1. Definitions, Interpretation. "Consumer(s)" means Seller branded reagents and consumable items that are intended to be consumed through the use of Software. "Documentation" means Seller’s user manual, package insert, and similar documentation, for the Product in effect on the date that the Product ships from Seller. Documentation may be provided with the Product at time of shipment or provided electronically from Seller. "Hardware" means Seller branded instruments, accessories, or peripherals. "Product(s)" means the item(s) acquired hereunder. Products may be Hardware, Consumables, or Software. Software may be embedded in or installed on Hardware or provided separately. "Purchaser" means the person or entity acquiring the Product with the intent to use the Product, from (i) Seller or (ii) Seller’s authorized distributor or reseller. "Seller" means the Illumina entity selling the Product. The Seller is identified in the quotation, order acknowledgment or similar communication, or Seller website if the order is being placed electronically at Seller’s website. "Software" means Seller branded software (e.g., Hardware operating software, data analysis software). All Software is licensed and not sold and may be subject to additional terms found in the Software's end user license agreement. "Specifications" means Seller’s written technical specifications for the Product in effect on the day that the Product ships from Seller.

Sections, titles and headings in this text and conditions are for convenience only and are not intended to affect the meaning or interpretation hereof. Whenever required by the context, the singular term shall include the plural, the plural includes the singular, and the neuter includes all genders. As used in these terms and conditions except as the context may otherwise require, the words "include", "includes", "including", "such as", "e.g." or "example(s)" are deemed to be followed by "without limitation", whether or not they are in fact followed by such words, and "will" or "shall" are used synonymously. Except as expressly stated, any reference to "days" shall be to calendar days, and "business day" shall mean all days other than Saturdays, Sundays or a bank holiday recognized in the Federal Republic of Germany.

2. Rights to Products upon Purchase. Subject to these terms and conditions, the Purchaser is granted a non-exclusive, non-transferable, perpetual, non-sub licensable right under Seller’s Core IP to use the Product only in Purchaser’s facility only for Purchaser’s Research Use (“Permitted Rights”). "Research Use" means use for internal research (which includes research services provided by Purchaser to third parties), specifically excluding any use that (a) is not in accordance with the Product’s Specifications or Documentation, (b) requires grants of rights or a license to Application Specific IP, (c) is a re-use of a previously used Consumable, (d) to the extent not otherwise permitted by law is the disassembly, reverse-engineering, reverse-compiling, or reverse-assembling of the Product, (e) to the extent not otherwise permitted by law is the separation, extraction or isolation of components of the Product or other unauthorized analysis of the Product, (f) to the extent not otherwise permitted by law gains access to or determines the methods of operation of the Product, (g) is the use of non-Seller reagent/consumables with Seller’s Hardware (does not apply if the Specifications or Documentation state otherwise), (h) is the transfer to a third-party of, or sub-licensing of, Software, non-Seller third-party software provided by Seller, or (i) is a clinical, diagnostic, or other non-research-use of the Product (each of (a) – (i), is referred to as an "Excluded Use"). All Software, whether provided separately, installed on, or embedded in a Product, is licensed to Purchaser, not sold. Purchaser agrees that the first sentence of this Section is designed to and does alter the effect of the exhaustion of patent rights that would otherwise result if the sale was made without restriction. Except as expressly stated in this Section no right or license under any intellectual property rights owned or licensed by the Seller or the Seller’s affiliates is or are granted to Purchaser.

"Application Specific IP" means the intellectual property rights owned by or licensed by Seller and Seller’s affiliates, as of the date the Product ships, that pertain to or cover aspects or features of the Product (and use thereof) only with regard to specific field(s) or specific application(s). Application Specific IP excludes all Core IP. "Core IP" means the intellectual property rights owned or licensed by Seller and Seller’s affiliates, as of the date the Product ships, that pertain to or cover aspects or features of the Product (or use thereof) that are common to the Product in all applications and all fields of use. Application Specific IP is separate, non-embodied, non-proprietary property owned or licensed by Seller and Seller’s affiliates. By way of non-limiting example, Seller and Seller’s affiliates’ intellectual property rights for non-invasive prenatal testing, for specific diagnostic methods, for specific forensic identification, for specific nucleic acid biomarkers, sequences, or combinations of biomarkers or sequences are examples of Application Specific IP.

