

## **Terms of Use / T&Cs** (last updated February 11, 2014)

We are delighted that you are visiting Advanced Tear Diagnostics' web site ("Site"). For legal reasons we need to specify a Terms of Use ("Agreement") which will govern the use by you of this Site. By using this Site, you agree to be bound by the terms and conditions contained in this Agreement. If you do not agree to the terms and conditions contained in this Agreement, you may not access or otherwise use this Site.

These Terms may change from time to time. When we do we will notify you by changing the last updated date at the top of this page. We encourage you to check this page periodically for any changes. Your continued use of the Site following the posting of changes to these terms will mean you accept those changes.

In addition, when using particular services or features or making purchases on the Site, you will be subject to any posted guidelines or policies applicable to such services, features or purchases that may be posted from time to time. All such guidelines or policies are hereby incorporated by reference into this Agreement.

### **I. Not Healthcare Advice**

This Site is not intended to provide medical advice, diagnosis or treatment options. The products, information, and other content provided on and through this Site are provided for informational purposes only. You should not use the information on this Site for diagnosis, determining a treatment plan, or evaluating any other medical advice regarding any disease or health issue. Nothing on the Site is intended to be a claim or indication for clinical use of the products described. The recommended uses and indications for the products mentioned on this Site are limited solely and exclusively to those expressly stated in the indications for use for such devices as approved by the Federal Regulatory Authorities.

### **II. Privacy**

Use of this Site is subject to the terms of our Privacy Policy, which is hereby incorporated into and made part of this Agreement. By using this Site, you agree to be bound by the terms of both this Agreement and our Privacy Policy. We reserve the right, and you authorize us, to use information regarding your use of this Site, account registration, and any other personal information provided by you in accordance with our Privacy Policy.

### **III. Copyright**

The entire content included in this Site, including but not limited to text, graphics or code is copyrighted as a collective work under the United States and other copyright laws, and is the property of Advanced Tear Diagnostics. Permission is granted to electronically copy and print hard copy portions of this site for the sole purpose of placing an order with Advanced Tear Diagnostics or for personal non-commercial use. Any other use, including but not limited to the reproduction, distribution, display or transmission of the content of this site is strictly prohibited, unless authorized by Advanced Tear Diagnostics. You further agree not to change or delete any proprietary notices from materials downloaded from the site.

### **IV. Sales**

Sales are not final until approved by an authorized employee of Advanced Tear Diagnostics, LLC. Sales made by an independent representative will require approval.

### **V. Shipment**

Shipments are normally made via FedEx ground, but you can request overnight or two day delivery. Customers ordering products from Advanced Tear Diagnostics must have the proper CLIA certification. Lack of proper certification can affect the timing of shipments. Shipments of test kits are normally made within 48 hours of payment being received by Advanced Tear Diagnostics for orders placed

online or via other means. Contact ATD or your rep for shipment timing of equipment orders. All orders require payment in full prior to shipment.

#### **VI. Returns and Cancellations**

Orders for equipment, test kits or supplies from Advanced Tear Diagnostics can be cancelled prior to shipment, however any down-payments that have been made toward the purchase of equipment will not be refunded. Once product has shipped it cannot be returned except for warranty related issues.

#### **VII. Warranty**

Advanced Tear Diagnostics warrants its Micro Assay System ("Product") to be free of defects in material and workmanship for one year (12 months) from date of shipment. The warranty excludes damage sustained in shipment (we will assist with claims against the shipper), consumable items such as Test Kits as well as normal wear and tear. The warranty is nontransferable and is void if the Product has been repaired or modified by anyone other than Advanced Tear Diagnostics or its authorized representative. If the Product fails under warranty, please contact Advanced Tear Diagnostics to obtain a Return Material Authorization ("RMA") number for the defective Product. Products returned without a valid RMA number will not be processed. Advanced Tear Diagnostics will repair or replace the Product, at its sole discretion, as soon as reasonably practical. Advanced Tear Diagnostics also will make a best efforts basis to provide a loaner unit should the repair or replacement time be problematic.

THE REPAIR OR REPLACEMENT OF THE NONCONFORMING PRODUCT BY ADVANCED TEAR DIAGNOSTICS AS PROVIDED ABOVE WILL BE YOUR SOLE AND EXCLUSIVE REMEDY UNDER WARRANTY.

#### **VIII. Disclaimer; Limitation of Liability**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT: YOUR USE OF THE SITE IS AT YOUR SOLE RISK. THE SITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, ADVANCED TEAR DIAGNOSTICS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND OTHER REPRESENTATIVES (COLLECTIVELY, "THE ADVANCED TEAR DIAGNOSTICS PARTIES") EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND RELATED TO THIS SITE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE ADVANCED TEAR DIAGNOSTICS PARTIES MAKE NO WARRANTY THAT (I) THE SITE WILL MEET YOUR REQUIREMENTS, OR (II) THE SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SITE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE ADVANCED TEAR DIAGNOSTICS PARTIES OR ON OR THROUGH THE SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE ADVANCED TEAR DIAGNOSTICS PARTIES EXPRESSLY DISCLAIM ALL LIABILITY FOR PRODUCT DEFECT OR FAILURE, CLAIMS THAT ARE DUE TO NORMAL WEAR, PRODUCT MISUSE, ABUSE, PRODUCT MODIFICATION, IMPROPER PRODUCT SELECTION AND NON-COMPLIANCE WITH ANY PRINTED DIRECTIONS. THE ADVANCED TEAR DIAGNOSTICS PARTIES SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING OUT OF, IN CONNECTION WITH OR RELATING TO THE USE OF OR INABILITY TO USE THE SITE. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL DAMAGES OF ANY KIND, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR

CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOOD WILL, LOSS OF USE, LOSS OF DATA, COST OF PROCURING SUBSTITUTE GOODS, SERVICES OR INFORMATION, LITIGATION OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF AN INDIVIDUAL ADVISES OF THE POSSIBILITY OF SUCH DAMAGES. THE SOLE AND ENTIRE MAXIMUM LIABILITY OF THE ADVANCED TEAR DIAGNOSTICS PARTIES FOR ANY REASON, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE OR CLAIM WHATSOEVER, SHALL BE LIMITED TO THE AMOUNT PAID BY YOU FOR ANY PRODUCT, INFORMATION OR SERVICE PURCHASED BY YOU FROM ADVANCED TEAR DIAGNOSTICS ON THIS SITE. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. ACCORDINGLY, SOME OF THE ABOVE DISCLAIMERS AND LIMITATIONS MAY NOT APPLY TO YOU. IN SUCH JURISDICTIONS, THE EXCLUSIONS AND LIABILITY ARE LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

#### **IX. Indemnification**

You agree to indemnify, defend and hold harmless Advanced Tear Diagnostics Parties against all claims, demands, causes of action, losses, expenses, damages and costs, including any reasonable attorneys' fees, resulting or arising from or relating to your use of or conduct on the Site, any activity related to your account by you or any other person, any material that you submit to, post on or transmit through the Site, your breach of this Agreement, your infringement or violation of any rights of another, or termination of your access to the Site.

#### **X. Site Usage; Termination of Usage**

You are required to establish an account on this Site in order to take advantage of certain features of this Site, such as making a purchase. If you provide information on this Site, you agree to (a) provide true, accurate, current and complete information about yourself as prompted by the Site, and (b) maintain and promptly update such information to keep it true, accurate, current and complete to the extent the Site facilitates such updates. If you provide any information that is false, inaccurate, outdated or incomplete, or Advanced Tear Diagnostics has reasonable grounds to suspect that such information is false, inaccurate, outdated or incomplete, Advanced Tear Diagnostics has the right to suspend or terminate your account and prohibit any and all current or future use of the Site (or any portion thereof) by you.

You will create a username and password while completing the account registration process. You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities that occur under your password or account. You agree to immediately notify Advanced Tear Diagnostics of any unauthorized use of your password or account or any other breach of security. You agree to be responsible for all charges resulting from the use of your account on the Site, including charges resulting from unauthorized use of your account prior to your taking steps to prevent such occurrence by changing your password and notifying Advanced Tear Diagnostics. You agree not to use this Site in any manner that interferes with its normal operation or with any other user's use and enjoyment of the Site.

Advanced Tear Diagnostics makes no representation that Materials contained on the Site or products described or offered on the Site are appropriate or available for use in jurisdictions outside the United States, or that this Agreement complies with the laws of any other country. Visitors who use the Site and reside outside the United States do so on their own initiative and are responsible for compliance with all laws, if and to the extent local laws are applicable. You agree that you will not access this Site from any territory where its contents are illegal, and that you, and not Advanced Tear Diagnostics, are responsible for compliance with applicable local laws.

You agree that Advanced Tear Diagnostics may terminate or suspend your access to all or part of this Site, without notice, for any conduct that Advanced Tear Diagnostics, in its sole discretion, believes is in violation of this Agreement or any applicable law or is harmful to the interests of another user or Advanced Tear Diagnostics.

Sections III, V, VI, VII, VIII, X and XI shall survive any termination of this Agreement.

**XI. Applicable Law; Jurisdiction; Dispute Resolution**

This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama in the United States, without regard to its choice of law provisions. You agree to submit to personal jurisdiction in the State of Alabama and further agree that any cause of action arising from or relating to the use of this Site or this Agreement shall be brought exclusively in the Federal or State Courts residing in Jefferson County, Alabama.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU AND ADVANCED TEAR DIAGNOSTICS HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING OR LITIGATION BROUGHT AGAINST THE OTHER WITH RESPECT TO THIS AGREEMENT OR THE SITE. IN ADDITION, NEITHER YOU NOR ADVANCED TEAR DIAGNOSTICS SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER SITE USERS, OR LITIGATE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

**XII. Severability; Interpretation**

If any provision of this Agreement shall be deemed unlawful, void, or for any reason unenforceable by a court of competent jurisdiction, the validity and enforceability of any remaining provisions shall not be affected. When used in this Agreement, the term "including" shall be deemed to be followed by the words "without limitation."

**XIII. Entire Agreement**

This Agreement constitutes the entire and only Agreement between Advanced Tear Diagnostics and each user of this Site with respect to the subject matter of this Agreement and supersedes any and all prior or contemporaneous Agreements, representations, warranties and understandings, written or oral, with respect to the subject matter of this Agreement.

**XIV. Miscellaneous**

The failure of Advanced Tear Diagnostics Parties to insist upon strict adherence to any term of this Agreement shall not constitute a waiver of such term and shall not be considered a waiver or limit that party's right thereafter to insist upon strict adherence to that term or any other term of this Agreement. You agree that regardless of any statute or law to the contrary, any claim of cause of action arising from or relating to use of this Site or this Agreement must be filed within one (1) year after such claim or cause of action arose, or will be forever barred.