

ABBOTT RAPID DX NORTH AMERICA, LLC

BINAXNOW COVID-19 ANTIGEN SELF TEST KIT RETURN TO SCHOOL TERMS OF SALE

ABBOTT RAPID DX NORTH AMERICA, LLC ("ABBOTT") – 30 SOUTH KELLER ROAD, SUITE 100, ORLANDO, FL 32810

By submitting an order or accepting or using Products, you acknowledge that you agree to be bound by these terms and conditions (the "Terms of Sale") in their entirety.

- AGREEMENT AND ACCEPTANCE.** To the extent that you do not have an Existing Agreement with Abbott for Products being purchased, these Terms of Sale shall apply and shall govern the sale of all Products delivered to you by Abbott. "Existing Agreement" shall mean any existing agreement currently entered between you and Abbott. "Product" shall mean the Abbott test products and/or equipment referenced in any order form submitted by you to Abbott. All terms and conditions contained in any order form issued by you, unless specifically accepted in writing by Abbott, shall be null and void and entirely superseded by the terms and conditions of these Terms of Sale. Abbott shall have the right to accept or reject any purchase order in its sole discretion and without incurring any liability.
- PRICING.** Prices are subject to review and approval by Abbott and may be revised without notice.
- SUPPLY ALLOCATION.** Notwithstanding anything to the contrary herein, you acknowledge and agree that (i) Abbott shall not incur any liability for any failure to supply or any delayed supply of Products; (ii) Abbott reserves the right, in its sole discretion and without liability, to allocate supply of the Products, and to immediately discontinue supplying any Product, and (iii) any such action or inaction by Abbott described in clauses (i) to (iii) will not constitute a breach of these Terms of Sale by Abbott.
- DISCLOSURE.** Any discounts, rebates or other price reductions (collectively referred to herein as "discounts") issued by Abbott to you constitute a discount under applicable law (42 U.S.C. Section 1320a-7b(b)(3)(A)). Upon your written request, Abbott shall provide detail pertaining to such discounts and the allocation of total net purchase dollars for Products, equipment, services, and miscellaneous purchases, as applicable. You may have an obligation to report such discounts to any State or Federal program that provides reimbursement to you for the items to which the discount applies, and, if so, you must fully and accurately report such discounts. Further, you should retain invoices and other price documentation and make them available to Federal or State officials upon request.
- PAYMENT TERMS; SHIPPING; TAXES.** Payment terms are net thirty (30) days. Past due balances are subject to a service charge of one and one-half percent (1 ½%) per month or the highest rate allowed by law, whichever is lower. Abbott ships goods with shipping charges prepaid and added to each invoice. Products will be shipped FCA point of shipment Unless you are fully exempt from all taxes, you are required to pay all federal, state and local taxes that may be imposed on the use, possession, ownership, or rental or lease of any product. Abbott shall add any such tax to the invoice. If you are tax-exempt, you must provide Abbott with a copy of tax-exempt certification.
- PRODUCT PERFORMANCE.** If you experience difficulty with a Product, you should call Abbott Technical Support at 1-833-637-1594. If you experience a problem with an order or shipment, you should call Customer Service at 877-441-7440, option 1. If instructed to return the Product to Abbott, the package must be labeled as instructed by Abbott or the return will not be accepted. All returns shall be governed by Abbott's return policy, which Abbott shall provide to you upon request.
- WARRANTY.** Abbott warrants and represents that Products delivered to carrier for shipment to you, or delivered directly to you, will commence on acceptance of Product and continue for the shelf life of the Product: (1) materially conform to published specifications set forth in the applicable Abbott package insert(s) for such Product; (2) not be adulterated or misbranded within the meaning of the U.S. Food, Drug and Cosmetic Act; and (3) be of good quality and free from defects in materials and workmanship. Except as to warranties specifically set forth in this paragraph, the only other warranties made by Abbott with respect to Products are those specifically and expressly stated as warranties in the Abbott package insert specifications and manuals. **ABBOTT MAKES NO OTHER WARRANTIES; EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER MATTER.