Purchaser agrees that (i) Purchaser’s use of Product in any manner or for any purpose other than Research Use is a breach of these terms and conditions, (ii) actual knowledge by Seller, or Seller’s affiliates, that Purchaser is using Product in any manner or for any purpose other than Research Use does not (A) waive or otherwise limit any rights that Seller or Seller’s affiliates have under this Section or such use of the Product, including without limitation, any rights or remedies available under these terms and conditions and/or at law, (B) grant Purchaser a license to any intellectual property rights owned or licensed by Seller or Seller’s affiliates with respect to such use of the Product, and (iii) any trade usage, course of performance or course of dealing between Seller and Purchaser, will not be used to interpret these terms and conditions, including without limitation, the scope of the Research Use rights for Product conferred under this Section.

Purchaser is solely responsible for determining whether Purchaser has all necessary intellectual property rights that are necessary for Purchaser’s intended uses of the Product, including without limitation, any rights from third parties or rights from Seller, or Seller’s affiliates, to Application Specific IP (collectively “Other IP”). Seller makes no guarantee or warranty that Purchaser’s specified intended uses will not infringe the intellectual property rights of a third party or Application Specific IP of Seller or Seller’s affiliates.

3. Product Restrictions. The conditions and restrictions found in these terms and conditions are bargained for conditions of sale and therefore control the sale of and use of the Products by the Purchaser.

a. Unauthorized Uses of Products. Purchaser agrees: (i) to use each Product only as permitted by the Product’s Specifications or Documentation, (ii) that the limitations in (i)-(ii) do not apply if the Documentation or Specifications for the Product expressly state otherwise. Purchaser agrees not to, nor authorize any third party to, use the Products as described in any Excluded Uses. Purchaser further agrees that the contents of and methods of operation of the Product are proprietary to Seller and the Product contains or embodies trade secrets of Seller.

b. Unauthorized Transfer of Products. Purchaser agrees to not sell, rent, lease, loan, transfer or assign or otherwise dispose of any Hardware or component thereof containing Software to any third party (“Unauthorized Transfer”) unless Purchaser erases or removes the Software prior to such action. For the avoidance of doubt, Purchaser understands that in the event of an Unauthorized Transfer, any rights to use the Software granted to Purchaser by Seller and the Permitted Rights immediately cease, and the third party transferee will have no rights to use the Software and no Permitted Rights. Additionally, in the event of an Unauthorized Transfer, any existing warranties for the Hardware or Software shall be void and of no effect, as of the date of such Unauthorized Transfer.

4. Regulatory. The Product is labeled For Research Use Only. Purchaser acknowledges that (i) the Product has not been subject to any conformity assessment or declaration of conformity or certified, approved, cleared, or registered by any conformity assessment body or other regulatory entity or under any law or regulation whether foreign or domestic for any specific intended use, whether research, commercial, diagnostic, or otherwise, and (ii) Purchaser must ensure it has undertaken any assessments and made any declarations and has any necessary regulatory certifications, approvals, clearances and registrations that are necessary for Purchaser’s intended uses of the Product. Purchaser further agrees to comply with all applicable laws and regulations when using, maintaining, and disposing of Product.

5. Liability and Warranties. TO THE EXTENT PERMITTED BY LAW, ALL OF SELLER’S LIABILITIES ARE HEREBY EXCLUDED. TO THE EXTENT PERMITTED BY LAW AND SUBJECT TO THE EXPRESS PRODUCT WARRANTY MADE IN THESE TERMS AND CONDITIONS SELLER MAKES NO (AND EXPRESSLY DISCLAIMS ALL) WARRANTIES.

