

## **Roche Diagnostics (Switzerland) Ltd - General Terms and Conditions**

### **1 General**

- 1.1 These General Terms and Conditions (**GTCs**) apply to all contracts between Roche Diagnostics (Switzerland) Ltd ("**Roche**") and the Customer, especially sale, delivery and service contracts. Different terms and conditions of the Customer are binding only if expressly acknowledged in writing by Roche.
- 1.2 If any provision of these General Terms and Conditions of Sale and Delivery is held to be ineffective in whole or part, the contracting parties will replace it with a new provision as similar in legal and commercial effect as possible.
- 1.3 Prices and specifications in price lists, prospectuses, on websites and the like are not binding.
- 1.4 All agreements and legally relevant declarations by the contracting parties are valid only if made in writing. In the event of conflict between contractual provisions agreed in writing and these GTCs, the contractual provisions take precedence.

### **2 Contract conclusion**

- 2.1 The contract is concluded on written order confirmation by Roche or on the issue of the invoice by Roche.
- 2.2 Deviations from the Customer's order in the order confirmation or invoice become an integral part of the contract unless disputed in writing by the Customer within five business days of receiving the order confirmation. The right to correct simple invoicing errors is reserved.

### **3 Scope of goods and services supplied**

- 3.1 Roche goods and services are conclusively specified in the order confirmation and/or invoice.
- 3.2 Roche is entitled to engage subcontractors.

### **4 Prices**

- 4.1 In the absence of any agreement to the contrary, all prices are net and in Swiss francs, with no deductions of any kind and excluding value-added tax.
- 4.2 In the absence of any agreement to the contrary, small-lot charges and the costs of implementing special customer requirements pursuant to section 7.5 et seq. will be charged to the Customer and are invoiced separately.
- 4.3 In the event of changes in pricing due to unforeseeable circumstances between the conclusion of the contract and delivery (especially currency fluctuations and supplier prices), Roche is entitled to adjust prices accordingly.

### **5 Delivery dates**

- 5.1 The delivery date specified in the order confirmation applies. Roche makes every effort to meet delivery dates, but these cannot be guaranteed. In the event of late delivery the Customer has no right to withdraw or to receive compensation or additional performance.
- 5.2 The delivery date will be extended commensurately:
  - (i) if Roche does not receive the specifications required for fulfilling the contract in good time
  - (ii) if the Customer subsequently alters the specifications and thereby causes a delay in delivery
  - (iii) if hindrances arise which Roche cannot overcome despite its application of due care, regardless of whether such hindrances arise at Roche, at the Customer or at a third party.
- 5.3 If Roche is unable to deliver on time or at all owing to events beyond its control, Roche is entitled to withdraw from the contract in whole or in part. Roche reserves the right to make partial deliveries.

## **6 Transfer of benefit and risk**

- 6.1 Benefit and risk pass to the Customer on the arrival of the shipment at the agreed place of delivery.
- 6.2 If dispatch is delayed at the Customer's request or for other reasons for which Roche is not responsible, risk passes to the Customer at the time originally specified for delivery.

## **7 Dispatch, transportation, installation and insurance**

- 7.1 Roche arranges dispatch and transportation to the agreed destination, which is included in the price subject to any agreement to the contrary.
- 7.2 Roche arranges transport insurance at its own expense. Any additional insurance against losses of any kind is the responsibility of the Customer from the moment of the transfer of risk.
- 7.3 The Customer should address complaints about dispatch or transportation to the last carrier without delay upon receipt of the shipment or the shipping documents.
- 7.4 The installation of systems and equipment at the destination is carried out by Roche and is included in the price, subject to any agreement to the contrary.
- 7.5 Roche must be notified in good time of special requirements concerning dispatch, transportation, installation and insurance. The Customer is invoiced separately for any additional costs.

## **8 Inspection and acceptance of shipments**

The Customer shall inspect the systems and/or products supplied within five working days of receipt or installation and shall notify Roche in writing of any defects within this period. The inspection period for installation services begins when a system or product is largely functional, which the Customer must confirm by signing an installation record. After the expiry of this term the goods are deemed to have been accepted and approved.

