



BIA Separations  
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# General Terms and Conditions of Sale Of BIA Separations d.o.o.

## 1. General Provisions

### A) Definitions and Interpretations

For the purposes of this document, the following definitions apply:

**"BIA Separations"** means BIA Separations d.o.o., a Slovenian limited liability company registered in Ajdovščina, Slovenia with the Slovenian Companies Register under registration number 1319612000.

**"Confidential Information"** means any written or oral non-public information, viewed as the property of the holder and disclosed through any mean of communication or observation by one party to the other whereby the recipient is bound to refrain from making unauthorised use thereof.

**"Customer"** means the end buyer of the Products. In this document the Distributors are considered as Customers.

**"Distributor"** means the company distributing BIA Separations Products under the terms of conditions specified in the Distributor Agreement the company signed with BIA Separations.

**"General Terms and Conditions"** means this document, entitled General Terms and Conditions of Sale of BIA Separations d.o.o. (written as GTC in the rest of this document). These GTC are published on BIA Separations internet page and deemed to be accepted by the Customer upon transmission of a Purchase Order to BIA Separations.

**"Handling after rent"** is a service which includes disassembling of the used columns, passivating and cleaning the used Housing.

**"Housing"** means each Product's specially designed housing encasing that Product's unique CIM® Monolithic Stationary Phase.

**"Order Confirmation"** means the BIA Separations document sent to the Customer or Distributor confirming the receipt of a Purchase Order.

**"Payment Terms"** are the conditions under which BIA Separations will complete a sale of its Products to the Customer.

**"Price"** means the Product Price or List Price is a value for which the Customer will purchase a Product under the conditions defined by BIA Separations in a Quotation.

**"Products"** means the products and services offered by BIA Separations.

**"Instruction Manual"** is a document which specifies the installation, operation, maintenance and handling of the product.

**"Product Specific Information Sheet"** is a document which specifies the basic characteristics, maintenance and recommended storage conditions of the product.

**"Purchase Order"** means a purchase order for Products from the Customer to BIA Separations.

**"Quotation"** is a document issued by BIA Separations that specifies the price, delivery terms, payment terms and other conditions of sale for the Product(s) a customer requests. It is valid for the time period specified on the document. A reference to GTC is included in the quotation and it shall be deemed to be a reference to these GTC.

**"Receipt and Presence Form"** is a form completed by the technical support person who carried out the service and signed by the responsible person from the company where the work has been performed. This form can be used as a basis to charge for the listed services including on products used.

**"Refill"** is a service which includes disassembling of the used columns, passivating and cleaning the used Housing and assembling of the refilled column.

**"Rent"** or **"Rent Housing"** means the rental of a Stainless Steel Housing from BIA Separations (hereafter referred to as a SS Housing).

**"Shipment Date"** means the date when the Products are shipped from the BIA Separations Manufacturing Facility.

## **B) About GTC**

This document is available on the BIA Separations webpage. Any changes thereof become valid by publishing the new version of a document on the BIA Separations webpage. A reference to this document is included in BIA Separations' official Quotations and Order Confirmations. By sending a Purchase Order the Customer accepts these GTC.

A reference to GTC is a reference to these GTC as amended from time to time. A reference to a clause is a reference to a clause in these GTC in which it appears unless indicated otherwise. A reference to the singular includes the plural and vice versa. Clause headings are for convenience of reference only and shall not affect the interpretation of these GTC. A reference to any law or regulation shall be deemed to be a reference to such law or regulation as amended, replaced or re-enacted from time to time. This document can be amended or updated without prior notice to Customers. The version valid for the specific case is the one published on the BIA Separations webpage on the day the Customers' Purchase Order is received.

## **2. Quotations and Quotation Documents**

BIA Separations may provide a Customer with a written Quotation specifying the Quote Number, Product Code, Product Description, List Price, Quantity of Products as well as customers Bill to and Ship to information, Expiration date of the Quotation, and reference to these GTC. Important notes

are included on the bottom of the page. Any quotation which BIA Separations provides to the Customer shall in no way be considered as binding.

A Quotation normally also includes costs of Handling, Packing, and Shipping, provided that they are specifically stated on the Quotation. If not specifically stated, these costs are not included in the price. Shipping and Insurance costs might be subject to change if the Customer makes any special shipping requests.

