

## Biosite Terms and Conditions

“**Agreement**” means any contract between Biosite and the Customer incorporating these conditions.

“**Biosite**” means Biosite Systems Limited (company number 7308880) whose registered office is at Lancaster House, Drayton Road, Shirley, Solihull, West Midlands, B90 4NG.

“**Customer**” means the customer named in the Order Form.

“**Data Protection Legislation**” means the legislation in force from time to time in the United Kingdom which governs the processing of data pertaining to living individuals.

“**Equipment**” means any part of the Supplies which comprises tangible items.

“**Initial Period**” means the minimum duration (as set out on the Order Form) for which Biosite must supply and Customer must pay for those Supplies which are subject to recurring charges.

“**Liability**” means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities.

“**Order Form**” means the written order for Supplies signed by the Customer and accepted by Biosite.

“**Personnel**” means agents, subcontractors, consultants, employees and/or any other authorised representative of a party to the Agreement.

“**Services**” means any installation, maintenance and/or decommissioning of Supplies, and any other services, as specified on the Order Form.

“**Site**” means any premises at which any Services are to be performed as set out on the Order Form.

“**Software**” means any part of the Supplies which comprises computer software.

“**Supplies**” means any goods, services, software or other items which are expressly set out on an Order Form to be sold, hired or provided by Biosite to the Customer; together with any additional items which are added by agreement of the parties.

“**Working Days**” means any day which is not a Saturday, Sunday or statutory public holiday in England.

“**Working Hours**” means 9.00am to 5.00pm on any Working Day.

