



## **Roche Diabetes Care, Inc. Purchase Order Terms and Conditions**

- 1. Incorporation of Terms and Conditions.** This Purchase Order ("PO") is an offer by Buyer for the purchase of goods ("Goods") and/or services ("Services") to be provided by the party to whom this PO is addressed ("Seller") in accordance with, and subject to, these terms and conditions, together with any additional terms and conditions that may be set out on the face of this PO ("Terms"). Any Seller terms and conditions that are in addition to, or different from, those contained herein, unless separately accepted in writing by Buyer, are rejected and are of no force or effect. If any part of the Goods and/or Services have been shipped, delivered, and/or provided, Seller shall be deemed to have assented to these Terms. These Terms will apply to any repaired, replaced, or re-performed Goods and/or Services supplied by Seller under this PO.
- 2. PO Acceptance.** For this PO to be binding, Seller must return an acceptance copy to Buyer within seven (7) days of the PO date, confirming price, quantity, and/or description of Goods and/or Services, and delivery or performance dates. If Seller does not return an acceptance copy within such 7-day period, Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary in writing within seven (7) days of receipt. Upon PO acceptance, Buyer is not obligated to make any minimum, recurring, or future purchases of Goods and/or Services, except as otherwise expressly set forth on the face of this PO. Buyer may withdraw this PO at any time before Seller accepts it. After acceptance, Buyer may cancel this PO at any time for any reason (including, without limitation, for its convenience) prior to shipment of Goods or start of performance of Services without incurring any liability to Seller. Withdrawal or cancellation will be immediately effective on receipt of written or electronic (e.g., e-mail or facsimile transmission) notice to Seller.
- 3. Timely Delivery.** Provision of Goods and/or Services shall be made when stated, on time and in full, and failure to perform in a timely manner (including, without limitation, late delivery), unless waived by Buyer in writing, shall entitle Buyer to (a) terminate this PO; (b) reject late performance; or (c) procure Goods and/or Services elsewhere; and in any such event, hold Seller accountable for damages arising therefrom. As a condition to Buyer accepting late delivery, Seller may be required to expedite shipment, in which case Seller shall incur the extra cost of expedited shipment. Seller shall deliver the Goods and/or Services strictly in accordance with the dates and requirements set forth or referenced on the face of this PO and the other terms and conditions set forth herein, including but not limited to the shipping, labeling and packaging requirements set forth at <http://naprocedure.rochediabetescare.com/>, temperature and stability guidelines, and any other specifications, requirements and statement(s) of work. Delivery of Goods must include a packing slip, certificate of conformance or analysis, commercial invoice (if applicable) and any other requested documentation.
- 4. Inspection and Rejection of Nonconforming Goods and/or Services.** Buyer has the right to inspect Goods and/or Services on or after the date delivered and/or performed. Buyer, at its sole option, may inspect or audit all or a sample of the Goods and/or Services, and if any of the Goods and/or Services are non-conforming or defective, Buyer may reject all or any part of such Goods and/or Services. Buyer has the right, effective upon Seller's receipt of written notice, to: (a) rescind this PO in its entirety; (b) accept all or part of the Goods and/or Services at a reasonably reduced price; or (c) reject all or part of the Goods and/or Services and require replacement of the rejected Goods and/or re-performance of the Services. If replacement or re-performance is required, Seller, at no cost to Buyer, shall promptly replace the rejected Goods and/or re-perform the Services and pay for all related expenses including, but not limited to, transportation charges for return of rejected Goods and delivery of replacement Goods. Buyer has the right to inspect replacement Goods and/or audit re-performed Services as set out in this section.
- 5. Provider Undertakings.** Seller agrees, at all times, to act and perform its obligations in accordance with the Terms of this PO, with appropriate skill and diligence, in accordance with applicable industry standards and best practices, in a timely and professional manner, and in compliance with all applicable laws and regulations. If Seller fails to comply with the above, Buyer may, in addition to any other remedies it may have in law, instruct a competent third party provider to perform this PO, and Seller shall pay Buyer its costs and damages for having to use a third-party provider.