6. Product Warranty. All warranties are personal to the Purchaser and may not be transferred or assigned to a third-party, including an affiliate of Purchaser. All warranties are facility specific and do not transfer if the Product is moved to another facility of Purchaser, unless Seller conducts such move. The warranties described in these terms and conditions exclude any stand-alone third party goods that may be acquired or used with the Products.

a. Warranty for Consumables. Seller warrants that Consumables, other than custom Consumables, will conform to their Specifications until the end of (i) 3 months from the date of shipment from Seller, or (ii) any expiration date or the end of the shelf-life pre-printed on such Consumable by Seller, but in either event no later than 12 months from the date of shipment. With respect to custom Consumables (i.e., Biomarkers, sequences, or combinations of biomarkers or sequences), Seller warrants that the custom Consumables will be made and tested in accordance with Seller’s standard manufacturing and quality control procedures. Seller makes no warranty that custom Consumables will work as intended by Purchaser or for Purchaser’s intended uses.

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Zeppelinstrasse 71-73, 81669 Munich, Germany
DE228451997

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b. Warranty for Hardware. Seller warrants that Hardware, other than Upgraded Components, will conform to its Specifications for a period of 12 months after its shipment date from Seller unless the Hardware includes Seller provided installation in which case the warranty period begins on the date of such installation or 30 days after the date the Hardware was delivered, whichever occurs first (“Base Hardware Warranty”). “Upgraded Components” means Seller provided components, modifications, or enhancements to Hardware that was previously acquired by Purchaser. Seller warrants that Upgraded Components will conform to their Specifications for a period of 90 days from the date the Upgraded Components are provided by Seller. Upgraded Components do not extend the warranty for the Hardware unless the upgrade was conducted by Seller at Seller’s facilities in which case the upgraded Hardware shipped to Purchaser comes with a Base Hardware Warranty.

c. Exclusions from Warranty Coverage. The foregoing warranties do not apply to the extent a non-conformance is due to (i) abuse, misuse, neglect, negligence, accident, improper storage, or use contrary to the Documentation or Specifications, (ii) improper handling, installation, maintenance, or repair (other than if performed by Seller’s personnel), (iii) unauthorized alterations, (iv) Force Majeure events, or (v) use with a third party’s good not provided by Seller (unless the Product’s Documentation or Specifications expressly state such third party’s good is for use with the Product).

d. Procedure for Warranty Coverage. In order to be eligible for repair or replacement under warranty Purchaser must (i) promptly contact Seller’s support department to report the non-conformance, (ii) cooperate with Seller in diagnosing or confirming the non-conformance, and (iii) return the Product, transportation charges prepaid to Seller in accordance with Seller’s instructions. Claims will be paid in the currency found on the invoice. If payment is made by wire or other electronic funds transfer, Purchaser is solely responsible for any bank or other fees charged, and will reimburse Seller for all such fees. If any payment is made by the due date Seller may charge interest at the highest rate allowed by law, including without limitation, suspending performance. Purchaser shall pay for all costs (including reasonable legal fees) incurred by Seller in connection with the collection of late payments. Each purchase order is a separate, independent transaction, and Purchaser herewith waives his right to set-off against other purchase orders or other transactions with Seller. Seller will determine payment terms on a per-order basis and may modify credit terms in its discretion.

8. Payment Terms. The price of the Product will be the price set out in the Seller’s quote, or, if no price is quoted, the price set out in the Seller’s published price list in force as at the date of shipment. Seller will invoice upon shipment. All payments are due within 30 days of the date of the invoice. All amounts due will be paid in the currency found on the invoice. If payment is made by wire or other electronic funds transfer, Purchaser is solely responsible for any bank or other fees charged, and will reimburse Seller for all such fees. If any payment is made by the due date Seller may charge interest at the highest rate allowed by law, including without limitation, suspending performance. Purchaser shall pay for all costs (including reasonable legal fees) incurred by Seller in connection with the collection of late payments. Each purchase order is a separate, independent transaction, and Purchaser herewith waives his right to set-off against other purchase orders or other transactions with Seller. Seller will determine payment terms on a per-order basis and may modify credit terms in its discretion.

9. Shipping Terms; Title and Risk of Loss. Unless otherwise set forth in writing by Seller or otherwise agreed between the parties, all shipments are made DDP (Incoterms 2010) at the address designated by Purchaser at the time of ordering. In all cases, title (except for Software and third-party software) and risk of loss transfers to Purchaser when Product is made available at such address.

