

TERMS AND CONDITIONS OF SALE

The following terms and conditions (“**T&Cs**”) are applicable to all sales of products (“**Products**”) made by Biome, PBC, dba Biome, Inc. in California, a Delaware corporation (“**Biome**”) to you (“**Buyer**”) placed through whatever means.

1. **Buyer’s Acceptance of Terms.** These T&Cs prevail over any c Buyer’s general terms and conditions of purchase regardless c whether or when Buyer has submitted its purchase order or othe documents containing such terms. Fulfillment of Buyer’s order b Biome does not constitute acceptance of any of Buyer’s terms an conditions and does not serve to modify or amend these T&Cs. If there is any inconsistency between these T&Cs and terms and condition contained in any other document submitted by Buyer or exchanged b Biome (including purchase orders, acknowledgements, requests fo proposal, invoices, etc.), these T&Cs shall control even if Buyer’ documents expressly limit acceptance to use of Buyer’s terms an conditions. These T&Cs and any basic terms in a purchase order (suc as quantity, price delivery date, billing address and delivery location constitute the entire agreement between the parties as to any particula purchase by Buyer of Products.
2. **Price; Payment; Delivery.** Prices for the Products are based on the price list most recently provided to Buyer, which Biome may update at any time. All prices quoted by Biome are F.O.B. Biome’s facility. Biome’s payment terms require full payment in advance of delivery. Biome will arrange delivery to Buyer and Buyer will reimburse all shipping expenses incurred by Biome. Fast shipping is available on request (and payment by Buyer). Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law. In addition, Buyer shall reimburse Biome for all expenses and costs (including attorney’s fees) incurred or expended by Biome in enforcing any of its rights hereunder and/or collecting any past due sums, whether or not suit is commenced. Buyer may not reduce any payment by any alleged discounts or other deductions without Biome’s prior written consent. Buyer is responsible for paying all applicable local, state, federal, use, sales and excise taxes.
3. **Title.** Risk of loss and title for Products will pass to Buyer upon delivery to Buyer or its designee at the FOB location listed above.
4. **Inspection.** Buyer shall carefully inspect all Products and shipping documents promptly upon delivery of Products. No claim for non-conformity, defect, shortage or damage will be valid or enforceable against Biome unless Buyer gives Biome written notice specifying in detail the issue within 72 hours from the date that Buyer receives the Products. Buyer shall supply such reasonable documentation as to any loss as Biome may request. Buyer shall be deemed to conclusively accept all Products not rejected in accordance with the preceding sentences. If any Products are non-conforming, Buyer has provided proper notice, and if the non-conformity was not caused by Buyer or due to misuse or handling after Biome delivered the Product to Buyer, Biome will, at Biome’s option, (i) repair the non-conforming Product, (ii) replace the non-conforming Products at no additional charge to Buyer or (iii) reimburse Buyer for amounts Buyer paid for such non-conforming Products.
5. **Warranties; Disclaimer of Warranties.** Biome warrants that Buyer will receive good and valid title to the Product, free and clear of all encumbrances and liens of any kind. Biome further warrants that for a period of three years for hardware (mechanical and electrical) and 3 months for living plants from the date of delivery of any Product, (i) the Product will materially conform to the specifications set forth in the applicable quote to which the purchase order is responding, (ii) the Product will be free of significant defects in material and workmanship. The limited warranty in this Section does not apply to (x) normal wear and tear, abuse, neglect, misuse, negligence, accident, use contrary to instructions provided by Biome (e.g. letting water pump run dry or failure to follow watering instructions), or other improper testing, installation, storage, handling or use of such Product, or (y) any unauthorized modification of such Product. BIOME DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
6. **Limit of Liability.** BIOME WILL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL, CONTINGENT, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE OR USAGE, COST OF SUBSTITUTE PRODUCTS, ADDITIONAL COSTS INCURRED BY BUYER, OR CLAIMS OF THIRD PARTIES. BIOME’S TOTAL LIABILITY TO BUYER FOR DAMAGE OR LOSS ARISING OUT OF, OR IN ANY WAY RELATED TO, THE SALE OF PRODUCTS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND/OR GROSS NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR ANY OTHER CAUSE SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF PRODUCTS TO WHICH SUCH CLAIM RELATES.
7. **Indemnification.** Buyer agrees to defend, indemnify, and hold harmless Biome and its affiliates, or their respective officers, directors, employees, shareholders, agents, successors, or assigns from all liabilities, claims, and expenses, including attorney’s fees, that arise from (i) Buyer’s breach of these T&Cs; (ii) the negligent or more culpable act or omission of Buyer or its employees or agents; and (iii) any failure by a Buyer to comply with any applicable laws.
8. **Governing Law; Venue; Attorney’s Fees.** These T&Cs shall be governed by, and any dispute arising hereunder shall be determined in accordance with, the laws of State of California, without giving effect to conflict of laws principles. Buyer and Biome irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts sitting in San Francisco, California. In addition to other remedies, the prevailing party shall be entitled to recover such amount as the court may adjudge reasonable as attorney’s fees and expenses in the enforcement action or any appeal.
9. **Force Majeure.** Neither party will be liable for performance delays or for non-performance, except for payment obligations due to causes beyond the party’s reasonable control.
10. **Miscellaneous.** Neither party will be liable for performance delays or for non-performance due to causes beyond its reasonable control, except for payment obligations. There is no relationship of partnership, joint venture, employment, franchise or agency between the parties and Buyer will not have the power to bind Biome or incur obligations on Biome’s behalf without Biome’s prior written consent. If any provision of these T&Cs shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, this provision shall not affect any other provision or provisions contained in these T&Cs. None of the provisions of these T&Cs shall be (a) deemed to have been waived unless such waiver shall be set forth in writing signed by Biome, or (b) subject to modification or waiver by course of performance, course of dealing, or usage of trade.