shall be borne by the Customer (subject to clause 10.6 below).
 - 10.5 BioClad will instruct an engineer to remove a section of the Goods in question and submit this for independent laboratory testing. BioClad will provide the Customer with a choice of three approved testing houses to carry out the testing. The test results will be made available to the Customer by BioClad.
 - 10.6 If the laboratory test results show that the Goods no longer meet the Antimicrobial Specification ("**Failed Goods**"), BioClad will:
 - 10.6.1 at its option, repair, replace or refund the Price paid by the Customer for any Failed Goods; and
 - 10.6.2 refund to the Customer the costs of the engineer and the testing referred to in clause 10.5 above.
 - 10.7 BioClad shall have no liability in respect of any Goods which the laboratory test results show are within 5% of the Antimicrobial Specification, and for the avoidance of doubt, in such cases, no refund of engineer and/or testing costs referred to in clause 10.5 above will be given by BioClad.
 - 10.8 BioClad shall not be liable in respect of any Failed Goods if any of the circumstances listed in clause 9.6 have occurred.
 - 10.9 The provisions of these Conditions, including the warranty set out in clause 10.1, shall apply to any Goods that are repaired or replaced under the terms at this clause 10.
 - 10.10 BioClad gives no other warranty in respect of the Goods and excludes any warranty, term or condition that would otherwise be implied as to the quality of the Goods or their fitness for any purpose.
- 11 Changes to the Goods**
- 11.1 BioClad reserves the right to make minor changes to the Goods where such changes will not affect the Customer's use of the Goods in order to:
 - 11.1.1 reflect changes in relevant laws and regulatory requirements; or
 - 11.1.2 implement minor technical adjustments and improvements.

governing the importation of the Goods into the country of destination and for the payment of any applicable duties.

12 Limitation of liability

- 12.1 The extent of BioClad's liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.
- 12.2 Subject to clause 12.4, BioClad's total liability shall not exceed the Price paid for the Goods under the relevant Contract.
- 12.3 Subject to clause 12.4, BioClad shall not be liable for consequential, indirect or special losses, loss of profit or loss of business opportunity.
- 12.4 Notwithstanding any other provision of the Contract, BioClad's liability shall not be limited in any way in respect of death or personal injury caused by negligence, fraud or fraudulent misrepresentation or any other losses which cannot be excluded or limited by applicable law.

13 Force Majeure

- 13.1 Neither party shall be liable if delayed in or prevented from performing its obligations under the Contract due to a Force Majeure Event.
- 13.2 If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving written notice to the affected party.

14 Termination

- 14.1 Either party may terminate the Contract and BioClad may suspend delivery under the Contract or any other Contract by giving notice in writing to the other party (at which point, all credit is withdrawn and any monies owed to BioClad for this or any other Contract shall become immediately due and payable) if the other party:
- 14.1.1 is in breach of the Contract;
 - 14.1.2 has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 14 days after BioClad has given notification that the payment is overdue; or
 - 14.1.3 stops carrying on all or a significant part of its business, takes any step or action in connection with its entering administration, provisional liquidation, bankruptcy or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up or made bankrupt (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring) or having a receiver appointed to any of its assets.
- 14.2 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle BioClad to terminate the Contract under this clause 13, it shall immediately notify BioClad in writing.
- 14.3 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of BioClad at any time up to the date of termination.

15 Export Sales

- 15.1 Notwithstanding any other term or condition where Goods are sold for export outside the United Kingdom unless otherwise agreed in writing:
- 15.1.1 the currency will be Sterling;
 - 15.1.2 the Goods shall be delivered EXW BioClad's warehouse UK (Incoterms 2010);
 - 15.1.3 the Customer shall be responsible for arranging for testing and inspection of the Goods at BioClad's warehouse before shipment. BioClad shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit; and
 - 15.1.4 the Customer shall be solely responsible for complying with any legislation or regulation

16 General

- 16.1 Where a Customer purchases Goods in his or her personal capacity, and not for and on behalf of a business, nothing in these Conditions shall affect that Customer's statutory rights as a consumer of the Goods under applicable laws.
- 16.2 BioClad may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.3 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 16.4 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.5 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- 16.6 Subject to clause 5 above, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.7 A waiver of any right or remedy is only effective if given in writing. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- 16.7.1 waive that or any other right or remedy; nor
 - 16.7.2 prevent or restrict the further exercise of that or any other right or remedy.
- 16.8 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 16.9 No one other than a party to this Contract have any right to enforce any of its terms.
- 16.10 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 16.11 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.