10. Taxes. Purchaser agrees that any applicable sales, use, excise, VAT (value added tax), GST (goods and services tax), withholding and other taxes will be calculated based on both the tax rates in effect on the date of shipment and the ship to address for the Product. All amounts due listed on a quotation, if any, are for reference purposes only and are not binding on Seller. All prices and other amounts payable to Seller are exclusive of and are payable without deduction for any taxes, customs duties, tariffs or charges hereafter claimed or imposed by any governmental authority upon the sale of Product, all of which will be paid by Purchaser. In the event Seller is required by law or regulation to pay any such tax, duty, tariff or charge, such amount will be added to the purchase price or subsequently invoiced to the Purchaser. In the event Purchaser is required by law or regulation to deduct any such tax, duty, tariff or charge the Purchaser shall gross up any payment to the Seller.


a. Applicability of Terms and Conditions. These terms and conditions, including any terms in the Documentation exclusively govern the ordering, purchase, supply, and use of Product, and override any conflicting, amending and/or additional terms contained in any purchase orders, invoices, or similar documents all of which are hereby rejected and are null and void. Seller’s failure to object to any such terms shall not constitute a waiver by Seller, nor constitute acceptance by Seller of such terms and conditions.

b. Order Changes/Cancellations. Orders for Products may not be changed or cancelled once placed. If Purchaser cancels an order, Purchaser forfeits to Seller any deposit paid related to such order.

c. Governing Law. These terms and conditions shall be governed by and interpreted in accordance with the laws of the state of California, and without reference to conflict of law principles. International purchase laws, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall not apply.
d. Arbitration. Any dispute relating to the validity, performance, construction or interpretation of these Terms and Conditions, which cannot be resolved amicably between Customer and Illumina shall be submitted to final and binding arbitration in accordance with the Arbitration Rules of the German Institution for Arbitration (DIS). Place of Arbitration shall be Munich, Germany. The number of arbitrators shall be three (3). The language of the arbitration proceeding shall be English, provided, however, that written evidence may be submitted in either German or English language. The award of the arbitration shall be final, non-appealable and binding upon the parties and their respective successors and permitted assigns. Judgement upon the award may be entered in any court having the jurisdiction thereof.

e. Representations and Warranties. Purchaser is not an authorized dealer, representative, reseller, or distributor of any of Seller’s, or its affiliates’, products or services. Purchaser agrees, represents and warrants that it (i) is not purchasing the Product on behalf of a third party, (ii) is not purchasing the Product in order to resell or distribute the Product to a third party, (iii) is not purchasing the Product in order to export the Product from the country in which Seller shipped the Product pursuant to the ship-to address designated by Purchaser at the time of ordering (“Ship-To Country”), and (iv) will not export the Product out of the Ship-To Country.

f. Remedies for Breach. In addition to any remedies specified elsewhere under these terms and conditions, and any remedies available to Seller under law, Seller may, immediately upon notice to the Purchaser, to any, all, or any combination of the following in the event Purchaser breaches any of these terms and conditions: (i) cease performance, including without limitation, cease further shipments of Product, (ii) terminate the rights granted to Purchaser pursuant to Section 2 (Rights to Product Upon Purchase), (iii) terminate any service contracts then in effect for affected Product, or (iv) terminate any remaining product warranty for the affected Product.

g. Facility Requirements and Installation of Hardware. Purchaser acknowledges that it is responsible for ensuring at Purchaser’s sole cost that its facility meets the site requirements for the Hardware. If the purchase of Hardware includes installation it will be completed within 30 days of delivery of all components of the Hardware and the facility meeting such requirements, including Purchaser’s reasonable cooperation.

h. Service Contracts. If a Seller extended service contract for Hardware is being provided then Seller’s standard terms and conditions for such service contract shall exclusively govern such extended service contract. Purchaser agrees that all service contracts are both personal to Purchaser and facility specific: services contracts cannot be transferred to a third party and may not be transferred to a new facility if the Hardware is relocated.

i. Future Products. Any future products and/or services (“Unreleased Products”) are subject to new part numbers, pricing, and specifications and the acquisition of Product hereunder is not in reliance on the availability of any Unreleased Products.

j. Seller Affiliates. Any actions or rights that may be performed or exercised by Seller may be performed or exercised by Seller itself or by any of its affiliates. By way of non-limiting example, Seller’s affiliates may carry out shipment, servicing, invoicing and receipt of payment.

