



STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

These Terms and Conditions shall apply to all contracts for the supply of Goods and / or Services by Biomatrix to the Client to the exclusion of all other terms and conditions including any terms and conditions which the Customer may seek to impose or incorporate under any purchase order, confirmation of order or other document, or which are implied by trade, custom, practice or course of dealing. These Terms and Conditions may be updated from time to time by Biomatrix and the most up to date version can be requested from Biomatrix and will be made available on Biomatrix's website www.biomatrixwater.com

1. THE GOODS AND SERVICES

- 1.1 Biomatrix agrees to supply the Goods and/or Services to the Client in accordance with the Contract.
- 1.2 No Order for the supply of Goods and/or Services is binding on Biomatrix unless and until it has been accepted by Biomatrix in writing or (if earlier) when Biomatrix delivers the Goods or performs the Services.
- 1.3 Biomatrix shall be entitled to deem any quotation to have lapsed prior to acceptance unless it is unconditionally accepted by the Client within 30 days of its date.
- 1.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Biomatrix shall be subject to correction without any liability on the part of Biomatrix.
- 1.5 All Goods must be used strictly in accordance with the instructions, recommendations and specifications (if any) of Biomatrix.
- 1.6 Biomatrix shall have the right to make any changes to the Services which are necessary to comply with applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Biomatrix shall notify the Client in any such event.
- 1.7 Time shall not be of the essence in relation to the provision of the Goods and/or Services by Biomatrix to the Client.

2. DELIVERY AND PERFORMANCE

- 2.1 Delivery of the Goods and performance of the Services will be on the date(s) and in the manner as agreed with the Client and specified in the Order ("Agreed Delivery Date").
- 2.2 Stated delivery and performance times are an estimate only and Biomatrix will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or performance of the Services nor will any delay entitle the Client to terminate or rescind the Contract.
- 2.3 If the Client refuses or fails to take delivery of the Goods within the Client's normal working hours on the Agreed Delivery Date, or if Biomatrix is unable to deliver the Goods on time because the Client has not provided appropriate instructions, documents, licences or authorisations, Biomatrix may store the Goods and the Client shall in addition to the Price payable pay all related costs and expenses (including the costs for storage and insurance) and any additional delivery costs incurred by Biomatrix

and if the Client refuses or fails to take delivery of or to collect the Goods within 5 days following the Agreed Delivery Date, Biomatrix may rescind the Contract and recover damages.

- 2.4 If Goods are delivered in instalments, each delivery shall constitute a separate Contract. Any failure by Biomatrix to deliver or any claim by the Client in respect of any one or more of the instalments in accordance with this Contract shall not entitle the Client to treat the Contract as a whole as repudiated.
- 2.5 Biomatrix reserves the right, at its sole option, to cancel or withhold the delivery of any Goods and/or the performance of the Services (whether in whole or in part) if the Client is in breach of any of the terms of the Contract or if any invoices from Biomatrix to the Client are overdue.
- 2.6 At the time of delivery to the Client of Goods, the Client shall check such item(s) for completeness and damage and shall furnish Biomatrix with notification thereof. If no such notification has been received by Biomatrix within 3 days of delivery of Goods to the Client, such Goods shall be deemed to have been received by Client in a complete and undamaged condition.

3. RISK AND TITLE

- 3.1 Risk in the Goods shall pass to the Client when the Goods are delivered to the Client's premises or Work Site, or otherwise where the Order specifies that risk shall pass in accordance with an agreed INCOTERM.
- 3.2 Title in the Goods shall pass to the Client when payment has been received in full (in cash or cleared funds) for the Goods.

4. QUALITY OF GOODS

- 4.1 Biomatrix warrants to the Client that the Goods shall be free from material defects in material and workmanship for the following periods:
 - 4.1.1 where the Order identifies that Biomatrix are supplying the 2D Product Range to the Client, the period of 12 months from the date of delivery;
 - 4.1.2 where the Order identifies that Biomatrix are supplying the 3D Product Range to the Client, the period of 24 months from the date of delivery;
 - 4.1.3 where the Order identifies that Biomatrix are supplying the 4D Product Range to the Client, the period of 24 months from the date of delivery; and
 - 4.1.4 for all other products, for the period of 12 months from the date of delivery.

(in each case the relevant time period being the "Goods Warranty Period").

