



## ROCHE DIAGNOSTICS LIMITED GENERAL TERMS AND CONDITIONS OF SALE

In these Conditions, references to the singular include the plural, references to one gender shall include the others and references to any statute or statutory provision shall, unless the context requires otherwise, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

**DEFINITIONS** In these terms and conditions, the following words shall, where the context so admits, have the following meanings:-

**Applicable Law** – All applicable laws, regulations and guidelines, including without limitation, the Bivda Code of Conduct, Good Manufacturing Practice (GMP), Good Distribution Practice (GDP) and the MHRA's Blue Book.

**Buyer** - The company, firm or person from whom the order for the purchase of Goods is received

**Company** - Roche Diagnostics Limited

**Conditions** - These General Terms and Conditions of Sale

**Contract** - Any contract between the Company and the Buyer for the sale and purchase of the Goods incorporating these terms and conditions

**Goods** - Any goods supplied by the Company to the Buyer (including any part or parts of them) pursuant to the Contract.

**Working Day**- Any day that is not a Saturday, a Sunday, or a bank or public holiday in the UK and/or the Republic of Ireland.

### 2. APPLICATION OF TERMS

2.1 The Company submits all quotations and accepts all orders from the Buyer subject to the Conditions and, unless otherwise expressly agreed in writing, these Conditions shall govern and form part of every Contract to the exclusion of any other terms and conditions, whether expressed or implied, of the Buyer (including any terms and conditions, which the Buyer purports to apply under any purchase order, specification or any other document whatsoever and whenever. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in these Conditions or Contract.

2.2 Notwithstanding the foregoing, if the Company and the Buyer have executed a formal written contract which is in full force and effect, the terms and conditions of that contract will apply and govern, to the exclusion of any inconsistent Condition.

2.3 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.4 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order, which may include email or facsimile, is issued by the Company or, if earlier, the Company delivers the Goods to the Buyer. Any order shall be accepted entirely at the discretion of the Company.

2.5 Any variation, cancellation or waiver of these Conditions shall only be effective if made in writing and signed by a duly authorised representative of the Company. For the avoidance of doubt, the Company's drivers, sales representatives, warehouse and depot staff are not so authorised.

### 3. PRICE AND PAYMENT

3.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set in the Company's price list as at the date of the order for the Goods.

3.2 The Company's prices are subject to alteration without notice and are stated exclusive of Value Added Tax and all other taxes or levies and all costs and charges in relation to packaging, labelling, carriage and freight all of which the buyer shall bear where applicable.

3.3 Unless orders are accepted on a pre-payment basis, when payment for the goods shall be due in advance of delivery, accounts are due for payment within thirty days of the date of invoice and no accounts shall be deemed to be paid until the Company has received cleared funds. The Company reserves the right to withdraw these credit terms at any time without notice. Time for payment shall be of the essence.

3.4 UK accounts are invoiced and payable in Pounds Sterling and all other EU accounts are invoiced and payable in Euros.

3.5 The Buyer shall notify the Company of any invoice discrepancy within 14 days of receipt of the invoice after which time the invoice shall be deemed accepted by the Buyer.

3.6 The Company reserves the right to withhold delivery of subsequent orders when the Buyer's account is overdue or the Company has doubts concerning the creditworthiness of the Buyer. In such cases the Company shall have the right to release any Buyer reserved or ordered Goods.



3.7 The Company reserves the right to charge interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (as supplemented, amended or replaced from time to time) on any sums remaining unpaid after the due date. Interest shall be calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment, at the rate of eight per cent (8%) per annum above the official dealing rate prevailing from time to time, is made in full;

3.8 The Company reserves the right at any time at its discretion to demand security for payment before continuing with, or delivering any order.

#### 4. DELIVERY

4.1 The Company will use reasonable efforts to meet any time or date for delivery given. Notwithstanding this, any time or date for delivery given by the Company is an estimate only and the Company will not be held liable or responsible for any delay or non-delivery nor for any loss, expense or damage whatsoever resulting from any such delay or non-delivery and the Buyer shall not be entitled to treat a Contract as repudiated by reason of late delivery.

4.2 The Company reserves the right to refuse to deliver any order if the Buyer goes or threatens to go into liquidation, makes any composition or arrangement with its creditors or has appointed an administrator or an administrative receiver, provided always that title in the Goods has not already passed to the Buyer.

