
General Terms and Conditions of Purchase

1. Applicable terms and conditions

- 1.1. Our purchase orders are subject to these General Terms and Conditions, exclusive of all other general terms and conditions, in particular those of the Supplier.
- 1.2. Variations from these General Terms and Conditions will be legally binding only with the prior mutual agreement between the parties in writing. The specific provisions of each purchase order prevail over these General Terms and Conditions.

2. Purchase order – acceptance

- 2.1. Only formal purchase orders dated and signed by BIOFILM S.A. have legal effect.
- 2.2. The Supplier shall formally and unconditionally acknowledge receipt of the purchase order within one week from the date of notification of the purchase order by BIOFILM S.A. The mere implementation of a purchase order implies unconditional acceptance of these General Terms and Conditions despite anything indicating the contrary, unless accepted by BIOFILM S.A. by written confirmation.
Important: all documents and correspondence related to a purchase order must indicate its reference number and be written in Spanish or English or to the exclusion of any other language.

3. Execution of purchase orders

3.1. Place of execution

Products shall be delivered and services carried out in the place named in the purchase order.

3.2. Quality and conformity

The Supplier shall conform to good practice, to regulations in force and to the technical specifications applicable to the purchase order. The Supplier is liable for the quality of the products delivered and will set up a system of quality and management control required for the correct execution of the purchase order and the specifications defined in the technical documents, as the case may be. The Supplier is fully responsible in case of breach of this provision regardless of any acceptance of products, services, materials and/or techniques by BIOFILM S.A.

3.3. Plans and documents

Merely by accepting a purchase order, the Supplier acknowledges having received from BIOFILM S.A. all instructions required for the execution of the purchase order. The failure of the Supplier to provide any plans or documents will lead to the rejection of the delivery and further to the suspension of payments until these documents are delivered to BIOFILM S.A.

3.4. Progress

Until complete delivery, the Supplier will provide BIOFILM S.A. all necessary information on progress in the form of planning, progress reports, inspection reports of workshops and sub-contractors, if sub-contractors are accepted.

The Supplier remains solely and fully responsible for the execution of the services assigned to its sub-contractors.

3.5. Termination / Cancellation

Buyer may cancel this total Purchase Order or any unfilled portions thereof at any time. In addition to and without limiting any of Buyer's other remedies, Buyer may cancel this order in whole or in part, without any liability to Supplier hereunder, if the Goods, or any part thereof, are not delivered or performed at the times, at the places, in the manner, at the prices and in the quantities set forth on this Purchase Order, or if any of the terms or conditions herein are breached, if any action is taken with commences a voluntary or involuntary bankruptcy or insolvency proceeding against Supplier or if a receiver or similar official is appointed for any substantial part of Supplier's assets. If Buyer cancels or suspends this order in whole or in part at any time for any other reason, Supplier shall, to the extent specified in Buyer's notice, promptly suspend work, terminate any work being performed by others under any outstanding subcontracts with respect to the Goods, take all other reasonable steps to minimize its expenses with respect to the Goods, and take all necessary action to protect all property in Supplier's possession in which Buyer has or may acquire an interest.

Any claim for damages resulting from such cancellation or suspension must be submitted to Buyer within 60 days after Seller has been notified to cancel or suspend the order. Any cancellation or suspension by Buyer shall be without prejudice to any of Buyer's claims for damages or its other rights against Seller. Buyer, at its option, may accept the late or nonconforming Goods, and Seller will agree to an equitable adjustment in the price of those Goods. If Buyer elects to cancel this Purchase Order, Buyer shall have the option to take any goods, work or other items included in this Purchase Order whether finished, unfinished, or in process, upon such terms as Buyer and Seller may negotiate. If Buyer has instructed Seller to suspend work, by no later than 90 days after the giving of such instruction, Buyer must either cancel the order or instruct Seller to continue the work. If Buyer elects to continue, Seller shall, within 30 days after such election to continue, submit to Buyer any claim it may have for adjustment of price, delivery schedule or any other item affected by the work stoppage.

3.6. Modification

Buyer may, from time to time, by written instructions, or drawings issued to Supplier, make changes to any aspect of this order, and the provisions of this order shall apply to all such changes, additions, and modifications. No work, addition or alteration will be paid for unless performed pursuant to and in accordance with the written order of Buyer. If any work or change in work affects the price or the time required for performance, Seller shall notify Buyer thereof within 15 days of change order and no adjustment in price or schedule shall be binding upon Buyer unless Buyer has agreed in writing to the same. However, nothing herein shall excuse Supplier from immediately proceeding with the change.