- 4.2 Subject to condition 4.3, if the Client gives notice in writing during the relevant Goods Warranty Period that some or all of the Goods do not comply with the warranty set out in condition 4.1, Biomatrix shall, at its sole option, repair or replace the defective Goods or refund the price of the defective Goods, or defective component thereof. Subject to the terms of this condition 4, the Goods are non-returnable and the Price is non-refundable.



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- 4.3** Biomatrix shall not be liable for the Goods' failure to comply with the warranty in condition 4.1, if:
- 4.3.2** the defect arises due to the Client Group's or its agent(s) failure to follow Biomatrix's oral or written instructions including as to the storage, handling, installation, commissioning, use or maintenance of the Goods or (if there are none) good industry or trade practice;
- 4.3.3** the defect arises as a result of Biomatrix following any drawing, design, specification or instruction supplied by the Client Group or its agent(s);
- 4.3.4** the Client Group or its agent(s) or any third party alters or repairs such Goods without the written consent of Biomatrix; or
- 4.3.5** the defect arises as a result of fair wear and tear, wilful damage or theft, negligence, or environmental or adverse working conditions including damage caused by pollution, frost, ice, glass, stones, metals or other accidental, environmental or wildlife inflicted damage.
- 4.3.6** Biomatrix provides no warranty against damages caused by natural or environmental factors, such as wind, waves, birds or other animals, sun, high velocity flows or other environmental factors. It is the clients responsibility to understand the environmental conditions of their site and insure suitability.
- 4.4** No warranty is given by Biomatrix for any Goods that comprise live organisms (for example, biofilms or plants).
- 4.5** Except as provided for in this condition 4, Biomatrix shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in condition 4.1.
- 4.6** Biomatrix provides no warranty for goods, materials or equipment manufactured by third parties, but shall use its reasonable endeavours to ensure that any warranties granted by third party manufacturers are assigned to the Client.

5. QUALITY OF SERVICES

- 5.1** Subject to condition 5.4, Biomatrix warrants that the Services will be provided in accordance with the requirements of the Contract using reasonable skill and care. Biomatrix warrants that the Services shall be free from defects for a period of 30 days from the date of completion of the Services (the "Services Warranty Period").
- 5.2** If the Client gives notice in writing during the Services Warranty Period that the Services do not comply with the warranty set out in condition 6.1, Biomatrix shall re-perform the Services.
- 5.3** Except as provided for in this condition 5, Biomatrix shall have no liability to the Client in respect of the Services' failure to comply with the warranty set out in condition 5.1.
- 5.4** Unless otherwise specifically agreed in writing between Biomatrix and the Client, assistance offered by Biomatrix on the layout and design of project installations is offered on a general and informal basis only and Biomatrix shall have no liability in respect thereof. Biomatrix may discuss site conditions and provide layout and design support but the Client shall ultimately be responsible for determining the suitability of Biomatrix products or solutions for any specific site. Biomatrix do not provide consultancy services and the Client hereby confirms and accepts that it has fully satisfied itself that the Goods shall be suitable for them and their proposed location.

6. CLIENT OBLIGATIONS

- 6.1** Where specified in the Order, the Client shall provide such accommodation, security, storage and victualling for Biomatrix's personnel whilst at the Work Site.
- 6.2** The Client shall provide Biomatrix, in a timely manner, with all such information and full, uninterrupted access to the Worksite and all materials, appliances, utilities, connections and supplies as are necessary for Biomatrix to carry out the Services and/or provide the Goods in accordance with the Contract and the Client warrants that all information provided by it or on its behalf to Biomatrix is accurate. The Client further warrants that it will give Biomatrix prior written notice of any exceptional hazards, known or suspected, by the Client that might potentially arise in the use of such materials or information.
- 6.3** The Client warrants that it has obtained all necessary licences, approvals, permits or authorities required in relation to the Goods and/or Services and the Client accepts full responsibility and liability in respect of any failure to obtain such permissions.
- 6.4** The Client shall be responsible following delivery of the Goods for all maintenance of the Goods and for the ultimate removal and recycling of the Goods from the Work Site.

