

## Abbott Standard Terms and Conditions of Supply

### 1. Application of these Terms and Conditions

- 1.1 These Terms and Conditions apply to all Orders and supplies of Goods and Services by Abbott to the Customer. By placing an Order with Abbott, the Customer agrees to be bound by these Terms and Conditions.
- 1.2 Subject only to alternate arrangements in a formal written agreement signed by both parties, these Terms and Conditions form the entire understanding between Abbott and Customer regarding the subject matter and supersede all prior communications between the parties.
- 1.3 Abbott is not bound by any terms or conditions provided by Customer or attached to any documents submitted by Customer, and if any such terms and conditions are provided or submitted, the provision of these Terms and Conditions prevail.

### 2. Interpretation

- 2.1 In these Abbott Standard Terms:
 

**Abbott** means Abbott Rapid Diagnostics Limited of Bell Gully, Level 22, Vero Centre, 48 Shortland Street, Auckland, 1010, New Zealand (NZBN: 9429032718850).

**CGA** means the *Consumer Guarantees Act 1993* (NZ).

**Customer** means a Person (including a successor or an assignee) acquiring Goods from Abbott.

**Delivery** occurs when the Goods pass into the control of Customer or an agent or a carrier of Customer, whichever is earlier.

**Goods** means any equipment, material, components, merchandise or other products supplied by Abbott as specified in an invoice.

**GST** means any tax imposed on the supply of goods or services which is imposed or assessed under GST Law.

**GST Amount** has the meaning given in clause 10.1.

**GST Law** means the *Goods and Services Tax Act 1985* (NZ) (as amended) and all related ancillary legislation which provides for a broad based consumption tax on the supply of goods and services.

**Order** means an order placed by the Customer for the supply of Goods (whether for purchase, or for supply on a consignment or loan basis), or Services by Abbott.

**Person** includes body corporate, firm, unincorporated body, a joint venture, partnership, association or government agency.

**Rights Owners** means the respective owners of intellectual property rights in connection with the Goods as notified by Abbott.

**Services** means any services to be supplied by Abbott to the Customer.

**Terms and Conditions** mean these Abbott Standard Terms and Conditions of Supply.

**Warranty Period** has the meaning given in clause 12.1.

### 3. Orders

- 3.1 The Customer must ensure that Orders are in the format specified, and contain all details and information requested, by Abbott.
- 3.2 Each Order is subject to Abbott's acceptance. Supply of Goods is subject to availability.
- 3.3 Abbott may suspend or discontinue supply of Goods at any time.

### 4. Delivery

- 4.1 Unless otherwise agreed in writing by Abbott:
  - 4.1.1 Delivery is made by Abbott's nominated carrier at Customer's expense from Abbott's designated dispatch warehouse(s), subject to availability.
  - 4.1.2 Delivery of any accepted Order will be arranged by Abbott in such manner as Abbott considers appropriate, having regard to the size, weight, and Delivery address of the Goods.
- 4.2 If Customer designates Delivery by a specific carrier or method of carriage, Customer must inform Abbott in writing and arrange for Delivery by its nominated carrier at its own risk and expense. Abbott reserves the right to decline such a request if Customer's nominated carrier or method of carriage is considered by Abbott to be inappropriate for delivering the Goods.
- 4.3 If Customer requires urgent or expedited delivery, Customer must inform Abbott and Abbott may charge Customer the additional cost of any urgent or expedited Delivery in an invoice issued under clause 9.
- 4.4 Any Delivery date is an estimate only. Abbott does not guarantee Delivery on that date and accepts no liability for delay in or for any short or defective Delivery for any reason whatsoever and Customer is not entitled to cancel any Order for those reasons.

### 5. Risk and Title

- 5.1 Risk in the Goods transfers to Customer on Delivery. Customer bears all risk in the Goods upon Delivery, including loss, damage or deterioration to the Goods due to any cause whatsoever.
- 5.2 Title to the Goods passes to Customer on payment in full for the Goods (in cleared funds).

