

**Biosite Terms of Business 2020**

The Customer's attention is particularly drawn to the provisions of clause 18 (Suitability and limitations of supplies) and clause 23 (Limitations and exclusions of liability).

"Agreement" means the contract for between Biosite and the Customer for the Supplies in accordance with these terms.

"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.

"Data Protection Legislation" unless it is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) ('GDPR') and any national implementing laws, regulations and secondary legislation, including the Data Protection Act 2018, as amended or updated from time to time, in the UK, and then any successor legislation to the GDPR, or the Data Protection Act 2018.

"Equipment" means any part of the Supplies which comprises tangible items.

"Initial Period" means the minimum duration (as set out on the Order) 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" the Customer's order for the Supplies, as may be set out in the Customer's purchase order form in response to a Biosite quotation, or the Customer's written acceptance of Biosite's quotation, as the case may be.

"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 (such as fire alarm monitoring, for example), as specified in the Order.

"Site" means any premises at which any Services are to be performed as set out in the Order.

"Software" means any part of the Supplies which comprises computer software.

"Supplies" means any goods (including Equipment), Services, software or other items which are expressly set out on in the Order 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 8.00am to 5.00pm on any Working Day.

1. **Orders.** Until accepted as described in this clause 1, an Order does not oblige Biosite to fulfil orders or maintain pricing. An Order is a contractual offer by the Customer to purchase the Supplies as set out in the Order and on these terms. If Biosite has issued a quotation to the Customer, the parties agree that the Customer's Order, and therefore the Customer's contractual offer, incorporates the details of the Biosite quotation, unless otherwise agreed between the parties in writing. An Agreement for the Supplies is binding only when an Order is accepted by Biosite. Acceptance of an Order happens when Biosite expressly notifies Customer that the Order is accepted or when Biosite begins to provide or make available any Supplies, whichever is earlier. The parties agree that these terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate (whether through its standard documentation or otherwise), or which are implied by law, trade custom, practice or course of dealing.
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. Whilst a purchase order may constitute an Order, the lack of any purchase order will not have any effect on the binding status or terms of the Agreement if the Customer has submitted its Order (and therefore its contractual offer) via any other written means.
3. **Accuracy of Orders.** The Customer is responsible for the accuracy of an Order (regardless of whether or not that Order incorporates a Biosite quotation) and providing all information necessary for Biosite to perform the Agreement. Any inaccuracy in an Order, information or statement provided by the Customer, that results in the delay or inability of Biosite to provide the Supplies and/or Services, will result in an adjustment to the fees payable by the Customer.
4. **Booking process.**
  - 4.1. Upon acceptance of an Order, the parties will confirm, in writing, a date for the commencement of the Services detailed in that Order (a "Booking"). Allocation of resources by Biosite for the Services, will only take place once a Booking has been confirmed.
  - 4.2. After a Booking is confirmed, any cancellation or rescheduling of a Booking by the Customer, within 3 Working Days prior to the agreed date for the commencement of the Services, will result in the Customer paying to Biosite a proportion of the fees as follows. Where a cancellation or rescheduling of the Services by the Customer has taken place:
    - 4.2.1. on the day of the agreed date for the commencement of the Services, the Customer shall pay to Biosite 100% of the fees estimated/quoted for the Booking.

- 4.2.2. within 1 Working Day prior to the agreed date for the commencement of the Services, the Customer shall pay to Biosite 75% of the fees estimated/quoted for the Booking.
- 4.2.3. Within 2 Working Days prior to the agreed date for the commencement of the Services, the Customer shall pay to Biosite 50% of the fees estimated/quoted for the Booking.
- 4.2.4. Within 3 Working Days prior to the agreed date for the commencement of the Services, the Customer shall pay to Biosite 25% of the fees estimated/quoted for the Booking.
5. **Timescales.** Biosite shall use reasonable efforts to meet any timescales expressly set out in an Order. Time is not of the essence for any dates for performance of this Agreement.
6. **Quotes.** Any quotation or estimate given by Biosite shall not constitute an offer and is only valid for a period of 30 days from its date of issue unless otherwise specified by Biosite in writing.
7. **Delivery of Equipment.** Unless otherwise specified in the Order Biosite shall deliver the Equipment to the location set out in the Order and Biosite is responsible for loss or damage in transit.
8. **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:
  - 8.1. 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; and gives Biosite a reasonable opportunity to examine the Equipment;
  - 8.2. 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);
  - 8.3. Customer has duly paid invoices for the price for the Equipment and any maintenance Services;
  - 8.4. the loss or damage is not covered by any Customer policy of insurance;
  - 8.5. the Equipment has not been adjusted, modified or added to except by Biosite or with the prior written consent of Biosite;
  - 8.6. Customer can evidence that the Equipment has been duly routinely tested and maintained the Equipment in accordance with Biosite instructions;
  - 8.7. 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.
9. **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.
10. **Software.** The provisions of this clause 10 apply to Software.
  - 10.1. 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.
  - 10.2. Software is licensed only for the number of users and subject to any other restrictions set out in the Order.
  - 10.3. 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.
  - 10.4. Unless otherwise stated in the Order, 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.
  - 10.5. 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.
  - 10.6. Customer acknowledges that Software might not be error-free or operate entirely uninterrupted.
11. **Equipment Hire.** For any Equipment which is hired, the Customer must:
  - 11.1. 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;
  - 11.2. insure the Equipment against loss or damage and for normal insured perils;
  - 11.3. not relocate or part with possession of the Equipment except with the prior written consent of Biosite;
  - 11.4. make the Equipment available for inspection by Biosite promptly upon demand;
  - 11.5. 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



- destruction of personal data, and damage being caused to personal data. These measures shall be appropriate to (1) the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage of the personal data, and (2) the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting (in transit) personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 21.1.3. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled: (1) Biosite and the Customer have provided appropriate safeguards in relation to the transfer; (2) the data subject has enforceable rights and effective legal remedies; (3) Biosite complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and (4) Biosite complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 21.1.4. ensure only personnel required for the purposes of carrying out the Agreement have access to personal data, and that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 21.1.5. if the Customer is unable to access the relevant information, to assist the Customer, and in any event, provide reasonable assistance in responding to any request from a supervising authority or a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 21.1.6. notify the Customer without undue delay on becoming aware of a personal data breach;
- 21.1.7. in accordance with Biosite's standard policies for backup as provided to the Customer from time to time, delete, or return in a format determined by Biosite, personal data and copies thereof, on termination of the Agreement, unless required by any Applicable Laws to continue to store the personal data;
- 21.1.8. maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits to be carried out by the Customer, or the Customer's designated auditor, only so far as is necessary in order to demonstrate compliance, provided that the Customer (1) provides Biosite with no less than 30 days' notice of such audit or inspection; and (2) both parties agree the scope, duration and purpose of such audit or inspection. If the Customer becomes privy to any Confidential Information of Biosite as a result of this clause, the Customer shall hold such Confidential Information in confidence and, unless required by law, not make the Confidential Information available to any third party, or use the Confidential Information for any other purpose. The Customer acknowledges that Biosite shall only be required to use reasonable endeavours to assist the Customer in procuring access to any third party assets, records or information as part of any audit.
- 21.2. The Customer:
- 21.2.1. will ensure, and warrants that, it has all necessary and appropriate consents (where applicable) and notices in place to ensure that it can lawfully transfer the personal data to Biosite, for the duration and purposes of the Agreement;
- 21.2.2. shall, unless otherwise provided for in the Agreement, be solely responsible for the legality, security, confidentiality, integrity, availability, accuracy and quality of any data it transfers and processes;
- 21.2.3. shall provide Biosite with a detailed description of the data processing activities, including the personal data concerned, in writing, and warrants that such description will be accurate, complete, and sufficient to satisfy the Data Protection Legislation;
- 21.2.4. is solely responsible for responding to any request from a data subject and in ensuring its own compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 21.2.5. shall indemnify Biosite against any claims, actions, liabilities, proceedings, direct losses, damages, expenses, fines and costs (including without limitation court costs and reasonable legal fees) incurred by Biosite as a direct result of any negligence, wilful misconduct, or breach of the Data Protection Legislation of the Customer.
- 21.3. Subject to clause 21.4, the Customer authorises Biosite to appoint (and permit each third party processor appointed in accordance with this clause 21 to appoint) third party sub-processors in accordance with this clause 21 and any restrictions in this Agreement.
- 21.4. Biosite may appoint alternative third-party processors to provide materially like-for-like services to the Customer as part of the Services subject to:
- 21.4.1. Biosite entering into a written agreement with such third party processor incorporating terms which are substantially similar to those set out in this clause 21; and
- 21.4.2. such third party processor being able to demonstrate at least as high a standard of service quality and compliance to the previously appointed third party processor.
- 21.5. Biosite shall give the Customer prior written notice of the appointment of any new third party processor, and provide the Customer with full details of the processing to be undertaken by the third party processor. If the Customer objects (on reasonable grounds) to the proposed appointment, subject to the termination provisions of the Agreement, either party may terminate the Agreement by providing Biosite with 30 days' advance written notice.
22. **Warranties.** Biosite warrants that:
- 22.1. it shall perform any Services with reasonable care and skill;
- 22.2. it will comply with applicable laws;
- 22.3. it is lawfully entitled to enter into the Agreement and provide the Supplies;
- 22.4. the Software will not infringe the intellectual property rights of any third party; and
- 22.5. it has good title to Equipment which is sold and it is lawfully entitled to provide Equipment which is hired.
23. **Limitations and exclusions of liability (THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE).**
- 23.1. In view of the express commitments given by Biosite in these terms, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 23.2. Biosite will have no Liability to the Customer:
- 23.2.1. for any delay due to events or matters outside Biosite's reasonable control;
- 23.2.2. for failure of automated release of exit Equipment if the Equipment is the only means of escape;
- 23.2.3. for failure of Equipment or Services that rely on communication facilities (including, but not limited to alarm signalling Equipment or alarm monitoring Services) as a result of communication failures or deficiencies which are generally associated with the mode of communication (including, for example only, cellular coverage for wireless communications (3G, 4G, GPRS), obstructions to radio communications, LAN network failures and disruption caused by environmental conditions);
- 23.2.4. loss of profits and/or damage to goodwill;
- 23.2.5. loss of data;
- 23.2.6. business interruption, loss of business, contracts, opportunity and/or production; and/or
- 23.2.7. indirect or consequential losses; even if Biosite was advised that such Liability would probably arise.
- 23.3. Biosite's total Liability to the Customer whatsoever and howsoever arising under or in connection with this Agreement per claim or series of connected claims will not exceed the amount paid by the Customer to Biosite under this Agreement in the 12 months immediately prior to the first acts and/or omissions giving rise to the Liability.
- 23.4. 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, including breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
24. **Risk and title.** Risk in the Equipment will pass to the Customer at the time of delivery or collection of the Equipment.
- 24.1. 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.
- 24.2. 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.
- 24.3. 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.
- 24.4. 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.
25. **Termination.** If the Customer:
- 25.1. fails to make any payment to Biosite when due;
- 25.2. 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;
- 25.3. persistently breaches any one or more terms of this Agreement;

