

DIAMETRA TERMS OF SALE (“General Terms”) – MANUAL PRODUCTS (ELISA, RIA, RapidTest)

1. Definitions and interpretation

“Approvals” any license, permits, approvals or such other authorisations or documents required for approval for the use of the Products;

“Customer” means the person, company or other body placing an Order with DIAMETRA;

“Expiry Date” means the date after which the Products should not be used, as marked on the relevant Products;

“Instructions for Use” means the instructions for use of the Products provided to the Customer with the relevant Products, which may be updated by DIAMETRA from time to time;

“Intellectual Property” means all patents, rights to inventions, copyright and related rights, trademarks, trade names, copyright, rights in designs, rights in software, database rights, rights to use and protect know-how and DIAMETRA technology and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

“Mandatory Policies”: DIAMETRA’s modern slavery and human trafficking policy, Anti-bribery and anti-corruption policy and Data and privacy policy, as amended by notification to the Customer from time to time;

“Order” means the purchase order placed by the Customer for the supply of the Products;

“Order Acknowledgement” means the written DIAMETRA acknowledgement of a Customer Order, setting out the Product Price and estimated shipment date.

“Price” means the price for the Products;

“Product(s)” means the in-vitro diagnostic kits and/or devices supplied by DIAMETRA to the Customer.

“Product Recall” means a request to return any of the Products which may be defective or potentially unsafe;

“Storage Instructions” means the detailed written instructions regarding how to store the Products, as set out in the documentation supplied with such Products.

2. Conditions

- 2.1 The supply of the Products is subject to these General Terms, unless DIAMETRA and the Customer have another supply agreement which specifically overrides these General Terms. The General Terms shall be the terms and conditions applicable to such supply. Any terms and conditions printed or provided on the Customer’s Order or other similar document shall not be binding on DIAMETRA and the placing of an Order by the Customer shall indicate unqualified acceptance of these General Terms as referred to on each Order Confirmation.
- 2.2 No representative, agent or other person has DIAMETRA’s authority to vary, amend or waive these General Terms on behalf of DIAMETRA.

3. Supply of Products

- 3.1 DIAMETRA shall supply the Products to the Customer.
- 3.2 The Customer shall submit Orders to DIAMETRA. Each Order shall be deemed to be a separate offer by the Customer to purchase Products under these General Terms, which DIAMETRA shall be free to accept or decline at its absolute discretion. No Order shall be deemed to be accepted by DIAMETRA until it issues a written Order Acknowledgement to the Customer or when DIAMETRA delivers the Products, whichever is the earlier. Once submitted to DIAMETRA, Orders are non-cancellable.
- 3.4 The Customer represents and warrants that the Customer shall use the Products only in accordance with the Instructions for Use. Only trained healthcare professionals qualified to run in-vitro diagnostic tests shall use the Products.
- 3.5 All Products shall be supplied on an ex-works (incoterms 2020) basis.

4. Invoicing and Payment

- 4.1 The Price for the Products shall be as agreed between the parties and set out on the DIAMETRA Order Acknowledgement. All Prices are exclusive of VAT and any import duties. Where any taxable supply for VAT purposes is made by DIAMETRA to the Customer, the Customer shall, on receipt of a valid VAT invoice from DIAMETRA, pay to DIAMETRA such additional amounts in respect of VAT as are chargeable on the supply of the Products.
- 4.2 DIAMETRA shall invoice the Customer at the point of Order Acknowledgement, and the Customer shall settle the invoice before the dispatch of the Products, unless the Customer has pre-approved credit terms agreed in writing by DIAMETRA. If the Customer has been pre-approved for credit, standard payment terms are 30 days from the date of invoice.
- 4.3 DIAMETRA reserves the right to increase the price of the Products, by giving notice to Customer at any time before delivery, to reflect any increase in the cost of the Products to DIAMETRA that is due to any delay caused by any instructions of Customer in respect of the Products, or failure of Customer to give DIAMETRA adequate or accurate information or instructions in respect of the Products, or any request by Customer to change the delivery date(s), quantities or types of Products ordered.
- 4.4 At DIAMETRA’s discretion, DIAMETRA can arrange shipment of the products to a location specified by the Customer. All costs incurred shall be invoiced to the Customer along with the Products
- 4.5 Without prejudice to any other rights or remedy that it may have, if the Customer fails to pay DIAMETRA on the due date DIAMETRA may:
 - 4.5.1 charge interest on any amounts overdue at the rate set forth by Legislative Decree No. 231/2000 on combating late payment in commercial transactions as applying from time to time to run from the due date for payment until receipt by DIAMETRA of the full amount whether or not after judgment and without prejudice to any other right or remedy of DIAMETRA;
 - 4.5.2 suspend delivery of any Products.
- 4.6 No payment shall be deemed to have been received until DIAMETRA has received cleared funds.
- 4.7 The Customer shall make all payments due in full without any deduction whether by set-off, counterclaim, discount, abatement or otherwise.