BIA Separations applies Insurance costs for shipments with the value which exceeds (including Handling and Packing costs) 3.000,00 Euros. Upon a Customer's request, BIA Separations can apply Insurance costs also for shipments with the value (including on Handling and Packing costs) which does not exceed 3.000,00 Euros.

Any quotation provided by BIA Separations to the Customer is valid for the period of time specified in the Quotation and is subject to BIA Separations acceptance of the Customer's Purchase Order in accordance with the Section 3 of these GTC.

### **3. Purchase Orders**

A Customer may submit a Purchase Order for Products with the accompanying costs as specified in a valid Quotation. Any Purchase Order shall specify (i) the ordered Products; (ii) the quantity of the ordered Products; (iii) Customer's VAT identification number (for VAT ID holders); (iv) any special Customer's requirements. By submitting a PO the Customer accepts the Price and other payment conditions for products ordered and these GTC.

All Purchase Orders shall become binding for BIA Separations only when BIA Separations issues an Order Confirmation to the Customer. BIA Separations reserves the right not to confirm the order received by the Customer, whereby such received PO is in no way binding for BIA Separations.

An Invoice can be issued to the Customer on the basis of a Receipt and presence form issued by a member of BIA Separations' Technical Support team. This form lists the Services performed and/or Products used/left at the Customer's place of business.

### **4. Conditions of Sale and Delivery Terms**

BIA Separations shall select the type of packaging in which the Products shall be delivered to the Customer.

BIA Separations commits itself to processing the Customer's Purchase Order and issuing an Order Confirmation in one working day. The Shipment Date is determined based upon whether or not the Products are on stock or must be manufactured. The Customer shall be informed about the indicative Shipping Date in the Order Confirmation.

Partial deliveries are permitted and are subject to Customer notification by BIA Separations or an agreement between BIA Separations and the Customer.

Other special requests are also possible and are subject to a written agreement between BIA Separations and the Customer. In such a case, the Customer takes full responsibility for any risk which might apply and all financial consequences that may result due to their request.

All Purchase Order details are set out in the Order Confirmation issued to the Customer by BIA Separations.

## 5. Prices and Payment Terms

Prices of BIA Separations Products are presented in a Quotation, which is available to Customers upon request. BIA Separations reserves the right to change prices at any time, whereby such change has no effect on valid Quotations. The prices of Products listed in each Quotation are EXW (Incoterms 2010).

Basic terms of payment are (i) Prepayment of Advanced Payment, (ii) open account, provided that the Customer has a credit rating acceptable to BIA Separations, and (iii) secured account, where the Customer provides BIA Separations with a collateral. Payment terms may also include standard term of payment and a Credit limit that BIA Separations might define for each Customer.

Prior to confirming any Purchase Order, BIA Separations may, in its sole discretion, request the Customer to make an advance payment (a "Down Payment") and/or require the Customer to submit certain documents and/or obtain certain releases. If BIA Separations requires a Down Payment and/or any other documentation or releases from the Customer, BIA Separations shall promptly inform the Customer in writing of its requirements.

An advanced payment (a "Down Payment") of:

- (i) 50 % of the price is obligatory upon the Customer's order of a:
  - product of 800 ml or larger volume (cGMP and non-cGMP compliant),
  - custom designed products
  - service;
- (ii) 30 % of the price is obligatory upon Customer's order of:
  - cGMP compliant units up to 80 ml volume

for all Customers, unless agreed otherwise between the parties in a written form.

BIA Separations reserves the right to require an advanced payment from the Customer. In a case where the Customer cancels the order, the Down Payment will not be refunded.

The Customer shall only be entitled to apply a non-refunded Down Payment against any future or prior amounts due to BIA Separations, subject to a prior written agreement of BIA Separations.

If the Customer defaults on any of its payment obligations to BIA Separations or if the Customer's financial condition shall at any time seem inadequate to BIA Separations to warrant further shipments, BIA Separations shall have the right (i) to require a full advanced payment of a Purchase Order and of all due accounts, (ii) to cancel any Purchase Orders and delay any shipments of Products to the Customer until payment is made or assurances required by BIA Separations are received, or (ii) cancel any Purchase Orders upon written notice to the Customer.