- 6. Warranties and Remedies.** Seller represents and warrants that all Goods furnished pursuant to this PO (a) are owned by Seller or Seller has the right to transfer free and clear title to Buyer; (b) are free from defects in materials, workmanship, installation and design, even if the design has been approved by Buyer; (c) are in good working order and condition; (d) conform to the applicable specifications, drawings, quality control plans, prints, data, samples, and other descriptions and instructions furnished or specified by Buyer; (e) are free from contaminants and are not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 321-394) as applicable; (f) are new and merchantable; (g) will be fit for Buyer's intended use and any use or purpose expressed in this PO; (g) are free and clear of all liens, claims, and encumbrances; (h) do not infringe, violate or misappropriate any patent, copyright or other intellectual property rights of any third party, and do not utilize misappropriated third party trade secret information; and (i) the manufacture, production, installation, sale and use by Buyer are in compliance with any and all applicable laws, rules and regulations. In addition, Seller acknowledges that Seller knows of Buyer's intended use and warrants that all goods covered by the PO that have been selected, designed, manufactured or assembled by Seller based upon Buyer's stated use will be fit and sufficient for the particular purposes intended by Buyer. Seller further represents and warrants that all Services furnished pursuant to this PO (A) will be performed by personnel who have the necessary and appropriate education, background, training, and certification to furnish the Services; (B) will be performed in a good, workmanlike manner in accordance with the standard of care typically exercised in Seller's field; (C) will be performed in accordance with all applicable laws and regulations; (D) will fully conform to the applicable specifications, drawings, quality control plans, prints, data, samples, and other descriptions and instructions furnished or specified by Buyer; (E) will be fit for Buyer's intended use and any use or purpose expressed in this PO; and (F) will be free and clear of all liens, claims, and encumbrances. All warranties will survive any inspection, delivery or acceptance of the Goods or Services, or payment for the Goods or Services delivered and such warranty shall run to the benefit of Buyer, Buyer's customers and/or Buyer's successors and assigns, and shall not be deemed exclusive of any other warranties, express or implied. The warranties provided are cumulative and in addition to any warranty provided by law or equity. Any applicable statute of limitations runs from the date of discovery. Goods and Services that meet the preceding standards are collectively called "conforming goods." If conforming goods are not furnished within the time specified by Buyer, then Buyer may, at its election and in addition to any other rights or remedies it may have at law or in equity, have the nonconforming goods repaired, replaced, or corrected at Seller's expense. Seller is responsible for the costs of repairing, replacing, or correcting nonconforming goods, and for all related costs, expenses and damages, including but not limited to, the costs of removal, disassembly, failure analysis, fault isolation, reinstallation, re-inspection, and retrofit of the nonconforming goods or of Buyer's affected end-product; all freight charges; all customer charges; and all corrective action costs (i.e., costs of additional inspection or quality-control systems). Unless set off by Buyer, Seller will reimburse Buyer for all such costs upon receipt of Buyer's invoice.
- 7. Other Seller Covenants.** Seller shall not offer, pay, or accept bribes or participate in other illegal inducements. Seller shall conduct its business consistent with fair competition and in compliance with all applicable antitrust laws. Seller shall employ fair business and employment practices including, but not limited to, equal employment opportunity. In addition, Seller must abide by the integrity standards in the Roche Supplier Code of Conduct at <http://naprocedure.rochediabetescare.com/>. Seller, at its sole expense, will acquire and maintain in good standing, all permits, licenses, and other entitlements required by law to perform under this PO. Seller will maintain in full force and effect, at its own cost and expense, insurance satisfactory to Buyer and adequate to assure its obligations under this PO including general commercial liability (including contractual liability & products liability), automobile liability insurance (including non-owned automobile liability) and worker's compensation, and employer's liability insurance with such coverage and in such amounts as a reasonably prudent party would maintain to adequately protect Buyer against such damage, liabilities, claims, losses and expenses (including attorney fees). Seller agrees to submit certificates of insurance evidencing its insurance coverage when requested by Buyer. Seller will not disclose to Buyer any inventions, trade



