



CONDITIONS OF SALE

INTRODUCTION:

These are the terms ("**Conditions of Sale**") on which Roche Diagnostics Australia Pty Limited (ABN 29 003 001 205) ("**Roche**" or "**we**") will supply you, the buyer ("**Buyer**" or "**you**") identified in any order accepted by Roche, with such goods, including but not limited to diagnostic equipment, reagents, consumables and services, as we may at our discretion agree ("**goods**"). All goods sold by Roche are sold only on the basis of these Conditions of Sale. If any other terms are proposed by you, these Conditions of Sale will prevail to the extent of any inconsistency and we will be deemed, by delivering the goods to you, to have made a counter-offer to sell the goods subject only to these Conditions of Sale. By accepting delivery of the goods, you accept the counter-offer. We may from time to time notify you of changes to these Conditions of Sale, which changes will apply to each order received after that notification. You are responsible for ensuring that you have read and understood these Conditions of Sale (and any changes to them which we notify you of from time to time).

1 ORDERS AND PRICING:

- (a) You may request that we supply you with goods by submitting an order to Roche, quoting your Roche account number, a purchase order number and specifying the delivery point.
- (b) Any orders, whether based upon quotations or not, are subject to acceptance by Roche, in writing or by performance.
- (c) We reserve the right to accept any order in whole or in part or to decline any order. Where we make a part delivery in respect of any order, each such delivery constitutes a separate sale. Delivery details including quantity of goods supplied by Roche are confirmed in the Roche tax invoice or where applicable the delivery note accompanying the goods.
- (d) Orders should be placed in shipper quantities and, if the total price of the order is less than \$1,000.00 (excluding GST) you will be charged a handling fee of \$200.00 (excluding GST) in addition to the price of the order.
- (e) You will be charged for all goods ordered and delivered in accordance with the approved price listed for each of the products, unless you have a separate written agreement or a valid quotation.
- (f) You may not vary or cancel an order without Roche's prior written consent.

2 PAYMENT:

- (a) We will issue a tax invoice in respect of the goods which we supply to you. All prices quoted before our acceptance of your order are indicative only and are subject to change by Roche without notice.
- (b) You must pay the invoiced price, plus any handling or freight charges, taxes (including goods and services tax), duties, levies and all other statutory charges specified in the invoice (the Price) without deduction or set-off, within 30 days of the invoice date. Roche may provide credit facilities in its discretion. Roche reserves the right to withdraw credit facilities at any time prior to delivery.
- (c) Overdue amounts bear interest calculated daily at the Cash Rate, as published by the Australian Financial review plus 500 basis points. Roche reserves the right in its absolute discretion to apply this interest charge to all payments not made by you in accordance with clause 2(b) above and to debit your account accordingly.
- (d) Payment is to be made by Electronic Funds Transfer (EFT) to the following bank account:

Account Name:	Roche Diagnostics Australia Pty Limited
BSB:	248 057
Account:	10 000 001
Bank and Branch:	Citibank, Park Street, Sydney
- (e) Payment and invoicing queries should be directed to Roche Accounts Receivable at australia.accountsreceivable@roche.com.

- (f) Subject to clause 2(h) below, you agree that a notification signed by the Secretary of our company stating the amount of any unpaid price and, or overdue interest thereon due by you to Roche will be conclusive evidence, in the absence of manifest error, of your indebtedness to Roche at the date of the notification.
- (g) Failure to pay may result in your account being placed on credit hold and you may be refused supply.
- (h) If you dispute an invoice issued by Roche, you must notify Roche in writing of the dispute. You will pay any undisputed portion of the invoice in accordance with this clause. Any disputed part of the portion will be resolved in accordance with the Dispute Resolution clause.
- (i) We may use credit reference agencies to help Roche make credit decisions or for fraud protection purposes. You consent to Roche and its agents collecting, using and disclosing credit and personal information about you (and, in the case of a company, your directors) to check your credit worthiness, credit standing, credit history or credit capacity in accordance with the Privacy Act 1988 (Cth).