4.3 When signing for Goods from the carrier, the Buyer agrees to check that the number of packages received agrees with the number on the delivery note and immediately to record any numerical discrepancy or obvious external damage on the carrier's delivery note. The Company will consider claims for damages, shortages or incorrect delivery only if notified within 14 days of receipt of the Goods and claims for non-delivery only if notified within 14 days of the date of invoice. If any claim is so notified, the Company's sole responsibility will be limited to replacing or redelivering the goods in question or collecting excess deliveries at its expense and the Buyer will not be entitled to any other compensation whatsoever. The Company will accept no liability for any claims howsoever caused not notified within these periods nor will the Company have any liability in respect of damage or shortages caused by the acts or omissions of the Buyer.

4.4 The Company reserves the right to deliver in more than one instalment and to invoice each instalment separately

4.5 If delivery is by instalments a notifiable claim in one instalment will not entitle the Buyer to reject all instalments.

4.6 Any order received on a Friday which requires dry ice or other form of temperature control will be dispatched the following Monday (or in the case of a bank holiday on Tuesday). In the event the Buyer requires a weekend delivery, the Buyer shall be solely responsible for receipt and shall be liable for any degradation of the Goods in the event that the Goods cannot be delivered.

4.7 The Company will not accept the return of unwanted Goods correctly delivered against an order.

#### 5. RISK

The Goods shall be at the risk of the Buyer from the time of delivery to the Buyer's nominated premises, or from the time of collection from the Company's nominated premises by or on behalf of the Buyer, whichever is the applicable.

#### 6. TITLE

6.1 Full Legal, beneficial and equitable title in the Goods shall remain vested in the Company, notwithstanding delivery to the Buyer's nominated premises, until such time as the Company has received payment in full (in cash or cleared funds) for the Goods delivered and all other sums owed by the Buyer to the Company.

6.2 Until full legal, beneficial and equitable title in the goods passes to the Buyer:

6.2.1 the Buyer shall hold the Goods on a fiduciary basis acting as bailee for the Company;

6.2.2 the Buyer shall store the Goods at its premises in accordance with Applicable Law and in conditions which adequately protect and preserve the Goods. The buyer shall also insure the Goods, without any charge to the Company, will not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored and are clearly identifiable as belonging to the Company. The Company shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Buyer reasonable notice of its intention to do so;

6.2.3 the Company may at any time, on demand and without prior notice, require the Buyer to deliver the Goods up to the Company and the Company may repossess and resell the Goods if any of the events specified in Condition 14.1 occurs or if any sum due to the Company from the Buyer under the Contract or on any other account or under any other contract is not paid when due;

6.2.4 for the purposes of this Condition 6.2 the Company, its employees, agents and sub-contractors will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Buyer and/or any other location where any of the Goods are situated by giving the Buyer reasonable prior notice;



6.2.5 the Company shall be entitled to maintain an action against the Buyer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Buyer; and

6.2.6 the Company hereby authorises the Buyer to use and/or sell the Goods in the normal course of the Buyer's business and to pass good title in the Goods to its customers, if they are purchasers in good faith without notice of the Company's rights and provided that all proceeds of sale are held on trust for the Company pending payment to the Company. This right shall automatically cease on the occurrence of any event set out in Condition 14.

#### 7. NO RIGHT OF SET-OFF

The Buyer shall make all payments due under the Contract without any deduction to sums due under the Contract whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

#### 8. SAFETY AND RECALL

8.1 The Buyer should satisfy itself that the persons responsible for the shipping, storage, handling and/or use of any Goods supplied by the Company have all the information required on health and safety requirements (as required by Applicable Law and conditions of storage and any health and material safety data sheets and/or summaries of product characteristics). The Company shall not be liable to the Buyer in any civil proceedings brought by the Buyer against the Company in respect of a breach of the Applicable Law, shipping, storage, handling or use instructions or any other applicable health and safety legislation or any regulations, orders or directions made pursuant to such health and safety legislation in force from time to time or under any directive, regulation, order or other instrument relating to health and safety, where such exclusion of liability is permitted by law.

8.2 The Buyer shall keep the Company properly informed of all customer complaints concerning the Goods and shall comply with any directions of the Company in any issues, proceedings or negotiations relating to such complaint.

