

TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS

1. INTERPRETATION

THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.

1.1 Definitions:

Biofortuna: Biofortuna Limited registered in England and Wales with company number 06514391.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Conditions: these terms and conditions as amended from time to time in accordance with clause 9.5.

Contract: the contract between Biofortuna and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases Goods from Biofortuna.

Goods: the product or products to be supplied to the Customer under these Conditions as described in an Order.

Order: the Customer's order for Products as set out in the Customer's written acceptance of the Quote.

Price: the price payable by the Customer for the supply of the Products in accordance with clause 7 (Price and payment).

Quote: a quotation for Products including a description and specification.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Customer are complete and accurate.
- 2.2 The Order shall only be deemed to be accepted when Biofortuna issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Biofortuna, and any descriptions or illustrations contained in Biofortuna's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by Biofortuna shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF GOODS

- 3.1 Biofortuna shall supply the Goods to the Customer in accordance with the Quote in all material respects.

- 3.2 Biofortuna warrants that it has good title to the Goods and will transfer such title as it may have in the Goods to Customer.
- 3.3 Biofortuna warrants that the Goods and any ancillary technical services shall be in accordance with agreed specifications (within accepted or stipulated tolerances); shall otherwise reasonably conform to any description given by Seller in writing and shall be of reasonably satisfactory quality.
- 3.4 Biofortuna shall not be liable for the Goods' failure to comply with the warranty set out in Clause 3.3 in the event that the defect arises because the Customer failed to follow Biofortuna's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods.
- 3.5 Subject to Clause 3.4, if:
- (a) the Customer gives notice in writing to Biofortuna within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 3.3;
 - (b) Biofortuna is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by Biofortuna) returns such Goods to Biofortuna's place of business at Biofortuna's cost,
- Biofortuna shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 3.6 To the extent that the Quote given by Biofortuna is based on the Customer's specifications as given to Biofortuna:-
- (a) Biofortuna shall not be held liable or responsible for the lack of sufficiency, fitness for purpose or satisfactory quality in respect of Goods insofar as attributable to the Customer's specifications; and
 - (b) The Customer shall indemnify Biofortuna against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Biofortuna in connection with any claim made against Biofortuna for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Biofortuna's use of the specification provided.
- 3.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

4. DELIVERY

- 4.1 Biofortuna shall ensure that:-
- (a) Each delivery of Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of Goods (including the code number of each Product, where applicable) and special storage instructions (if any).
 - (b) It states clearly on the delivery note any requirement for the Customer to return any packaging material to Biofortuna. The Customer shall make any such packaging materials available for collection at such times as Biofortuna shall reasonably request. Returns of packaging materials shall be at Biofortuna's expense.
- 4.2 Biofortuna shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing.
- 4.3 Customer shall pay Biofortuna for the shipping costs of any Goods and shall be responsible for the insurance for the shipment of Goods from its collection at Biofortuna's premises.
- 4.4 The Goods must be examined and signed for by the Customer at the time of passing to Customer's possession or control or at the earliest opportunity thereafter. Biofortuna shall assist the Customer in pursuing any claim made against the carrier. No claims by the Customer in respect of damage to, shortage or loss of some or all of the Goods in transit prior to delivery shall be made unless notice in writing of such damage, shortage or loss on delivery is given to Biofortuna and the carrier within

48 hours of their arrival at the Customer's premises or eventual place where the Customer takes control or possession of the Goods as stipulated in the order. The Customer accepts that this allows a reasonable period to allow such inspection.

- 4.5 Any time or date for delivery given by Biofortuna to the Customer is Biofortuna's estimate of the date on which the Goods will be delivered to the Customer, and Biofortuna will make every reasonable endeavour to meet such delivery date, but time shall not be of the essence with regard to delivery at such time or date.
- 4.6 Biofortuna shall be entitled to deliver the Goods by instalments and in such case each instalment shall constitute a separate contract and any failure in delivery of any one or more instalments shall not entitle Customer to repudiate the Contract for the supply of a series of instalments as a whole or to cancel any subsequent instalment. In times of shortage of availability of the Goods, Biofortuna shall be entitled to allocate supplies as it sees fit without being in breach of the Contract or incurring liability hereunder to Customer.
- 4.7 Customer shall not be entitled to reject the Goods or part thereof by reason only of short delivery.
- 4.8 Return of products. Before returning Goods, the Customer must contact Customer Services for a Return Material Authorisation and shipping instructions. Goods ordered in error are subject to a 15% administration fee plus a £30.00 freight charge. For full details of this policy call Customer Services or see www.Biofortuna Ltd.com.

