

BEACON DIAGNOSTICS® LABORATORIES
GENERAL TERMS AND CONDITIONS

Beacon Diagnostics® Laboratories (hereafter "BDL"), a division of Associates of Cape Cod, Inc., offers for sale its services (hereafter "Services") subject to the following standard Terms and Conditions. Together with the price, quantity, quality, shipping, delivery or other such Terms in any accompanying BDL quotation, invoice, Sample Submission Form or website notification, these Terms and Conditions constitute the complete agreement ("Contract") for sale of Services by BDL and shall exclusively govern their acquisition by Purchaser. Modifications to these Terms and Conditions will not be effective unless incorporated into a written agreement executed by duly authorized representative of BDL and Purchaser. BDL's failure to object to provisions contained in any purchase order or other form or document from Purchaser shall not be construed as either a waiver of these Conditions or an acceptance of any such provision. By ordering Services from BDL, Purchaser represents that it has read, understood, and complies with these Terms and Conditions and the product Insert (as defined herein) specified in Article 1 herein.

1. Scope of Services. The Services offered for sale by BDL include the analysis of biological specimens, including patient specimens and other materials for the presence of (1→3)-β-D-glucan, using the Fungitell® diagnostic test kit.
2. Warranties and Disclaimer. BDL EXPRESSLY DISCLAIMS ANY STATED OR IMPLIED WARRANTIES OF MERCHANTABILITY, USEFULNESS OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY DATA SUPPLIED UNDER THIS AGREEMENT. USE OF THE DATA IN DIAGNOSIS AND THERAPEUTIC REGIMEN DEVELOPMENT IS ENTIRELY AND SOLELY THE RESPONSIBILITY OF THE PURCHASER AND BDL MAKES NO CLAIMS OR WARRANTIES THEREOF.
3. Limitation of Liability. IN NO EVENT SHALL BDL, ITS PARENT, AFFILIATES, SUBSIDIARIES, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES TO PURCHASER. BDL AND ITS SUPPLIER'S TOTAL LIABILITY UNDER THIS AGREEMENT WITH RESPECT TO ANY TRANSACTION SHALL IN NO EVENT EXCEED THE INVOICED AMOUNT PAID BY PURCHASER FOR SUCH TRANSACTION. IN NO EVENT SHALL BDL BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS), EVEN IF BDL HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.
4. Indemnification. Purchaser shall indemnify, defend, and hold harmless BDL, its suppliers, subsidiaries, employees, agents, successors, representatives, officers, and assigns from all direct or indirect losses, claims, damages, costs, and expenses (including attorney fees) which Purchaser may incur related to, or by virtue of, the use of the Services or the reported results of the Services supplied by BDL.
5. Payments and Other Charges. BDL reserves the right to provide credit terms at its discretion. All payments are made in US dollars. If Purchaser defaults in making any payment to BDL when due, BDL, at its option and without prejudice to other lawful remedies, may defer delivery of results or cancel the Contract. Any sales tax, excise tax, duty, inspection or testing fee, or any other tax, fee or charge imposed by any governmental authority, on or measured by the transaction between Purchaser and BDL shall be paid by Purchaser in addition to the prices quoted or invoiced. Purchaser shall provide BDL at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge. If BDL is required to pre-pay any such tax, fee or charge, such amount shall be added to the invoice. Unpaid invoices over 60 days past due are assessed an additional finance charge of the Citi Bank prime rate (as of the invoice due date) plus 2% per annum. Accounts with invoices 90 or more days past due will result in a credit hold and pre-pay status. BDL reserves the right to institute, modify or discontinue credit limits provided to customers at any time for any or no reason. Under certain circumstances the use of credit cards for payment may incur a fee. BDL reserves the right to add an energy surcharge to any invoice, without notice.
6. Delivery, Acceptance and Data Reporting. Purchaser shall comply with any applicable laws and regulations, including all required licenses and approvals, governing the purchase and use of the Services supplied by BDL, and the legal shipment of Samples to BDL. Acceptance by BDL shall be deemed to have occurred upon the completion of a satisfactory inspection of the Sample shipment. For acceptance, Samples must be shipped as indicated on the Sample Submission Form, which may be found on our website at www.beacondiagnostics.com. Samples must be shipped in accordance with all state and federal regulations for the shipment of diagnostic specimens, be in an unbroken container and labeled correctly so as to identify its contents. If a Sample shipment fails to conform to the above specifications, BDL may dispose of the container as medical waste, and immediately notify the Purchaser, if identifiable, and invoice for the appropriate disposal charge. Samples submitted to BDL are held in a secure setting for up to two weeks, after which Samples are de-identified or disposed of as medical waste. NO RETURN OF SAMPLES TO THE PURCHASER WILL BE MADE UNDER ANY CIRCUMSTANCES. Sample data are retained by BDL according to its internal document retention policy.
7. Risk of Loss and Title. Risk of loss shall be with the Purchaser until receipt and acceptance of samples at BDL. Title to the Samples shall pass to BDL upon acceptance of receipt for Samples. Title to the data generated by BDL using Samples submitted by Purchaser will reside with the Purchaser.
8. Laws and Jurisdiction. This Agreement will be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to provisions of the conflicts of laws. Exclusive jurisdiction and venue to enforce this Agreement or any provision thereof shall reside in the state or federal courts located in the Commonwealth of Massachusetts.
9. General Provisions. In computing the number of days for purposes of this Agreement, the time shall be so computed as to exclude the first day when notice is given and include the last day of any period. All days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday, or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, or holiday. Neither party shall be held liable or deemed to be in default under this Agreement if prevented from performance of its obligations by reasons of force majeure or other contingencies beyond its control, including but not limited to strikes, fires, earthquakes, wars, restraints affecting shipping or other transportation, natural calamities or acts of any government or supranational legal authority. If any part of these Terms and Condition is found to void or unenforceable in whole or in part by a court of competent jurisdiction, the remainder of these Terms and Conditions shall continue to be valid as to the other provisions thereof and the remainder of the affected provision. In case of a conflict between these Terms and Conditions and any purchase order, these Terms and Conditions shall control. These Terms and Conditions are subject to change without notice.