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 software that is labeled by Seller for human in-vitro diagnostic use (e.g., IVD Hardware operating software, data analysis software). All IVD Software is licensed and not sold and may be subject to additional terms found in the IVD Software’s end user licence agreement. “Product(s)” means the item(s) acquired hereunder labeled by Seller as branded software that is labeled by Seller for human in-vitro diagnostic use (e.g., IVD Hardware operating software, data analysis software). All IVD Software is licensed and not sold and may be subject to additional terms found in the IVD Software’s end user licence agreement. “Product(s)” 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 to test for specific nucleic acid sequences, combination of nucleic acid sequences, diseases, or conditions).

Sections, titles and headings in this Agreement 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 this Agreement 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 Spain.

2. Rights to Products upon Purchase. Subject to these terms and conditions, Purchaser is granted only a non-exclusive, non-transferable, perpetual, non-transferable right or license to the Software and Documentation to be used only for the intended use, and to otherwise use the Product for the intended use set forth in the Product’s Specifications or Documentation, and (B) Core IP to use General Purpose Products only for the intended use set forth in the IVD Software and Core IP. Authorized distributor or reseller 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. “Specifications” means Seller’s written technical specifications for the Product in effect on the date that the Product ships from Seller. “Test Specific Product(s)” 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 to test for specific nucleic acid sequences, combination of nucleic acid sequences, diseases, or conditions).

By law gains access to or determines the methods of operation of the Product, (g) is the transfer to a third-party for costs of procurement of substitute products or services, lost profits, data or business, or for any indirect, special, incidental, exemplary, consequential or punitive 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 and conditions, however arising or caused and on any theory of liability, in contract, tort (including negligence), strict liability or otherwise. TO THE EXTENT PERMITTED BY LAW, SELLER’S TOTAL AND CUMULATIVE LIABILITY TO PURCHASER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE 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 AND CONDITIONS, HOWEVER ARISING OR CAUSED AND ON ANY THEORY OF LIABILITY, IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT PAID TO SELLER FOR THE PARTICULAR PRODUCT CONTAINED IN THE PARTICULAR ORDER THAT DIRECTLY CAUSED THE LIABILITY.
against Purchaser in connection with such infringement claim. If the Product or any part entered into, and all final judgments and costs (including reasonable legal fees) awarded enforceable intellectual property rights of a third party, and (ii) pay all settlements according with the Product’s Documentation and Specifications infringes the valid and Documentation, or (y) Purchaser’s internal research use (which includes research equivalent non-infringing substitute, or (C) require the return of the Product and Purpose Products when used for (x) the specific against any third-party claim or action alleging that the (A) Test Specific Products when

warranties are facility specific and do not transfer if the Product is moved to another transferred or assigned to a third-party, including an affiliate of Purchaser. All

COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. WITHOUT

ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A

DISCLAIMS ALL) WARRANTIES, EXPRESS, IMPLIED OR STATUTORY,

SUBJECT TO THE EXPRESS PRODUCT WARRANTY MADE IN THESE

the upgraded IVD Hardware shipped to Purchaser comes with a Base IVD 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 equipment’s good is for use with the Product).

d. Procedure for Warranty Coverage. In order to be eligible for repair or replacement under this warranty Purchaser must (i) promptly contact Seller’s support department to report the non-conformance, (ii) cooperate with Seller in confirming or diagnosing the non-conformance, and (iii) return the Product, transportation charges prepaid to Seller following Seller’s instructions or, if agreed by Seller and Purchaser, grant Seller’s authorised repair personnel access to the Product in order to confirm the non-conformance and make repairs.

e. Sole Remedy under Warranty. Seller will, at its option, repair or replace non-conforming Product that is covered by this warranty provided that Seller can reasonably verify and confirm, such non-conformance within 90 days after the date the IVD Hardware was delivered, whichever occurs first ("Base IVD Hardware Warranty"). “Upgraded Components” means Seller provided components, modifications, or enhancements to IVD Hardware that was previously acquired by Purchaser. The warranties 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 IVD Hardware unless the upgrade was conducted by Seller at Seller’s facilities in which case the case the upgraded IVD Hardware shipped to Purchaser comes with a Base IVD Hardware Warranty.