5. TITLE AND RISK

- 5.1 The risk in the Goods shall pass to the Customer on collection from Biofortuna's premises.
- 5.2 Title to the Goods shall not pass to the Customer until Biofortuna receives payment in full (in cleared funds) for the Goods.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Biofortuna's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify Biofortuna immediately if it becomes subject to any of the events listed in clause 8.1; and
 - (e) provide such information relating to the Goods as Biofortuna may require from time to time.

6. PRICE AND PAYMENT

- 6.1 The Price for the Goods shall be as set out in an Order.
- 6.2 Biofortuna reserves the right to increase the Price to take account of any increase in any costs or charges of production, storage or transport or of any levy or taxes or any currency fluctuation which may occur at any time before shipment; provided, however, that where Biofortuna agrees to supply the Goods at a fixed price within a specified period, the Goods will be charged at such price if ordered and accepted for delivery within such period.
- 6.3 Biofortuna reserves the right to increase the Price on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be the latest available figure for the percentage increase in the Retail Prices Index.
- 6.4 Biofortuna shall invoice the Customer before the shipment of the Goods in accordance with the Price on an Order.
- 6.5 The Customer shall pay each invoice submitted by Biofortuna:
 - (a) within 30 days of the date of the invoice; and

- (b) in full and in cleared funds to a bank account nominated in writing by Biofortuna; and
 - (c) time for payment shall be of the essence of the Contract.
- 6.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Biofortuna to the Customer, the Customer shall, on receipt of a valid VAT invoice from Biofortuna, pay to Biofortuna such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
- 6.7 Biofortuna shall ship the Goods on the receipt of payment from the Customer.

7. LIMITATION OF LIABILITY:

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 7.1 The restrictions on liability in this Clause 7 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.3 Biofortuna shall not be liable (in contract, delict, tort or otherwise howsoever) in respect of any liability, loss, expense, claim or damage incurred by Customer arising from any reasonable delay in delivery of the Goods or any part thereof or any delay due to circumstances beyond Biofortuna's control and in no event shall Biofortuna be so liable for any special, indirect, consequential damage or economic loss including, without prejudice to the foregoing generality, loss of profit, arising from any delay in delivery, howsoever caused.
- 7.4 Subject to Clause 7.2, Biofortuna total liability to the Customer shall not exceed the total value of the Goods.
- 7.5 This *Clause 7.5* sets out specific heads of excluded loss:
- (a) Subject to Clause 7.1, the types of loss listed in Clause 7.5(b) are wholly excluded by the parties.
 - (b) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.
- 7.6 Unless the Customer notifies Biofortuna that it intends to make a claim in respect of an event within the notice period, Biofortuna shall have no liability for that event. The notice period for Goods is 10 days from dispatch of Goods to the Customer, the notice period for any other event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 7.7 This Clause 7 shall survive termination of the Contract.

8. TERMINATION

- 8.1 Without affecting any other right or remedy available to it, Biofortuna may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 Without affecting any other right or remedy available to it, Biofortuna may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 8.3 Without affecting any other right or remedy available to it, Biofortuna may suspend the supply of Services under the Contract or any other contract between the Customer and Biofortuna if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 8.2(b) to clause 8.2(d) or Biofortuna reasonably believes that the Customer is about to become subject to any of them.
- 8.4 Termination of the Contract shall not affect either of the party's rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before termination.

9. GENERAL

- 9.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 9.2 **Assignment and other dealings.**
- (a) Biofortuna may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
 - (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Biofortuna.
- 9.3 **Confidentiality.**
- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.3(b).
 - (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each

party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9.3; or

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

9.4 **Entire agreement.**

- (a) The 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.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

9.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

9.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

9.7 **Severance.** 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.

9.8 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to an address specified in the Quote.
- (b) Any notice or other communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this *Clause* 9.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

9.9 **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 9.10 **Governing law.** 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.
- 9.11 **Jurisdiction.** 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 the Contract or its subject matter or formation.