3 DELIVERY:

- (a) Subject to clauses 3(b) and 3(c) below, the cost of delivery and freight to your premises is excluded from the price. Unless otherwise agreed, we will select the mode and route of shipment of the goods. We will use our reasonable endeavours to ensure that the mode and route of shipment selected and delivery and freight charges is reasonable taking into account the nature and value of your order. Any specification of delivery time is indicative only.
- (b) You agree to accept delivery of all products the subject of an order placed by you. Any additional costs reasonably incurred by Roche as a result of your failure to accept delivery of any goods so ordered will be a debt due by you to Roche.
- (c) You may request that we send the goods to you in a specific manner. If we agree to this, you will bear all additional freight costs as specified on the invoice. You may request that we deliver the goods to more than one location. If we agree to this, you must bear any reasonable additional expense (as determined by Roche and specified in the invoice) and risk in the goods will pass to you when the goods leave Roche premises.

4 GENERAL OBLIGATIONS:

Supply of goods under these Conditions of Sale is conditional upon your compliance with the following obligations:

- (a) You will at all times comply with all applicable laws and regulations, including in relation to therapeutic goods, drugs, poisons, controlled substances, dangerous goods, record-keeping, document retention, trade practices issues and fair trading issues in connection with the goods, their receipt, storage and their re-supply.
- (b) You must (and will ensure that any person to whom you sell or transfer the goods does) hold all required licences and authorisations and have established all workplace precautions and systems (including any required under dangerous goods legislation) to safely receive, store, use and supply the goods (if applicable).
- (c) You must acquaint yourself and comply with any instructions for use and operating instructions or recommendations in respect of the goods and you must pass them on to any person to whom you sell or transfer the goods.
- (d) You must acquaint yourself and comply with any instructions or recommendations which we give to you with respect to storage, handling, use, processing, re-supply and labelling of the goods and you must pass them on to any person to whom you sell or transfer the goods.
- (e) You agree that promptly upon delivery you will place the goods into storage conditions adequate to preserve and protect them and which are appropriate given the nature of the goods, and you will ensure that the goods are maintained in those conditions until the time of their re-supply.
- (f) You will not create any encumbrance (including a bill of sale, mortgage, security interest, charge, lien, pledge or similar security arrangement) or adverse equity interest over or in the goods held by you, before title in the goods passes to you in accordance with the Title and Risk clause.

- (g) You will comply with all applicable laws prohibiting bribery and the payment of money or anything of value to government officials, political parties or candidates for the purpose of corruptly obtaining or retaining business.
- (h) You will advise Roche of any misuse or suspected misuse of any Roche product as soon as possible after it first comes to your attention.
- (i) You will not take any action on Roche's behalf which would conflict with applicable anti-corruption laws.

5 RESALE OF GOODS:

- (a) You will not on-sell, repackage, rebrand or relabel the goods, unless directed and/or agreed to in writing by Roche.
- (b) Subject to clause 5(a) above, the goods purchased by you are for sale and use only within Australia and you will not export any of the goods or on-sell any of the goods to anyone you know, or ought to know, would or would be likely to export any of the goods.
- (c) Subject to clause 5(a) above you must keep adequate records identifying the persons to whom you on-sell goods. You will, within 2 business days, permit Roche access to, or provide Roche with copies of, those records if we so reasonably request in writing.