### 6. Inspection and Acceptance

- 6.1 Customer must inspect and (if applicable) test the Goods promptly upon receipt. The Goods shall be deemed accepted unless Customer notifies Abbott in writing within five (5) business days of Delivery of any defects or discrepancies in the quality or quantity of the Goods received.
- 6.2 Customer agrees the time-frame in clause 6.1 is a reasonable time-frame to diligently inspect and provide written notice to Abbott. Customer waives any right to reject the Delivery or revoke acceptance thereafter.
- 6.3 For a claim of damaged or defective Goods at Delivery, notice to Abbott must contain a supporting survey or other documentary evidence as required by Customer's and/or Abbott's insurance company or delivering carrier. If Customer's shipment is insured under a floating policy it must notify its insurance company of any claim.
- 6.4 Customer agrees to inform Abbott of all actual or suspected complaints, defects or adverse events associated with the Goods and to provide information and assistance as reasonably required by Abbott to address any such complaints, defects or adverse events.

### 7. Field Safety Corrective Action including Goods Recall

- 7.1 Customer agrees to maintain appropriate up-to-date and accurate records to enable immediate actioning of field safety corrective action for any Goods if the need arises because of any proceedings under the law or voluntarily by Abbott. These records shall include records of deliveries to end users or other customers (including details of batch numbers, lot numbers, delivery date, name and address of

user / customer, quantity, and telephone number and email or fax number if available) and shall be held until at least twelve (12) months after the expiry date of the Good.

- 7.2 Any such field safety corrective action shall be promptly implemented and administered by Customer in a manner which is appropriate and reasonable under the circumstances and in conformity with accepted trade practices and law.

## 8. Price

- 8.1 Prices in Abbott's price lists do not include the cost of Delivery unless otherwise agreed between Abbott and Customer.
- 8.2 Customer must pay the list price for Goods and applicable Delivery charges, unless otherwise agreed between Abbott and Customer, when Abbott accepts an Order.
- 8.3 Abbott will not be responsible for any costs or expenses not specifically provided in these Terms and Conditions.
- 8.4 Abbott will provide Customer with thirty (30) days' notice of any price increase. If Abbott notifies Customer of a price increase, or Goods discontinuance, Abbott will not be obliged to accept Orders for Goods during the thirty (30) day notice period in any amount that exceeds Customer purchases during the six (6) months before the notice date divided by three (3).

## 9. Payment Terms

- 9.1 Customer must pay any invoice in full within thirty (30) days of the invoice date.
- 9.2 All overdue amounts are subject to interest from the date payment is due to and including the date of receipt (whether before or after judgment) at a rate equal to the lesser of 1.5% per month, compounded monthly, or the maximum rate permitted by applicable law. Customer will reimburse Abbott for reasonable costs (including solicitors' fees) relating to collection of past due amounts. Any credits that may be due to Customer may be applied first to any outstanding balance. In addition to its other rights, Abbott may also, at its discretion, withhold or decline further Orders for Goods.
- 9.3 In addition to its other rights Abbott may also, where Abbott retains title to the Goods, enter the premises where the Goods are located and repossess such Goods. The Customer grants Abbott an irrevocable license to enter such premises for the purpose of repossessing the Goods without liability for trespass or any resulting damage. Abbott also retains the right to keep or resell any Goods repossessed pursuant to this clause.

## 10. Taxes

- 10.1 Except as otherwise provided in this clause, all consideration payable under these Terms and Conditions in relation to any supply is exclusive of GST. If GST is payable in respect of any supply made by a supplier under these Terms and Conditions (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply. The recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under these Terms and Conditions in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in these Terms and Conditions). The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under this clause.
- 10.2 For the purpose of this clause, words and expressions that are not defined in these Terms and Conditions but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

- 10.3 Each party is responsible for its own personal property or real estate taxes on property that the party owns or leases, for franchise and taxes on its business, and for taxes based on its net income or gross receipts.

## 11. Returned Goods

- 11.1 Subject to clauses 6 and 12, Abbott will accept returns at its sole discretion.
- 11.2 Customer must notify Abbott regarding any return of Goods and obtain Abbott's approval to return any Goods before doing so.

