



Terms and Conditions of Sale

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 13.5.
"Contract"	the contract between the Supplier and the Customer for the sale and purchase of the Products in accordance with these Conditions.
"Customer"	the person who purchases the Products from the Supplier.
"Delivery Date"	the target date for delivery of the Products as set out in the Order or as otherwise agreed in writing between the parties.
"Delivery Location"	the delivery location as set out in the Order, or as otherwise agreed in writing by the parties.
"Documentation"	the Specification, IFU, and any other manual, instructions for use and other documentation published by the Supplier in relation to the Products.
"Expiration Date"	with respect to a Product, any shelf life date, expiration date or "use by" of such Product, as set out in the applicable Specifications.
"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.
"IFU"	in respect of a Product, its written instructions for use as made available by the Supplier.
"Losses"	has the meaning given in clause 7.5.
"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.
"Product(s)"	the products described in the Order.
"Product Data"	technical or usage data related to the Products, including log files of tests, log files of Products, but excluding any patient-specific data.

"Specification"	with respect to a Product, the Supplier's specifications for such product as made available by the Supplier from time to time.
"Supplier"	QuantuMDx Group Limited (registered in England and Wales with company number 06523152).
"Updates"	has the meaning given in clause 9.3.

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 twenty (20) Business Days from its date of issue.
- 2.7 The Supplier reserves the right to amend the Documentation if required by any applicable quality, statutory or regulatory requirements.

3 **Delivery**

- 3.1 Unless agreed otherwise in writing in the written acceptance of the Order under clause 2.3, Products delivered under the Contract shall be delivered on FCA Incoterms 2020 at the Delivery Location.
- 3.2 The Customer shall collect Products from the Delivery Location on the date of delivery.

- 3.3 Delivery Dates are approximate only, and without prejudice to clause 6.3, the time of delivery is not of the essence.
- 3.4 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.
- 3.5 If the Customer fails to collect Products in accordance with clause 3.2, the Customer shall be liable for any and all costs that the Supplier may incur as a result of such failure (including that the Supplier may charge the Customer for all reasonable storage costs).
- 3.6 If the Supplier delivers up to and including five percent (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.

4 Quality

- 4.1 The Supplier warrants that on delivery each Product will conform in all material respects with its applicable Specification.
- 4.2 The warranty in clause 4.1 shall apply:
 - 4.2.1 if the Product has an Expiration Date, from the date of delivery up to such Expiration Date; or
 - 4.2.2 if the Product does not have an Expiration Date, one (1) year from the date of delivery.
- 4.3 Any warranty claims must be made in writing to the Supplier by the Customer within the applicable warranty periods specified in clause 4.2 or 4.5, promptly on discovery of any alleged breach of warranty.
- 4.4 As the Supplier's sole liability for, and the Customer's sole remedy for, any failure of a Product to conform with the warranty set out in clause 4.1, Supplier will, at its discretion, repair or replace such Product, or refund to the Customer the purchase price of such Product (subject to the return to the Supplier of such Product, if requested by the Supplier), provided that the Customer:
 - 4.4.1 first gives the Supplier a reasonable opportunity of examining such Products,
 - 4.4.2 if asked to do so by the Supplier, returns such Products to the Supplier's place of business at the Supplier's cost (as to reasonable out-of-pocket expenses) and in accordance with the Supplier's reasonable instructions, and in such event, Customer shall ensure that the Products are appropriately packaged to reach the Supplier in good condition, and
 - 4.4.3 provides any other assistance that may be reasonably required to facilitate any repair or replacement of such Product, including (as applicable) granting the Supplier access to retrieve the applicable Product, or installing, or making available for remote support to install, any Updates pursuant to clause 9.3.
- 4.5 Notwithstanding any other provision, the warranty period on any repaired or replaced Product shall be:
 - 4.5.1 if the Product has an Expiration Date, from the date of delivery of such repaired or replaced Product up until the date of such Expiration Date; or
 - 4.5.2 if the Product does not have an Expiration Date, the remaining term of the original warranty for the original Product.
- 4.6 The Supplier shall not be liable for any Products (or repaired or replaced Products, as appropriate) failure to comply with the warranty set out in clause 4.1 in any of the following events:
 - 4.6.1 the Customer makes any further use of such Products after giving notice in accordance with clause 4.3;
 - 4.6.2 the Customer fails to comply with its obligations under clauses 4.4.1 to 4.4.3;