7. LIABILITY

- 7.1** Save as provided for in condition 7.2 below, Biomatrix's total liability arising under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed a sum equal to 110% of the aggregate consideration received by Biomatrix from the Client under the relevant Order.
- 7.2** Nothing in these Terms and Conditions excludes or limits the liability of Biomatrix:
- (a) For death or personal injury caused by Biomatrix's negligence; or
 - (b) Under section 2(3), Consumer Protection Act 1987; or
 - (c) For any matter which it would be illegal for Biomatrix to exclude or attempt to exclude its liability; or
 - (d) For fraud or fraudulent misrepresentation.

All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

- 7.3** Notwithstanding any other provision of the Contract, Biomatrix shall not be liable for the Client Group's Consequential Loss and the Client shall not be liable for Biomatrix Group's Consequential Loss. "Consequential Loss" shall mean:-

(a) consequential or indirect loss under applicable law; and

(b) loss of production, deferral of production, loss of product, loss of use and loss of revenue (with the exception of any payment due to Biomatrix under the Contract), profit or anticipated profit, loss of contracts, loss of business opportunity business interruption arising from or related to the performance of the Contract, and whether or not such losses were foreseeable at the time of entering into the Contract.

- 7.4** If Biomatrix's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, contractors or employees or by customs or any other authority, Biomatrix shall not be liable for any costs, charges or losses

sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

- 7.5** The Client shall be responsible for and shall save, indemnify, defend and hold harmless Biomatrix Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of personal injury including death or disease or loss of or damage to the property of any party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Client Group arising in relation to the Goods and/ or the Services or otherwise arising from a breach by the Client of its obligations under the Contract.

8. INVOICING AND PAYMENT TERMS

- 8.1** Subject to any special terms agreed in writing between the Parties (including any special terms relative to a deposit for the Goods) and save as provided under these Terms and Conditions, Biomatrix shall be entitled to invoice the Client:-
- 8.1.1.** for the Goods at the time of order, for full or partial payment;
- 8.1.2.** for Services at the end of each 30 day period during the provision of the Services. In the event that that the provision of the Services is less than 30 days, Biomatrix shall invoice the Client on completion of such Services.
- 8.2** The Price and any other amounts stated in any quotation are exclusive of VAT (or any other equivalent sales tax) and withholding tax which will be payable by the Client (where relevant) at the appropriate rate.
- 8.3** Biomatrix reserves the right to increase the Price to reflect any increased costs suffered or incurred by Biomatrix as a result of, without limit, any changes to or introduction of any laws, bye-laws or regulations in connection with the provision of the Goods or Services or any increased prices imposed on Biomatrix by its suppliers.
- 8.4** Payments of the Price shall be made by the Client within 14 days of receipt of a valid VAT invoice. Payment shall be made in UK £ Sterling or, if applicable, such other currency agreed in the Order. Where Biomatrix agrees to quote in a foreign currency, it reserves the right to adjust its prices in the quoted currency at the time of invoicing in the event that the exchange rate has fluctuated (up or down) by more than three percent (3%) from the rate which was applied at the date of the quotation. Where Biomatrix offers the Client a prompt pay discount and payment of the Price is not made within 14 days of receipt of a valid VAT invoice, Biomatrix shall be entitled to invoice the Client for the discounted amount.
- 8.5** The Client shall also procure at its sole cost, all necessary inoculations, visas and work permits which are required by Biomatrix's personnel in the provision of the Services. The Client shall be responsible for all local customs duties, import and export taxes or other charges and shall assist with the preparation of all necessary documentation to facilitate such importation.
- 8.6** All bank charges associated with payments made by the Client for the Goods and/or Services (such as, by way of example only, charges levied on payments from overseas) shall be payable by the Client.
- 8.7** All sums due from the Client to Biomatrix which are not paid on the due date (without prejudice to the rights of Biomatrix under the Contract) shall be subject to interest. The amount of interest payable shall be based on the then current annual Bank of England 'Base Rate' plus 8% per annum and shall be calculated pro rata on a daily basis.

Interest shall run from the date on which the sum in question becomes due for payment until the date on which actual payment is made.

- 8.8** Time shall be of the essence in relation to payments by the Client to Biomatrix under the Contract.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1** Neither Party shall have the right of use, other than for the purposes of the Contract, whether directly or indirectly of any Intellectual Property provided by the other Party and the rights thereto shall remain with the Party providing such Intellectual Property.
- 9.2** Where any potential patent or registrable right in any country in the world or any confidential know how results from:
- 9.2.1** developments by Biomatrix which are based wholly on data, equipment, processes, substances and the like in the possession of Biomatrix prior to the effective date of the Contract or otherwise produced by Biomatrix outside of the Contract; or
- 9.2.2** enhancements of or in the existing Intellectual Property of Biomatrix,

such rights shall vest in Biomatrix.

