

# General Terms & Conditions of Sale

## 1. Area of Application

1.1 All Orders accepted by Bia Analytical Limited or any of its subsidiaries or affiliates (collectively, "BA") will be governed by these General Terms and Conditions of Sales (the "Terms and Conditions"), including orders placed by telephone which have not been confirmed in writing and orders made by delivery of samples. A contract with these Terms and Conditions comes into being when an order that has been placed with BA is accepted by BA. An order placed with BA is considered as accepted by BA when (a) BA proceeds to fulfil that order, without need for any written confirmation from BA or (b) BA accepts the order in writing.

1.2 These Terms and Conditions supersede and replace all prior verbal or written price quotations and agreements between the parties and, unless specifically indicated otherwise therein, take precedence over all conflicting or inconsistent provisions of subsequent written agreements between the parties. No officer (other than the CEO/COMPANY OFFICER of BA), employee, agent or subcontractor of BA has the authority to alter or waive any of these Terms and Conditions or to make any representation which conflicts with or purports to override any of these Terms and Conditions; and no such alteration, waiver or representation shall be binding upon BA, unless it is in writing and signed by the CEO/COMPANY OFFICER of BA.

## 2. Placement of Order

2.1 A customer's order will be valid only if it is sent by mail or fax or other electronic message on letterhead of the customer or by using BA approved sample dispatch sheets or electronic order forms and the commercial aspects of the order which are not specifically set out in these Terms and Conditions (including price, estimated turnaround times and delivery date) must be agreed at the time of the order. The customer must confirm in writing orders given by telephone immediately after they are made and in any event, will be deemed to have placed an order if the customer sends samples to BA quoting the customer reference given to it by BA. BA is not obligated to start any analytical work unless the order is clear and it has been provided all required information.

2.2 Unless specifically accepted in writing and signed by the CEO/COMPANY OFFICER of BA, any terms proposed or submitted by a customer at any time (including, but not limited to, terms or provisions in the customer's purchase order, instructions or other document) which differ from these Terms and Conditions are rejected as a material alteration of these Terms and Conditions and shall be of no force or effect. Furthermore, special terms or conditions of prior orders which have been agreed by BA in accordance with these Terms and Conditions, including special pricing, will not automatically apply to subsequent orders. Each order accepted by BA will be treated as a separate contract between BA and the customer.

2.3 BA is entitled to charge management and administrative fees of up to £25.00 in connection with the request for additional services to an existing order. A request for additional services on samples that have entered the laboratory will be treated as a new order and may postpone estimated delivery date accordingly.

2.4 Any logistic service off-site of the laboratory must be paid in full, unless it has been cancelled or modified by the customer at least forty eight hours (48) in advance for collection services, ninety six (96) hours in advance for sampling services and one (1) week in advance for auditing services.

## 3. Price and Terms of Payment

3.1 If the acknowledgment of an order does not state otherwise, BA's prices apply "ex works", excluding packaging, which is charged separately. Any additional cost or disbursement (e.g. incurred by BA in connection with the order) must be paid by the customer.

3.2. Prices are exclusive of all applicable taxes (including sales, use and VAT) and are based on tariffs in force at the day of the remittance of the offer to the customer. Applicable taxes are those in force at the date of invoicing.

3.3 Unless specifically agreed otherwise by BA in its acceptance of an order, payment of all invoices is due strictly within 30 days of the invoice date. Any dispute about invoices must be raised in writing within 30 days of the invoice date. The challenge of an analytical result will not entitle a customer to defer payment. Any invoice which remains outstanding after due date, may be additionally charged with an administration fee of £25.00 in respect of BA's costs in dealing with such outstanding payment, and also may carry interest at the rate of one percent (1%) per month or the maximum interest rate permitted by applicable law, whichever is lower.

3.4 Invoices are subject to a minimum invoice charge of £150.00 excluding VAT or other applicable taxes. BA has the right to charge an administrative fee of up to £25.00 to re-issue an invoice.

