



Inverness Medical Innovations Australia Pty Ltd ABN 19 010 728 220 trading as Alere (Alere).

Terms of Trade

1 Terms of Trade

- a) These terms of trade constitute the entire understanding between Alere and the customer in respect of the sale of goods and override any conditions to the contrary which may be expressed in any of the customer's purchase order forms or other documents and supersede all prior arrangements between the parties whether written, oral or established through a course of dealings between Alere and the customer.
- b) These terms of trade cannot be varied except in writing signed by a duly authorised officer of Alere.

2 Sale and Purchase

- a) By placing an order for goods with Alere, the customer is deemed to have accepted these terms of trade.
- b) Alere is under no obligation to supply any goods to any person in response to the placing of an order.

3 Price

- a) Alere may change its prices for goods at any time and without prior notice to customers.
- b) The price of the goods is specified in Alere's price list and is in Australian dollars (exclusive of GST), as amended by Alere from time to time, current as at the date the order is placed.

4 Payment

- a) Payment terms are net cash 30 days from end of month, unless otherwise agreed in writing signed by a duly authorised officer of Alere.
- b) The customer must make payments to Alere without set-off, counter claims, conditions, restrictions, withholdings or deductions, unless required by law.



5 Delivery

- a) Alere will use its best endeavours to deliver the goods on the agreed date for delivery or within the agreed period for delivery at the customer's warehouse or any other delivery point [in Australia] nominated by the customer with upon at least [seven days written notice].
- b) The customer must inspect the goods promptly upon delivery and must notify Alere in writing within five (5) business days of the date of delivery if the customer alleges that the goods are not in accordance with the order.
- c) If the customer fails to notify Alere in accordance with clause 5(b), the goods will be deemed to be in all respects in accordance with the order and the customer shall be bound to pay for the goods.

6 Risk and Title

- a) Risk of loss or damage to goods passes to the customer when Alere delivers the goods in accordance with these terms of trade.
- b) Property in the goods remains with Alere until full payment for the goods has been made or title is properly vested in some other person by operation of law.
- c) The customer must:
 - (i) until property passes:
 - (A) keep the goods in its possession free from any charge, lien or other encumbrance;
 - (B) to the maximum extent possible, keep the goods separate from other goods in the customer's possession;
 - (C) at the customer's own expense insure the goods for their full insurable or replacement value (whichever is the higher) against theft, loss or damage;
 - (ii) if property passes before full payment for the goods occurs and it sells the goods to a third party, hold the sale proceeds on trust for Alere.
- d) If the customer does not pay for the goods in accordance with clause 4 and title to the goods has not properly vested in some other person by operation of law, Alere may without prejudice to any other remedies, enter the premises where the goods are situated and re-take possession of the goods, and the customer hereby grants Alere an irrevocable license to enter such premises for the purpose of re-possessing the goods.



7 PPS Act

- a) These terms of trade constitute a security agreement for the purposes of the PPS Act and create a Security Interest (which is a Purchase Money Security Interest) in the goods currently provided by Alere to the customer and all further goods provided by Alere to the customer.
- b) The customer agrees to implement, maintain and comply in all material respects with procedures for the perfection of Alere's Security Interests as set out in clause 7a).
- c) The Purchase Money Security Interest will continue for any goods coming into existence or for the Proceeds from the sale of goods coming into existence.
- d) The customer must do all things necessary to assist Alere to continuously perfect any Security Interest arising under these terms of trade, including signing any documents or providing any information that Alere reasonably requests for the purposes of protecting its interest under the PPS Act.
- e) Until title passes from Alere to the customer, the customer will not or will not permit any Security Interest to be created in the goods without the consent of Alere.
- f) If any goods supplied by Alere to the customer are commingled by the customer with other property, Alere will have a Security Interest in those Commingled goods including the goods supplied under these terms of trade.
- g) The customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any Security Interest under these terms of trade.
- h) Everything which the customer is required to do under this clause 7, is to be done at the expense of the customer and the customer agrees to reimburse Alere for these costs including any expenses incurred by Alere in registering or removing a financing statement or financing change statement on the PPS Register.
- i) The customer must not lodge or permit the lodgement of a financing change statement or an Amendment Demand in respect of the goods without the consent of Alere.
- j) The customer must immediately notify Alere in writing of any change in the customer's name or in the description of the goods.
- k) To the maximum extent permitted by the PPS Act:
 - (i) Alere does not have to give a notice to the customer of any action Alere takes in accordance with sections 95 or 121(4) of the PPS Act;
 - (ii) Alere does not have to give a notice under section 130 of the PPS Act;
 - (iii) Alere does not have to give the details required under section 132(3)(d) of the PPS Act;
 - (iv) Alere does not have to give a written statement of account under section 132(4) of the PPS Act;
 - (v) Alere does not have to give a notice required under section 135 of the PPS Act;
 - (vi) no person can redeem the Security Interest in the goods under section 142 of the PPS Act without Alere's consent; and
 - (vii) no person may reinstate the security agreement under section 143 of the PPS Act without Alere's consent.
- l) For the purposes of section 275(6) of the PPS Act, the customer must keep confidential any information relating to these terms of trade which is in the nature of information which an interested person could access under section 275(1) of the PPS Act.



