

Terms and Conditions of Purchase

These Terms & Conditions of Purchase (the "Agreement") and the accompanying purchase order (the "Purchase Order") is an offer to purchase goods and related services (the "Goods") by BioFire Diagnostics, LLC ("BioFire") from the party to whom the Purchase Order is addressed ("Seller") (individually a "Party", and collectively the "Parties"). Acceptance of the Purchase Order from BioFire constitutes Seller's acceptance of this Agreement. Any other terms or offers other than as set forth in this Agreement are expressly rejected by BioFire.

1. Price & Payment Terms

Seller will invoice BioFire for the Goods. Each invoice will include: (i) BioFire's purchase order number; (ii) a description of the Goods; (iii) quantity and unit price(s); and (iv) shipping, handling, and any other charges agreed to by BioFire, and applicable taxes. The Purchase Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Purchase Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, whether written or oral, with respect to the subject matter of the Purchase Order. The terms and conditions of this Agreement prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with the Purchase Order. At any time prior to Acceptance of the Goods by BioFire (as defined in [Section 3](#)), BioFire may terminate the Purchase Order in whole or in part. BioFire will pay within thirty (30) days of receipt of Seller's invoice. The purchase price of the Goods is subject to set-off. Payment will be in United States dollars unless otherwise agreed to by specific reference in this Purchase Order.

2. Quantity; Delivery; Packaging

The quantity of the Goods delivered must equal the quantity set forth on the Purchase Order. Seller shall ship and deliver Goods and/or render services hereunder on the date or date(s) specified on the Purchase Order unless prior written approval of any change in such date or date(s) is given by BioFire. Seller will deliver the Goods to BioFire Incoterms® 2020 DDP. Seller bears risk of loss for the Goods until delivered to BioFire. Seller will include a packaging list with BioFire's Purchase Order number, part number, the quantity shipped, and the remaining quantity to be shipped. No charge will be paid by BioFire for packaging, boxing or cartage unless specified on the Purchase Order. Loss of or damage to any Goods not packed in such a manner as to ensure proper protection will be charged to Seller.

3. Acceptance

BioFire shall have thirty (30) days from the date of delivery of the Goods to inspect the Goods and reject any nonconforming Goods. This right of inspection, shall not affect BioFire's rights to revoke acceptance or pursue other remedies with respect to latent defects, which shall include any defects that may not be detected by BioFire through standard inspection and/or testing. BioFire may return nonconforming goods to Seller at Seller's risk and expense, including transportation and handling costs.

4. Warranties

Seller warrants to BioFire that for a period of one (1) year from the delivery date of the Goods, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by BioFire. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of BioFire's discovery of the noncompliance of the Goods with the foregoing warranties. In addition to any other remedies in this Agreement, BioFire may elect to have Seller repair or replace the Goods, or refund the purchase price for non-conforming Goods.

5. Compliance

(a) BioFire's purchase of the Goods may be related to the fulfillment of a federal government prime contract or subcontract. Accordingly, Seller will comply with 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) prohibiting discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibits discrimination against individuals based on their race, color, religion, gender, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

(b) If applicable, Seller warrants that any Goods delivered to BioFire are subject to European Union Directive 2011/65/EU on the Restriction of Hazardous Substances (RoHS) in Electrical and Electronic Equipment are fully compliant with such Directive in effect at the time of purchase and identified as "RoHS compliant." If applicable, Seller warrants that any Goods delivered to BioFire will be fully compliant with the Registration, Evaluation, Authorization and

Restriction of Chemicals Regulation No. 1907/2006 (“REACH”) in effect at the time of purchase. Upon written request from BioFire, Seller shall promptly provide materials, documents and records evidencing such compliance with RoHS and REACH.

(c) BioFire is a bioMérieux company. Seller represents that it will not participate in any conduct that violates bioMérieux’s Business Principles for Third Parties (“Business Principles”) (https://www.biomerieux.com/sites/corporate/files/att_2_-_business_principles_for_third_parties_-_en.pdf). If BioFire determines that Seller is in violation of the Business Principles, BioFire may terminate this Agreement upon written notice to Seller. BioFire will have no further obligation to Seller.

6. Indemnity

Seller will defend, indemnify, and hold harmless BioFire, its employees, officers, directors, agents, and affiliates, from all demands or claims (including attorney’s fees) arising out of: (a) the breach by Seller of any representation or warranty set forth in this Agreement; (b) bodily injury, death or property damage related to an act or omission of Seller; (c) claims that the design of the Goods infringe any patent or other proprietary right, except where such liabilities are due to the negligence or wrongful acts of BioFire. In the event of a claim of infringement of a third party’s copyright, patent, trade secret, or other intellectual property right, Seller’s obligation will be, at BioFire’s option, to (i) obtain a license for BioFire, its employees, agents, affiliates to continue the use of or the sale of the infringing Good; (ii) modify or replace the infringing Good with a non-infringing Good which conforms to the specifications for the infringing Good; or (iii) refund the purchase price paid by BioFire for such infringing Good.

7. Insurance

During the term of the Purchase Order and for a period of one (1) year thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in an amount that is reasonable and customary for the industry adequate to cover Seller’s obligations under this Agreement. If Seller’s coverage is claims made, Seller will keep coverage in effect for not less than three years after the expiration or termination of this Agreement. Seller will provide BioFire with certificates of insurance upon written request.

8. Termination

Either may terminate a Purchase Order in whole or in part at any time for (i) breach of this Agreement or the terms of a Purchase Order, or (ii) the suspension of business or insolvency of a Party. BioFire may terminate all or part of a Purchase Order: (a) at any time prior to Seller’s shipment of the Goods, subject to an equitable adjustment between the Parties as to any work or materials then in progress; (b) for Seller’s failure to timely deliver Goods; or (c) Seller’s failure to provide adequate assurance of performance. In the event of a material default of any Party pursuant to this Section 8, the non-defaulting Party may exercise any or all rights and remedies available to it.