3.5 The payment method is cheque, bank transfer or direct debit. Any other method of payment must receive prior agreement from BA. The customer undertakes to provide bank account details where relevant.

3.6 BA is entitled to require payment of up to 100% of the quoted order price as a condition of acceptance.

## 4. Duties of Customer in Delivering Samples or Materials

4.1 The samples or materials must be in a condition that makes the preparation of reports/analyses or the production of ordered products possible without difficulty. BA is entitled to conduct an initial examination of the samples or materials to check their condition before processing the samples, drawing up a report or using them in production. The customer shall bear the costs of this initial examination, if the samples or materials do not comply with the requirements described in this clause 4.1. If the result of the initial examination is that an analysis or production is impossible or is possible only under more difficult conditions than originally anticipated – for example, because the samples or materials have been interspersed with foreign materials or substances that were not reported by the customer or are degraded – BA shall be entitled to terminate or interrupt the order and the customer shall bear costs incurred by BA to that point.

4.2 The customer must ensure, and hereby warrants, that no sample poses any danger, including on its site, during transportation, in the laboratory or otherwise to BA premises, instruments, personnel or representatives. It is the customer's responsibility to ensure compliance with hazardous waste regulations, including regarding information, labelling, transportation and disposal and to inform BA personnel or representatives about sample health and safety concerns, including any known or suspected toxic or other contaminant that may be present in the sample and its likely level of contamination as well as the risks to BA premises, instruments, personnel and representatives related to the contamination. The customer shall be responsible for, and indemnifies BA against, all costs, damages, liabilities and injuries that may be caused to or incurred by BA or its personnel or representatives including on the sampling site, during the transportation or in the laboratory by the customer's sample or by sampling site conditions. The customer shall bear all extraordinary costs for adequate disposal of hazardous waste resulting from the sample, whether or not described as hazardous waste. At BA's request, the customer must provide BA with the exact composition of the samples.

## 5. Property Rights on Sample Material and Sample Storage

5.1 All samples become the property of BA to the extent necessary for the performance of the order. Unless the customer pays for storage, BA shall have no obligation or liability for samples sent to BA for storage, including samples requiring refrigeration. If the customer pays for storage, BA will take commercially reasonable steps to store the samples, according to professional practice.

5.2 BA can dispose of or destroy samples immediately after the analysis has been performed, unless BA and the customer have agreed in writing on the terms of BA's retention of the sample. BA also can dispose of or destroy the samples after the agreed upon retention period, without further notice and at customer's cost, should an extra cost for BA arise to comply with any regulation (for example, with respect to disposal of hazardous waste). If the customer requests the return of unneeded sample material, BA will return them to the customer, at the customer's cost and risk.

## 6. Delivery Dates, Turnaround Time

6.1 Delivery dates and turnaround times are estimates and do not constitute a commitment by BA. Nevertheless, BA shall make commercially reasonable efforts to meet its estimated deadlines.

6.2 Results are generally sent by email and/or by UK post, or via other electronic means, to the attention of the persons indicated by the customer in the order, promptly after the analysis is completed.

## 7. Transfer of Property

7.1 Title in any analysis results, products, equipment, software or similar supplied by BA to the customer will remain with BA until all invoices in respect thereof have been paid by the customer in full, and until such full payment, the customer shall have no property rights or other rights to use them. In addition, even if BA has accepted and begun to fulfil an order, BA has the right at any time stop processing that order and to stop doing any work for a customer if that customer is late in paying any amount due to BA, whether for that or any other order.

7.2 Even after payment in full by the customer, BA shall retain the right to store, use and publish all analysis results in an anonymous form which does not identify the customer.