8 Return and Cancellation

- a) Subject to *clause*, Alere is under no obligation to accept goods returned by the customer and will do so only on terms to be agreed in writing in each individual case.
- b) No order may be cancelled except with consent in writing signed by a duly authorised officer of Alere.
- c) Product Recall: Customer shall maintain appropriate up-to-date and accurate records to enable the immediate recall of any batches of the Products or any of them from the retail and/or wholesale markets, if the need arises because of any proceedings under the law or voluntarily by Alere. These records shall include records of deliveries to customers (including details of batch numbers, lot numbers, delivery date, name and address of customer, quantity, and telephone number and fax or telex number if available) and shall be held until at least 12 months after the expiry date of the product; any such recall 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.

9 Exclusion of Warranties

- a) All express or implied warranties, representations, statements, terms and conditions relating to these terms of trade that are not contained in these terms of trade, are excluded to the maximum extent permitted by law.
- b) Nothing in these terms of trade excludes, restricts or modifies any term, condition, warranty, right or remedy implied or imposed by any statute or regulation which cannot lawfully be excluded, restricted or modified, which may include the Competition and Consumer Act 2010 (Cth) and corresponding Australian state or territory legislation, which contain provisions including implied conditions and warranties which operate to protect the purchasers of goods and services in various circumstances (Implied Terms).
- c) If there are any Implied Terms in these terms of trade and we are able to limit your remedy for a breach of such a term, condition or warranty, then our liability for breach of the term, condition or warranty is limited to the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.
- d) Subject to our obligations with respect to Implied Terms, to the maximum extent permitted by law, our maximum aggregate liability for all claims under or relating to these terms of trade, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on breach or on any other basis, is limited to the amount paid to us for the supply of the goods.
- e) Subject to our obligations with respect to Implied Terms, and to the maximum extent permitted by law, we are not liable for (under any circumstances):
 - (i) special, indirect, consequential, incidental or punitive damages; or
 - (ii) damages for loss of profits, revenue, goodwill, bargain, anticipated savings or loss, personal injury, death, the costs arising from the loss of use of the goods and the costs of any substitute and the costs of any substitute goods which you obtain.
- f) In no event will we be liable for:
 - (i) any loss or damage which you suffer arising from, or caused or contributed to by, our negligence or the negligence of our agents or servants; or
 - (ii) special, indirect or consequential loss or damage as a result of a breach by us of these terms of trade including, without limitation, loss of profits or revenue, personal injury, death, the costs arising from the loss of use of the goods and the costs of any substitute equipment which you obtain.
- g) © Alere. All rights reserved. The Alere Logo and Alere are trademarks of the Alere group of companies.
The customer acknowledges that:



- (i) it has not relied on any statement, representation, warranty, conduct or undertaking made or given by Alere or any person on its behalf; and
 - (ii) it has relied on its own skill and judgement in deciding to acquire the goods and in accepting these terms of trade.
- h) Any description of any goods supplied under these terms of trade is given solely for identifying the goods that are the subject of sale and does not constitute a sale by description. Alere hereby disclaims all other warranties, express or implied, including warranties of merchantability or fitness for a particular purpose. Alere expressly disclaims any representations and warranties regarding the performance, safety and efficacy of the products in combination with the compounds or any other products or component(s)



10 Force Majeure

- a) For the purposes of this clause Force Majeure means any of the following:
- (i) act of God;
 - (ii) law, rule, regulation or order of any government or governmental authority;
 - (iii) act of war declared or undeclared;
 - (iv) public disorder;
 - (v) riot, insurrection, rebellion, sabotage or act of terrorists;
 - (vi) flood, earthquake, hail, lightning, severe weather conditions or other natural calamity;
 - (vii) strike, boycott, lockout or other labour disturbance, which
- (A) is beyond the control of Alere;
 - (B) could not have been reasonably foreseen by Alere; and
 - (C) was not directly or indirectly caused or contributed to by Alere.
- b) Delays in or failure of performance by Alere will not constitute a breach of these terms of trade by Alere if and to the extent any delay or failure is caused by a Force Majeure provided that Alere:
- (i) notifies the customer in writing within seven days of the occurrence of the Force Majeure providing details of the Force Majeure and its anticipated likely duration and effect; and
 - (ii) uses its best endeavours to resume fulfilling its obligations as promptly as possible and provides the customer with written notice within seven days of the cessation of the Force Majeure.
- c) If a delay caused by Force Majeure continues for more than fourteen (14) days, either party may terminate these terms of trade by giving seven (7) days notice to the other parties.



