

Linea™ COVID-19

SARS-CoV-2 Assay Kit

SUPPLEMENTAL LINEA™ COVID-19 ASSAY KIT TERMS OF USE

These Supplemental Terms of Use (“Supplemental Terms”) govern all aspects of your use of the Linea™ COVID-19 Assay Kit (the “Product”) and are in addition to the Applied DNA Sciences, Inc. (“Applied DNA”) Standard Terms and Conditions of Sale (“Standard Terms”), which can be viewed at <https://adnas.com/terms-conditions-of-sale/>. These Supplemental Terms shall take priority in the event of a conflict with any term or condition contained in the Standard Terms. By using the Product, you are agreeing to these Supplemental Terms. If you do not accept these Supplemental Terms, do not use the Product.

1. USE OF THE PRODUCT

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

2. 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 these Supplemental Terms. 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 these Supplemental Terms, so long as you comply with the terms and conditions of these Supplemental Terms. You acknowledge that the Product is 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 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.

3. 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 these Supplemental Terms; (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 these Supplemental Terms.

4. 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. For the purposes of these Supplemental Terms, an "authorized laboratory" shall mean laboratories certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. §263a, to perform high complexity tests.**
- (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.

5. 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.

6. 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 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 THESE SUPPLEMENTAL TERMS 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 these Supplemental Terms 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 these Supplemental Terms 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 these Supplemental Terms. 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.

7. GENERAL TERMS

- (a) Force Majeure: Applied DNA will be liable for any failure to perform under these Supplemental Terms 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.