5. Intellectual Property Rights

The Customer acknowledges that any and all Intellectual Property in and relating to the Products, DIAMETRA and / or DIAMETRA’s business belong to DIAMETRA or its licensors (as applicable) and shall remain entirely in the ownership of DIAMETRA or its licensors (as applicable). Nothing said or done by either Party shall constitute the transfer of any Intellectual Property rights.

6. DIAMETRA’s obligations

- 6.1 DIAMETRA does not warrant or give any guarantees that the Products will be fit for purpose and it shall be for the Customer to determine that the Products are fit for the Customer’s purpose prior to placing an Order.
- 6.2 DIAMETRA warrants that the Products shall perform in accordance with the Instructions for Use until their expiry dates. DIAMETRA does not provide any warranty or give any guarantees if the Products are not used in accordance with the Instructions for Use and where the Products are not stored and/or used in accordance with section 7, and where the Products are not used by trained healthcare professionals qualified to run in-vitro diagnostic tests. Furthermore, the warranty for the Products is voided by the use of (i) non-validated sample types; or (ii) reagents or any products that have not been validated by DIAMETRA. DIAMETRA may at its own discretion determine whether or not it is possible to repair any defect, malfunction or damage.
- 6.3 In the event that the Products do not comply with the warranty given in the above condition 6.2 DIAMETRA shall at its option replace such Products (or the defective part) or refund the price of such Products provided that, if DIAMETRA so requests, the Customer shall, at DIAMETRA’s expense, return the Products to DIAMETRA.

7. Use and Storage of the Products

The Customer warrants and undertakes:

- 7.1 to store and use the Products strictly in accordance with the Instructions for Use;
- 7.2 to not use the Products after the Expiry Date
- 7.3 to not use non-validated sample types or reagents, consumables or parts not validated by DIAMETRA.
- 7.4 that only trained healthcare professionals qualified to use in-vitro diagnostic products shall use the Products.

8. Delivery

- 8.1 DIAMETRA shall provide the Products for collection at DIAMETRA’s warehouse or deliver the Products to the Customer location if agreed in accordance with condition 4.4.
- 8.2 DIAMETRA shall provide/deliver the Products within the period of time specified by DIAMETRA or if no dates are so specified within a reasonable time after notification to the Customer that the Products are ready for dispatch to the Customer. For the avoidance of doubt, it shall be the Customer’s responsibility to ensure that any person who signs at the point of delivery is an authorised signatory of the Customer.
- 8.3 Any dates specified by DIAMETRA for shipment of the Products are intended to be an estimate and time for shipment shall not be made of the essence by notice.
- 8.4 DIAMETRA may provide/deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of these General Terms.

9. Non-delivery

- 9.1 The quantity of any consignment of Products as recorded by DIAMETRA upon despatch from DIAMETRA’s place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 9.2 From the date of physical delivery of the Products to the Customer, the Customer shall have a maximum of 3 (three) days to check the condition of the Products.
- 9.3 DIAMETRA shall not be liable for any non-delivery or delivery of the wrong quantity of the Products (“Non-Delivery”) unless the Customer gives written notice to DIAMETRA of the Non-Delivery within 3 days of the date when the Products were or would in the ordinary course of events have been received.
- 9.4 Any liability of DIAMETRA for Non-Delivery of the Products shall be limited to replacing the Products within a reasonable time or refunding the fee paid for such Products.

10. Product Recall

In the event of the Customer receiving a complaint from any competent authority or notification relating to the Products:

- 10.1 the Customer will immediately inform DIAMETRA.
- 10.2 Each Party shall provide such reasonable assistance to the other Party in the handling of all arrangements relating to a Product Recall, redesign or remanufacture of Products as the other Party may request.
- 10.3 Where the Customer purchases Products for a use outside of their intended use or modifies or in any way the Products, the Customer shall be solely liable for any use and DIAMETRA's participation in any Product Recall shall be at DIAMETRA's sole discretion.

11 Risk / Title

- 11.1 Risk in the Products shall pass at the point of delivery in accordance with condition 8.1
- 11.2 Ownership of the Products shall not pass to the Customer until DIAMETRA has received in full payment of all sums due to it in respect of the Products and all other sums which are, or which become due to DIAMETRA from the Customer under this or any other contract.