6 INDEMNITY AND LIABILITY:

- (a) We will not be liable for any failure to perform which is directly or indirectly due to strikes, fire, explosions, flood, riot, lock-out, government action or order, supply chain disruption, unavoidable accident, force majeure, or any other cause beyond our reasonable control.
- (b) Roche's total aggregate liability arising out of or in connection with these Conditions of Sale, any purchase order issued thereunder and any Roche order confirmation (if any) shall be limited to the purchase order value in total aggregate (or such other amount as agreed between the parties in writing).
- (c) No party will be liable to the other for economic loss; loss of contract; loss of profit or revenue; business interruption; loss of production; loss of data; costs of data reconstruction and loss; indirect or consequential loss or damage or for special or exemplary damages. Subject to clause 6(h), this limitation and exclusion of liability shall apply whether the liability claim is based on breach of contract, tort (including negligence), under a warranty or an indemnity, under statute, in equity or otherwise.
- (d) You indemnify Roche from and against all liabilities, losses, damages, costs and expenses (including any damage to, theft or loss of the goods) which we directly or indirectly suffer or incur because of:
 - i. any act or omission by you or your employees, agents, or subcontractors in breach of your obligations under these Conditions of Sale;
 - ii. your failure to comply with any written instructions or recommendations about the goods, including in relation to storage or transportation of the goods and directions for use;
 - iii. your failure to comply with any law or regulation in relation to the goods or their use or supply;
 - iv. your negligence; or
 - v. statements you may make about the goods or their performance or characteristics, without our written approval.
- (e) We indemnify you from and against all liabilities, losses, damages, costs and expenses which you directly suffer or incur because of Roche's negligence in connection with the goods and these Conditions of Sale.
- (f) The indemnities set out in clauses 6(d) and 6(e) above will include any GST liability incurred by the indemnified party in enforcing the indemnity.
- (g) A party's liability in connection with these Conditions of Sale (including any indemnity) will be reduced to the extent that the other party caused or contributed to the liabilities, losses, damages, costs or expenses.

- (h) The provisions in this clause 6 apply to the maximum extent permitted by law and nothing in these Conditions of Sale exclude, restrict, modify, or limit:
- i. the rights or liability (including liability for any categories of liabilities, losses, damages, costs and expenses) of a party under, or the application of any applicable legislation, including the Australian Consumer Law (if applicable) where and to the extent that such rights, liability or application of legislation cannot be lawfully excluded restricted, modified or limited (as applicable); or
 - ii. a party's liability for death or personal injury caused by that party's negligence except as provided by this clause 6.

7 RETURNS AND EXCHANGES:

Subject to clause 6(h) and to the extent permitted by law:

- (a) All grants of credits, exchange or return are at our discretion and under such conditions as we may impose.
- (b) All goods related claims must be lodged with Roche Customer Service at australia.customerservice@roche.com, citing all original invoice details and the basis of the claim. Unless we otherwise agree with you in writing, we will not accept (and you waive any right to make) any claim notification: (i) received five (5) day/s after delivery; (ii) from any person except you; or (iii) for goods supplied on "special deals" where we have supplied the goods on a no returns basis (except where we are required to accept a return under the Australian Consumer Law).
- (c) No returns will be accepted (and you waive any right to return goods) unless (i) we have given authorisation and the goods return number is quoted; (ii) at all times the goods were in your possession or control, the goods were stored and maintained in accordance with our written instructions relating to the storage and maintenance of the goods; and (iii) unless otherwise agreed by us in writing, the goods are returned immediately to our Warehouse using our nominated carrier (if applicable).
- (d) We will not credit or accept claims or returns in respect of goods returned to you by your customers, unless faulty or defective.
- (e) Where we agree to accept return of goods, they must be returned in their original container and the label and any seal should not have been removed or otherwise tampered with or damaged, unless otherwise agree in writing by Roche. All goods must be returned in compliance with the signed Product Return document.
- (f) You must pay any return freight charged for the return of goods unless the goods are subject to a goods recall or withdrawal from sale, were supplied in error by Roche, or were faulty, defective or damaged when received by you due to our fault.
- (g) Where Roche approves the disposal of damaged goods, the cost of such disposal will be met by you unless otherwise agreed in writing by Roche.

8 RECALLS:

- (a) Roche will notify you if we require, at any time a recall of goods which are still in your possession, custody or control. Where a recall is instituted, we will provide you with a list of the goods impacted by the recall, and any other information we determine is relevant.
- (b) You will provide all necessary assistance to Roche, including following all reasonable directions of Roche to enable a recall to be adequately completed in accordance with applicable laws, regulations and industry standards including the Uniform recall procedure for therapeutic goods (URPTG).

9 TITLE AND RISK:

- (a) Unless otherwise agreed to by Roche in writing, possession in the goods and risk in the goods passes to you upon delivery of the goods to the location specified on the order.
- (b) Property in the goods remains with Roche until we have received full payment of the price. If we do not receive full payment, we may retake possession of the goods and for this purpose enter into any premises you occupy or control.

