

Diamond Diagnostics INC
("Sales")
Terms and Conditions of Sales

1. All orders placed with Diamond Diagnostics, Inc. are subject to the Conditions and Terms listed below and constitute a contract upon acceptance at Seller's Home Office. These are the only Conditions and Terms. There are no other Conditions and Terms unless accepted in writing specifically signed by an authorized officer of Diamond Diagnostics.

2. **Definitions:**

- a. "Buyer" The person or institution identified as Buyer or Customer on the face hereof.
- b. "Goods" The items on the face hereof which are being sold by Seller to Buyer under the terms of this Agreement.
- c. "Seller" Diamond Diagnostics.
- d. "Seller's Plant" Sellers facility in Holliston, MA

3. **Placing Order:**

Diamond Diagnostics has a well trained staff in Holliston, MA to take phone, FAX, email and mail order Mon-Fri 8:00AM to 5:00PM Eastern. Our International Department handles all orders and quotation requests from outside the United States.

Please provide the following information when placing an order:

- If ordering from Diamond Diagnostics quotation, please provide the Proforma reference number. Acceptance and use of the quotation constitutes acceptance of the Condition and Terms herein.
- Your customer account number (if you do not know yours, your Diamond Diagnostics Representative will provide it). Your cooperation in supplying an account number will greatly assist us when taking your order.
- Your complete billing and shipping address.
- The catalog number, product name, and number of units for each item being ordered.
- A complete Purchase Order number (required for correct invoicing), if applicable.
- Any special shipping instructions.
- A contact name and phone number.

Ordering by phone:

In the USA or Canada, call 1-800-813-4229, option #1, to place an order. Worldwide call (508) 429-0450, option #1, Mon-Fri 8:00AM to 5:00PM Eastern. It is generally not necessary to send confirming mail orders when ordering by phone, unless specifically requested to do so by the Diamond Diagnostics Representative. However, orders over \$2,500 require written confirmation by mail or fax. When confirming by mail, please clearly indicate status of "Confirming Order."

Ordering by FAX:

To Order by Fax, please use (508) 429-0452.

Ordering by Mail:

To Order by mail, please send to:
Diamond Diagnostics, Inc.
333 Fiske Street
Holliston, MA 01746-2048

4. **Pricing:**

Prices are in U.S. Dollars and are applicable for continental United States, Alaska, Hawaii and Puerto Rico. Prices are subject to change without notice except when specifically guaranteed in writing. Printed and quoted prices do not include sale taxes unless specifically stated. All prices are firm for delivery period specified, based on receipt of a purchase order within stated limits of the quotation. Purchase Orders received after this time are subject to review for price adjustment. If, after acceptance of a Purchase Order the delivery date is modified by the Buyer, Diamond Diagnostics reserves the right to adjust the price to recover additional expenses incurred, due to increase in labor or material costs (including mark-up), inventory expense and such like. In addition, Diamond Diagnostics will be entitled to invoice and receive payment for 90% of the value of the labor and material expended, once notice of the delivery date has been modified. We reserve the right to correct all typographical and clerical errors which might occur in our prices and specifications.

Please forward bid to requests to:
Diamond Diagnostics, Inc.
Attn: Bid Processing
333 Fiske Street
Holliston, MA 01746-2048

5. **Return Shipment Policy:**

Return Shipments of Diamond Diagnostics product must be pre-arranged with a Technical Service Representative or a Sales Representative. You must obtain a Return Merchandise Authorization (RMA) number and shipping instructions from us. Returns are only allowed up to 30 days after the original shipment date of the product. Unauthorized returns will be refused and credit will not be allowed. Authorized returns must be in undamaged condition with the customer's name and address clearly indicated on the outer shipping container. Customer must prepay and absorb all transportation charges. All returned products must be packaged and labeled in accordance with all shipping regulations including those of the DOT and the US Environmental Protection Agency (EPA). Unopened Diamond consumables product returned is subjected to a 25% Restocking Charge. Refrigerated product, Hazardous Material, Opened Product, Instrumentation, OEM Items and Service Parts are non-returnable and non-refundable. Warranty information is available under separate cover. OEM Items herein are marked with used products must be decontaminated before packing and shipping to our facility. Failure to follow these procedures will result in return of goods to the Buyer without credit to their account or Service work being done.