secrets or other information of third parties that Seller does not have the right to disclose. The sale, resale, or use of the Goods furnished, and their method of manufacture, and the provision of Services, under this PO will not infringe any patents or other intellectual property rights (except insofar as such infringement necessarily arises solely from the specific design and specifications furnished by Buyer), and Seller agrees to defend, protect, indemnify, and hold harmless Buyer, its affiliates, successors, assigns, customers, and other users of the Goods and/or Services from all damages and expenses (including, without limitation, legal fees) resulting from any claims based on actual or alleged infringement. Seller acknowledges that it is a prerequisite for doing business with Buyer that it comply with the Code which can be found under the link [http://www.roche.com/roche\\_supplier\\_code\\_of\\_conduct.pdf](http://www.roche.com/roche_supplier_code_of_conduct.pdf). Seller commits to the sustainability principles outlined in the Code and will use diligent efforts to comply with these principles in its business activities related to this Agreement. In case of material non-compliance, Buyer reserves the right to terminate the contract. Buyer reserves the right to audit Seller upon reasonable notice and at Buyer's expense with regard to compliance with the Code, such audit to be conducted in such a way as to minimize the impact on Seller's operations. Upon Buyer's written request, Seller agrees to provide certification of compliance. Seller shall also use diligent efforts to require its own suppliers to commit to the sustainability principles as outlined in the Code.

**8. Changes to Purchase Order.** Any addition, deletion, or other modification to this PO, to be effective, requires the mutual consent of Seller and Buyer. Buyer will issue a revised PO for acceptance by Seller.

**9. Changes to the Goods or Services.** All changes requested by Seller must be approved in writing by Buyer. If any such changes cause an increase or decrease in the Price or the time required for the performance of the PO, an equitable adjustment shall be made and the PO shall be amended in writing by the parties. For further details, Seller should refer to [https://usdiagnostics.roche.com/en/business\\_partners.html#supplier-portal](https://usdiagnostics.roche.com/en/business_partners.html#supplier-portal)

**10. Payment Terms.** Buyer shall have no obligation for payment until Buyer's receipt of the Goods and/or Services and any required documentation (including shipping documentation and an accurate and complete invoice in English). Buyer's payment is based upon the receipt of Seller's invoice and payment will be made net sixty (60) days of receipt of an undisputed invoice.

**11. Indemnification.** Seller shall defend, indemnify, and hold harmless Buyer, and its affiliates and their respective officers, directors, shareholders, and employees (collectively, "Indemnitees") from and against any and all liabilities, claims, or demands, whether arising in tort or in contract, including, without limitation, for bodily injuries (including death) and/or property damage incurred or demanded by an Indemnitee, arising out of, resulting from, or occurring in connection with Seller's negligence, willful misconduct, or breach of any of the Terms of this PO. In addition, Seller shall be obligated to undertake, at its own expense, the defense of the legal proceedings with respect to such liability, claim, loss, demand or expense; *provided, however*, the legal counsel selected by Seller shall be subject to the prior written approval of Buyer. This indemnification shall be in addition to the warranty obligations of Seller.