- (c) Until such time as payment is made in full for the goods, you are only a bailee of the goods and hold them in trust for Roche; you receive any proceeds of sale of them on trust for Roche and must keep those moneys in a separate account and account to Roche for those moneys upon demand; and you must keep them separate from other goods held by you or store them in such a way as they are clearly identifiable as Roche property.
- (d) You agree at your expense to insure Roche's goods until property has passed to you in accordance with clause 9(b) (i.e. when Roche has been paid in full for them). You will insure the goods under a comprehensive policy of insurance in your and our names for the full value of the goods against fire, accident, malicious damage and theft and such other risks as notified by us and which we may from time to time reasonably require.
- (e) You will hold the proceeds of any insurance claim in respect of the goods in trust for Roche and must account to Roche for that amount immediately without the need for any demand by Roche.
- (f) You acknowledge that by virtue of clauses 9(a) and 9(c) (above) we have a security interest in the goods for the purposes of the Personal Property Securities Act 2009 (Cth) (**PPS Act**) and to the extent applicable the PPS Act applies.
- (g) You acknowledge that we may do anything reasonably necessary, including but not limited to registering any security interest which we have over the goods on the Personal Property Securities Register established under section 147 of the PPS Act in order to perfect the security interest and comply with the requirements of the PPS Act.
- (h) You agree to do all things reasonably necessary to assist Roche to undertake the matters set out in (g) (above).
- (i) The Buyer and Roche agree that, pursuant to section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the goods to the extent, if any, mentioned (words in this provision have the same meaning as in the PPS Act): (i) section 129 (disposal by purchase); (ii) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal; (iii) section 132(3)(d) (contents of statement of account after disposal); (iv) subsection 132(4) (statement of account if no disposal); (v) section 142 (redemption of collateral); and (vi) section 143 (reinstatement of security agreement).

10 NO REPRESENTATIONS OR WARRANTIES:

- (a) The details of any warranty we offer for our goods are made available by Roche prior to or at the time you place an order for the goods, or with the goods when they are delivered to you. These warranties are in addition to your rights under the Australian Consumer Law (if applicable). Otherwise, the only terms, guarantees, conditions and warranties which are binding on Roche in respect of the goods supplied to you by Roche are:
 - i. those expressly set out in these Conditions of Sale or otherwise agreed to in writing by Roche; and
 - ii. those (if any) which are imposed, created, implied or required to be binding by statute, including the Australian Consumer Law (if applicable) and which cannot be lawfully excluded.
- (b) Subject to clause 10(a) above and to the maximum extent permitted by law, all other terms, guarantees, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to the goods are excluded.
- (c) Subject to clause 6(h) and to the extent permitted by law, Roche's liability (if any) arising from the breach of the conditions or warranties referred to in clause 10(a) is, at Roche's option, limited to:
 - i. the replacement of the goods or the supply of equivalent goods;
 - ii. the repair of the goods;
 - iii. payment of the cost of replacing the goods or of acquiring equivalent goods;
 - iv. payment of the cost of having the goods repaired; or
 - v. to the extent the goods also comprise any services, supplying those services again or paying the cost of having those services supplied again.

- (d) You acknowledge that neither Roche nor any person acting on Roche's behalf has made any representation or other inducement to you to enter these Conditions of Sale and that you have not entered into these Conditions of Sale in reliance on any representations or inducements except for those representations or inducements contained in these Conditions of Sale. No representative of ours is authorised to make any representation or promise or enter into any agreement with respect to the goods or to waive any right under, alter or modify any of these Conditions of Sale unless the representation, promise, agreement or waiver is in writing and signed by Roche.

11 SUPPLY OF SERVICES:

- (a) To the extent the goods also comprise any services to be provided by Roche, the following terms will apply:
- i. the services to be provided, including any applicable service levels, will be specified in the relevant order;
 - ii. Roche will commence providing the services on the date specified in the relevant order and will notify you in writing when the services have been completed;
 - iii. Roche will provide the services in a proper workmanlike manner with all due skill, care and diligence in accordance with all laws applicable to the services;
 - iv. you must arrange for our employees, agents and subcontractors to have such access to any premises or site as is reasonably required for the provision of the services; and
 - v. you will provide all necessary assistance to Roche, including following all reasonable directions of Roche to enable Roche to perform the services.