1. **Order Forms.** Until accepted as described in this clause 1, an Order Form does not oblige Biosite to fulfil orders or maintain pricing. An Order Form signed by the Customer is a contractual offer by the Customer to purchase the Supplies as set out in the Order Form and on these terms. An Agreement for the Supplies is binding only when an Order Form is accepted by Biosite. Acceptance of Order Forms happens when Biosite expressly notifies Customer that the Order Form is accepted or when Biosite begins to provide or make available any Supplies, whichever is earlier.
2. **Purchase Orders.** If the Customer desires to use purchase orders, the Customer must issue purchase orders in good time to allow Biosite to reference the purchase orders in the manner desired by the Customer. Biosite accepts purchase orders only to facilitate Customer internal procedures. No purchase order (even if it purports to impose further or alternative contractual terms), or the lack of any purchase order, has any effect on binding status or terms of the Agreement.
3. **Accuracy of Order Forms.** The Customer is responsible for the accuracy of an Order Form and providing all information necessary for Biosite to perform the Agreement.
4. **Timescales.** Biosite shall use reasonable efforts to meet any timescales expressly set out in an Order Form. Time is not of the essence for any dates for performance of this Agreement.
5. **Delivery of Equipment.** Unless otherwise specified in the Order Form Biosite shall deliver the Equipment to the location set out in the Order Form and Biosite is responsible for loss or damage in transit.
6. **Warranty period for Biosite Equipment.** Equipment manufactured by Biosite is supplied with a warranty period of 6 months from the date of delivery, during which time Biosite will repair or replace free of charge (or, at Biosite’s option, refund the price paid for) Equipment which becomes defective, provided that:
  - 6.1. the Customer telephones Biosite as soon as practicable following discovery of a defect and reports the defect in writing within 5 Working Days of such notification, by post or facsimile, to the postal address and/or facsimile number specified in the Order Form; and gives Biosite a reasonable opportunity to examine the Equipment;
  - 6.2. the defect is not caused by the acts or omissions of the Customer, acts of theft or vandalism by any person, or by external causes (such as fire, flood, power surges or environmental conditions beyond the stated design and capacity of the Equipment);
  - 6.3. Customer has duly paid invoices for the price for the Equipment and any maintenance Services;
  - 6.4. the loss or damage is not covered by any Customer policy of insurance;
  - 6.5. the Equipment has not been adjusted, modified or added to except by Biosite or with the prior written consent of Biosite;
  - 6.6. Customer can evidence that the Equipment has been duly routinely tested and maintained the Equipment in accordance with Biosite instructions;
  - 6.7. the defect is not caused or contributed by the use of battery packs, fuel or consumables not supplied by Biosite; and such repair, replacement or refund is the sole remedy for such defect.
7. **Warranty cover for third party Equipment.** Equipment manufactured by a third party is supplied with the benefit of the warranty provided by the third party supplier. If such Equipment becomes defective otherwise than due to the negligent acts or omissions of Biosite, Biosite’s sole liability for such defect is to use reasonable endeavours to utilise for the benefit of the Customer the warranty cover provided by the third party supplier or, at Biosite’s option, refund the price paid for the Equipment.
8. **Software.** The provisions of this clause 8 apply to Software.
  - 8.1. Biosite hereby grants to Customer a personal, non-exclusive, and non-transferable licence to load, store and run the Software in object code form for the duration expressly stated in the Order Form.
  - 8.2. Software is licensed only for the number of users and subject to any other restrictions set out in the Order Form.
  - 8.3. Customer must not adapt, modify, reverse engineer, or derive human-readable code from the Software or translate the Software into another language or write or derive any program from the Software except as expressly permitted by law.
  - 8.4. Unless otherwise stated in the Order Form, Biosite can elect to supply Software by installing it on Customer’s hardware or by providing Customer with a download facility or appropriate machine-readable media for Customer to install.
  - 8.5. Software might be dependent on minimum hardware requirements, operating system requirements, and the availability of generally available third party software (including, for example, compliant Internet browsers and office applications). Except for items supplied by Biosite, it is Customer’s responsibility to meet such requirements at its own cost. Upon request, Biosite shall state the minimum requirements then prevailing.
  - 8.6. Customer acknowledges that Software might not be error-free or operate entirely uninterrupted.
9. **Equipment Hire.** For any Equipment which is hired, the Customer must:
  - 9.1. take care of, store and operate the Equipment in accordance with Biosite’s instructions; any documentation supplied with the Equipment; and, in accordance with good industrial practices;
  - 9.2. insure the Equipment against loss or damage and for normal insured perils;
  - 9.3. not relocate or part with possession of the Equipment except with the prior written consent of Biosite;
  - 9.4. make the Equipment available for inspection by Biosite promptly upon demand;
  - 9.5. not make any modification to the Equipment or its packaging, nor alter, remove or tamper with any trademarks, trade names, markings or names affixed to or used in relation to the Equipment; and
  - 9.6. return the Equipment at the end of the hire period in a good, clean and working order except for fair wear and tear.
10. **Maintenance and Support.** The provisions of this clause 10 apply if an Order Form specifies that the Supplies include support and maintenance Services (which might be specific to certain items or provided as part of a maintenance plan for a complete installation, and which might be subject to specific charges or charges which are included within the charges for other Supplies).
  - 10.1. Biosite shall provide a facility to take telephone calls in Working Hours from the Customer in relation to problems or deficiencies experienced by the Customer in the use of Supplies.
  - 10.2. Subject to clause 10.3, the maintenance and support Services include such work as is reasonable and necessary to reinstate the normal operation of the Supplies. In the case of Software, maintenance and support also includes the supply of any updates to the Software.
  - 10.3. Biosite will be entitled to invoice for time spent on diagnosis and rectification of any problems resulting from any of the following:
    - 10.3.1. improper use or neglect of the Supplies by the Customer;
    - 10.3.2. the failure by the Customer to implement recommendations, workarounds and/or solutions to problems previously advised by Biosite;
    - 10.3.3. repair, adjustment, alteration or modification of the Supplies not undertaken by Biosite;
    - 10.3.4. adverse external conditions beyond the design and capability of the Supplies; or
    - 10.3.5. deliberate or accidental damage caused by the Customer or any third party.
  - 10.4. In the case of Equipment failure after expiry of the relevant warranty period, the maintenance and support Services include Biosite time

spent dealing with the failure but Biosite can invoice for replacement Equipment or for the cost of spare parts used for Equipment repair, as applicable.