8.3 In the event of any product recall the Buyer will cooperate with the Company to enable it to fulfil its vigilance duties, in entirety, with respect to the Medical and IVD Device Directives 92/42/EEC and 98/79 EC.

#### 9. INSPECTION, STORAGE, TRANSPORT AND USAGE CONDITIONS

9.1 All stocks of Goods shall be stored and transported by the Buyer in accordance with product temperature conditions as issued or amended by the Company from time to time.

9.2 The Company shall be entitled with the prior agreement of the Buyer (such agreement not to be unreasonably withheld) to inspect the Buyer's stocks of the Company's products at the Buyer's depots, sub-depots or other business premises.

#### 10. LIABILITY AND CONSEQUENTIAL LOSS

10.1 Condition 4 and this condition 10 set out the entire liability of the Company (including any liability for the acts or omissions of its sub-contractors and any member of its Group) in respect of any breach of these Conditions or other contract and any representation, statement or tortuous act or omission including negligence arising under or in connection with the Contract.

10.2 If any of the Goods should prove to be not fit for their intended purpose within 12 months of the date of invoice (or within their expiry dates if earlier or later) when stored and used correctly, the Company will either replace or, at its sole option, refund the purchase price but shall have no liability to the Buyer for any other consequential loss, damage or expense.

10.3 The Company shall not in any circumstances whatsoever (whether by reason of negligence, breach of contract, misrepresentation or otherwise) be liable for any economic loss, damage or expense, whether direct, indirect or consequential (including, without prejudice to the generality of the foregoing, loss of profits, business interruption, loss of goodwill or reputation) arising out of or in any way connected with the delivery and/or sale and/or use of the goods whether by the Buyer or by any third party.

10.4 Nothing in this paragraph 10 shall be taken to limit or restrict the Company's liability (i) for personal injury or death resulting from the negligence of the Company, its employees and agents; or (ii) for fraud or fraudulent misrepresentation or for any other matter for which it would be illegal for the Company to exclude, limit or attempt to exclude or limit its liability.

10.5 The total aggregate liability of the Company howsoever arising in connection with this Contract whether for negligence or breach of contract or otherwise shall in no event exceed the value of the Goods sold by the Company under this Contract.

10.6 The price of the Goods has been calculated on the basis that the Company will exclude or limit its liability as set out in the Contract and the Buyer, by placing an order, agrees and warrants that the Buyer shall insure against or bear itself any loss for which the Company has excluded or limited its liability in the Contract and the Company shall have no further liability to the Buyer.



## 11. BUYERS WARRANTY AND INDEMNITY

11.1 The Buyer warrants that the Goods shall only be resold by the Buyer in their original form as packaged and supplied by the Company without any breaking down or repacking, without the Company's prior written approval. The Buyer will not remove, alter or add to the labels on or the leaflets within these packages prior to any such sale without the Company's prior written approval.

11.2 The Buyer acknowledges that the Goods may be perishable and may become denatured if they are stored or transported incorrectly. The Buyer warrants that, if it resells the Goods, the Buyer will:

11.2.1 ship and handle the Goods in the same manner as they were supplied by Company to the Buyer and in accordance with the marketing authorisation for the relevant Goods;

11.2.2 store the Goods in suitable conditions and supply only those of satisfactory quality (as defined by the Sale and Supply of Goods Act 1994) and, in each case, in accordance with the marketing authorisation for the relevant Goods; and

11.2.3 ensure that customers purchasing the Goods ship, store and handle the Goods in the same conditions as those specified in Conditions 11.2.1 and 11.2.2.

11.3. The Buyer agrees to indemnify and hold the Company harmless from and against any claims, costs, expenses, and damage arising out of: (i) the abnormal or improper use, misuse or neglect of the Goods or any breach of these terms and conditions or default on the part of the Buyer; or (ii) any use or sale of any goods manufactured by the Buyer and incorporating any Goods supplied by the Company to the Buyer.

## 12. FORCE MAJEURE

The Company reserves the right to suspend or cancel the Contract in whole or part, including but not limited to deferring the date of delivery or reducing the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the Company's reasonable control including, but not limited to, acts of God, fire, wind, accident, pandemic, epidemic, widespread disease, industrial action, riot, war, civil commotion, flood, breakdowns of plant or machinery, the acts of a third party or the intervention of a competent authority provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 13. CARRIAGE AND HANDLING CHARGES.