10. FORCE MAJEURE

Biomatrix shall not be liable for any failure to perform any of its obligations under the Contract if and to the extent that the failure is beyond the control and without the fault or negligence of Biomatrix and which by the exercise of reasonable diligence, Biomatrix is unable to provide against. For the purposes of the Contract Force Majeure shall include:

- (i) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
- (ii) Ionising radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radio-active, toxic, explosive or other hazardous properties and any explosive nuclear assembly or nuclear component thereof;
- (iii) Epidemic, tidal wave, explosion, lightning, earthquake, fire and flood);
- (iv) Strikes or industrial disputes at a national or regional level by labour not employed by Biomatrix, its subcontractors or its suppliers and which affect a substantial or essential portion of the Services;
- (v) Maritime or aviation disasters;
- (vi) Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

- (vii) Interruptions of transport, shortage of labour or materials, delay in delivery by Biomatrix's suppliers or any other cause whatsoever (whether or not similar to the foregoing) outside the control of Biomatrix.

11. TERMINATION

- 11.1** The Contract may be terminated by Biomatrix without cause on giving 14 days written notice to the Client.
- 11.2** Biomatrix may terminate the Contract immediately by written notice given to the Client where:
- 11.2.1** the Client commits a breach of the Contract which Biomatrix reasonably considers is not capable of remedy; or
- 11.2.2** the Client continues to breach the Contract for more than 5 days after being notified to remedy such breach in writing by Biomatrix; or
- 11.2.3** if the Client ceases trading or threatens to cease trading or if the Client is a company, and the Client passes a resolution or the court makes an order that it should be wound up or that an administrator be appointed, or if the Client makes a composition or an arrangement with its creditors, or if a receiver or manager or administrator on behalf of a creditor is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a winding up order.
- 11.3** If one of the events in condition 11.2.3 occurs and if the Goods have been delivered and/or Services performed but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement to the contrary.
- 11.4** If the Client does not make payments in accordance with condition 9 Biomatrix reserves the right to cease the supply of Goods and/or Services, and if it thinks fit, to terminate or suspend the Contract immediately by written notice given to the Client and the Client shall indemnify Biomatrix in full against all loss, costs, damages, charges and expenses incurred by Biomatrix as a result of such termination and/ or suspension.
- 11.5** Goods are manufactured to the Client's order and the Contract may not be cancelled, suspended or amended by the Client except with the agreement in writing of Biomatrix and the Client shall indemnify Biomatrix in full against all loss, costs, damages, charges and expenses incurred by Biomatrix as a result of such cancellation.

12. EFFECT OF TERMINATION

- 12.1** The termination of the Contract shall not affect any of the following:-
- (a) the rights, liabilities or obligations of either Party accrued prior to and including the date of termination; or
- (b) the continued existence and validity of the rights, liabilities and obligations of the Parties under those conditions which are intended expressly or by implication to survive termination or expiry.
- 12.2** Biomatrix may, during the term of the Contract and upon termination of the Contract, set off against any debt owed by the Client to Biomatrix, any sums otherwise due to the Client.

13. CONFIDENTIALITY

- 13.1.** Neither Biomatrix nor the Client shall at any time without the prior consent of the other (such consent not to be unreasonably withheld or delayed) make any publicity releases or announcements concerning the subject matter of the Contract save that Biomatrix may utilise all projects as case-studies for future PR so long as Client personal details are not disclosed without consent.