**11. Pricing and Payment.** The provisions of this clause 11 apply to pricing and payment.

- 11.1. In consideration for provision of the Supplies, Biosite shall invoice, and Customer shall pay, the price for the Supplies set out on the Order Form.
- 11.2. To the extent that this Agreement says that Biosite is entitled to charge for any Supplies beyond those originally set out in the Order Form, the price for such items will be the Biosite price then prevailing for comparable Supplies if they were requested by a new customer.
- 11.3. Prices are stated exclusive of any applicable VAT. Biosite shall invoice and Customer shall pay VAT at the applicable rate.
- 11.4. Prices are stated exclusive of delivery charges which will be payable in addition Equipment which is required to be delivered.
- 11.5. Payment terms are net 30 days (that is to say payment is required by the end of the month following the month of the invoice).
- 11.6. If the customer wishes Biosite to move any Equipment, Biosite may charge for such move.
- 11.7. The Customer shall pay all sums due to Biosite under this Agreement without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 11.8. If payment is not made to Biosite when due then Biosite may (without prejudice to any other remedies) suspend performance of any of its obligations under this Agreement.
- 11.9. Except as otherwise stated on the Order Form, Biosite is entitled to submit invoices as follows:
  - 11.9.1. in the case for Equipment sold or hired, any time on or after delivery or collection of the Equipment;
  - 11.9.2. in the case of charges for maintenance or support, annually in advance, commencing with the date when Biosite invoices the price of the relevant Supplies;
  - 11.9.3. in the case of Services subject to recurring charges, monthly in arrears; and
  - 11.9.4. in all other cases, upon delivery of the Supplies.
- 11.10. Except for termination caused by Biosite's breach or negligent performance of this Agreement, charges invoiced in advance are not non-refundable.

**12. Price increases.** The prices for recurring Supplies (including Equipment hire) are subject to increases after the Initial Period upon prior written notice from Biosite. Otherwise, after an Order Form is accepted as described in clause 1, the price for Supplies is fixed (but only for the Supplies and quantities included in the Order Form).

**13. Recurring Supplies.** The provisions of this clause 13 apply to Supplies which are which are subject to recurring charges:

- 13.1. Supplies subject to an Initial Period cannot be terminated before the end of the Initial Period.
- 13.2. Supplies will continue until either party gives prior written notice of termination of at least one whole invoice period.
- 13.3. if the Customer nevertheless cancels the Supplies before the end of the Initial Period or without the required notice, Biosite will be entitled to invoice the Customer for the Supplies as if they had continued for the unexpired portion of the Initial Period and until expiry of the required notice, less a deduction only for any variable costs which Biosite is able to avoid incurring.

**14. Cancelled Equipment orders.** Biosite is not obliged to accept cancellation of any Supplies after the Order Form becomes binding in accordance with clause 1. If the Customer nevertheless does cancel any Supplies after the Order Form becomes binding as described in clause 1, but before the Supplies are delivered, then:

- 14.1. in the case of Supplies which are customised or bespoke for the Customer, Biosite can invoice in full for the quantity of such Supplies for which Biosite has incurred costs or liabilities associated with sourcing or manufacturing the Supplies;
- 14.2. in the case of Supplies subject to recurring charges for an Initial Period, clause 13.3 shall apply to the cancellation;
- 14.3. in the case of any other Supplies, Biosite will have the option (but not the obligation) in lieu of any other remedy or compensation for the cancellation, to invoice the Customer a 15% restocking fee.

**15. Personnel training.** Except for any Services which comprise training, it is Customer's responsibility to ensure that Customer personnel are appropriately skilled, trained and supervised to use the Supplies. Biosite is entitled to charge for time spent remediating any failures caused by Customer Personnel.

