



## CONDITIONS OF SALE OF GOODS January 2012

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### 1) Basis of Sale

These are the conditions ("Conditions of Sale") on which Roche Diagnostics Australia Pty Limited ("Roche") will supply you, the buyer ("Buyer" or "you") identified in any order accepted by us, with such products as we may at our discretion agree ("goods"). If any other terms are proposed by the buyer, these conditions prevail to the extent of any inconsistency and Roche will be deemed by delivering the goods to the buyer to have made a counter-offer to sell the goods subject only to these Conditions. Buyer accepting delivery of the goods shall amount to an acceptance of that counter-offer. Orders received are subject to acceptance by Roche in writing or by performance. **Roche is only authorised to supply product for use in Australia and Papua New Guinea.** Goods sold by Roche may not be exported to any country except Papua New Guinea. We may from time to time notify you of changes to these Terms of Sale, which changes will apply to each order received after that notification.

### 2) Prices

All prices and quotations are submitted without obligation and are subject to change without notice by Roche. Any re-sale prices shown in any price list issued by Roche are recommended prices only. Prices exclude delivery by air or road express as appropriate. **Unless otherwise indicated a handling and delivery charge will be added to each order.**

### 3) Ordering Procedures:

(a) Orders should be placed directly with Roche Customer Service. To ensure rapid processing of orders the buyer should furnish:-

- (i) Purchase order number.
- (ii) Name and address of buyer for shipping and invoicing purposes.
- (iii) Product catalogue number and name.
- (iv) Quantity and pack sizes.
- (v) Any special packaging and shipping instructions.

(b) All purchase orders in confirmation of phone/fax orders must be marked "confirmation, do not duplicate". (Return of duplicate shipments may not be accepted unless this advice is given). All orders are subject to a minimum billing of \$100.00.

### 4) Terms of Payment

The purchase price for the goods must be paid by the Buyer without deduction or set-off no later than **30 days from the date of invoice** which is submitted to the Buyer. Overdue amounts bear interest calculated daily at the Cash Rate, as published daily in the Australian Financial Review plus 500 basis points. Cheques are to be crossed, marked "Not Negotiable" and made payable to Roche.

### 5) Trade Marks, Packaging, etc.

- (a) Unless otherwise declared in writing at time of sale, goods sold by Roche must be resold in the original packages.
- (b) Where goods sold are sold under a registered trade mark, the buyer should note that Roche (and its related companies) will strictly enforce any rights (including the right to damages) in respect of any infringement of Roche Group trade marks arising in any manner whatsoever (including substitution, passing off or other improper use). Buyer must not itself use any logo, business name or intellectual property of Roche.

### 6) Instructions for Use, etc.

All goods are sold on the condition that the buyer strictly follows Roche's Operating Instructions including manuals, pack inserts, material safety data sheets and Roche's instructions regarding safety and environmental procedures with respect to storage, handling, use and processing thereof and passes on such instructions to the buyer's customers.

### 7) Delivery

Unless otherwise advised by the Buyer, Roche will select the method of shipment of the goods. Where the Buyer selects their own method of shipment, risk in the goods shall pass to the buyer when the goods leave Roche's premises.

### 8) Exclusions

- (a) Roche will not be liable for any loss or damage in transit.
- (b) Roche will not be liable for any failure to perform any contract due directly or indirectly to strikes, fire, explosions, flood, riot, lock-out, unavoidable accident, force majeure, or other cause beyond reasonable control.
- (c) Roche excludes, to the full extent to which it is entitled to do so by law, any and all implied conditions and warranties, together with any liability for any loss or damage, direct or indirect, suffered by the buyer including special, indirect, consequential damage and loss of anticipated profit.
- (d) Where goods are sold for the purpose of further use and processing prior to resale by the Buyer, any recommendations by Roche as to such use or processing is for information only and Roche accepts no responsibility whatsoever for any claim by the Buyer and/or the end-user in respect of the finished product incorporating the goods sold.