12 Liability

- 12.1 This section 12 sets out the entire financial liability of DIAMETRA (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of: any breach of these General Terms; any use made by the Customer of the Products; and any representation, statement or tortious act or omission (including negligence) arising under or in connection with these General Terms.
- 12.2 Nothing in these General Terms limits or excludes the liability of DIAMETRA for: death or personal injury resulting from DIAMETRA's negligence; or for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by DIAMETRA; or for any liability that by law cannot be limited or excluded.
- 12.3 Except as set out in these General Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these General Terms.
- 12.4 Subject to condition 12.2:
 - 12.4.1 DIAMETRA fully excludes all liability where the Customer does not use and store the Products in strict accordance with section 7 or where the defect arises during shipping of the Products due to delays or high ambient temperature;
 - 12.4.2 DIAMETRA fully excludes all liability where Products do not meet their warranty under condition 6.2 as a result of fair wear and tear, wilful damage, or negligence;
 - 12.4.3 DIAMETRA shall bear no responsibility and fully excludes all liabilities in respect of how the Customer uses the Products;
 - 12.4.4 DIAMETRA shall bear no responsibility and fully excludes all liabilities in respect of Products used by persons who are not trained healthcare professionals qualified to run in-vitro diagnostic tests;
 - 12.4.5 DIAMETRA shall bear no responsibility and fully excludes all liabilities as a result of changes made to Products to ensure they comply with applicable statutory or regulatory requirements;
 - 12.4.6 DIAMETRA shall not be liable for: loss of profits; or loss of business; or depletion of goodwill and/or similar losses; or loss of anticipated savings; or loss of Products; or loss of contract; or loss of use; or loss of corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - 12.4.7 DIAMETRA's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise shall be limited to: (i) where such claim is in relation to the Products to the price paid or payable for the relevant Products; and (ii) where any claim does not relate to the Products to £10,000 (ten thousand pounds sterling).

13 Mandatory Policies

- 13.1 The Customer shall:
 - 13.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption;
 - 13.1.2 promptly report to DIAMETRA any request or demand for any undue financial or other advantage of any kind received by DIAMETRA in connection with the performance of this Agreement;
- 13.2 The Customer shall:
 - 13.2.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force; and
- 13.3 Breach of condition 13.2.1. shall be deemed a material breach not capable of remedy and grounds for immediate termination of any outstanding Orders.

14 General provisions

- 14.1 Each provision of the General Terms is severable and distinct from the others and if any provision is or at any time becomes to any extent or in any circumstances wholly or partially invalid, illegal or unenforceable for any reason, it shall to that extent or in those circumstances be deemed not to form part of the General Terms, but the validity, legality and enforceability of all other provisions of the General Terms and the remainder of such provision shall not otherwise be affected or impaired, it being the Parties' intention that every provision of the General Terms shall be and remain valid and enforceable to the fullest extent permitted by law.
- 14.2 DIAMETRA shall have no liability to the Customer under the General Terms if it is prevented from or delayed in performing any of its obligations under the General Terms or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of DIAMETRA or any other party), failure of a utility service or transport network, act of God, act of terrorism, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.
- 14.3 Failure or delay of a Party to exercise or enforce any right under the General Terms shall not be deemed to be a waiver of that right or any other right, nor operate to bar exercise or enforcement of it or any other right at any time or times thereafter.
- 14.4 Each Party warrants to the other that:
 - 14.4.1 the General Terms constitute the entire agreement and understanding between the Parties unless DIAMETRA and the Customer have another supply agreement which specifically overrides these General Terms;
 - 14.4.2 when placing an Order and entering into the General Terms, the Customer does not rely on any statement, representation, assurance, promise or warranty of any person other than as expressly set out in these General Terms. Neither Party excludes its liability for fraud.
- 14.5 The Customer shall at all times keep secret and confidential all Intellectual Property and all other information of a confidential nature which have been disclosed to the Customer or the Customer's agent by DIAMETRA, its employees, agents or sub-contractors and any other confidential information concerning DIAMETRA's business or its products which the Customer may obtain.

15 Governing Law and Jurisdiction

- 15.1 These General Terms shall be governed by and construed in accordance with Italian law and the Civil Court of Spoleto shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Agreement.

Pursuant to section 1341 and 1342 of the Civil Code, the Customer declares that it has read, understood and accepted specifically the following clauses of the "DIAMETRA TERMS OF SALE":

- 9. Non-delivery
- 11. Risk / Title
- 12. Liability
- 14. General Provision (14.2. Force Majeure; 14.5 Confidentiality)
- 15. Governing Law and Jurisdiction