**12. Compliance with Applicable Laws.** Seller shall comply, as applicable, with applicable federal laws, rules, regulations and executive orders, including without limitation, relative to Equal Employment Opportunity, the utilization of small, disadvantaged, woman-owned, veteran and HUB zone businesses. This PO is subject to Executive Order 11755, Executive Order 13126, 48 CFR Section 52.222-54(e), FAR 52.219-8, FAR 52.222-2, FAR 52.222-3, FAR 52.222-19, FAR 52.225-5, and FAR 52.225-13. Seller agrees to provide, at Buyer's request, any and all documentation required to substantiate such compliance. Seller confirms that Seller is not debarred, suspended, or proposed for debarment by the federal government, and is not include in any of the Bureau of Industry and Security's Lists of Parties of Concern. With respect to certain import and export laws, Seller shall provide to Buyer, upon request, any information that Buyers requests to comply with its CTPAT requirements, obtain an export license, classify a product for import (harmonized tariff schedule number), classify a product for export (Export Control Classification Number "ECCN" and the Schedule B under employment verification provisions prescribed by 8 U S C A 1324(a) and (b) of the Federal number) or to respond to any government inquiry. Seller shall be in compliance with the E-Verify Program Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. 23-214(A).

**13. Equal Employment Opportunity.** Specific to Equal Employment Opportunity, this PO is subject, as applicable, to the provisions of (i) Executive Order 11246, (41 CFR Section 60-1.4(a)); (ii) Section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a)), and (iii) Section 4212 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-300.5(a)); This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-741.5(a), 60-741.5(a), and 60-300.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals without regard to race, color, religion, sex, sexual orientation, gender identity/expression, national origin, protected veteran status or disability. This PO is also subject to Executive Order 13496 (29 CFR Part 471.29 CFR Part 471 – Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

**14. Termination.** Buyer may terminate this PO in whole or in part, for its convenience, at any time upon five (5) days' prior written or electronic (e.g., e-mail or facsimile transmission) notice to Seller. Upon receipt of such termination notice, Seller shall promptly comply with the directions contained in such notice. In the event of a Buyer termination, payment to Seller for Goods delivered and/or Services performed prior to termination shall be the sole remedy available to Seller.

**15. Assignment.** Seller may not (directly or indirectly) assign or transfer this PO or delegate any right or obligation under it without the prior written consent of Buyer. Any attempted Seller assignment, transfer, or delegation without such consent is void and is grounds for Buyer to terminate this PO. Buyer may assign or transfer this PO, in whole or in part, to any Buyer affiliate without Seller's consent.

**16. Assignment of Intellectual Property.** Seller agrees to assign and hereby does assign to Buyer, its successors, and assigns, all of Seller's right, title, and interest in and to any inventions, works of authorship, trade secrets, know-how, and other items made, conceived, reduced to practice, authored, or otherwise developed, discovered, or generated by Seller, solely or jointly with others, in the course of or as a result of its performance under this PO ("IP Developments"). Seller agrees to assign and hereby does assign to Buyer and its successors and assigns, any right, title, and interest in and to patent applications, patents, copyright applications, copyrights, or other intellectual property rights that exist by reason of, or may be claimed or obtained on any IP Developments ("IP Rights"), to the full extent of the term for which such IP Rights may exist. Seller will promptly disclose any IP Developments to Buyer in writing. At Buyer's request, Seller will promptly execute all documents and perform all acts deemed by Buyer to be necessary or reasonably useful (a) to perfect Buyer's right, title, and interest in and to IP Developments and IP Rights in any country; (b) to prepare, apply for, prosecute, obtain, maintain, defend, and enforce IP Rights as Buyer may desire in any country. Seller hereby appoints Buyer as its attorney-in-fact solely for purpose of taking any action where Seller has failed to promptly respond to Buyer's request for further acts related to IP Developments or IP Rights. Buyer will pay all costs and expenses of preparation, application, prosecution, maintenance, defense, and enforcement of IP Rights. Unless expressly granted elsewhere, nothing contained in the PO shall be construed to grant Seller a license or in any way give ownership to any Buyer-owned intellectual property, except that Seller shall have access to such Buyer-owned intellectual property as required for Seller to fulfill, and solely for the purpose of fulfilling, its contractual obligations under the PO. Seller agrees, at its own expense, to defend any suit or action against Buyer or against those selling or using the Goods and/or Services covered by the PO for alleged infringement of IP Rights arising from the sale or use of such Goods and/or Services, and to indemnify and hold harmless Buyer and those selling or using such Goods and/or Services from any damages, liabilities, claims, losses, and expenses (including attorney's fees) paid or incurred by Buyer in connection with any such suit or action, whether against Buyer or against those selling or using the Goods and/or Services covered by the PO. For all intellectual property rights not specifically covered by this PO or any underlying agreement, Seller hereby grants to Buyer an irrevocable, nonexclusive license to fully make use of and fully enjoy all intellectual property rights incorporated into any of the Goods or Services delivered or provided by Seller under this PO.