## 9) Return of Goods

- (a) Return of all goods must be authorised by Roche Customer Service within seven (7) days of receipt of goods.
- (b) No returns will be accepted by Roche unless a GRN (Goods Return Number) has been issued by Roche Customer Service.
- (c) **Freight charged for the return of goods shall be paid by the buyer except where the goods are recalled by Roche or where the goods are subject to a fault of manufacture of where the goods have been supplied in error by Roche.**

## 10) Claims

- (a) **All claims must be notified in writing within 7 days of receipt of goods.**
- (b) No adjustment will be allowed for out-dated material unless notice is received from the buyer within 7 days of receipt of goods. Roche reserves the right to replace out-dated material instead of allowing an adjustment.
- (c) If goods are ordered in error by the buyer and are accepted by Roche for return, a **10% restocking charge will be deducted from the adjustment given.**
- (d) No claims will be accepted by Roche unless the claim specifies the Tax Invoice No., date of Tax Invoice and basis of claim

## 11) Taxes

Goods and Services Tax and any other impost applicable by law to the sale shall be to the buyer's account.

## 12) Title and Risk

- (a) Unless otherwise agreed to by us in writing, possession in the goods and risk in the goods passes to Buyer 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 Roche do not receive full payment, Roche 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, Buyer is only a bailee of the goods and holds them in trust for Roche; Buyer receives 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 Buyer must keep them separate from other goods held by Buyer or store them in such a way as they are clearly identifiable as Roche property.
- (d) Buyer agrees at own expense to insure Roche's goods until property has passed to Buyer in accordance with clause (b) (i.e. when Roche has been paid in full for them). Buyer will insure the goods under a comprehensive policy of insurance in Buyer and Roche names for the full value of the goods against fire, accident, malicious damage and theft and such other risks as Roche may from time to time require. Buyer 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.
- (e) Buyer acknowledges that by virtue of (b) and (c) (above) Roche 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.
- (f) Buyer acknowledges that Roche may do anything reasonably necessary, including but not limited to registering any security interest which Roche have over the good 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 requirement of the PPS Act.
- (g) Buyer agrees to do all things reasonably necessary to assist Roche to undertake the matters set out in (f) (above).
- (h) 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. paragraph 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);
  - vi. section 143 (reinstatement of security agreement);

## 13) No Representations or Warranties

- (a) Subject to paragraph (b) (below) and except as expressly provided to the contrary in these Conditions of Sale of Goods, all terms, conditions, warranties, undertakings, inducements or representation whether express or implied, statutory or otherwise, relating to the goods are excluded.
- (b) Where any Act of Parliament implies a term in these Conditions of Sale of Goods and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, such term, shall be deemed to be included in these Conditions of Sale of Goods provided that the liability of Roche for breach of the term, condition or warranty is limited to (at our option) the repair or replacement of the goods (or the cost of doing so).
- (c) Buyer acknowledges 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 herein. No representative of Roche 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.

#### **14) Confidentiality**

- (a) Buyer acknowledges that Roche are under no obligation to give Buyer 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 of Goods, 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 of Goods 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.

#### **15) 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 of Goods. Buyer will ensure that any individuals are made aware of, or obtain individual consent to, the collection, disclosure and use of their personal information by Buyer or by Roche, including in compliance with Buyer obligations to keep and disclose records of customers to whom you on-sell the goods.

#### **16) Dispute Resolution**

- (a) If any dispute or claim arises out of or in connection with this sale or these Conditions of Sale of Goods (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) If a claim or dispute about the supply, price, payment, delivery, return or exchange of goods under these Conditions of Sale of Goods cannot be resolved by mediation, then that claim or dispute must be submitted for arbitration. Arbitration will be conducted using one arbitrator agreed by the parties, in accordance with the UNICITRAL Arbitration rules. The cost of arbitration will be shared equally by the parties, except where determined by the arbitrator.
- (d) The parties agree to keep strictly confidential any information or documentation disclosed in the course of, or for the purpose of, a mediation or arbitration. Both parties will require all third parties, including the mediator or arbitrator, any witnesses, experts, representatives or others concerned, to execute and deliver to the mediator or arbitrator with a copy to the other party a deed of confidentiality prior to rendering any services in respect of the mediation or arbitration.

#### **17) Governing Law**

The Conditions of Sale of Goods 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 of Goods 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 of Goods cease to have any effect.

#### **19) Subcontracting**

Buyer may only subcontract their obligations under these Conditions of Sale of Goods with Roche prior written consent, which consent will not be unreasonably withheld or delayed. Buyer will remain primarily liable to Roche for all acts or omissions of Buyer's subcontractors under these Terms of Sale.

#### **20) No Assignment or Transfer**

Neither party may assign or transfer any of its rights or obligations under these Conditions of Sale of Goods 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 Terms 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 of Goods.