f. b. Infringement Indemnification by Seller. Subject to these terms and conditions, including without limitation, the Exclusions to Seller’s Indemnification Obligations (Section 8(d) below), Seller shall (i) defend, indemnify and hold harmless Purchaser against any third-party claim or action alleging that the (A) Test Specific Products when used for the specific intended use set forth in its Documentation, and (B) the General Purpose Products when used for (x) the specific intended use set forth in its Documentation, or (y) Purchaser’s internal research use (which includes research services to third parties), in accordance with these terms and conditions, and in accordance with the Product’s Documentation and Specifications. If Seller is adjudicated to be enforcing intellectual property rights of a third party, and (ii) pay all settlements entered into, and all final judgments and costs (including reasonable legal fees) awarded against Purchaser in connection with such infringement claim. If the Product or any part thereof infringes any such claim, or in the event that the Product is the subject of an infringement claim, Seller shall have the right, at its option, to (A) procure for Purchaser the right to continue using the Product, (B) modify or replace the Product with a substantially equivalent non-infringing substitute, or (C) require the return of the Product and terminate the rights, license, and any other permissions provided to Purchaser with respect the Product and refund to Purchaser the depreciated value (as shown in Purchaser’s official records) of the returned Product at the time of such return; provided that the foregoing will not relieve Seller of the requirement to indemnify Purchaser for any infringement claim to the extent such infringement arises from: (i) use of the Product in any manner not in accordance with its Specifications, its Documentation, or the rights expressly granted to Purchaser under these terms and conditions, including without liability, personal injury or death claims, and infringement of a third party’s intellectual property rights, either jointly or severally, (ii) purchase of the Product (or any part thereof) from any third party not authorized by Seller to sell the Product, (iii) the breach of any of these terms and conditions, or (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 the Documentation or Specifications express or implied).

g. Conditions to Indemnification Obligations. The parties’ indemnification obligations are conditioned upon the party seeking indemnification (i) promptly notify the other party in writing of such claim or contention, (ii) providing the indemnifying party all information and assistance in the defense of such claim or action, and (iii) not admitting or stipulating to any infringement of 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 quote 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. If payment is made by wire or other electronic funds transfer, Seller is solely responsible for any bank or other fees charged, and will reimburse Seller for any such fees. All amounts due shall be paid in currency found on the invoice. If any payment is not made by the due date Seller may exercise all rights and remedies available by law, including without limiting, suspending performance. Seller 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 no purchase order has (i) right to set-off of any other purchaser obligations against any other transaction or purchase order. Seller will determine payment terms on a per-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 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 both the 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 do not represent the final tax liability. 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 the Purchaser shall gross up any payment to the Seller.


a. Applicability of Terms and Conditions. Subject to the permitted by law, these Terms and Conditions shall govern the performance, purchase, supply, and use of 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.
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 recognized mail, confirmable mail, or e-mail, on being returned as undelivered to the addressee; 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 this Agreement or any rights, obligations, or benefits hereunder, in whole or in part, to any other person, firm, corporation, or other entity except to a successor in good faith of all or substantially all of the assets of Purchaser, or to any person pursuant to the terms and conditions of an insolvency proceeding applicable to the bankruptcy or reorganization of Purchaser, or 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 of 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 the terms and conditions of this Agreement, 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, this Agreement 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 rights to Seller a non-exclusive, fully-paid, 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. Waste Electrical and Electronic Equipment (WEEE) and Waste Industrial Batteries and Accumulators (WIBA) Compliance. The Purchaser agrees to indemnify and keep indemnified and hold harmless the Seller from and against any claims or causes of action involving infringement, validity, or enforceability of a party or its affiliate’s intellectual property rights are not subject to this arbitration clause.

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 as well as healthcare self-code regulations to which the Seller has adhered (“Healthcare Laws”) to disclose the existence of this Agreement, the terms of this Agreement 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.

r. Majeure. Force Majeure. Seller shall not be in breach of this Agreement 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, storms, 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, interception or failure of any utility service, raw materials or equipment, or 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 delay.

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 by estoppel. All references to days mean calendar days unless specifically stated otherwise. 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, reorganization, liquidation, or composition for the benefit of creditors. These terms and conditions, including to the extent permitted by law 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 the other party of any breach of any of such terms or conditions shall not prevent any subsequent exercise of such right or enforcement of, or 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.