## 12. Warranty

- 12.1 Abbott warrants that the Goods are free from manufacturing and material defects for a period ending on the expiry date for the Goods where an expiry date is provided or in all other cases and for capital equipment, 12 months from the date of the invoice in respect of the Goods (**Warranty Period**), unless expressly stated otherwise by Abbott. This warranty is subject to the proper handling, storage and use by Customer in the application for which the Goods are intended and compliance with any instructions pertaining to the Goods provided with them. This warranty is the sole remedy for any Customer who is not a "consumer" under the CGA.
- 12.2 Where the Goods are purchased by a "consumer" under the CGA, Goods come with warranties that cannot be excluded under the CGA. Subject to clause 13.1, Customer is entitled to a replacement, refund or compensation for a serious fault and for repair, replacement or refund for any other reasonably foreseeable loss, damage or if the Goods fail to be of acceptable quality.
- 12.3 To the maximum extent permitted by law, no other express or implied warranties, guarantees or conditions will apply.
- 12.4 Nothing in these Terms and Conditions excludes, restricts or modifies any warranty, guarantee or condition which cannot be excluded, restricted or modified by law.
- 12.5 If during the Warranty Period, Customer believes it is entitled to make a claim under the warranty, Customer must:
- 12.5.1 within the Warranty Period, notify Abbott in writing of the claim and details; and
- 12.5.2 at its cost, return the Goods to Abbott.
- 12.6 Each claim under the warranty provided in clause 12 is assessed on its own merits. If, following receipt of a claim for Goods under the warranty, Abbott or its agent determine that Customer's claim in respect of the Goods is invalid, Abbott may charge Customer for any labour or transport or Delivery costs incurred by Abbott or its agent in assessing Customer's claim.

## 13. Limitation of liability

- 13.1 The liability of Abbott for breach of a guarantee implied by the CGA (other than a guarantee under section 5 of the CGA) in relation to the supply of Goods or services not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited, at Abbott's option, to:
- 13.1.1 in the case of Goods - replacing the Goods, supplying equivalent goods, repairing the Goods, payment of the cost of replacing the Goods or payment of the cost to acquire equivalent goods;
- 13.1.2 in the case of services - supplying the services again or payment of the cost of having the services supplied again.
- 13.2 In all other circumstances, and to the extent permitted by law, the liability of Abbott for any claim relating to the Goods provided under these Terms and Conditions, or any other goods, whether in tort, contract or any other legal basis, will

be limited to a sum equal to the total amount paid by Customer in the 12 month period immediately prior to Abbott receiving notification by Customer of such a claim.

- 13.3 Abbott is not liable for any loss, damage or claim to the extent that any such loss, damage or claim results or arises, directly or indirectly, from Customer's act or omission.
- 13.4 To the fullest extent permitted by law, Abbott will not be liable for consequential, indirect or special losses or damages of any kind (including loss of profits, loss of or damage to goodwill, loss or corruption of data, or business interruption) suffered by Customer as a result of any act or omission whatsoever of Abbott, its employees, agents or subcontractors, however arising.
- 13.5 Nothing in this Agreement is to be read as excluding, restricting or modifying any liability: for death or personal injury resulting from negligence; for fraud or deceit; or arising from the application or operation of any legislation which by law cannot be excluded, restricted or modified.

#### **14. Single Use Devices**

- 14.1 For Goods identified on their packaging or elsewhere as single use devices or as Goods not for reuse, Customer will:
- 14.1.1 read and adhere to all instructions for use which accompany (or are issued in respect of) the Goods;
- 14.1.2 use the Goods as single use only and not re-sterilize or reuse the Goods. Thorough cleaning of biological and foreign material is impossible. Adverse patient reactions may result from reuse of the Goods;
- 14.1.3 not alter the Goods;
- 14.1.4 properly dispose of the Goods after use;
- 14.1.5 not use the trade marks of Abbott and/or the other Rights Owners on or in physical relation to the Goods after the initial (i.e. the single) use of the Goods;
- 14.1.6 not apply another trade mark to the Goods or use another trade mark in physical relation to them;
- 14.1.7 not use on the Goods, or their packaging, anything that is likely to injure the reputation of the trade marks of Abbott or the other Rights Owners; and
- 14.1.8 notify any subsequent owner, acquirer and Person in possession of the Goods (prior to that Person acquiring the Goods from Customer) of the terms of this clause 14 and any terms, limitations or prohibitions included with or on the packaging of the Goods.
- 14.2 Abbott will not be responsible or have any liability for those Goods identified as single use devices or as Goods not for reuse which are used in a manner contrary to these Terms and Conditions and any instructions accompanying the single use device(s).