9. Amendment

The terms of this Agreement may not be altered, modified, suspended or amended, and no additional or different terms will become a part of this Agreement absent a writing signed by the Parties.

10. Export Regulations

Upon request by BioFire, if Seller is providing Goods used by BioFire to manufacture products for the Department of Defense, Seller will certify that it has registered with the U.S. Department of State Directorate of Defense Trade Controls and understands its obligations to comply with International Traffic in Arms Regulations (“ITAR”) and the Export Administration Regulations (“EAR”). Seller agrees that no technical data, information, or other items provided by BioFire in connection with this Purchase Order will be provided to any foreign persons or to a foreign entity, including, without limitation, a foreign subsidiary of Seller, without the express written authorization of BioFire and Seller’s obtaining of the appropriate export license, technical assistance agreement, or other requisite documentation for ITAR-controlled technical data or items. It will be the sole responsibility of Seller to determine whether the information provided by BioFire is technical data as outlined in the ITAR (22 CFR 120-130) prior to any release to a third party. Seller will immediately notify BioFire if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended or revoked. Should Seller’s goods or services originate from a foreign location, those goods may also be subject to the export control laws and regulations of the country in which the articles or services originate. Seller agrees to abide by all applicable export control laws and regulations of that originating country. BioFire may be required to obtain information concerning citizenship or export status of Seller’s personnel. Seller agrees to provide such information as necessary and certifies the information to be true and correct.

11. Debarment

Seller certifies that neither it nor any of its officers, directors, owners, partners, key employees, principal investigators, researchers or management or supervisory personnel (collectively, “Principals”) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program (including, but not limited to Medicare and Medicaid) by any federal department or agency. Seller will provide immediate written notice to BioFire if it, or any of its Principals, is debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract, or program, including Medicare, Medicaid.

12. Trademarks

Seller will not use the BioFire name, logo, trademark, service mark, or trade dress without prior written approval of BioFire.

13. Confidential Information

Seller understands and acknowledges that in the provision of Goods or related services pursuant to the Purchase Order, BioFire (or any of its subsidiaries, affiliated companies, vendors or customers) may disclose to Seller, or Seller may otherwise obtain, information that BioFire considers confidential. Such information may include all information relating to the subject matter of the Purchase Order, whether furnished to or obtained by Seller or its representatives before, on or after the date of the Purchase Order, in any form, including, but not limited to, written, verbal, visual, or electronic or in any other media or manner ("Confidential Information"). Seller hereby agrees to keep such Confidential Information strictly confidential and shall not use or disclose any such Confidential Information to any third party, except as may be required for Seller to perform its obligations under this Agreement and the Purchase Order. Notwithstanding the foregoing, if Seller is required by law to disclose any Confidential Information, Seller must supply BioFire with written notice of such proposed disclosure and shall provide BioFire with reasonable assistance in seeking such protected order or other similar order to prevent and/or limit the disclosure of Confidential Information.

14. Seller Changes

Material changes to the Goods proposed by Seller that may affect form, fit, function, reliability, serviceability, performance, regulatory compliance or safety must be submitted to BioFire prior to implementation of any such changes along with: (i) a written change notice for BioFire approval; (ii) a description of the Good(s) affected; (iii) the proposed date of implementation; (iv) the reason for the change; (v) the specific details of the change; and (vi) supporting data necessary to reasonably evaluate the proposed changes. Such material changes may not be implemented without the prior written consent of BioFire.

15. Intellectual Property

Nothing in this Agreement or Purchase Order is intended to grant any right, title or interest to Seller in any patent, patent application, trademark, trade secret, know-how, Confidential Information or any other intellectual property right by BioFire. Any work performed by Seller in order to conform the Goods to any specifications required by BioFire shall remain the sole property of BioFire.

16. Audit

Seller acknowledges that BioFire is subject to certain laws and regulations that may require BioFire to conduct regular audits of certain of its suppliers. Accordingly, if applicable, Seller acknowledges that BioFire has the right to conduct periodic audits of Seller's facilities and inspection of documents as such related to the manufacture of the Goods. Such audits, inspections and document review shall be conducted by BioFire at a time, date and duration mutually agreeable to Seller and BioFire.

17. Relationship of the Parties; No Assignment or Subcontracting

The relationship between the Parties is that of independent contractors. Seller may not assign any rights, delegate any of its obligations under this Purchase Order, or subcontract its obligations without the prior written consent of BioFire.

18. Notices

All notices will be sent either certified mail, return receipt requested, delivered personally, or sent by overnight courier, to the attention of BioFire at the following address: 515 Colorow Dr., Salt Lake City, Utah 84108, Attn: Director of Purchasing and Legal Department, and to Seller at the address set forth on the quotation related to the Purchase Order

19. Force Majeure

Neither Party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party, without such Party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). Force Majeure Events include, but are not limited to, governmental acts (official or unofficial), strikes (legal or illegal), acts of God, fires, or flooding.

20. Governing Law and Venue

This Agreement will be governed by the laws of the State of Utah without regard to its conflict of laws rules. Seller consents to venue in Salt Lake County, Utah, and hereby waives any objections based on *forum non conveniens*.

21. Severability; Headings; No Waiver

If any of the provisions contained in this Agreement are held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected. The headings and titles of the provisions of this Agreement are inserted for convenience only. No failure or delay on the part of BioFire in exercising any right or remedy under this Agreement will operate as a waiver, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise of any right or remedy. No provision of this Agreement may be waived except in a writing signed by the Party granting such waiver.