k. Force Majeure. Seller shall not be in breach of these terms and conditions nor liable for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, tornado, earthquake, hurricane, lighting, any action taken by a government or regulatory authority, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Seller’s suppliers or subcontractors, transportation difficulties, interruption or failure of any utility service, raw materials or equipment. In the event of any such delay the delivery date shall be deferred for a period equal to the time lost by reason of the delay.

l. Notices. Any notice required or permitted shall be in writing.

m. Assignment. Seller shall not assign or transfer these terms and conditions or any rights or obligations, whether voluntary, by operation of law or otherwise, without the prior written consent of Seller; provided that, only notice to Seller and no consent shall be required for any assignment in connection with any change of control or the sale of all or substantially all of the stock or assets of Purchaser to a party that (i) agrees in writing to be bound by these terms and conditions, and (ii) is not a competitor of Seller or any of Seller’s business units or Subsidiaries, or part of the right to pay or have paid, a royalty, or (iii) assignment or transfer made in contravention of the terms hereof shall be null and void. Subject to the foregoing, these terms and conditions shall be binding on and inure to the benefit of the parties’ respective successors and permitted assigns.

n. Seller Information. Seller may maintain and use a database of orders and account information pertaining to Purchaser for purposes of order processing, maintaining records, assisting with future orders of Purchaser, and compliance with applicable laws and regulations. Purchaser consents to disclosure of terms this transaction to any third party without the prior written consent of the Seller, except as (and only to the extent) required by securities or other applicable law. Purchaser grants to Seller a non-exclusive, transferable, worldwide, irrevocable, perpetual right and licence, with the right to sub-license, to use in any manner suggestions, ideas or comments provided by Purchaser to Seller related to the Products.

o. Export Compliance. The Products, any related technology, or information provided to Purchaser may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder (or the export regulations and laws of another country). Notwithstanding anything to the contrary in these terms and conditions, Purchaser agrees not to use the Products in, or export or re-export the Products, any related technology, or information provided to Purchaser into any country or to any person or entity, or in any manner, in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

p. Healthcare Law Compliance. Purchaser acknowledges and agrees that as a healthcare company, Seller, and Seller’s affiliates, may be required by applicable law and regulation (including codes of practice enforceable by law) (“Healthcare Laws”) to disclose the existence of these terms and conditions, the terms of these terms and conditions including financial terms, and the subject matter. Seller agrees it, and its affiliates, will disclose the least amount of information as possible in order to comply with such Healthcare Laws.

q. Waste Electrical and Electronic Equipment (WEEE) Compliance. The Purchaser shall exclusively finance the collection and delivery of waste electrical and electronic equipment (WEEE) to the recycler’s address specified by the Seller, as required by the Directive 2002/96/EC and applicable national law. This clause applies to all new electrical and electronic equipment (EEE) put on the market by the Seller after 13 August 2005 (known as new WEEE), as well as all EEE put on the market before 13 August 2005 (known as historic WEEE) which becomes waste as a result of a purchase of new EEE from the Seller after August 2005. If the Purchaser resells the EEE to a customer, the Purchaser will ensure that this clause in its entirety is included in the contractual arrangements governing the sale to the customer. The Purchaser agrees to indemnify and keep indemnified and hold harmless the Seller and ENVIRON (as the operator of I2BWEEN(Scheme)) from and against all costs and expenses which ENVIRON or the Seller incurs or suffers, as a result of a direct or indirect breach or negligent performance or failure in performance by the Purchaser of its obligations in this clause.

r. Miscellaneous. Seller may cease performance (including cancellation of any order outstanding) immediately without liability to Purchaser if Purchaser becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors. No amendment to these terms and conditions or waiver of any right, condition, or breach will be effective unless made in a writing signed by both parties. If any provision is held invalid or unenforceable, such provision shall be enforced to the maximum extent permissible so as to give effect to the intent of the parties, and the remaining terms will continue in full force and effect. The failure of either party to exercise any right granted herein or to require any performance of any term or the waiver by either party of any breach shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term. Nothing herein shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties.