Illumina Italy s.r.l
Terms and Conditions of Sale – IVD Products
January 2015

1. Definitions, Interpretation. ‘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. “General Purpose Product(s)” means all Products other than Test Specific Products (e.g., an instrument that can be used with multiple test specific IVD Consumables). “Intended use” means Seller’s specific intended use of a Product as set forth in the intended use statement of the Documentation for such Product. “IVD Consumable(s)” means Seller branded reagents and consumable items labeled by Seller for human in-vitro diagnostic use. “IVD Hardware” means Seller branded instruments, accessories, or peripherals that are labeled by Seller for human in-vitro diagnostic use. “IVD Software” means Seller branded software that is labeled by Seller for human in-vitro diagnostic use. Test results recognized in Italy.

2. Rights to Products upon Purchase. Subject to these terms and conditions, Purchaser is granted only a non-exclusive, non-transferable, perpetual, worldwide, non-sublicensable right under Seller’s (A) Core IP and Application Specific IP to use the Test Specific Products only for the specific intended use set forth in the Test Specific Product’s Documentation, and (B) Core IP to use General Purpose Products only for the specific intended use set forth in the General Purpose Product’s Documentation and for Purchaser’s internal research use (which includes research services provided by Purchaser to third parties), in each of the preceding (A) and (B), only in Purchaser’s facility (“Permitted Rights”) specifically excluding any use that (a) is not in accordance with the Product’s Specifications or Documentation, (b) requires grants of rights or a licence to Application Specific IP (except in the case of a Test Specific Product, which may be sublicensed with rights to certain Application Specific IP), (c) is a re-use of a previously made IVD Consumable, and (d) is not intended or used for research and development, disassembling, reverse-engineering, reverse-compiling, or reverse-assembling of the Product. The Purchaser agrees that the first sentence of this Section is designed to and does alter the effect of the ownership—the rights that Seller would have or would have if the sale was a sale of goods (e.g., by implication or otherwise permitted by law) and may not be used, transferred, or sublicensed by Purchaser otherwise permitted by law except as provided in these terms and conditions. Application Specific IP means those Products that have a specific intended use set forth in its documentation (e.g., an in-vitro diagnostic reagent kit whose Documentation includes an intended use statement stating that the Product is intended to be used for test for specific nucleic acid sequences, combination of nucleic acid sequences, diseases, or conditions).

Sections, titles and headings in these terms 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 term shall include the singular, and the gender of any pronoun shall include all genders. As used in these terms and conditions except as the context may otherwise require, the words “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 or words of like import, and “will” and “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 recognised in Italy.

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.

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

4. Regulatory. Purchaser agrees to comply with all applicable laws and regulations when using, maintaining, and disposing of Product.

5. Limited Liability. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER OR ITS SUPPLIERS BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH, WITHOUT LIMITATION, THE SALE OF THE PRODUCT, ITS USE, SELLER’S PERFORMANCE OR ANY OF THESE TERMS OR CONDITIONS, INCLUDING WITHOUT LIMITATION, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, UNLESS SUCH LIABILITY ARISES OUT OF WILFUL MISCONDUCT OR GROSS NEGLIGENCE ATTRIBUTABLE TO SELLER OR ITS SUPPLIERS.

TO THE EXTENT PERMITTED BY LAW, SELLER’S TOTAL AND CUMULATIVE LIABILITY TO PURCHASER OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, INCLUDING WITHOUT LIMITATION, THE PRODUCT (INCLUDING THEREOF) AND SELLER’S PERFORMANCE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT PAID TO SELLER FOR THE PARTICULAR PRODUCT IN THE PARTICULAR ORDER THAT DIRECTLY CAUSED THE LIABILITY, UNLESS SUCH LIABILITY ARISES OUT OF WILFUL MISCONDUCT OR GROSS NEGLIGENCE ATTRIBUTABLE TO SELLER.

6. Limitations on Warranties. 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, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

7. 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.

8. Indemnification by Purchaser. Purchaser shall defend, indemnify and hold harmless Seller, its affiliates, its non-affiliate collaborators and development partners that contributed to the development of the Product, and their respective officers, directors, employees and agents, from and against any and all claims and damages, including without limitation, the Exclusions to Seller’s Indemnification Obligations, and losses of any and every kind, including without limitation, personal injury or death claims, and infringement of a third party’s intellectual property rights, resulting from, relating to, or arising out of (i) Purchaser’s breach of any of these terms and conditions, (ii) Purchaser’s use of the Product in any manner or for any purpose other than as expressly authorized by Seller herein, including without limitation, any use of the Product beyond the specific intended use set forth in its Documentation, or (iii) any Excluded Claim.

d. Conditions to Indemnification Obligations. The parties’ indemnification obligations are conditioned upon the party seeking indemnification (i) promptly notifying the other party in writing of such claim or action, (ii) giving the other party exclusive control and authority over the defense and settlement of such claim or action, (iii) not admitting infringement of any intellectual property right without prior written consent of the other party, (iv) not entering into any settlement or compromise of any such claim or action without the other party’s prior written consent, and (v) providing reasonable assistance to the other party in the defense of the claim or action; provided that, the party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance.

9. 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 delivery. All payments are due within 30 days of the date of the invoice. All amounts due shall 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 any such fees. If any payment is not made when due, Seller may, at its option, (i) charge interest on the full amount due including all interest, at a rate of 1.5% per month, or the highest rate permitted by law, whichever is lower, or (ii) notify Purchaser in writing that such amount is past due. Purchaser shall, within 30 days of receipt of such notice, pay all amounts due, including all interest, or (iii) purchase the Product on a purchase order basis and may modify credit terms in its discretion. Any amounts not paid when due will accrue interest at the rate of 1.5% per month, or the maximum amount allowed by law, if lower.

10. 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 IVD Software and third-party software) and risk of loss transfers to Purchaser when the Product is made available at such address.

11. 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 the applicable tax rates in effect on the date of shipment and the ship to address for the Product. Any amounts for tax 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, which shall be borne by Purchaser, calculated and paid to the relevant governmental authority or governmental agency in accordance with applicable law and regulations. 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 the Product, and prevail over 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 in respect of the order.

c. Governing Law. These terms and conditions, their interpretation, and the performance of the parties shall be governed by the laws of Italy. Seller and Purchaser agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions, including any terms in the Documentation.

d. Arbitration. Any dispute, claim or controversy arising out of or relating to, the breach, termination, enforcement, interpretation or validity of these terms and conditions, shall be determined by confidential binding arbitration conducted in the English language, to be held in Milan before one arbitrator to be appointed in accordance with the Rules of the Chamber of Arbitration of Milan, which are deemed to be incorporated by reference into this clause. In all cases of arbitration hereunder each party shall bear its own costs and expenses and an equal share of the arbitrator’s and administrator’s fees of arbitration; neither party nor arbitrator shall be entitled to exercise any rights or obtain any remedies available by the laws of the place where the contract is executed under the laws of Italy. The parties agree to arbitrate all disputes between them that are submitted to the Court of Milan. The parties shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Notwithstanding anything herein to the contrary, any claims or causes of action involving

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infringement, validity, or enforceability of a party or its affiliate’s intellectual property rights are not subject to this arbitration clause; the Court of Milan will have exclusive jurisdiction to adjudicate any such claim or cause of action.

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, do 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.

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

h. IVD Hardware Compatibility. Due to the slower rate of updates to IVD Hardware, Purchaser acknowledges that Seller’s research use reagents and consumables may not be compatible with the IVD Hardware and the IVD Software. Please contact Seller’s technical support department prior to purchasing any Seller research use reagents and consumables for use with IVD Hardware and IVD Software.

i. Service Contracts. If a Seller extended service contract for IVD 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 IVD Hardware is relocated.

j. 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.

k. 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.

l. 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, lightning, 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 addition to the foregoing, Seller is not responsible for any failure to perform or delay attributable in whole or in part to Purchaser’s fault or negligence. 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 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.

m. Notices. Any notice required or permitted shall be in writing and shall be deemed received when (i) delivered personally, (ii) 5 days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or 10 days for international mail); or (iii) 1 day after deposit with a commercial express courier that provides written verification of receipt.

n. Assignment. Purchaser 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 Seller’s affiliates. Seller may assign all or part of the right to payments. Any 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.

o. 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 shall not disclose any terms of 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, fully paid-up, royalty-free, worldwide, irrevocable, perpetual right and license, with the right to sublicense, to use in any manner suggestions, ideas or comments provided by Purchaser to Seller related to the Products.

p. 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.

q. 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, 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. Further, Purchaser acknowledges and agrees that Seller may be required to disclose the existence of these terms and conditions, these terms and conditions and information on the Products sold hereunder pursuant to Codes of Conduct of associations and organizations that Seller may be a member of from time to time.

r. Waste Electrical and Electronic Equipment (WEEE) and Waste Industrial Batteries and Accumulators (WIBA) Compliance. The Purchaser shall exclusively finance the collection and delivery of waste WEEE and WIBA 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 B2BWEEE-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. For further information regarding collection, treatment and recycling arrangements for waste industrial batteries, please contact your local Illumina sales representative.

s. Miscellaneous. Except as expressly stated in these terms and conditions, no right or license under any of Seller, or Seller’s affiliates, intellectual property rights is or are granted expressly, by implication, or otherwise. All references to days mean calendar days unless specifically stated otherwise. To the extent permitted by law, Seller may cease performance (including cancellation of any order outstanding) immediately without liability to Purchaser if Purchaser is in a state of insolvency. These terms and conditions, including any terms and conditions in the Documentation, represent the entire agreement between the parties regarding the subject matter hereof and supersede all prior discussions, communications, agreements, and understandings of any kind between the parties. No amendment to these terms 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.