- 4.6.3 the defect arises because the Customer failed to follow any written instructions or as a result of improper, incorrect or unauthorised handling, storage, commissioning, installation, transport, use, maintenance or removal of the Products as set out in the Documentation or (if there are none) good trade practice regarding the same;
 - 4.6.4 the defect arises through accidental damage or the Product is subjected to abuse, misuse or neglect (including any damage that arises from environmental or operational conditions, such as electrostatic discharge, externally caused short circuits, incorrect voltages or other improper external inputs);
 - 4.6.5 anyone other than the Supplier or its authorised representative modifies, services, alters or repairs such Products without the written consent of the Supplier;
 - 4.6.6 the Product is used by the Customer for any purpose other than as expressly stated in the IFU;
 - 4.6.7 the Product is transferred or sold by Customer to any third party without Supplier's consent;
 - 4.6.8 the Product is damaged such that Supplier is unable to verify the nonconformity or defect in the normal course of Product testing;
 - 4.6.9 the Products differ from the Specification as a result of changes after the date of delivery to ensure they continue to comply with applicable statutory or regulatory requirements; or
 - 4.6.10 the Product is used in combination with any technology, hardware, software, product, material and/or other property (including any chemicals and reagents) not supplied by Supplier or expressly authorised in writing by Supplier or the applicable Documentation.
- 4.7 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 4.1.
- 4.8 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 Title and risk

- 5.1 The risk in the Products shall pass to the Customer on delivery.
- 5.2 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.
- 5.3 With respect to each Product, until title to such Product has passed to the Customer (if ever), the Customer shall:
- 5.3.1 notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.1.2 to clause 11.1.4; and
 - 5.3.2 give the Supplier such information relating to such Product as the Supplier may require from time to time.

6 Price and payment

- 6.1 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.
- 6.2 The price of the Products excludes:
- 6.2.1 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

6.2.2 the costs and charges of packaging, insurance, import/export duties and transport of the Products to the Delivery Location, which shall be invoiced to the Customer separately.

6.3 Unless otherwise agreed in writing:

6.3.1 the Supplier may invoice the Customer for the Order value on acceptance of the Order pursuant to clause 2.3, and the Customer shall pay such amount in accordance with clause 6.4; and

6.3.2 the Supplier shall not be under an obligation to deliver the Products the subject of the Order prior to the Supplier receiving such amounts from the Customer in full and cleared funds.

6.4 Unless agreed otherwise in writing, the Customer shall pay each invoice submitted by the Supplier:

6.4.1 within the number of days as specified on the invoice, from receipt of the invoice (and if no number of days is specified on the invoice, 30 days) upon receipt of such invoice; and

6.4.2 in full and in cleared funds to a bank account nominated in writing by the Supplier.

6.5 Time for payment shall be of the essence of the Contract.

6.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting any other right or remedy of the Supplier (including under the Contract), 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 6.5 will accrue each day at four percent (4%) a year above the Bank of England's base rate from time to time, but at four percent (4%) a year for any period when that base rate is below zero percent (0%).

6.7 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).

7 Compliance

7.1 The Customer agrees that:

7.1.1 Customer shall obtain and maintain all approvals, permits, licences and registrations necessary to use the Products for their intended purpose (for clarity, not including any certifications and declarations of conformity, CE/UKCA markings, approvals and the like necessary for the Supplier to place the Products on the market);

7.1.2 it shall not use the Products except in accordance with applicable laws, necessary certifications and declarations of conformity, CE/UKCA markings, approvals, permits, licences and registrations and the applicable Documentation provided or made available by the Supplier to the Customer; and

7.1.3 in respect of each employee, agent, other personnel of the Customer (including sub-contractor personnel) who will use the Products, prior to their first use of the Products, the Customer shall procure that such individuals participate in training by or on behalf of the Supplier (including achieving any required standard in testing or other assessment to demonstrate competence); and

7.1.4 without prejudice to the generality of clause 7.1.1, the Customer may only use the Products in accordance with their intended purpose and IFU.

7.2 The Customer shall notify the Supplier within four (4) Business Days of the occurrence of any adverse incident associated with use of the Products, including false positive or false negative results falling outside the declared performance of the test, or any other events the Supplier may be under an obligation to report pursuant to applicable laws governing the manufacture and supply of *in vitro* diagnostic medical devices, such as the In Vitro Diagnostics Medical Devices Directive 98/79/EC or In Vitro Diagnostic Medical Devices Regulation (EU) 746/2017 (IVDR), except for adverse incidents representing an imminent hazard or risk to public health that require notification to the relevant regulatory authority within a shorter period, in which case, the Customer shall notify the Supplier immediately. Customer shall maintain adequate tracking of the Products to enable the Supplier to meet the requirements applicable to the tracking of medical devices. The Customer shall assist the Supplier with any field safety corrective actions and otherwise assist the Supplier as may be reasonably required for the Supplier to comply with applicable laws.

- 7.3 The Customer may not manufacture, modify, duplicate, create a derivative work of, decompile, disassemble, decrypt, extract, reverse engineer, or otherwise copy or reproduce any software within or any other element of the Product (except to the extent permitted by applicable law) or the applicable Documentation or permit any third party to do any of the foregoing.
- 7.4 The Customer shall comply with the Seller's instructions relating to, and shall be responsible for, the collection, and environmentally sound treatment and disposal of any of the Products or parts thereof that become waste electrical and electronic equipment, and/or waste industrial batteries and accumulators, in accordance with the Waste Electrical and Electronic Equipment Regulations 2013 (as amended) and the Waste Batteries and Accumulators Regulations 2009 (as amended), including financing the costs of the same.

- 7.5 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including reasonable legal and other professional costs and expenses) ("Losses") suffered or incurred by the Supplier arising out of or in connection with any breach by or on behalf of the Customer of the Contract or negligence of the Customer in the performance of the Contract.

8 Intellectual Property

- 8.1 All intellectual property rights in the Products, and all technology relating to the Products, their design and any and all improvements thereto or thereof shall at all times remain vested in Supplier, licensors or suppliers, as applicable.
- 8.2 The Supplier shall indemnify the Customer against all Losses suffered or incurred by the Customer arising out of or in connection with any third party claim made against the Customer for infringement by the Customer of a third party's patent rights in the United Kingdom caused by the Customer's possession or use of a Product in accordance with the Contract. The Supplier's obligation to indemnify under this clause 8.2 in relation to a claim is conditional on the Customer: (a) promptly notifying the Supplier of any actual or threatened claim; (b) not make any admission of guilt, liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier; (c) giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the indemnified party, to enable the indemnifying party and its professional advisers to examine them and to take copies (at the Customer's expense) to assess the Claim; and (d) giving the Supplier the sole authority to avoid, dispute, compromise or defend the Claim. This shall be the Customer's sole and exclusive remedy in respect of any such claims. This indemnity shall not apply to the extent the claim arises as a result of the Customer's breach of the Contract.

9 Data and Updates

- 9.1 The Customer agrees that the Supplier and/or its subcontractors (as applicable) may from time to time collect, prepare derivatives from and otherwise use howsoever Product Data, including for supporting, maintaining, improving and benchmarking Products, researching and developing new products and services, and facilitating the provision of Products and services associated with them, and agrees to grant the Supplier access to the Products to do so. The Supplier will own all intellectual property rights that arise from such collection, preparation and use.
- 9.2 Subject to any applicable Product containing (or, at the Supplier's discretion, being upgraded to contain) the appropriate functionality, the Customer shall ensure that such Product is and remains connected to an Internet connection in order to enable such collection of Product Data and to enable remote determination of the Product's state or other remote operations by or on behalf of the Supplier in connection with the Contract. The Customer is responsible for maintaining security of such connection.
- 9.3 From time to time, the Supplier may develop new Product firmware and software versions or updates ("Updates"). Upon such Updates being made available to the Customer, the Customer shall promptly either (i) install such Updates directly, or (ii) on request from the Supplier, make available the Product for installation of such Updates remotely, and provide reasonable assistance to the Supplier in connection therewith. The Customer acknowledges that such Updates (if any) are made at the Supplier's sole discretion and the Customer shall comply with all reasonable instructions of the Supplier in respect of such Updates, including as to installation.
- 9.4 The Customer shall regularly make backup copies of any data or information that is entered into, generated by or stored within the Product. The Supplier shall take reasonable precautions to preserve the integrity of any data or information, and prevent any loss of use or corruption of such data or information, when installing Updates or repairing the Product, provided that, subject to clause 10.2 and pursuant to clause 10.4.5 the Supplier shall not be liable for any loss of use or corruption of data or information.

10 Limitation of liability

- 10.1 The restrictions on liability in this clause 10 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.2 Nothing in the Contract limits or excludes any liability which cannot legally be limited or excluded, including liability for:
 - 10.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); and
 - 10.2.2 fraud or fraudulent misrepresentation.
- 10.3 Subject to clause 10.2, 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.
- 10.4 Subject to clause 10.2, the following types of loss are wholly excluded:
 - 10.4.1 loss of profits;
 - 10.4.2 loss of sales or business;
 - 10.4.3 loss of agreements or contracts;
 - 10.4.4 loss of anticipated savings;
 - 10.4.5 loss of use or corruption of software, data or information;
 - 10.4.6 loss of or damage to goodwill; and
 - 10.4.7 indirect or consequential loss.

11 Termination

- 11.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - 11.1.1 the Customer breaches the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of being notified in writing to do so;
 - 11.1.2 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;
 - 11.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 11.1.4 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.
- 11.2 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 11.1.2 to clause 11.1.4, 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 the Contract on the due date for payment.

- 11.3 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.
- 11.4 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.
- 11.5 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.
- 11.6 Clauses 6.5, 7, 10, 11.4, 11.5, 13 and this clause 11.6 shall survive termination or expiry of the Contract..

12 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 purchasing (if any) and payment obligations) if such delay or failure results 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 the Contract by giving fourteen (14) days' written notice to the affected party.

13 General

13.1 Assignment and other dealings.

- 13.1.1 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.
- 13.1.2 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.

- 13.2 **Confidentiality.** Each party shall keep confidential any non-public information that it receives from the other party in connection with the Contract. For clarity, non-public information of the Supplier shall include pricing information and Product Data. Notwithstanding the foregoing, the Supplier may disclose the Customer's non-public information to contractors, suppliers and other third parties in connection for the purpose of performing its obligations or exercising its rights under the Contract.

- 13.3 **Data protection.** Each party shall comply with all applicable privacy and data protection law and regulation, as it applies to each party's performance of the Contract. If the Customer makes any personal data of third parties available to the Supplier in the course of this Agreement, the Customer shall ensure that the Customer is permitted to do so, and the Supplier shall use appropriate technical and organisational measures to keep that personal data secure and shall process that personal data only for the purposes of this Agreement.

13.4 Entire agreement.

- 13.4.1 The 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.
- 13.4.2 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

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

13.6 **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.

13.7 **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 the Contract. If any provision of the Contract is deemed deleted under this clause 13.7 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.

13.8 **Notices.**

13.8.1 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 or 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.

13.8.2 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 or 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 13.8.2(c), business hours means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.

13.8.3 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.

13.8.4 A notice given under the Contract is not valid if sent by fax.

13.9 **Third party rights.**

13.9.1 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.

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

13.10 **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.

13.11 **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 the Contract or its subject matter or formation.