12 CONFIDENTIALITY:

- (a) You acknowledge that we are under no obligation to give you any proprietary or confidential information about the goods and that you will keep confidential any such information, including without limitation, price lists, specifications or market research, you do acquire.
- (b) Both parties agree to keep the other party's confidential information confidential and secure at all times.
- (c) A party will only use or disclose the other party's confidential information for the purpose of performing its obligations under these Conditions of Sale, if required by law, or with the prior written agreement of the other party.
- (d) Any party who has received confidential information under these Conditions of Sale must, on the request of the other party, immediately deliver to that party all documents or other materials containing or referring to the confidential information.

13 PRIVACY:

Each party will comply with applicable privacy laws in the collection, use, disclosure and storage of personal information in performing its obligations under these Conditions of Sale. You will ensure that any individuals are made aware of, or provide individual consent to, the collection, disclosure and use of their personal information by you or by Roche, including in compliance with your obligations under these Conditions of Sale to keep and disclose records of customers to whom you on-sell the goods.

14 INTELLECTUAL PROPERTY:

- (a) You acknowledge that all patents, rights, trade marks and other intellectual property rights subsisting in the goods and/or the packaging of the goods are the sole property of Roche (and its related companies worldwide) and you will not in any way question, dispute or infringe any of those rights.
- (b) You will not use our name, trade marks or logos without our prior written consent to each such use.
- (c) You will not tamper with, obscure, damage, remove or otherwise alter the trade marks as they are applied to the goods, or cause or authorise this alteration.

- (d) If any software is provided in the goods by Roche, your use of that software shall be governed by the terms of the licence accompanying such software. If there is no separate licence terms, you are granted a non-exclusive, non-transferable licence to use the software (excluding any source code) to the extent of the instructions of use and/or operator manual for the relevant item. You must not (i) copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) the software; (ii) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Software; (iii) sublicense or assign or make available the licence or the software to any third party; or (v) derive any source code form software.

15 RECORDKEEPING:

- (a) You must keep adequate records identifying the persons to whom you on-sell goods. You will, within two (2) business days, permit Roche access to, or provide Roche with copies of, those records if we so reasonably request in writing.

16 DISPUTE RESOLUTION:

- (a) If any dispute or claim arises out of or in connection with this sale or these Conditions of Sale (including in relation to the formation of the contract for sale of the goods or arising after termination of that contract, or in relation to invoicing and payment), the parties agree to first attempt to co-operate with each other in an amicable manner in order to resolve the dispute.
- (b) If a resolution cannot be reached by local operational management, within 14 days of the dispute arising, the parties may refer the dispute to mediation. A party will not commence arbitration or litigation, other than for urgent interlocutory relief, unless it has first offered to submit the dispute to mediation.
- (c) The parties agree to keep strictly confidential any information or documentation disclosed in the course of, or for the purpose of, mediation. Both parties will require all third parties, including the mediator, any witnesses, experts, representatives or others concerned, to execute and deliver to the mediator with a copy to the other party a deed of confidentiality prior to rendering any services in respect of the mediation.

17 GOVERNING LAW:

The Conditions of Sale and any related disputes or claims will be governed by the laws of New South Wales without regard to conflict of laws provisions.

18 ENTIRE AGREEMENT:

These Conditions of Sale and any document incorporated by reference constitute the entire agreement of the parties about this subject matter. Any previous agreements, understandings and negotiations on the subject matter of the Conditions of Sale cease to have any effect.

19 SUBCONTRACTING:

You may only subcontract your obligations under these Conditions of Sale with our prior written consent, which consent will not be unreasonably withheld or delayed. You will remain primarily liable to Roche for all acts or omissions of your subcontractors under these Conditions of Sale.

20 NO ASSIGNMENT OR TRANSFER:

Neither party may assign or transfer any of its rights or obligations under these Conditions of Sale without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. Any unauthorised assignment or transfer by either party will be void.

21 SEVERANCE:

If at any time a provision of these Conditions of Sale is or becomes illegal, invalid or unenforceable in any respect under the law of Australia that will not affect or impair the legality, validity or enforceability of any other provision of these Conditions of Sale.

