

Terms and Conditions for the sale of In Vitro Diagnostic Medical Devices

1 Interpretation

1.1 Definitions:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Conditions"	the terms and conditions set out in this document as amended from time to time in accordance with clause 11.5.
"Contract"	the contract between the Supplier and the Customer for the sale and purchase of the Products in accordance with these Conditions.
"Control"	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
"Customer"	the person who purchases the Products from the Supplier.
"Delivery Date"	the date agreed for delivery as set out in the Order or as otherwise agreed in writing between the parties.
"Delivery Location"	as specified
"Documentation"	means the Specification and any manual, instructions for use and other documentation published by the Supplier in relation to the Products.
"EXW"	means Ex-works (Incoterms® 2020).
"Force Majeure Event"	an event, circumstance or cause beyond a party's reasonable control which affects, prevents or hinders the performance by a party of its obligations under the Contract and arises from acts, events, omissions or non-events including acts of God, riots, war, acts of terrorism, fire, flood, storm, earthquake, epidemic, pandemic and any natural disaster.
"Order"	the Customer's order for the Products, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, as the case may be.
"Products"	the products (or any part of them) set out in the Order.
"Specification"	the Supplier's specifications for each Product, covering the technical and commercial features of the Products.

"Supplier"

QuantuMDx Group Limited (registered in England and Wales with company number 06523152).

1.2 Interpretation:

- 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.5 A reference to writing or written includes email but not fax.

2 Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are suitable for the Customer's purposes.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in any of the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the products referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Products given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3 Products

- 3.1 The Products are described in the Specification.

3.2 The Supplier reserves the right to amend the Specification and Documentation if required by any applicable quality, statutory or regulatory requirements.

4 Delivery

4.1 Unless agreed otherwise in writing in the written acceptance of the Order, delivery shall be on the basis of EXW at the Delivery Location.

4.2 The Supplier shall ensure that each delivery of the Products is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and any relevant Documentation.

4.3 The Customer shall collect Products from the Delivery Location within two Business Days of the Supplier notifying the Customer that they are ready for collection.

4.4 Delivery is completed when the Supplier places the Products at the Customer's disposal at the Delivery Location.

4.5 Delivery Dates are approximate only, and the time of delivery is not of the essence.

4.6 The Supplier shall not be liable for any delay in delivery of the Products that is caused by the Customer's failure to provide accurate information or instructions that are relevant to the supply of the Products.

4.7 If the Customer has not collected the Products within ten Business Days after the day on which the Supplier notified the Customer that the Products were ready for delivery, the Supplier may resell or otherwise dispose of part or all of the Products and, may charge the Customer for all reasonable storage costs.

4.8 If the Supplier delivers up to and including 5% more or less than the quantity of Products ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Products was delivered, a pro rata adjustment shall be made to the Order invoice.

5 Quality

5.1 The Supplier warrants that on delivery the Products shall:

5.1.1 conform in all material respects with their description and the applicable Product Specification; and

5.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3:

5.2.1 the Customer must give notice in writing to the Supplier within:

(a) five Business Days of delivery of Products in relation to defects discoverable on normal visual inspection, and

(b) 10 Business Days of becoming aware of any latent defect,

if the Customer discovers that some or all of the Products do not comply with the warranty set out in clause 5.1. In such cases, the Supplier must, at its discretion, be given a reasonable opportunity of examining such Products, and the Customer (if asked to do so by the Supplier) must return such Products to the Supplier's place of business at the Supplier's cost for this purpose. To the extent that Supplier agrees that the Products do not comply with the warranty set out in clause 5.1 the Supplier shall, at its option, repair or replace the defective Products.

- 5.3 The Supplier shall not be liable for the Products' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- 5.3.1 the Customer makes any further use of such Products after giving notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow any written instructions as to the storage, commissioning, installation, use and maintenance of the Products as set out in the Documentation or (if there are none) good trade practice regarding the same;
 - 5.3.3 the Customer alters or repairs such Products without the written consent of the Supplier;
 - 5.3.4 the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Products supplied by the Supplier.