11 GST

- a) In this clause 11:
 - (i) words and expressions which are not defined in these terms of trade but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
 - (ii) GST Law has the same meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999.
- b) Unless otherwise expressly stated, all prices under these terms of trade are exclusive of GST.
- c) If GST is payable by Alere on any supply made under these terms of trade, the customer will pay to Alere an amount equal to the GST payable on the supply.
- d) The customer will pay the amount referred to in clause 11(c) in addition to and at the same time that the consideration for the supply is to be paid under these terms of trade.
- e) Alere will deliver a tax invoice or an adjustment note to the recipient before the time for payment under clause 11(d).
- f) If an adjustment event arises in respect of a taxable supply made by Alere under these terms of trade, the amount payable by the customer under clause 11(c) will be recalculated to reflect the adjustment event and a payment will be made by the customer to Alere or by Alere to the customer as the case requires.
- g) Where a party is required under these terms of trade to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.



12 General

12.1 Construction

Unless expressed to the contrary, in these terms of trade:

- a) words in the singular include the plural and vice versa;
- b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- c) "includes" means includes without limitation;
- d) no rule of construction will apply to a clause to the disadvantage of Alere merely because Alere put forward the clause or would otherwise benefit from it;
- e) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) time is to local time in Brisbane; and
 - (v) "\$" or "dollars" is a reference to Australian currency.
- f) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- g) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

12.2 Waiver and Exercise of Rights

- a) A single or partial exercise or waiver by Alere of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

12.3 Compliance

- a) Customers shall at all times conduct its business in full compliance with all applicable laws and regulations including any applicable anti-corruption laws or regulations. **Alere reserves the right to immediately terminate supplies to the customer should the Customer make any payment which would violate the U.S. FCPA, or any other anti corruption laws. The Customer shall indemnify and hold Alere harmless, and hereby forever releases and discharges Alere, from and against all losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) resulting from the Customer's breach of this clause;**
- b) The Customer is required to go through Alere's Anti-Corruption Policy and Code of Conduct available on http://www.alere.com/content/dam/alere/docs/legal/Code_of_Conduct_April_2013.pdf (together referred as Policy) , and agrees to abide by said Policy and, if required, it shall certify compliance with Policy from time to time.
- c) If goods are on-sold or distributed to a third party, the customer shall ensure that:

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- (i) the goods are handled appropriately and stored under the conditions stated on the product labelling;
- (ii) the goods are within the expiration date stated on the product labelling at the time of supply;
- (iii) the goods are not tampered with or broken down into individual components;
- (iv) the goods are only supplied to an appropriate party, for example goods intended for professional use are only supplied to professionals and not general consumers;
- (v) distribution records are maintained for traceability purposes in respect to each unit sold including quantity sold, relevant lot or serial numbers and customer contact details; and
- (vi) there is an appropriate system for stopping shipments and removing products from distribution if required.

12.4 Open Source Software

- a) The Alere-i instrument may contain or be delivered with certain open source software (“Open Source Software”). Your rights to use the Open Source Software are as set forth at www.alere-i.com



12.4 Privacy

- a) Alere is committed to protecting the privacy of your personal information.
- b) In some cases, it may be necessary to request personal information in order to supply goods to a customer. If this information is not provided it may not be possible to provide goods.
- c) Our detailed privacy policy (<http://www.alere.com/au/en/privacy.html>) includes further information on:
 - (i) what personal information Alere collects;
 - (ii) how personal information is stored and used;
 - (iii) how you can access and seek correction of your personal information; and
 - (iv) how you can complain about a breach of your privacy and how we will deal with a complaint.
- d) By placing an order for goods with Alere, the customer is taken to have consented to providing any applicable personal information.
- e)

12.5 Governing Law and Jurisdiction

- a) These terms of trade are governed by and are to be construed in accordance with the laws applicable in Queensland, Australia.
- b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

12.6 Definitions

Amendment Demand	means a demand that a registration of a Security Interest be amended in accordance with the PPS Act.
Commingled goods	has the same meaning as 'commingled' under the PPS Act.
PPS Act	means the Personal Property Securities Act 2009 (Cth).
PPS Register	has the same meaning as 'register' under the PPS Act.
Proceeds	has the same meaning as in section 31 of the PPS Act.
Purchase Money Security Interest	has the meaning given to it in section 14 of the PPS Act.
Security Interest	means a security interest within the meaning of section 12 of the PPS Act or a Purchase Money Security Interest as the context requires.