3.7. Deadlines

Acceptance of a purchase order implies a formal and irrevocable commitment by the Supplier to comply with the contractual deadlines. No cause whatsoever will release the Supplier from its commitment, except force majeure. The Supplier is committed to inform BIOFILM S.A. as soon as possible and in writing of any incident likely to delay the execution of the purchase order. This notification shall not release the Supplier from its liability in case of delay.

3.8. Penalties - termination

Except in case of force majeure and without prejudice to the statutory rights of BIOFILM S.A. to claim compensation for damages, BIOFILM S.A. is entitled in case of delay to liquidate damages in the amount of 1% of the price of related purchase order in delay for each complete 7 days week of delay. The maximum amount of liquidated damages under this purchase order shall not exceed 10% of total purchase order amount.

BIOFILM S.A. is entitled to terminate automatically without prior written notice the purchase order, in whole or in part, and to claim compensation for damages, in the case of gross negligence of the Supplier. In the case of termination for any reason whatsoever, the Supplier will immediately refund BIOFILM S.A. of all down payments/ advance payments paid.

3.9. Down payments - advance payments

Any requirement for down payments/ advance payments by the Supplier for an amount equal to or higher than 10,000 USD induces the obligation for the Supplier to set up, through a bank generally recognized as creditworthy, a guarantee for reimbursement of such down payments/ advance payments to BIOFILM S.A..

4. Delivery

4.1. Delivery note

Each delivery should be accompanied by a delivery note in three copies reproducing all of the references indicated and items ordered. A copy of this delivery note will be inserted into the packing.

4.2. Transport

Unless otherwise expressly agreed, the products ordered shall be delivered “DDP” (“Delivered Duties Paid” according to the INCOTERMS of the International Chamber of Commerce - edition 2010) to the place of delivery named in the purchase order. The transport risks remain with the Supplier who is responsible for the stowing, securing, protection and identification of the products shipped. Products being transported at Supplier’s risk, the Supplier shall insure for all damages that may be caused to the products with a cover sum consistent with the purchase order price and the consequences for BIOFILM S.A. of any damage to the products.

4.3. Packing

The Goods shall be packed and shipped by Supplier in accordance with Buyer’s instructions and with good commercial practice to insure that no damage results from transportation, weather or other foreseeable conditions. In the absence of a packing list, Buyer’s count as to the Goods shipped shall be final and conclusive

4.4. Quantitative and qualitative acceptance

Checks carried out upon reception of the products do not preclude BIOFILM S.A. from its right toward the Supplier and do not release the Supplier from its own obligations. Quantitative check of the products supplied is carried out on arrival at the place of delivery and qualitative check when the products are put into service. Delivery may be rejected in case of default, absence of documents required on delivery, delay, breakdown or non-conformity. The same applies to products delivered in excess of the quantities ordered.

Rejected products remain at the Supplier’s disposal at its own expenses and risks. All costs for storage, handling and return of such rejected products are borne by the Supplier. Products rejected shall be collected by the Supplier at its own expenses within one week of the rejection notice of BIOFILM S.A. In case of production scraps or obligation to sort the products, BIOFILM S.A. is entitled to invoice the Supplier for the production scraps or sorting costs incurred.

5. Force majeure

Delay in performance or failure to perform hereunder shall be excused to the extent caused by act of God, labor trouble, fire, act of governmental authority, failure of transportation or supplies, accident or any other cause beyond the reasonable control of the party claiming such excuse and not the result of its failure to exercise due diligence. The party claiming such excuse shall give written notice to the other party as soon as practicable after occurrence of the event giving rise to the claim and shall provide in such notice its best estimate of the expected delay period.

6. Guarantees

Supplier warrants that the Goods shall be free from any defects in material or workmanship, be merchantable within the meaning of the Commercial Code in the country where Buyer's principal office is located, conform to any specifications or drawings given by Buyer, and be fit for any particular purpose or other requirement communicated to Supplier. Supplier also warrants that any Goods not manufactured pursuant to detailed specifications or drawings furnished by Buyer shall be free from any design defects and that any Goods sold by sample shall be of the same quality as the sample and conform in all other respects to the sample.

Without prejudice to the statutory guarantees owed to BIOFILM S.A., the Supplier warrants to remedy all defects notified by BIOFILM S.A. during a one year guarantee period from the date of delivery. All costs arising from such guarantee, including spare parts, labour and freight costs, are at the expense of the Supplier.