## **9 Warranty**

- 9.1 The warranty period begins on the arrival of the delivery at the agreed destination. The warranty period for installation services begins when a system or product is largely functional, which the Customer must confirm by signing an installation record. The warranty period for systems and/or products is 12 months, even if these have been installed in an immovable item. The warranty period for replacement parts is 6 months.
- 9.2 Consumables such as reagents and parts subject to wear are not covered by the warranty.
- 9.3 The Customer is entitled solely to have the defective item either repaired or replaced, at Roche's option. Amendments and reductions are excluded, as are other rights and entitlements.
- 9.4 The warranty shall expire early if the Customer or a third party improperly interferes with, alters or repairs the goods or if the Customer fails to immediately notify Roche of a defect.
- 9.5 Roche is not liable for defects arising from natural wear and tear, defective maintenance, improper use (such as the use of consumables or parts subject to wear that do not meet Roche standards or are not recommended by Roche), excessive load or other causes for which Roche is not responsible.

## **10 Compensation and restriction of liability**

- 10.1 Roche's liability (whether in respect of a warranty, impermissible actions, a contract or otherwise) is in all cases restricted to compensation for the direct damage to a maximum of the Customer's payments under the relevant contract. Liability for indirect damage, consequential damage, loss of production or loss of profit is expressly excluded.
- 10.2 In the event that a product liability claim is lodged against Roche by a third party in respect of a defect attributable to the Customer, the Customer shall indemnify Roche for all resulting costs.

## **11 Confidentiality**

- 11.1 Information supplied by Roche to the Customer for purposes of contract performance may not be used for other purposes of the Customer or disclosed to third parties.
- 11.2 Roche shall likewise not disclose the Customer's confidential information and trade secrets to third parties. This does not apply to companies belonging to the Roche Group.

## **12 Services**

- 12.1 The Customer shall ensure that Roche system specialists have unhindered access to the system at the agreed time and that the system can be switched off if necessary. If service costs are increased owing to circumstances for which the Customer is responsible (such as insufficient parking spaces, the failure to meet agreed deadlines or special security requirements), Roche is entitled to charge supplements to reflect the increased costs. In these cases Roche is also entitled unilaterally to increase reaction times by an appropriate factor.
- 12.2 Except for necessary maintenance work on Roche's instructions, neither the Customer nor third parties may interfere with the system unless explicitly permitted to do so by Roche.
- 12.3 The Customer's signs the customer service report to indicate its acceptance of all Roche services. Any defects not apparent at that time must be reported within 48 hours of the work being completed, failing which all work will be deemed to have been approved.

## **13 Payment terms**

- 13.1 Payment is due within 30 days of the invoice date.
- 13.2 If a Customer when placing a new order has not yet settled invoices due for payment, Roche may suspend performance of the contract until the due payments have been made.
- 13.3 Roche may withdraw from the contract if payment is not made by the Customer within a reasonable period.

## **14 Reservation of title**

- 14.1 All goods sold remain the property of Roche until the terms of the contract are fulfilled and all payment obligations are met.
- 14.2 Roche is authorized to register this reservation of title in the Registry of Reservations of Title in Switzerland or in equivalent registries in other countries, and the Customer is obliged to cooperate in the steps required for such registration.

## **15 Import and export controls**

The purchaser's attention is drawn to the fact that goods and other deliverables (and possibly the expertise that they contain) may be subject to export or import controls. Each contracting party is responsible for complying with the relevant export and import control regulations. The purchaser's attention is also drawn to the fact that US export control law applies even to goods and other deliverables originating partly or entirely in the USA. This may even be the case if the contract has no other connection with the USA.

## **16 Applicable law and place of jurisdiction**

- 16.1 The present GTCs are subject to substantive Swiss law to the exclusion of the Vienna Sales Convention.
- 16.2 The sole place of jurisdiction for all legal disputes arising between the contracting parties is Zug, Switzerland.

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