** Notwithstanding the foregoing, any warranties provided by Abbott will not apply to any Product if (a) it has been misused, altered, damaged or used other than in accordance with the applicable Abbott package insert and/or operating manual (including product dating); (b) it has been used in combination with other articles, substances or reagents (or any combination thereof) not provided or recommended for use by Abbott with such Product; (c) the serial or lot number of any Product has been altered, defaced, or removed; or if any repair is attempted by personnel who has not been authorized by Abbott to perform such repair; or (d) the Product was purchased from an unauthorized distributor (subsections (a) through (d), collectively, "Warranty Exclusions"). If any Product does not comply with the warranty set forth in this paragraph, as your sole and exclusive remedy, Abbott shall, at its discretion, repair or replace the applicable Product at no additional expense to you.
- DISCLAIMER OF LIABILITY.** You assume all risk for the suitability of the test results obtained by using any Product and/or equipment hereunder, and the consequences which flow therefrom. You assume all risk when any of the Warranty Exclusions apply to the Products and/or equipment. **TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, ABBOTT'S MAXIMUM AGGREGATE AND TOTAL LIABILITY FOR ALL CLAIMS UNDER THESE TERMS OF SALE IS LIMITED TO THE AMOUNT PAID TO ABBOTT BY YOU FOR THE PURCHASE ORDER WHICH INCLUDED THE UNIT OF PRODUCT AND/OR EQUIPMENT GIVING RISE TO THE CLAIM.. IN NO EVENT SHALL ABBOTT BE LIABLE FOR ANY PUNITIVE, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES OR LOSSES OF ANY NATURE WHATSOEVER (INCLUDING WITHOUT LIMITATION, LOST REVENUE, LOST PROFITS, OR LOST BUSINESS) ARISING OUT OF THESE TERMS OF SALE OR THE USE OF PRODUCTS, EQUIPMENT, SERVICES, OR MISCELLANEOUS PURCHASES OR ANY FAILURE BY Abbott TO SUPPLY PRODUCTS, EQUIPMENT, SERVICES, OR MISCELLANEOUS PURCHASES HEREUNDER.**
- USE OF PRODUCTS.** The Products purchased under these Terms of Sale are for your own use and not for resale or distribution to any third party. You agree not to (1) resell the products; (2) use the Products, as applicable, past their expiration date; (3) use the Products in any manner inconsistent with its intended use; or (4) use the Products for any research and development of, or comparison to, any in vitro diagnostic testing devices or technologies. Upon reasonable notice, Abbott or its designee may, at its expense, audit all of your relevant books and records to confirm your compliance with this section 9. . . . If your fail to comply with the restriction described in this paragraph or uses any product in any matter inconsistent with its intended use, Abbott may, at its discretion, seek any remedies available at law.
- MISCELLANEOUS.** These Terms of Sale constitute the entire understanding between you and Abbott with respect to the subject matter contained within the Terms of Sale. Written notice to Abbott shall be addressed to: Abbott Rapid Dx North America, LLC, 30 South Keller Road, Suite 100, Orlando, FL 32810, ATTN: Contracting and Pricing Department. You will not use Abbott's or its Affiliates' names, logos or other indicia in any publicity, advertising, announcement, brochure, customer list or website, in any media now known or hereinafter invented, without prior written consent from Abbott Public Affairs or its designee. You may not assign or transfer these Terms of Sale without Abbott's prior written consent. Abbott may assign any of its rights and/or obligations under these Terms of Sale Agreement to an affiliate or parent of Abbott. These Terms of Sale shall be governed by and construed in accordance with the laws of the State of Illinois, excluding choice of law provisions. Abbott shall not be liable for any failure to supply due to events outside the its reasonable control, including strikes (legal or illegal), lockouts, fires, floods, or water damage, riots, government acts or orders, interruption of transportation, or inability to obtain material upon reasonable prices or terms. These Terms of Sale do not create or otherwise imply that there is any relationship of employment, agency, franchise, joint venture, partnership or other similar legal relationship between you and Abbott.