

Linea™ COVID-19

SARS-CoV-2 Assay Kit

LINEA™ COVID-19 ASSAY KIT TERMS AND CONDITIONS

Please read these terms and conditions carefully before using the Product. These Terms and Conditions (this "Agreement") are a legal binding contract between you and Applied DNA Sciences, Inc. a Delaware corporation having offices at 50 Health Sciences Drive, Stony Brook, New York USA 11790 ("Applied DNA") that governs all aspects of your use of the Linea™ COVID-19 Assay Kit (the "Product"). By using the Product, you are entering into a binding contract with Applied DNA. If you do not accept the terms and conditions of this agreement, do not use the Product.

1. USE OF THE PRODUCT

- (a) Your use of the Product shall comply with the terms and conditions of this Agreement and all other instructions enclosed or included with the Product, including without limitation, the Instructions for Use. This Agreement will terminate immediately, without written notice, if you fail to comply with, or breach the terms and/or conditions of, this Agreement.

2. CONFIDENTIALITY

- (a) Confidentiality Obligations. Each party (the "Receiving Party") acknowledges that in connection with this Agreement it will gain access to Confidential Information of the other Party (the "Disclosing Party"). As a condition to being provided with Confidential Information, the Receiving Party shall, for a period of five (5) years after receipt of Confidential Information:
 - (i) not use the Disclosing Party's Confidential Information other than as strictly necessary to exercise its rights and perform its obligations under this Agreement; and
 - (ii) maintain the Disclosing Party's Confidential Information in strict confidence and, subject to the exceptions below, not disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, provided, however, the Receiving Party may disclose the Confidential Information to its Representatives who: (A) have a need to know the Confidential Information for purposes of the Receiving Party's performance, or exercise of its rights concerning the Confidential Information, under this Agreement; (B) have been apprised of this restriction; and (C) are themselves bound by written nondisclosure agreements at least as restrictive as those set forth in this section, provided further that the Receiving Party shall be responsible for ensuring its Representatives' compliance with, and shall be liable for any breach by its Representatives of, this Section.

The Receiving Party shall use reasonable care, at least as protective as the efforts it uses for its own confidential information, to safeguard the Disclosing Party's Confidential Information from use or disclosure other than as permitted hereby.

- (b) Exceptions. If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall:
- (i) if legally permitted to do so, provide prompt written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy or waive its rights under this Section; and
 - (ii) disclose only the portion of Confidential Information that it is legally required to furnish.

If a protective order or other remedy is not obtained, or the Disclosing Party waives compliance under this Section, the Receiving Party shall, at the Disclosing Party's expense, use reasonable efforts to obtain assurance that confidential treatment will be afforded the Confidential Information.

- (c) Compulsory Disclosure. If a party is disclosing any Confidential Information because it is required to do so to comply with a statute, ordinance or regulation or compulsory legal process, including, without limitation, its reporting requirements under the Securities Exchange Act of 1934, as amended, and/or the Securities Act of 1933, as amended, such party intending to make such disclosure shall give the other Party at least five (5) business days prior notice in writing of the text of the intended disclosure, unless such statute, ordinance, regulation or compulsory legal process would require earlier disclosure, in which event the notice shall be provided as early as practicable.

3. INTELLECTUAL PROPERTY

- (a) Applied DNA and its third-party suppliers are the sole and exclusive owner of all intellectual property, including patents, trademarks, copyrights, trade secrets, technology, and know-how relating to the Product. You will treat all Applied DNA and third-party intellectual property relating to the Product like any other material protected by U.S. and International laws and treaties relating to such property rights and in accordance with this Agreement. Applied DNA and its third-party partners retain all right, title, and interest of such intellectual property in and to itself. You do not own or hold any rights in such intellectual property. You shall not attempt to sell, lease or otherwise transfer any rights in the subject intellectual property, and any attempted transfer will be deemed null and void.
- (b) You are granted a limited, non-exclusive, non-sublicensable, and non-transferable right to use the Product during the term of this Agreement, so long as you comply with the terms and conditions of this Agreement. You acknowledge that the Product are covered in whole or in part by materials, methods and compositions that are proprietary, patented and/or copyrighted by Applied DNA and/or its third-party suppliers.
- (c) **Note to Purchaser: Limited License:** The MGB probe contained in this Product is covered by applicable United States patents and corresponding patents outside the United States and is sold under a license from the ELITech Group. The purchase of this Product includes a license to use only this amount of product solely for your own use solely in the human in

in vitro diagnostic field in accordance with applicable regulatory requirements, and may not be used for any other commercial use, including, without limitation repackaging or resale in any form (including resale by purchasers who are licensed to make and sell kits for use in the 5' Nuclease Process). No right under any other patent claim or for any other use is conveyed expressly, by implication, or by estoppel. Corresponding products conveying rights for use in other fields may be obtained from Life Technologies under a separate catalog number. For information on obtaining additional rights, please contact outlicensing@thermofisher.com or Out Licensing, Life Technologies Corporation, 5781 Van Allen Way, Carlsbad, California 92008.

4. INDEMNIFICATION

To the fullest extent permitted by law you agree to indemnify, defend and hold harmless Applied DNA and its respective affiliates, employees, officers, directors, agents, servants, suppliers and representatives from any liability, loss, claim, suit, damage, and expenses (including reasonable attorneys' fees and expenses) arising out of: (i) your violation of this Agreement; (ii) any negligent, reckless or intentional acts or omissions by you, your officers, agents or employees; or (iii) your use of the Product in violation of this Agreement.