Unless agreed otherwise in writing by BIA Separations the Customer bears the Shipping costs, whereby BIA Separations sends shipments using the following parities (Incoterms 2010):

- (i) FCA (Free Carrier)
- (ii) DAP (Delivered at Place)

BIA Separations applies Insurance costs for shipments with value which exceeds 3.000,00 Euros (including costs of Handling and Packing). Upon a Customer's request, BIA Separations can apply Insurance costs also for shipments with value (including on costs of Handling and Packing) which does not exceed 3.000,00 Euros.

The Payment due date is specified on the Invoice. BIA Separations may charge late interest on any overdue amounts at a rate of 10 per cent (10 %) per annum above the base rate of Bank of Slovenia and may charge a fee for processing reminders and other legal fees. The interest shall accrue on a daily basis and be compounded monthly.

The Customer irrevocably accepts the fact that BIA Separations will offset any payment against due charges and fees first, late interest second, and to finally against the cost of Products.

BIA Separations reserves the right to start the process of collection of outstanding accounts or unpaid bills, including any interest or charges for late payment. In addition, it reserves the right to conduct credit checks, to send collection letters and to take action with assistance of a collection agency or a solicitor. The Customer irrevocably accepts his obligation to pay late interest rate and any fee applied for processing reminders. BIA Separations reserves the right to proceed with legal action if the Customer doesn't fully settle his financial obligations towards BIA Separations in due time.

## **6. Rent, Return of Rented Parts**

In case of a Rented Housing, BIA Separations will provide and deliver to the Customer, at its option, a new or refurbished Housing. If BIA Separations provides a refurbished housing, BIA Separations guarantees that the Housing was treated in accordance with internal procedures and complies with the quality requirements.

There are two types of rental agreements:

(i) Renting the Housing from BIA Separations from the BIA Separations Shipment date until the date on which the Customer has paid BIA Separations 120% of the price for the Housing costs as specified in the Order Confirmation. Upon final payment, the Housing and associated Product becomes the property of the Customer.

(ii) Renting the Housing from BIA Separations from the BIA Separations Shipment date until the date when the Housing is returned to BIA Separations. The Customer fully accepts his obligation to pay for the cost of Handling after the rent is terminated and the Housing is returned to BIA Separations ('Handling after rent').

The Customer is obliged to ask BIA Separations for instructions prior to returning the rented Products and act accordingly. The Customer shall bear all shipping costs and expenses to and from the BIA Separations facility. The Products are to be shipped DDP (Incoterms 2010).

The Customer is responsible for the sterilisation and sanitization of any part(s) (including outer surface) prior to return of the rented SS Housing to a designated BIA Separations location. BIA Separations will accept the returned product only in the original product packaging accompanied by a signed Return Form which is available on the BIA Separations web page.

BIA Separations will not accept a returned SS Housing which is (i) contaminated or cannot be cleaned adequately to accepted standards within the biopharmaceutical industry or (ii) is damaged due to the

operation other than normal use.

If, upon return to BIA Separations, the rented SS Housing cannot be refurbished due to the Customer's improper use or failure to comply with the Product Specific Information Sheet or Product Instruction Manual, Customer shall, in addition to the rental fee, pay to BIA Separations the full price for the Housing (according to the Price List).

Upon the Customer's return of a rented SS Housing, BIA Separations will destroy the CIM® Monolithic Stationary Phases. In case the Customer would like the CIM® Monolithic Stationary Phase to be stored, Storage service can be offered according to the Price List.

## **7. Products for Refill**

If the Customer requests a refill of the monolithic stationary phase, the Customer is obliged to ask BIA Separations for instructions prior to returning the products for Refill. The Products shall be shipped to the designated BIA Separations location, unless otherwise defined in writing. The Customer shall bear all shipping costs and expenses to and from the BIA Separations facility. The Products are to be shipped DDP (Incoterms 2010).

The Customer is responsible for the sterilisation and sanitization of any part(s) (including outer surface) prior to return of the SS Housing to a designated BIA Separations location.

BIA Separations will accept the returned Product only in the original product packaging accompanied by a signed Return Form which is available on the BIA Separations web page. BIA Separations will not accept a returned SS Housing which is (i) contaminated or cannot be cleaned adequately to accepted standards within the biopharmaceutical industry or (ii) is damaged due to the operation other than normal use.

Upon refill, BIA Separations shall test the Product and provide evidence to the Customer that the Product meets all of the quality requirements of a new Product.

