



End User Terms Of Sale for CLINITEST® Rapid COVID-19 Antigen Self-Test

By submitting an order to Siemens Healthcare Diagnostics Inc. ("Siemens Healthineers") or accepting or using the CLINITEST® Rapid COVID-19 Antigen Self-Test (the "Product"), you acknowledge and agree to be bound by these terms and conditions (the "Terms of Sale") in their entirety.

- 1. Agreement and Scope.** To the extent that you do not have an existing agreement currently entered into between you and Siemens Healthineers covering the sale and/or use of the Product in the United States, these Terms of Sale shall apply and shall govern the sale of all Products to you.
- 2. Pricing.** Prices are subject to change by Siemens Healthineers and may be revised without notice to you.
- 3. Shipping; Title; Acceptance.** To the extent Siemens Healthineers is shipping Product(s) to you, Product deliveries will be FOB destination. You must pay all applicable shipping and handling charges for the Products to be delivered to you. Siemens Healthineers will make commercially reasonable efforts to meet the delivery dates quoted or acknowledged but will not be liable for its failure to meet such dates. Upon delivery of the Products to your designated location, or upon your purchase of the Products in person at any location: (i) title to and responsibility for the Products shall pass to you, and (ii) the Products shall be deemed accepted by you.
- 4. Warranty.** Siemens Healthineers warrants that Products will be free from patent and latent defects in material and workmanship and will conform to the applicable manufacturer's specifications until the expiration date appearing on the applicable packaging. The foregoing warranty does not apply to conditions resulting from use or storage not in accordance with the manufacturer's instructions or other external causes or from operation outside the environmental parameters specified for the Products. Your exclusive remedy for breach of this warranty shall be the replacement of such Products. **THE ABOVE ARE THE SOLE WARRANTIES PROVIDED BY SIEMENS HEALTHINEERS UNDER THESE TERMS OF SALE. SIEMENS HEALTHINEERS MAKES NO OTHER WARRANTIES TO ANY PERSON, EXPRESS, STATUTORY OR IMPLIED, IN CONNECTION WITH THE PRODUCTS INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** No oral or written promises as to the Products which conflict with this warranty will bind Siemens Healthineers unless signed by an authorized representative of the party to be bound.
- 5. Limitation of Liability.** End user acknowledges the Instructions for Use and other materials contained within the Product's packaging. Siemens Healthineers' and its affiliates' entire liability and your exclusive remedy for any direct damages incurred by you from any cause whatsoever, and regardless of the form of action, whether liability in contract or in tort, arising under these Terms of Sale or related thereto, shall not exceed the actual amount paid to Siemens Healthineers for the specific Product that caused the damage or is the subject matter of, or is directly related to, the cause of action. **NONE OF SIEMENS HEALTHINEERS OR ANY OF ITS AFFILIATES WILL BE LIABLE TO ANYONE FOR ANY INDIRECT, INCIDENTAL, UNFORESEEN, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, ANTICIPATED PROFITS, LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF SALE.** The limitations of liability contained herein shall apply to Siemens Healthineers and its affiliates and their respective employees, agents, manufacturers. and subcontractors performing under these Terms of Sale, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise, and even if Siemens Healthineers, any of its affiliates or any of their respective employees, agents or subcontractors are advised of the likelihood of such damages.
- 6. Taxes.** You are responsible for and will pay all sales and use taxes assessed on the sale of the Products (collectively, "Taxes"). In the event that you are exempt from certain Taxes pursuant to a tax exemption certificate (the "Exempt Taxes") and provided that (i) you maintain a valid tax exemption certificate; (ii) you provide Siemens Healthineers with a copy of such certificate; and (iii) such tax exemption is allowable and transferable to Siemens Healthineers, then Siemens Healthineers will not pay the Exempt Taxes and will not seek reimbursement from you for the Exempt Taxes. In the event that any Taxes are outside the scope of the tax exemption certificate, you will remain responsible for such Taxes.
- 7. Disclosure of Discounts.** You acknowledge that discounts, rebates, credits, free goods or services, coupons or other things of value which you may receive from Siemens Healthineers or any of its affiliates under these Terms of Sale may constitute a discount or reduction in price for purposes of 42 U.S.C. paragraph 1320a-7b(b)(3)(A) ("Discounts"). To the extent applicable, you agree to file all appropriate reports and to properly disclose and reflect all Discounts in any report filed in connection with state or federal cost reimbursement programs.
- 8. End User Certification.** You agree that the Product(s) purchased under these Terms of Sale are for your own use and not for resale or distribution to any third party.
- 9. Miscellaneous.** (a) These Terms of Sale set forth the entire agreement between you and Siemens Healthineers relating to the subject matter herein, and there are no understandings, agreements or representations expressed or implied not stated herein. Any term or condition contained in a customer purchase order relating to Products supplied under this Terms of Sale shall be null and void. (b) You may not assign or transfer these Terms of Sale without Siemens Healthineers' prior written consent. Siemens Healthineers may assign any of its rights and/or obligations under these Terms of Sale to an affiliate. (c) These Terms of Sale shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to any conflicts of law provisions. (d) These Terms of Sale only apply to purchase and use of the Product(s) within the United States. You may not export or reexport any Products outside the United States (including U.S. territories). (e) Siemens Healthineers will not be liable for any failure to supply due to events outside its reasonable control. Delivery dates and other contractual obligations of Siemens Healthineers may change due to the effects of the COVID-19 pandemic or other epidemic, including delays and disruptions in the supply chain, manufacturing, or execution as well orders by authorities and prioritization of (new and existing) orders of customers which are essential for the public healthcare. The magnitude of such changes cannot be predicted and might be substantial because it depends on the development of the COVID-19 pandemic or other epidemic.