6 Title and risk

- 6.1 The risk in the Products shall pass to the Customer on delivery.
- 6.2 Title to the Products shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Products in respect of which payment has become due, in which case title to the Products shall pass at the time of payment.
- 6.3 Until title to the Products has passed to the Customer, the Customer shall:
- 6.3.1 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4; and
 - 6.3.2 give the Supplier such information relating to the Products as the Supplier may require from time to time.

7 Price and payment

- 7.1 The price of the Products shall be the price set out in the Order or otherwise agreed in writing between the parties in a separate legally binding agreement. The Supplier may, by giving notice to the Customer at any time up to 14 Business Days before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to any delay or material changes to an Order caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.2 The price of the Products:
- 7.2.1 excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- 7.2.2 excludes the costs and charges of packaging, insurance, import/export duties and transport of the Products, which shall be invoiced to the Customer separately, to the extent that the Customer requests such additional services from the Supplier.
- 7.3 Unless agreed otherwise in writing, the Supplier may invoice the Customer for the Products as follows:
- 7.3.1 on acceptance of an Order, 50% of Order value; and
- 7.3.2 prior to delivery, 50% of the Order value.
- 7.4 Unless agreed otherwise in writing, the Customer shall pay each invoice submitted by the Supplier:
- 7.4.1 on acceptance of an Order;
- 7.4.2 prior to delivery of Products;
- 7.4.3 in full and in cleared funds to a bank account nominated in writing by the Supplier; and
- 7.4.4 time for payment shall be of the essence of the Contract.
- 7.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8 Limitation of liability and Product recall

- 8.1 The Customer undertakes to maintain appropriate, up-to-date and accurate records to enable the immediate recall of any Products or batches of Products from the retail or wholesale markets.

These records shall include records of deliveries to customers (including batch numbers, delivery date, name and address of customer, telephone number, fax number and email address).

- 8.2 The Customer shall, at the Supplier's cost, give any assistance that the Supplier shall reasonably require to recall, as a matter of urgency, Products from the retail or wholesale market.
- 8.3 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.4 Nothing in in the Contract limits any liability which cannot legally be limited, including liability for:
 - 8.4.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 8.4.2 fraud or fraudulent misrepresentation;
 - 8.4.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 8.4.4 defective products under the Consumer Protection Act 1987.
- 8.5 Subject to clause 8.4, the Supplier's total liability to the Customer shall not exceed the price paid for the Products purchased pursuant to the relevant Order or Orders.
- 8.6 Subject to clause 8.4, the following types of loss are wholly excluded:
 - 8.6.1 loss of profits;
 - 8.6.2 loss of sales or business;
 - 8.6.3 loss of agreements or contracts;
 - 8.6.4 loss of anticipated savings;
 - 8.6.5 loss of use or corruption of software, data or information;
 - 8.6.6 loss of or damage to goodwill; and
 - 8.6.7 indirect or consequential loss.
- 8.7 This clause 8 shall survive termination of the Contract.

9 Termination

- 9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- 9.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
 - 9.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 9.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - 9.1.4 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
 - 9.1.5 there is a change of Control of the Customer; or
 - 9.1.6 the Customer purchases products which (in the reasonable opinion of the Supplier) compete with the Products.
- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Products under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

10 Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract (other than, in the case of the Customer, its payment obligations) if

such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for three months, the party not affected may terminate this Agreement by giving 14 days' written notice to the affected party.

11 General

11.1 Assignment and other dealings.

11.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

11.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Confidentiality.

11.2.1 The Customer undertakes that it shall not at any time during the Contract and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Supplier, except as permitted by clause 11.2.2.

11.2.2 The Customer may disclose the Supplier's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Customer's rights or carrying out its obligations under the Contract. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Supplier's confidential information comply with this clause 11.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.2.3 The Customer shall not use the Supplier's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.3 Data protection.

11.3.1 Each Party shall comply with all applicable privacy and data protection law and regulation, as it applies to each Party's performance of this Agreement.

11.4 Entire agreement.

11.4.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.4.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

11.5 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.6 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision of the Contract is deemed deleted under this clause 11.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.8 Notices.

11.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the addresses specified by each party from time to time.

11.8.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours' resume. In this clause 11.8.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

11.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.8.4 A notice given under this Agreement is not valid if sent by fax.

11.9 Third party rights.

11.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

11.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.