If the returned Housing cannot be refurbished due to Customer's improper use or failure to comply with the Product Specific Information Sheet or Instruction Manual, the refill service shall not be performed until the Customer agrees to purchase or rent a new Housing. Any rent paid on the previous housing, shall not be applied to the cost of a new or rented Housing.

The refill period starts on the day of the BIA Separations confirmation of the delivery of the housing to the designated BIA Separations location.

## **8. Storage**

BIA Separations offers Storage services at its facility, which includes the storage of the Product according to Product Specific Information Sheet and Instruction Manual. The Storage service fee applies from the day the column arrives to the BIA Separations facility to the day the column leaves the BIA Separations premises.

If the Customer requests storage of the Product, the Customer is obliged to ask BIA Separations for instructions prior to returning the Products for storage. The Products shall be shipped to the designated BIA Separations location, unless agreed otherwise in writing.

The Customer shall bear all shipping costs and expenses to and from the BIA Separations' facility. The Products are to be shipped DDP (Incoterms 2010).

The Customer is responsible for the sterilisation and sanitization of any part(s) (including outer surface) prior to return of the Product to a designated BIA Separations location.

BIA Separations will accept the returned Product only in the original product packaging accompanied by a signed Return Form and the Statement of proper sterilisation and decontamination which are available on the BIA Separations web page.

## **9. Warranty**

The BIA Separations CIM® Monolithic Stationary Phases and CIM® Monolithic Columns are consumable material. The general Shelf life of the CIM® Monolithic Stationary Phases and CIM® Monolithic Columns is specified in the Product Specific Information Sheet and every product is labelled with its specific Expiry date.

Immediately upon delivery and before acceptance of the Package to the Customer's premises, the Customer shall carefully examine and inspect the Package for damage, which may indicate possible damage to the Product. This shall include examining any shock indicators that may have been included on the Package.

If, following the Customer's examination and inspection of the Package, the Customer believes the Product to be defective or non-conforming; the Customer shall act in accordance with the provisions of the Carrier's GTC. The Customer shall inform BIA Separations within one (1) working day. BIA Separations guarantees that the products and packages meet all of the required technical standards when they are sent from the BIA Separations facilities, but cannot assume the responsibility for any damage to the products or packaging that occurs during shipment.

BIA Separations warrants to the Customer that all Products shall be free from material defects in labour and under normal conditions of use and shall conform to BIA Separations written specifications as set out in the relevant Product Specific Information Sheet and Instruction Manual.

Within fifteen (15) working days from the date of Product delivery to the Customer's premises, the Customer shall test the Product according to BIA Separations approved testing procedures unless on-site installation and testing is provided by BIA Separations.

Customer shall inform BIA Separations in writing if Product fails any of BIA Separations approved testing procedures within fifteen (15) working days of the date of delivery of Product to Customer's premises. Section 924 of the Austrian Civil Code shall not apply.

In the case where BIA Separations performs the on-site installation and testing of the product, the warranty period for the Installed Products shall begin upon the date on which an Installation Report for that Installed Product has been signed by the BIA Separations representative and the Customer's representative. BIA Separations reserves the right to invalidate the Customer's warranty for the Installed Products if the Customer relocates such Product.

If the Product has suffered an Inspection or a Testing Failure, BIA Separations shall replace the Product at BIA Separations costs.

All returns of defective or non-conforming Products must be approved by BIA Separations. BIA Separations shall accept the returned Product only in the original product packaging accompanied by a signed Statement of proper sterilisation and sanitization. BIA Separations is responsible for all shipping, packing, insurance, customs clearance costs and other expenses linked to the return of the defective or non-conforming Products to BIA Separations.

After the delivery of the defective products to the BIA Separations facilities, BIA Separations shall inspect the returned products. In case the inspection shows that a defect was caused by the Customer or, that the products meet the quality control specifications, the Customer will refund BIA Separations for all costs associated with the unjustified transportation and inspection.

This warranty is exclusive and is in lieu of all other warranties, expressed or implied, including any implied warranties of quality and performance, merchantability, satisfactory quality or fitness for any incidental purpose, written, oral, or implied. All other express or implied warranties are, to the fullest extent permitted by applicable law, expressly excluded by BIA Separations. The remedy for defective or non-conforming Products set out in this Section shall be no more than the Customer's payment of the product and shall constitute fulfilment of all liabilities of BIA Separations, whether in warranty, contract, negligence, tort, strict liability or otherwise in respect of any defect, non-conformity or deficiency in any Product.