#### **15. Confidentiality**

- 15.1 Customer must keep confidential and secure Abbott's confidential information, except with the written consent of Abbott or where disclosure is required by law, in which case disclosure must only be to the extent required by law.
- 15.2 For the purpose of this clause and these Terms and Conditions, Abbott's confidential information includes information relating to: these Terms and Conditions; Abbott's business and operations; and the price of any goods or services supplied under these Terms and Conditions.

#### **16. Intellectual Property**

- 16.1 Customer acknowledges and agrees that all trade marks, patents and other intellectual property rights in or relating to the Goods belong to and are property of Abbott and/or its

affiliates or other Rights Owners. Customer will not and will not attempt to directly or indirectly make any claim in the rights in the intellectual property in any of the Goods.

- 16.2 Customer must not take any action to reverse engineer or reproduce Goods.
- 16.3 Customer will not, and will not do anything to enable or facilitate any other Person to, do anything or deal with the Goods in any way that infringes, impairs or otherwise diminishes the intellectual property rights of Abbott and/or other Rights Owners.
- 16.4 Customer acknowledges and agrees that a breach of any of Customer's obligations in this clause 16 may cause irreparable harm to Abbott and/or other Rights Owners and that damages may not be an adequate remedy for such breach.

#### **17. Force Majeure**

- 17.1 Abbott is not liable for any failure or delay in complying with any obligations in these Terms and Conditions if that failure or delay is caused by circumstances beyond Abbott's reasonable control.

#### **18. Compliance**

- 18.1 Customer shall at all times conduct their business in full compliance with all applicable laws and regulations including, but not limited to, applicable anti-bribery and anti-corruption laws and regulations.
- 18.2 Customer must not give or offer to give, directly or indirectly, money or anything else of value to a government official for purposes of influencing any act or decision of the government official in his or her official capacity to secure an improper advantage, obtain or retain business or direct business to any person or away from any person.
- 18.3 Except as legally permitted, Customer or any person acting on its behalf shall not seek, accept, offer, promise or give any payments, fees, loans, services or gifts from or to any person or firm or otherwise give anything of value in exchange for, or as a condition or result of, doing business with Customer or Abbott, or to secure any improper advantage.
- 18.4 Abbott reserves the right to immediately terminate supplies to Customer should Customer violate this clause or any anti-bribery or anti-corruption laws.
- 18.5 Customer shall indemnify and hold Abbott harmless, and hereby forever release and discharge Abbott, from and against all claims, losses, liabilities, damages, penalties, fines and expenses (including reasonable legal fees and expenses) resulting from Customer's breach of this clause.

#### **19. General**

- 19.1 The laws of New Zealand apply to these Terms and Conditions and the parties submit to the jurisdiction of the courts of New Zealand.
- 19.2 Customer must not assign all or any of its rights under these Terms and Conditions without the written consent of Abbott.
- 19.3 If a provision in these Terms and Conditions is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 19.4 Customer agrees that no Goods supplied under these Terms and Conditions will be exported, re-exported, or sold, distributed, or otherwise transferred to countries outside of New Zealand without first obtaining all necessary written consents, permits, and authorisations and completing such formalities as may be required under applicable trade restrictions.

- 19.5 A single or partial exercise or waiver of a right relating to these Terms and Conditions does not prevent any other exercise of that right or the exercise of any other right. Abbott's failure to exercise, or delay in exercising, a right, power or remedy does not constitute a waiver of the right, power or remedy. Any waiver must be agreed in writing by Abbott.
- 19.6 Abbott may vary or replace these Terms and Conditions by notifying Customer in writing, including by email. Any amended or new terms and conditions take effect from the date of the Customer's next Order.