Any defect notified during the guarantee period will extend its duration accordingly, without prejudice to the compensation of any direct and/or consequential damages. The Supplier further warrants to BIOFILM S.A. that the products delivered do not infringe any right of third parties, in particular intellectual and industrial property rights.

7. Indemnity and insurance

Supplier hereby indemnifies and holds Buyer, its employees, customers, and any other user of the Goods, harmless from all claims or expenses, including, without limitation, reasonable attorneys' fees, which may arise from any property damage, personal injury or death resulting from any purchase, sale, or use of the Goods. Supplier shall maintain insurance against such risks and, upon Buyer's request, shall deliver certificates of such insurance. Such insurance shall be in amounts satisfactory to Buyer, and shall name Buyer as an additional named insured. If any party purchasing Goods from the Buyer threatens to bring any action or claim, or brings any such action or claim against Buyer asserting that such Goods are not fit or safe for consumer use or are not merchantable or fit for the particular purpose intended, then, in addition to any other remedies which it may have, Buyer shall be entitled to tender to Supplier, at its plant, any remaining Goods of the nature complained about for cash refund or full credit, at Buyer's option, and shall be entitled to recover all expenses incurred in connection with such action or threatened action.

8. Invoicing

Invoices shall be dispatched to the address mentioned in the purchase order upon delivery of products and/or completion of services. Invoices shall mention all of the references and items shown on the purchase order. It is mandatory that the prices invoiced are the prices in force on the delivery date scheduled by BIOFILM S.A. No fixed invoicing charges will be accepted. Any invoice not conforming to these provisions will be returned.

9. Payment conditions

Unless otherwise expressly agreed, BIOFILM S.A. will pay each invoice either 90 days after the date of receipt of the invoice without discount, or 14 days after the date of receipt of the invoice with 2 % discount, by bank wire transfer, subject to products delivered and/or services completed within the deadlines stated in the purchase order.

10. Industrial property - confidentiality

The Supplier undertakes not to communicate, use, reproduce or appropriate for use, or disclose to anyone other than Buyer any plans, specifications, calculation items, written items, documents and information in general provided by BIOFILM S.A. for the purpose of delivery of products and/or completion of services. These documents and information remain the property of BIOFILM S.A. These documents are returnable upon request. The Supplier undertakes further to respect the industrial property and secrecy of any information and process entrusted to him.

All such property or data and all molds, tooling or other property or data manufactured by Supplier at Buyer's expense, shall remain Buyer's, shall be kept separate from other materials, shall be clearly identified as Buyer's property and shall be used solely in connection with the performance of this order

11. Transfer of risk - property reserve clause

The transfer of risk will occur in the place and at the time of physical delivery. No property reserve clause may be enforced against BIOFILM S.A.

12. Attribution of jurisdiction - law applicable

Any dispute arising in connection with the interpretation and/or execution of a purchase order is subject to the exclusive jurisdiction of the commercial court ("tribunal de commerce") competent where BIOFILM S.A. has its registered office. Applicable law is where BIOFILM S.A. has its registered office.

13. Subcontracts

If this order involves the use of subcontractors, the names and references of all proposed subcontractors shall be submitted in writing by Supplier to Buyer, and Buyer shall have the right to reject such subcontractors which it deems unsatisfactory. Supplier shall not sublet any portion of the work without written permission of Buyer. Such permission shall not, however, relieve Supplier from responsibility for the conduct and work of all subcontractors. Supplier, in subletting any part of the work, shall bind each subcontractor by a contract incorporating all the terms, obligations and conditions provided for by this order, in so far as the same may be applicable to the work of the subcontractor, without in any way creating any contractual relations between such subcontractor and Buyer. Supplier shall properly direct and control the subcontractors, being responsible for the correlation of the work of Supplier and that of the subcontractors.

14. Work on buyer's premises; cleanup; safety

In the event this order involves work to be done on Buyer's premises and Buyer has delivered a separate agreement covering such work, such agreement shall have priority over this order in the event of a conflict in terms and this order will incorporate such agreement's terms. In addition, after the completion of the work, Supplier shall leave the work area clean and ready for use, and shall remove all tools, scaffolding, and surplus materials. In the performance of the work, Supplier will comply with all safety regulations issued by Buyer and all Buyer's company policies supplied to Supplier and will require like compliance by all subcontractors.