## **10. Liability**

BIA Separations is only liable for compensation on the grounds of intent or of gross negligence. Liability is limited to damage which is typical for the Agreement and which could reasonably have been foreseen. The liability for slight negligence is hereby waived.

BIA Separations' liability becomes time barred within three months after those entitled to assert a claim have gained knowledge of (i) the damage and (ii) the liable party, but not later than one year after the purchase of the Product upon which the claim is based.

In no event shall BIA Separations be liable to the Customer, whether in contract, tort, breach of statutory duty or otherwise, for any direct or indirect loss of profit; loss of revenue; loss of anticipated savings; loss of business, goodwill or reputation or any indirect, incidental or consequential losses or damages arising out of or in connection with any of its obligations or duties under these GTC.

The Customer shall be solely responsible for the Products' and the technical information's suitability for the purpose intended by Customer or Customer's clients.

## **11. Retention of Title and Transfer of Risk**

BIA Separations retains title to the Products until full payment has been received by BIA Separations' for the Products sent to the customer. The liability of the Products shall pass to the Customer from the Shipment Date.

The Customer shall, upon the request of BIA Separations, be able to demonstrate that the storage conditions and maintenance is in compliance with any recommendations as shown on the relevant Product Specific Information Sheet and Instruction Manual.

In the event of any act or omission by or of Customer that is contrary to the terms of this Agreement



including without limitation, in the event of a delay in payment, BIA Separations shall be entitled to rescind this Agreement and to take back the delivered Products.

## **12. Confidential information**

In the event that Confidential Information is exchanged, each party will protect and safeguard the Confidential Information of the other in the same manner in which its own equivalent or similar confidential and trade secret information is treated, but in no event with no less a reasonable degree of care. Each party shall: (i) not disclose Confidential Information of the other party to any person other than any of its directors, employees or contractors who need to know such information in order to comply with its obligations under any Purchase Order or these General Terms and Conditions; or (ii) use any Confidential Information of the other party other than as necessary to perform its obligations or exercise its rights under any Purchase Order or these General Terms and Conditions.

No obligation with respect to Confidential Information is imposed upon a recipient where the Confidential Information: (i) was in the recipient's possession before disclosure without an obligation of confidentiality; (ii) becomes a matter of public knowledge through no fault of the recipient; (iii) is rightfully received by the recipient from a third party without a duty of confidentiality; (iv) is independently developed by the recipient; (v) is disclosed under operation of law; or (vi) is disclosed by the recipient with the discloser's prior written approval.

## **13. Force Majeure**

BIA Separations shall not be liable to the Customer for any failure to fulfil or delay in fulfilling the Purchase Order or any damage on Products caused in full or in part, directly or indirectly, by strikes, lockouts, floods, fires, acts of God, unusually severe weather, accidents, embargoes, war, or any order of any government or governmental agency, delays in the delivery of supplies or completed merchandise by the supplier thereof, or any cause beyond the control of, or occurring without the fault of BIA Separations.

## **14. Waiver of breach**

The waiver or failure of either party to enforce the terms of these GTC in one instance shall not constitute a waiver of said party's rights under these GTC with respect to other violations.

## **15. Miscellaneous**

These GTC shall be governed by and construed in accordance with the laws of the Republic of Austria. Any disputes arising out of or in connection with these GTC, whether contractual or non-contractual, shall be governed by and determined in accordance with the laws of the Republic of Austria and the competent Austrian court for the registered seat of BIA Separations shall have jurisdiction to settle any disputes arising out of or in connection with these GTC.

To the extent that any provision of these GTC is determined illegal or unenforceable in a particular country, the remainder of these GTC will remain in full force and effect.

These GTC constitutes the entire agreement between the parties and supersedes and extinguishes all

previous agreements, understandings and negotiations between them in respect of the subject matter hereof. The Customer acknowledges that in accepting these GTC, it is not relying on any statement, agreement, undertaking, warranty, promise or other arrangement of any nature, whether written or otherwise, relating to the subject matter of these GTC. Except in the case of fraud, neither party shall have any right or action against the other party arising out of or in connection with any such statement unless it is repeated in these GTC.

Amendments, if any, shall be in writing and valid only when signed by both parties.

These GTC may not be sold, assigned, or transferred without the written consent of both parties.

September 2015  
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