**17. Force Majeure.** Neither party shall be liable for failure or delay in performance under this PO due to causes beyond the reasonable control of the party affected ("Force Majeure Event") such as acts of nature, civil unrest and violence, acts of government, labor disputes, or any other such causes. The affected party shall provide prompt notice if a Force Majeure Event causes it to be unable to perform any obligation. Performance shall be promptly resumed after the Force Majeure Event has been remedied; otherwise, this PO may be terminated as provided in Section 14.

**18. Taxes.** If Goods furnished under this PO are for resale, Buyer will collect and remit to the taxing authority any sales or use taxes imposed on such Goods at time of resale. Seller will pay all other taxes, duties, and fees included in the Price as set out in this PO. Seller will promptly supply all tax forms and information necessary or reasonably required for Buyer to comply with any applicable tax withholding and reporting obligations. Seller acknowledges that Buyer may report payments to relevant tax authorities (including, without limitation, federal, state, and local tax authorities) and when determined necessary, may withhold taxes from such payments.

**19. Records.** Seller will maintain its documents, books, and records in connection with this PO in accordance with generally accepted accounting principles during the term of this PO and for seven (7) years after expiration or earlier termination of this PO. Seller also agrees to make such documents, books and records available pursuant to and as specified in 42 U.S.C. 420.302 et seq. Within five (5) business days after receipt of notice by Seller, Buyer (or its designated representative) shall be allowed access in which to examine, audit and copy, any records or manufacturing processes to determine compliance with applicable laws, the PO or to respond to any government inquiry.

**20. Work on Buyer's Premises.** Seller agrees that, while its personnel or agents are on Buyer's premises, such personnel or agents shall conform to all Buyer's work rules, safety regulations and its standard practices governing the behavior of its own employees. Seller agrees to require such personnel and agents to take any required training and to work in a manner which complies with all applicable laws.

**21. Buyer's Property.** All special tools, dies, patterns, jigs, drawings, equipment and fixtures ("Tooling") supplied by Buyer or paid for by Buyer shall remain Buyer's property and Seller agrees to comply promptly with all disposal and shipping instructions with respect to such Tooling. Seller agrees, at Seller's expense to maintain all Tooling in Seller's possession which belongs to Buyer in first-class condition and repair and adequately insure against all damages and loss. Seller further agrees to indemnify Buyer for all damage or loss to such Tooling. Seller shall prominently mark all Tooling "Owned by Roche Diagnostics", if possible, given the type of Tooling and agrees not to remove such Tooling from Seller's facility without Buyer's written permission. Seller shall provide Tooling and inventory condition upon Buyer's request.

**22. Safety and Environmental Requirements.** Seller shall obtain all permits and abide by all applicable environmental and safety regulations from all federal, state and local regulatory authorities. In order for Buyer to properly discharge, use, store, handle, transport and dispose of the Goods and to comply with applicable laws, Seller shall also provide to Buyer, upon request, with any information about the characteristics, components or contents of the goods.

**23. No Waiver.** A waiver of any right or obligation in this PO on one occasion shall not be deemed to be a waiver of that right or obligation (or other right or obligation) on any subsequent occasion. Buyer's failure to insist on Seller's strict performance or to enforce any right or remedy available to it under this PO at any time shall not be construed as a waiver by Buyer. Buyer's rights and remedies under this PO are cumulative and are in addition to any other rights and remedies provided at law or in equity.