5. RESTRICTIONS ON USE OF PRODUCT

- (a) **The Product has not been FDA cleared or approved; it has been authorized by FDA under an Emergency Use Authorization (EUA) for use by authorized laboratories. The Product has been authorized only for the detection of nucleic acid from SARS-CoV-2, not for any other viruses or pathogens. The Product is only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of in vitro diagnostic tests for detection and/or diagnosis of COVID-19 under Section 564(b)(1) of the Act, 21 U.S.C. §360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.**
- (b) You shall be solely responsible for ensuring that the Product is used in compliance with all applications laws and regulations, and to obtain any necessary approvals and intellectual property rights required for your particular use.

6. DISCLAIMER OF WARRANTY

THE PRODUCT ARE PROVIDED "AS IS." APPLIED DNA DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. YOUR USE OF THE PRODUCT IS AT YOUR OWN RISK. ACCESS TO THE PRODUCT MAY BE INTERRUPTED AND THE INFORMATION AND/OR MATERIALS ASSOCIATED WITH THE PRODUCT MAY NOT BE ERROR-FREE. APPLIED DNA DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY FOR THE COMPLETENESS OR USEFULNESS OF THE PRODUCT.

7. LIMITATION OF LIABILITY

- (a) APPLIED DNA AND ITS AFFILIATES WILL NOT BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR OTHER SIMILAR DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, REPUTATION, USE, OR DATA), COSTS OR LOSSES ARISING OUT OF THIS AGREEMENT AND/OR YOUR USE OF THE PRODUCT, EVEN IF APPLIED DNA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES. IN NO EVENT SHALL APPLIED DNA'S AND/OR ITS AFFILIATES' AGGREGATE LIABILITY UNDER OR AS A RESULT OF THIS AGREEMENT AND/OR YOUR USE OF THE PRODUCT, WHETHER UNDER CONTRACT, NEGLIGENCE, TORT, INDEMNITY, WARRANTY, STRICT LIABILITY OR ANY OTHER BASIS, EXCEED THE AMOUNT YOU HAVE PAID FOR THE PRODUCT IN THE ONE MONTH PRIOR TO A CLAIM OR \$500 IF YOU HAVE NOT MADE ANY PAYMENTS TO APPLIED DNA, AS APPLICABLE.
- (b) Each provision set forth above that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is to allocate the risks under this Agreement between the parties. This allocation is an essential element of the basis of the bargain between the parties. You acknowledge and agree that Applied DNA has offered the Product, set its prices, and entered into this Agreement in reliance upon the warranty disclaimers and the limitations of liability set forth herein, that the warranty disclaimers and the limitations of liability set forth herein reflect a reasonable and fair allocation of risk between you and Applied DNA, and that the warranty disclaimers and the limitations of liability set forth herein form an essential basis of the bargain between you and Applied DNA. Each of the foregoing provisions is severable and independent of all other provisions of this Agreement. The limitations in this Section will apply even if any limited remedy fails of its essential purpose.
- (d) Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the limitations of this and the foregoing section may not apply to you.

8. GENERAL TERMS

- (a) Choice of Law; Jurisdiction; Venue; Arbitration. This Agreement will be governed by New York law, without regard to its principles of conflicts of law. You agree that any legal proceeding or disputes arising from or relating to this Agreement and/or the Product will be finally settled by binding, confidential arbitration by a single arbitrator selected using the rules and procedures for arbitrator selection under the Commercial Rules of the American Arbitration Association ("AAA") in effect on the date of the commencement of the arbitration. The arbitration proceeding shall be conducted in English and all documentation shall be presented and filed in English. The decision of the arbitrator shall be final and binding on the parties, and judgment may be entered on the arbitration award and enforced by any court of competent jurisdiction. The venue of said arbitration shall be New York, New York. The United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement.

- (b) Severability. This Agreement is divisible, and any provision herein held to be violative of any applicable law, treaties, statutes or regulations will affect only that portion held to be invalid or inoperative, and the remaining portions of this Agreement will remain in full force and effect. In lieu of any such invalid or inoperative provisions, there will be added automatically as a part of this Agreement an enforceable provision as similar in terms to the severed provision as may be possible.
- (c) Entire Agreement. This Agreement constitutes the complete agreement and sets forth the entire understanding and agreement between you and Applied DNA as to the subject matter of this Agreement.
- (d) Assignment. Neither party may assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations under this Agreement without the prior written consent of the other party. The foregoing prohibition shall not apply in connection with a merger, consolidation, sale of all the equity interest of a party, or the sale of all or substantially all of the assets of a party. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- (e) Section Titles. The section titles in this Agreement are for convenience only and have no legal or contractual effect.
- (f) Independent Contractors. The parties hereto are independent contractors and nothing in this Agreement will constitute the parties to be partners, nor constitute one party the agent of the other party, nor constitute the relationship to be a joint venture. Neither party shall have, or shall represent that it has, the authority or power to act for or to undertake or create any obligation or responsibility, express or implied, on behalf of, or in the name of the other party.
- (g) Amendment; Modification; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the waiving party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (h) Force Majeure: Applied DNA will be liable for any failure to perform under this Agreement to the extent such failure is caused by any reason beyond Applied DNA's control including the following occurrences: labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, floods, earthquakes, acts of God, energy or other conservation measures, explosion, failure to utilities, mechanical breakdowns, material shortages, disease, pandemics or other such occurrences.