**16. Suitability and limitations of Supplies.** It is the Customer's responsibility to select Supplies which are suitable in all respects for the Customer's requirements having regard to environmental, regulatory, noise abatement, Site, safety and industry requirements. Except for specific written statements provided by Biosite in reply to requests for advice on suitability, Biosite's knowledge of the Customer's intended application of Supplies does not mean that Biosite warrants the

suitability of the Supplies for such application. Without limiting the generality of the foregoing:

- 16.1. Supplies for temporary or portable use might not offer comparable features and specifications to Supplies designed for permanent use;
- 16.2. unless expressly stated in writing by Biosite, Supplies might not meet specific standards or certification requirements;
- 16.3. Equipment with communication facilities (including, but not limited to alarm signalling Equipment) will be subject to communication failures or deficiencies which are generally associated with the mode of communication (including, for example, cellular coverage for wireless communications, obstructions to radio communications, LAN network failures and disruption caused by environmental conditions); and
- 16.4. Equipment might be vulnerable to deliberate or accidental damage to cabling, power supplies connected to the Equipment.
- 17. **CCTV.** If Biosite supply or install CCTV or related Equipment, it shall check that the Equipment is in apparent working condition at the time of supply and Biosite shall verify that installation performed by Biosite operates as expected before leaving the Site. The Customer accepts the risk that such Equipment might nevertheless subsequently fail or might not produce the desired images because:
  - 17.1. Equipment might develop a fault that affects normal operation until it is discovered and rectified;
  - 17.2. Equipment is susceptible to deliberate or accidental interference or its performance might be degraded by power or environmental conditions or by interruptions to connectivity (for example, Equipment moved by the Customer or vandalised or connectivity compromised by poor cellular network coverage);
  - 17.3. the nature of the Site and the extent of the Equipment might cause gaps in coverage (for example, incomplete coverage caused by obstructions); or
  - 17.4. optimal use of Equipment might be compromised by sub-optimal arrangements to monitor or act upon images (for example, difficulties contacting personnel).
- 18. **Customer co-operation.** The Customer undertakes to:
  - 18.1. co-operate with Biosite and procure that the Customer's Personnel co-operate with Biosite as required by Biosite in relation to performance of its obligations and/or the exercise of its rights under this Agreement;
  - 18.2. allow and/or procure free rights of adequate and safe access for Biosite Personnel to the Site as required by Biosite in relation to performance of Biosite obligations and/or the exercise of its rights under this Agreement; and
  - 18.3. ensure that the Site is cleared and prepared before the Services are due to commence and that the environment in which any Services are to be performed complies with all relevant legislation and/or regulations including relevant health and safety law. The Customer will communicate all relevant health and safety policies relevant to the Site to Biosite Personnel visiting the Site.
- 19. **Data Protection.** Insofar as performance of an Order Form includes Biosite processing on behalf of the Customer any personal data (as defined in Data Protection Legislation):
  - 19.1. each of the parties shall comply with Data Protection Legislation;
  - 19.2. Biosite, acting as data processor, shall:
    - 19.2.1. act only on instructions from the Customer in respect of any personal data processed by Biosite;
    - 19.2.2. have technical and organisational measures in place against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data held or processed by Biosite, appropriate to the harm that might result from such unauthorised or unlawful processing or loss, destruction or damage to personal data and the nature of the personal data;
    - 19.2.3. take all reasonable steps to ensure the reliability of any of its staff who have access to personal data processed; and
    - 19.2.4. not transfer personal data provided by the Customer to a country outside the European Economic Area without ensuring the personal data is afforded adequate protection.
- 20. **Warranties.** Biosite warrants that:
  - 20.1. it shall perform any Services with reasonable care and skill;
  - 20.2. it will comply with applicable laws;
  - 20.3. it is lawfully entitled to enter into the Agreement and provide the Supplies;
  - 20.4. the Software will not infringe the intellectual property rights of any third party; and
  - 20.5. it has good title to Equipment which is sold and it is lawfully entitled to provide Equipment which is hired.
- 21. **Limitations and exclusions of liability.**
  - 21.1. Except as expressly set out in the Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
  - 21.2. Biosite will have no Liability:
    - 21.2.1. for any delay due to events or matters outside Biosite's reasonable control;