## 8. Limited Warranties and Responsibilities

8.1 Orders are handled in the conditions available to BA in accordance with the current state of technology and methods developed and generally applied by BA and the results may not always be absolutely precise and/ or relevant. Analyses, interpretations, assessments, consulting work and conclusions are

prepared with a commercially reasonable degree of care but BA cannot guarantee that these will always be correct or absolute. This limited warranty expires six months after the delivery date of the samples, if the acknowledgement of the order does not specifically state otherwise. In all cases, the customer must independently verify the validity of any results, interpretations, assessments and conclusions supplied by BA, if it wishes to rely on the same in respect of matters of importance and shall do so at its own risk.

8.2 Each analytical report relates exclusively to the sample analyzed by BA. If BA has not expressly been mandated and paid for the definition of the sampling plan (including which samples of which raw materials and finished products and at which frequency should be analysed) and the definition of the precise range of analysis to be performed or if the customer has not followed BA recommendations, BA shall not bear any responsibility if the sampling plan and/or the range of analysis to be performed prove to be insufficient or inappropriate.

8.3 The customer is responsible for the proper delivery of samples sent to BA for examination/analyses or materials sent for production. Unless otherwise specifically agreed in writing by BA, BA accepts no responsibility for any loss or damage, which may occur to any sample in transit or to any facility or site where logistics services are being delivered. The customer will at all times be liable for the security, packaging and insurance of the sample from its dispatch until it is delivered to the offices or the laboratories of BA. BA will use commercially reasonable care in handling and storing samples, but BA shall not be held responsible for any loss or destruction of samples even after their receipt at its laboratories.

8.4 The customer warrants and represents to BA that all samples sent to BA for analysis are safe and in a stable condition and undertakes to indemnify BA for any losses, injuries, claims and costs which BA, or its personnel, may suffer as a result of any sample not being in a safe or stable condition, notwithstanding that the customer may have given an indication on the sample or any order form of any perceived problem with the sample. The customer must always inform BA in writing prior to shipment and label the packaging, samples and/ or containers appropriately, if the samples are dangerous or otherwise of a hazardous nature.

8.5 Unless explicitly agreed in writing by all parties, the contractual relationship shall be between exclusively the customer and BA. There shall be no third party beneficiary or collateral warranty relating to any order and the customer shall indemnify and hold BA harmless from and against any and all third party claims in any way relating to the customer or to the order by the customer.

8.6 Where BA supplies any software to the customer, the customer shall use such software in accordance with the applicable licence terms, instructions and manuals.

## **9 Limitation of Liability**

9.1 Except to the extent that such limitations are not permitted or void under applicable law and subject at all times to clause 9.2: (a) BA (together with its workers, office clerks, employees, representatives, managers, officers, directors, agents and consultants and all BA partners and affiliates, the "BA Indemnifying Parties") shall be liable only for the proven direct and immediate damage caused by the BA Indemnifying Party's breach of its obligations under these Terms and Conditions in connection with the performance of an order and then, only if BA has received written notice thereof not later than six (6) months after the date of the customer's knowledge of the relevant claim (unless any longer period is prescribed under applicable law and cannot be contractually limited), and (b) in all cases (whether arising under contract, tort, negligence, strict liability, through indemnification or otherwise), the BA Indemnifying Parties' aggregate liability in respect of all or any claims in relation to an order, and the customer's exclusive remedy, with respect to BA's services which fall under these Terms and Conditions, shall be limited to the lesser of: (i) the direct and immediate loss or damage caused by the BA Indemnifying Party's breach of its obligations under these Terms and Conditions in connection with the performance of the order and (ii) five times the amount BA actually received from the customer in relation to the order up to fifty thousand pounds sterling (£50,000).

9.2 The BA Indemnifying Parties shall not be liable for any of the following: (i) loss of business profits; or (ii) depletion of goodwill or other similar losses; or (iii) loss of business opportunities; or (iv) loss of contracts; or (v) loss of revenue; or (vi) loss of anticipated savings; or (vii) loss of or damage to data; or (viii) for any special indirect or consequential losses, costs, charges, expenses or damages incurred by the customer or by any third party. However, the BA Indemnifying Parties only exclude and limit their liability as permitted by applicable law. The BA Indemnifying Parties do not exclude or limit their liability for death or personal injury caused by their negligence, for their fraudulent misrepresentation or for breach of implied terms under any applicable statute regarding BA's right to transfer good title (subject at all times to clause 7).

