

Diamond Diagnostics Inc.
("Diamond Diagnostics")
TERMS AND CONDITIONS OF PURCHASE

1. **Definitions**
 - a. "Diamond" The agent representing or institution identified as Diamond Diagnostics Inc.
 - b. "Items or Components" Goods described on the face of this order which are being sold by the "Vendor" under the terms of the agreement.
 - c. "Vendor" as specified as Vendor on the face of the order.
 - d. "Purchase Order" Agreement between Diamond Diagnostics and Vendor as specified including all specification, drawing, miscellaneous correspondence and acceptance of the Terms and Conditions as prescribed
 - e. "Diamond Premises" Diamond Diagnostics Inc. located at 333 Fiske Street, Holliston, MA
2. Vendor warrants that the subject property, services, instrumentation – new or used, shall be free from defects of workmanship and materials, operational and free from physical damage unless otherwise specified, shall comply with the requirements of the order and shall be in full Compliance for the purpose intended in the order. All necessary accompanying accessories, components, peripherals, manuals and supporting documentation to be included where applicable. All warranties shall run in favor of Diamond, its successors, and assigns. Diamond reserves the right to renegotiate the purchase price and conditions in case of default of the aforementioned.
3. Vendor will not disclose to or utilize for the benefit of anyone other than the Vendor any developments, techniques, plans, designs, trademarks, trade names, specifications, drawings, business methods, customer names or addresses, trade secrets or other information of or pertaining to this purchase order, the items ordered or the business or affairs of the Diamond Diagnostics .
4. Pricing delineated herein shall be considered valid and invoiced by Vendor to Diamond in an amount not to exceed the pricing listed. In absence of express stipulation of pricing herein, all prices will be the same as those previously quoted or charged in writing to Diamond Diagnostics or other written authorization by Diamond Diagnostics. Vendor warrants that no price for any item is higher than the lowest unit price charged anyone by the Vendor for any order of any size of item of the same or substantially similar grade and quality at any time during the period beginning 90 days prior to this date and ending on the date of delivery, and that no price is in the excess of the maximum fixed by any applicable law regulation or order of any public authority.
5. All patterns, designs specifications, equipment, tools, dies, molds, printing plate, and like purchased or produced by the Vendor or furnished or approved by Diamond in connection with this order shall be Diamond's benefit with insurers, coverage and limits satisfactory to Diamond, the Vendor having sole responsibility for risk of loss. Diamond shall have the responsibility for carefully checking all of the foregoing for accuracy, design, quality and suitability for use.
6. Diamond may at any time, verbally or in writing, change the order, make any changes within the general scope of the contract in any one or more of the following (1) drawing, designs, specifications, work description or requirements, (2) method of shipment or packing, (3) time or place of delivery. If a change order issued hereunder causes an increase or decrease in cost of performance, Vendor shall notify Diamond's Purchasing Department as soon as possible. If agreed by both parties, an equitable adjustment shall be made in the contract price and/or delivery schedule and this contract shall be modified in writing accordingly. Any claim for adjustment under this clause must be submitted within (10) days of receipt of change order.
7. Time is the essence of the contract. All shipments are to be made within time specified by Purchase Order unless previously authorized by Diamond. Diamond may verbally or by written notice cancel all or part of the contract work and hold Vendor liable for financial losses if the Vendor fails to (1) make delivery of the articles or to perform the services within the time specified herein, or (2) replace or correct defective articles in accordance with our terms, (3) perform any of the other provisions of the contract or so fails to make progress as to endanger performance of the contract in accordance with its terms and, in either of the circumstances specified in (4) does not cure such failure within a period of ten (10) days after receipt of notice from Diamond Diagnostics specifying such failure.
8. Except for articles manufactured to Diamond drawings, the Vendor shall, at its expense, hold harmless and defend Diamond against any claim or suits for the infringement of any patent, copyright or trademark, and shall indemnify Diamond Diagnostics against all damage, costs and expenses arising there from by reason of the manufacture, sales or the normal intended use of the articles covered by this contract. Diamond agrees to give the Vendor prompt notice of any such claim or suit for infringement.
9. The Vendor shall at its expense, be responsible for obtaining any necessary licenses and permits for complying with any applicable Federal, State and local laws, codes and regulations for completion of work.
10. The maximum over/under shipment of any order is to be ten percent (10) upon verbal or written approval by Diamond's purchasing department. Diamond reserves the right of refusal in short shipments. Any shipments made over this percentage will not be paid for. The Vendor will be responsible for arranging the cost and logistics of returning excess material.
11. All articles are to be packed in accordance with sound commercial practice, shipments should be in accordance with DOT and IATA and, unless otherwise indicated, shipped F.O.B. destination – Diamond's location, freight prepaid, Diamond will not accept any shipment sent C.O.D. Vendor will ship all items by means of transportation and carrier approved by Diamond, Vendor having full responsibility for risk of loss and damage until receipt by Diamond at Diamond premises. In the case of freight damage, payment of damaged goods will be issued upon full settlement of claim only.
12. Vendor shall mark containers or packages with necessary lifting, loading and shipping instructions along with Purchase Order Number, item number (2), weight, and date shipments. No shipment will be accepted without a visible, valid Purchase Order Number. All Bills of Lading attached to shipments must include a Purchase Order Number.
13. None of the work contemplated of being performed by Vendor under this Purchase Order shall be assigned without the prior written consent of Diamond.
14. All Local, State, Federal, Excise, Sales and any applicable taxes shall be listed separately on Vendor's Invoices.
15. Vendor supplying a specific component to Diamond must notify Diamond of any changes in the component since the last shipment to Diamond. Notification of changes must be made to Diamond Quality Assurance Manager prior to shipment of the item to Diamond. All items listed on Diamond's purchase order must conform to the specifications which accompany the purchase order. Diamond shall inspect each item based on the criteria provided on the accompanying specification and if any item fails to meet the inspection criteria, Diamond will reject the entirety of the order for the affected item and will not pay shipping or any charge relation to the rejected item.
16. Acceptance of this order by Vendor will be limited to the acceptance of the terms of this order and supersedes all previous agreements, offers and communications, both verbal and written. No deviation there from will be binding upon company unless agreed to in writing by the parties. An Invoice or equivalent is required for final payment to be issued. Unless otherwise indicated, all payment terms for net payments are calculated from the date of receipt of respective commodities or services or date of receipt of invoice, whichever is later. All subject properties must conform to standard UCC regulations.
17. **Additional Provisions**
 - a. **Severability:** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants or conditions shall remain in full force and effect and shall in no way be affected, impaired or invalidated unless the entire purpose of the Agreement is thereby defeated.
 - b. **Enforcement:** If Diamond fails to enforce any claim or exercise any of the rights to which it is entitled pursuant to the agreement or the laws, it shall not constitute a waiver of such rights and shall not relieve the Vendor from compliance with its obligations. In case Diamond is entitled to any right pursuant to the agreement for the laws, and there is no compulsory regulation specifying that only a certain right can be exercised among the rights, Diamond shall be entitled to exercise any of such rights individually or jointly.
18. All of the foregoing Conditions and Terms and all aspects of this contract shall be governed by the laws 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 Diamond elects to file an action against the Vendor in any Court outside of Massachusetts or otherwise waives this provision.