- 21.2.2. for failure of automated release of exit Equipment if the Equipment is the only means of escape;
- 21.2.3. loss of profits and/or damage to goodwill;
- 21.2.4. loss of data;
- 21.2.5. business interruption, loss of business, contracts, opportunity and/or production; and/or
- 21.2.6. indirect or consequential losses; even if Biosite was advised that such Liability would probably arise.
- 21.3. Biosite's total Liability to the Customer whatsoever and howsoever arising under this Agreement in any relevant 12 month period under this Agreement will not exceed the amount paid by the Customer to Biosite under this Agreement in the same relevant 12 month period. For the purposes of this clause 21.3 relevant 12 month period means the 12 months immediately prior to the first acts and/or omissions giving rise to the Liability.
- 21.4. Nothing in this Agreement shall exclude or limit Biosite's Liability for death or personal injury caused by Biosite negligence or any Liability caused by Biosite fraud or any other liability which it is not permitted to exclude or limit as a matter of law.
22. **Risk and title.** Risk in the Equipment will pass to the Customer at the time of delivery or collection of the Equipment.
- 22.1. Biosite shall retain title and ownership of the Equipment until Biosite has received payment in full in cash or cleared funds for all Equipment supplied to the Customer by Biosite under this Agreement.
- 22.2. Until payment in full of the price for all Equipment supplied to the Customer is received by Biosite the Equipment must be clearly marked and identified as being Biosite property.
- 22.3. Until title in the Equipment has passed to the Customer, the Customer shall keep the Equipment insured for the price at which the Equipment was sold to the Customer against all insurable/normal risks and shall procure that Biosite's interest is noted on such policy of insurance. Any monies received from the Customer by Biosite in accordance with this clause shall not discharge the Customer's liability to pay the price for the Equipment but shall be set off against any such liability.
- 22.4. The Customer shall not part with the possession of any Equipment owned by Biosite until the Customer has paid in full all sums due to Biosite under this Agreement and/or any other agreement with the Customer.
23. **Termination.** If the Customer:-
- 23.1. fails to make any payment to Biosite when due;
- 23.2. breaches the terms of this Agreement and, if the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
- 23.3. persistently breaches any one or more terms of this Agreement;
- 23.4. pledges or charges any Equipment which remains Biosite property, or ceases or threatens to cease to carry on business, or proposes to compound with its creditors, applies for an interim order under Section 252 Insolvency Act 1986 or has a bankruptcy petition presented against it, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets, or takes or suffers any similar action in any jurisdiction; and/or
- 23.5. appears reasonably to Biosite to be about to suffer any of the above events
- then Biosite shall have the right, without prejudice to any other remedies, to :
- 23.6. enter, without prior notice, any of the Customer's premises (or premises of third parties) where Equipment owned by Biosite may be located and repossess and dispose of or sell any Equipment found which is owned by Biosite so as to discharge any sums due to Biosite under this Agreement and/or any other agreement with the Customer. The Customer must allow and/or procure free rights of adequate and safe access for Biosite Personnel to all premises of the Customer and/or any third parties where Equipment owned by Biosite may be located for the purpose of repossessing the Equipment;
- 23.7. withhold delivery of any undelivered Equipment, or collection of any uncollected Equipment, and stop any Equipment in transit and/or withhold or suspend all or any Supplies;
- 23.8. terminate or suspend without Liability to the Customer this Agreement and/or any other agreement with the Customer.
24. **Survival of rights.** Termination of this Agreement will not affect any accrued rights or liabilities of either party or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.
25. **Invalidity and Severability.** If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, then the invalidity or unenforceability shall not affect the other provisions of this Agreement and all provisions not affected shall remain in full force and effect. Both parties shall attempt to substitute the unenforceable clause with a valid and enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.
26. **No Waiver.** No waiver by Biosite of any breach of this Agreement shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
27. **No Assignment.** The Customer shall not assign its interest in this Agreement (or any part) without Biosite's prior written consent.
28. **Entire Agreement.** These terms supersede all prior agreements, arrangements and understandings between the parties and constitute the entire agreement between the parties relating to the Supplies. Each party acknowledges that in entering into this Agreement it does not rely on, and will have no remedies in respect of, any representation or warranty (whether made innocently or negligently but non-fraudulently) that is not set out in this Agreement.
29. **Variations.** No addition to, or modification of, any provision in this Agreement will be binding unless made in writing and signed by duly authorised representatives of the parties.