Orders below £100 or €120 shall be subject to a handling charge. The Company reserves the right to make additional charges for, including but not limited, deliveries requiring dry ice, all special and urgent deliveries and deliveries outside the United Kingdom and the Republic of Ireland.

## 14. IMPORT AND EXPORT CONTROL

14.1. If the Goods are being exported to the Buyer to outside the United Kingdom the provisions of this Condition 14 shall apply notwithstanding any other provision of the Contract.

14.2. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms 2010 shall have the same meaning for the purposes of the Contract. In the event of conflict between Incoterms 2010 and the Contract, the Contract shall prevail.

14.3. Unless stated otherwise in the Contract any Goods being exported to the Buyer shall be delivered, "Delivered At Place" (DAP).

14.4. The Buyer shall not supply any Goods to customers outside the European Union without the prior written consent of the Company.

14.5. Nothing in these Conditions shall prevent the Buyer from meeting unsolicited orders for Goods.

14.6. The Buyer shall be responsible for complying with any legislation, regulations, guidelines, codes of practice or directions governing the use or sale of the Goods in the country of destination.

14.7. The parties agree that all Goods, including software and technology, delivered under the Contract may be subject to foreign trade controls. The Buyer is responsible for and shall strictly comply with all applicable national and U.S. laws and regulations for the control of import, export or re-export, transfer, brokering and transit. Prior to any transfer of Goods, the Buyer shall guarantee that all necessary import and/or export licenses are obtained as may be required throughout the duration of the Contract.

14.8. The Company shall provide such information as the Buyer reasonably requires to ensure compliance with their obligations under applicable export and customs regulations.

14.9. Any costs incurred from the obligations in this Condition 14 shall be borne by the Buyer.



## 15 BREACH OF CONTRACT OR INSOLVENCY

15.1 The Company may immediately suspend performance of the Contract, cancel any outstanding delivery of the Goods, stop any Goods in transit or by notice in writing to the Buyer terminate the Contract without liability to the Company if:

15.1.1 the Buyer commits a material breach of any of its obligations under the Contract which is incapable of remedy or fails to remedy a breach of its obligations under the Contract which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Company to remedy or desist from such breach within a period of 14 days; or

15.1.2 the Buyer enters into bankruptcy, individual voluntary arrangement, liquidation, receivership, administration or into a corporate voluntary arrangement as defined by the Insolvency Act 1986;

15.1.3 the Buyer ceases, or threatens to cease to carry on business; or

15.1.4 any sum payable under the Contract is not paid within seven days of its due date for payment in accordance with this contract; or

15.1.5 the Company reasonably believes that any of the events specified in Condition 15.1.2 above is about to occur in relation to the Buyer.

15.2 Notwithstanding any such termination or suspension in accordance with Condition 15.1 the Buyer shall pay the Company for all Goods delivered up to and including the date of suspension or termination.

15.3 Termination of the Contract for any reason shall be without prejudice to the rights and remedies of either party which may have accrued up to termination.

## 16. SUBCONTRACTING, ASSIGNMENT AND THIRD PARTY RIGHTS

16.1 The Buyer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Company. The Company may assign, charge, subcontract or transfer the Contract or any part of it to any person.

16.2 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these terms and conditions.

## 17. GENERAL

17.1 For the avoidance of doubt, acceptance of the Buyer's order does not in any way entitle the Buyer to use any trademarks owned by the Company, its associates and affiliates. Any infringement of the Company's intellectual property rights, whether by substitution, passing-off, copyright or trademark infringement or any other improper use whatsoever will result in the Company taking appropriate action to safeguard its interests.

17.2 If any of these Conditions is held to be invalid, unenforceable or unlawful for whatever reason, such decision shall not affect the validity or enforceability of the remaining conditions or the Contract which will remain valid and enforceable in all respects.

17.3 The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

17.4 The Contract sets out the entire agreement and understanding between the Buyer and the Company in connection with the sale of the Goods and shall supersede and replace all documentation previously issued by the Company purporting to set out its conditions of sale of the Goods. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

## 18. APPLICABLE LAW AND JURISDICTION

These terms and conditions shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

January 2018