6. **Orders, Payments Shipment, etc...**

- Minimum Order: International clients must have a minimum consumables order of \$500. U.S. and Canadian End-users including Hospitals, Private Labs and Physician Offices must have a minimum consumables order of \$50. U.S. and Canadian Distributors must have a minimum order of \$250.
- Specifications: Diamond Diagnostics reserved the right to offer our latest and improved models at the time of shipments.

- Shipments: All shipments are FOB Holliston, MA, freight prepaid and added to the invoice unless otherwise specified on the order quotation. Unless specific instructions are provided, shipment will be made by the least expensive method.
 - Taxes: Prices quoted do not include any state, local, or federal taxes. Buyer shall pay all taxes, including sales and use taxes, and shall reimburse Seller promptly if Seller pays any tax for which buyer is so obligated.
 - Payment: Payment Terms are provided to customer on an individual basis. Order acceptance is subject to approval from Diamond Diagnostics Credit Department. Open balances not paid when due shall bear interest at 12% per annum until paid in full (Diamond reserves the right to alter interest terms). If Buyer fails to comply with any terms of payment or any requirement to secure payment, Seller reserves the right to withhold further deliveries or terminate this contract and any unpaid amount shall thereupon become immediately due from Buyer to Seller.
 - Damages or Shortages: Claims for shortages in shipment must be made within five (5) working days of receipt of the material. If the outer crate or carton is damaged in any way, the customer should not sign the bill of lading until carrier notes such damage on the bill of lading. Without this notification, carriers usually refuse customer damage claims and Seller reserves the right to do same.
 - Delivery: Delivery dates are approximate and based on production schedules at time of quotation. Diamond Diagnostics shall not be liable for damages to the Buyer for any default or delay in deliver for any reason. Every effort will be made to meet the delivery quoted, but failure to meet the estimated delivery will not be considered cause for cancellation and/or claims which may arise from such delay. In no event shall Seller be liable for delays or non-performance caused by fire, flood, drought, acts of God, war riots, strikes, lockouts, embargo, or governmental orders.
 - Cancellation: No notice of cancellation, termination, waivers, amendments, or modifications shall relieve Buyer from any obligation under this agreement without prior written consent of the Seller, which consent must be signed by an authorized officer of Seller in Seller's Home Office. For Standing Orders, cancellations prior to one year minimum term are subject to and contingent upon payment by Buyer of the difference between discounted and list pricing. For specifically manufactured items, any consent by Seller to cancel or terminate this agreement shall be subject to and contingent upon payment by Buyer of a minimum charge equal to (1) fifty percent (50%) of the established list or quoted price for all items completed prior to cancellation, plus (2) an amount equal to all costs incurred by Seller plus 24% thereof for all incomplete items, plus (3) charges for packing and storing, but in any case subject to a minimum order net value of \$75.00.
 - Acceptance: Orders, terms, and specifications are subject to approval of Diamond Diagnostics. No variation shall be binding unless in writing, signed by an executive officer of the Seller.
 - Sales Agents: No person acting as an agent of Diamond Diagnostics shall have authority to bind Diamond Diagnostics to any contract. All quotation for product must originate at, and all must be accepted and signed by an executive officer of the Seller.
 - Cost of Cancellation: Buyer will be liable to Diamond Diagnostics for all costs of collection, including without limitation attorney fees.