9.3 It is a condition of BA's acceptance of an order that the customer indemnifies the BA Indemnifying Parties for any losses, injuries, claims and costs which the BA Indemnifying Parties may suffer as a result of arising from or in any way connected with its role under or services or products or software provided pursuant to these Terms and Conditions, except to the extent that the BA Indemnifying Parties are required to bear them according to these Terms and Conditions, and by placing an order the customer agrees to provide that indemnification.

## **10. Repeated Analysis**

Objections to test results can be made within thirty (30) days after the customer receives the results. However, unless it would appear that the results of the repeated analysis do not match those of the first one, the customer shall bear the costs of the repeat testing or review. Furthermore, a repeated analysis will be possible only if BA has a sufficient amount of the original sample on hand when it receives the customer's objection. Otherwise the customer will be required to pay all costs, including sampling, transportation, analytical and disposal costs for the repeat analysis.

## **11. Force Majeure**

BA cannot be held liable for delays, errors, damages or other problems caused by events or circumstances which are unforeseen or beyond BA's reasonable control, or which result from compliance with governmental requests, laws and regulations.

## **12. Confidentiality & Processing of Customer Data**

12.1 BA shall be entitled to save and process personal or commercial data received from the customer in any way, no matter whether such data stem from the customer directly or from a third party and shall use commercially reasonable efforts to keep such data confidential, in compliance with applicable law.

12.2 BA shall use commercially reasonable efforts to keep all analysis results and service reports confidential, subject to BA's rights set forth in clause 7.2 and the right to use them in order to demonstrate its entitlement to payment for services rendered.

12.3 Analysis results are prepared and supplied exclusively for the use of the customer and should not be divulged to a third party for any purposes without the prior written agreement of BA. In addition, the customer is required to maintain secrecy concerning all services provided by BA and their results as well as the composition of products and software delivered by BA. Analysis results are not to be publicly disclosed or exploited without the prior written consent of BA. Even if such written consent is given by BA, the customer (a) remains responsible for any consequences due to the divulgence of such results to a third party and any reliance of such third party on such results and (b) hereby agrees to indemnify the BA Indemnified Parties against any liability which the BA Indemnified Parties may incur as a result of such divulgence or any such third party reliance.

## **13. Disclaimer and Miscellaneous**

**13.1 EXCEPT AS EXPRESSLY SET OUT IN THESE TERMS AND CONDITIONS, ALL CONDITIONS, WARRANTIES AND OTHER TERMS (INCLUDING ANY IMPLIED WARRANTY AS TO MERCHANTABILITY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE) AS TO THE MANNER, QUALITY AND TIMING OF THE TESTING SERVICE AND RESULTS, EQUIPMENT, PRODUCTS OR SOFTWARE SUPPLIED BY BA ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF BA CONTAINED IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE.**

13.2 These Terms and Conditions may be modified in writing from time to time by BA and orders will be governed by the most recent version of these Terms and Conditions that is in effect at the time BA accepts the order.

13.3 Should a court waive, limit or hold to be invalid, illegal or unenforceable any part of these Terms and Conditions, all other parts shall still apply to the greatest extent possible.

13.4 Failure by either BA or the customer to exercise the rights under these Terms and Conditions shall not constitute a waiver or forfeiture of such rights.

13.5 Except as expressly set out in these Terms and Conditions, a person who is not a party to this contract shall not have any rights under or in connection with it.

## **14. Governing Law/ Jurisdiction**

14.1 The construction, validity and performance of these Terms and Conditions and any contract which incorporates these Terms and Conditions shall be governed by the laws and the commercial courts of Northern Ireland which shall have exclusive jurisdiction.