- 25.4. 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
- 25.5. 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:
- 25.6. 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;
- 25.7. 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;
- 25.8. terminate or suspend without Liability to the Customer this Agreement and/or any other agreement with the Customer.
26. **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.
27. **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.
28. **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.
29. **No Assignment.** The Customer shall not assign its interest in this Agreement (or any part) without Biosite's prior written consent.
30. **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.
31. **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.
32. **Environmental.**
- 32.1. The Customer shall be responsible for financing the collection, treatment, recovery and environmentally sound disposal of:
- 32.2. all WEEE arising or deriving from the Supplies; and
- 32.3. all WEEE arising or deriving from products placed on the market prior to 13 August 2005 where such products are to be replaced by the Supplies and the Supplies are of an equivalent type or are fulfilling the same function as that of such products;
- 32.4. comply with all additional obligations placed upon the Customer by the WEEE Regulations by virtue of the Customer accepting the responsibility set out in clause 1.1.1; and
- 32.5. provide Biosite's WEEE compliance scheme operator with such data, documents, information and other assistance as such scheme operator may from time to time reasonably require to enable such operator to satisfy the obligations assumed by it as a result of Biosite's membership of the operator's compliance scheme.
- 32.6. The Customer shall be responsible for all costs and expenses arising from and relating to its obligations in clause 1.1.
- 32.7. Further information in respect of the arrangements set out in clause 1.1 can be found at [www.electrolink.eu.com](http://www.electrolink.eu.com) by clicking on 'BUSINESS WEEE COLLECTIONS', then clicking 'continue' under final users, and then entering WEEE registration number [The WEEE registration number of the Electrolink member seller should be entered here] where prompted.