 - No Assignment: Buyer may not assign any of its rights or obligations under agreement with Diamond Diagnostics without prior written consent of the Seller.
7. **Limited Warranty:**
- Diamond Diagnostics provides a Limited Warranty that its products shall be free of defects in material and workmanship for a period 1) ending on the last day of the month in which the goods expire or 2) ending one (1) year from the date of the invoice for goods without an expiration date, subject to the following:
 - This warranty shall not apply to any goods which have been repaired or altered by any person other than the Seller, subject to unreasonable or improper use, subject to accident or abuse, or installed improperly by any person (including the Buyer).
 - THIS WARRANTY IS LIMITED TO A PERIOD OF THREE (3) MONTHS FROM THE DATE OF THE INVOICE FOR ANY ITEM DEFINED BY THE SELLER AS AN "ION SELECTIVE ELECTRODE" PRODUCT AND SIX (6) MONTHS FOR ANY ITEM DEFINED BY THE SELLER AS A "BLOOD GAS ELECTRODE" PRODUCT.
 - THIS WARRANTY SHALL NOT BE EFFECTIVE UNLESS THE SELLER RECEIVES A FORMAL CLAIM WITHIN 21 DAYS AFTER THE DISCOVERY OF ANY DEFECT WITH RESPECT TO WHICH THE CLAIM IS MADE.
 - Upon request, the Buyer shall, at its own risk and expense return the goods in question to Seller's plant.
 - Seller's liability for any breach in warranty (at Seller's election) shall be limited to either repair or replacement at Seller's plant, or payment of amount equal to invoiced cost to the Buyer or the part or the material that is found to be defective. In no event shall Seller be required to repair, replace, or reimburse the Buyer for more than the part or material that is found to be defective and Seller's liability shall, in no event, be greater than the invoiced price of the item and shall not include labor, shipping or other costs incurred in connection with the reshipment of defective goods to Seller or reinstallation of such good after repair or replacement.
 - This warranty applies to original purchases only.
 - Seller is not responsible for delays outside its control.
 - No person acting as an agent of Seller shall have the authority to amend the Limited Warranty orally or otherwise and any such amendment shall only be binding if in writing and signed by an executive officer of Seller.
 - THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESSED IMPLIED, OR STATUTORY. SELLER DISCLAIMS ANY WARRANTY OF MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES WITHOUT LIMITATION OTHER THAN THE LIMITED WARRANTY STATED HEREIN.
8. **Limitation of Liability in General:**
IN NO EVENT WHATSOEVER SHALL DIAMOND DIAGNOSTICS BE LIABLE TO BUYER, ITS AFFILIATES, SUCCESSORS, ASSIGNEES, VENDEES OR TRANSFEREES, OR TO ANY THIRD PARTY, FOR ANY ECONOMIC LOSS, PHYSICAL HARM, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS AND/OR LOST BUSINESS OPPURTUNITIES) ARISING OUT OF, RESULTING FROM OR RELATING TO IN ANY WAY THIS AGREEMENT OR ACTS OR OMISSIONS IN CONNECTION HEREWITH (INCLUDING WITHOUT LIMITATION THE PERFORMANCE WHETHER OR NOT TIMELY OR NON-PERFORMANCE OF THIS AGREEMENT AND THE LOSS OR LOSS OF USE OF ANY OF THE GOODS OR OTHER PROPERTY, REGARDLESS OF WHETHER THE GOODS OR THE USE THEREOF RESULTS IN DAMAGE OR HARM ONLY TO THE GOODS OR TO OTHER PROPERTY OR WHETHER THE SELLER AND/OR OTHERS MAY BE WHOLLY, CONCURRENTLY, PARTIALLY, JOINTLY, OR SOLELY NEGLIGENT OR OTHERWISE AT FAULT.
9. **Limitations of Actions:**
Except as may be governed by other applicable law regarding personal injury, all actions brought hereunder must be commenced within one (1) year from the date of the breach.
10. **Governing Law and Choice of Forum:**
All of the foregoing Conditions and Terms and all aspects of this contract shall be governed by the law of the Commonwealth of Massachusetts. All legal and equitable actions brought in relation hereto shall be brought in the appropriate state and federal courts in Massachusetts, unless Seller elects to file an action against the Buyer in any other Court outside of Massachusetts or otherwise waves this provision.