14. GENERAL

- 14.1** The Client shall not assign or sub-contract the Contract or any part of it without the prior consent of Biomatrix in writing, such consent not to be unreasonably withheld or delayed. Biomatrix may at any time, on reasonable notice in writing to the Client, transfer or assign all or any rights and/or obligations under the Contract. Biomatrix shall be free to subcontract or otherwise deal with the whole or any part of the Goods and/or Services.
- 14.2** No delay by Biomatrix in enforcing or expressing any right, either arising out of the Contract or any right in respect of any breach of the Contract by the Client, shall constitute a waiver of such right. No waiver by Biomatrix of any breach of the Client's obligations shall constitute a waiver of any other prior or subsequent breach.
- 14.3** Any variation of any provision of the Contract must be effected in writing and issued by Biomatrix. No purported variation by any other means shall bind Biomatrix.
- 14.4** The Order and these Terms and Conditions constitute the Contract and no statement in any other publication issued by Biomatrix constitutes a term of the Contract, nor a representation in reliance upon which the Contract has been entered into. Biomatrix's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by Biomatrix in writing.
- 14.5** Nothing in the Contract shall be construed so as to create a partnership or joint venture between the parties or have the effect of making any employee of the Client an employee or a servant of Biomatrix or of making any employee of Biomatrix an employee or servant of the Client.
- 14.6** If any part of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected.
- 14.7** The Contract constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence and negotiations between them relating to its subject matter.
- 14.8** The Contract shall be governed by the laws of England and Wales and for the sole benefit of Biomatrix the parties agree to submit to the exclusive jurisdiction of the Court of Session in Edinburgh, Scotland and Aberdeen Sheriff Court. Nothing in this condition shall limit the right of Biomatrix to take proceedings against the Client in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

15. DEFINITIONS AND INTERPRETATION



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15.1 In these Terms and Conditions the following words shall have the following meanings:

"2D Product Range" means the 2D floating ecosystem product range of Biomatrix;
"3D Product Range" means the 3D floating ecosystem product range of Biomatrix;
"4D Product Range" means the 4D floating ecosystem product range of Biomatrix;
"Biomatrix" mean Biomatrix Water Solutions Limited (registered in Scotland No. SC427465) and having its registered office at Horizon Scotland, The Enterprise Park, Forres, Moray, IV36 2AB;
"Biomatrix Group" means Biomatrix, its subcontractors (of any tier), its and their affiliates, its and their respective directors, officers and employees (including agency personnel) but shall not include any member of the Client Group;
"Client" means the person or persons whom orders Goods and/or Services from Biomatrix as detailed in the Order;
"Client Group" means the Client, its and their affiliates, its and their respective directors, officers and employees (including agency personnel) but shall not include any member of Biomatrix Group;
"Contract" means the contract between Biomatrix and the Client for the supply of Goods and/or Services comprising the Order, these Terms and Conditions and any amendment or variation to the Order or these Terms and Conditions as agreed in writing between Biomatrix and the Client;
"Goods" means the goods supplied by Biomatrix and purchased by the Client as detailed in the Order (including any part of parts of them);
"Intellectual Property" means all patents, copyright, trade marks, service marks, trade, business and domain names, database rights, moral rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world including Technical Information;
"Order" means either of (i) the purchase order issued by the Client and accepted in writing (including by email) by Biomatrix or (ii) the project quotation or scope of work provided by Biomatrix and accepted in writing (including by e-mail) by the Client, in each case containing details relating to the supply of Goods and/or Services under the Contract;
"Parties" means Biomatrix and the Client;
"Price" means the price, charges, taxes and disbursements specified by Biomatrix for the supply of the Goods and/or Services including any shipping costs and import taxes;
"Services" means the services to be supplied by Biomatrix as detailed in the Order;
"Technical Information" means drawings, techniques, processes, formulae, reports, specifications, practices, procedures, instructions and other technical information and data of any kind in whatever form;
"Terms and Conditions" means these Standard Terms and Conditions for the Supply of Goods and Services;
"VAT" means UK value added tax; and
"Work Site" means the location where the Services are to be performed and/or the Goods are to be used/ located for the purposes of the Contract.

15.2 Unless the context otherwise requires, references in these Terms and Conditions:

- 15.2.1 to "person" or "third party" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
- 15.2.2 to one gender include all genders, and reference to the singular includes the plural and vice versa;
- 15.2.3 to "include" or "including" shall be construed without limitation;
- 15.2.4 to any statute, statutory provision or regulation, are references to that statute, statutory provision or regulation, as from time to time amended, extended or re-enacted; and
- 15.2.5 to "affiliate" shall mean any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company, "subsidiary" and "holding company" shall have the meaning assigned to it under the Companies Act 2006.
- 15.3 In the event of any inconsistency between these Terms and Conditions and the provisions of the Order, the provisions of the Order shall prevail.