**24. Confidentiality.** Any information Buyer supplies to Seller shall be treated as confidential ("Confidential Information") and stored in a secure location. Seller agrees that it will not use for any unauthorized purpose or disclose to any third party any Confidential Information. In the event of termination of this PO, Seller shall promptly return to Buyer or securely destroy all Confidential Information in its possession. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential and Seller shall have no right against Buyer except such rights that may exist under patent laws. All Confidential Information shall be returned to Buyer upon request. Seller will not issue any press release about Buyer or this PO. The existence of this PO and any other business relationship between Buyer and Seller is Confidential Information. Neither party will use or publish the other party's name, logos, trademarks, or trade names in promotion, publicity, advertising, or other purpose.

**25. Subcontractors.** Seller shall not subcontract any performance under this PO without the prior written consent of Buyer. In the case of permitted subcontracting, Seller shall use only subcontractors who are properly trained and qualified to perform this PO.

**26. Limitation on Buyer's Liability.** In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from the PO or from the performance or breach thereof shall not exceed the Price allocable to the Goods and/or Services which give rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the Goods and/or Services delivered hereunder must be commenced within one year after the cause of action has occurred.

**27. Entire Agreement.** This PO, including all exhibits, schedules, attachments, and proposals it expressly references, is the parties' entire understanding with respect to its subject matter, and it supersedes all prior executed agreements, negotiations, understandings, representations, statements, and writings between the parties relating to such subject matter. Where this PO is issued under a Master Agreement between the parties, in case of any conflicting provisions, the terms and conditions of the Master Agreement shall prevail. Where this PO is issued after a Non-Disclosure Agreement between the parties, in case of any conflicting provisions, the Terms of this PO shall prevail. This PO is binding on, and inures to the benefit of, the parties and their respective successors and permitted assigns.

**28. Travel.** Seller must utilize Buyer's travel group and follow the Buyer travel policies if travel is applicable for the Seller's project with the Buyer.

**29. Governing Law.** This PO, and all disputes and claims arising under it, will be interpreted and governed by the laws of the State or territory of the entity issuing the PO, without regard to its conflict of laws principles. The parties expressly consent to venue in, and the exercise of personal jurisdiction by, a court, federal or state, within the State or territory of the entity issuing the PO. The parties expressly waive any right to a jury trial regarding disputes and claims related to this PO.

**30. Setoff & Waiver.** All claims for money due or to become due from Buyer shall be subject to deduction or set off by Buyer. Buyer's failure or delay to insist on performance of any of the Buyer or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other breach, Buyer or conditions, whether of the same or similar type.

**31. Security.** If Seller executes Buyer's Privacy and Data Security Addendum, such addendum terms shall be incorporated into the Terms of this PO.

**32. Shipment of Goods Including Hazardous Materials.** Seller shall provide accurate shipping papers to the carrier covering Goods in accordance with the applicable laws and regulations. Seller shall correctly classify the Goods (including, without limitation, according to the United Nations Globally Harmonized System of Classification and Labeling of Chemicals ("GHS")), and ensure that Goods are described, packaged, marked, and labeled, and at the time of shipment are in proper condition for transportation according to applicable laws and regulations. Seller agrees to provide Buyer, at or prior to the time of shipment, with a material safety data sheet and to promptly provide corrections and/or updates, for all Goods supplied under this PO that are considered to be hazardous as that term is defined under the Occupational Safety and Health Administration's ("OSHA") Hazard Communication Standard ("HCS") (19 C.F.R. 1910.1200). Unless exempt from the HC labeling provisions, Seller shall ensure that each container of hazardous materials shipped to Buyer is properly labeled, or in the proper condition for transportation at the time of deliver to Buyer, according to the applicable regulations of the Department of Transportation, OSHA, or any other governmental authority, shall be treated as non-conforming and defective Goods.