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 the time of order placement or provided by Seller. "General Purpose 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). "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 for a specific nucleic acid sequence, 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 all singulars. As used in this Agreement 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 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 Switzerland.

2. Rights to Products upon Purchaser. Subject to these terms and conditions, the Purchaser is granted only a non-exclusive, non-transferable, perpetual, non-sublicensable right under Seller’s (A) Core IP and Application Specific IP to use Test Specific Products only for the specific intended use set forth in the Test Specific Product’s Documentation, and (B) Core IP is licensed to the Purchaser for purposes of the Excluded Uses. Purchaser further agrees that the contents of and use of the Products by Purchaser.

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

a. Unauthorized Uses of Products. Purchaser agrees: (i) to use each IVD Consumable only one time, and (ii) to use only Seller’s reagents/consumables with Seller IVD Hardware. The limitations in (i)-(ii) do not apply if the Documentation or Specification relates to the 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.

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 or erases the IVD Software prior to such action. For the avoidance of doubt, Purchaser understands that in the event of a lack of the 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. Liability and Warranties. To the extent permitted by law, all of Seller’s liabilities are herewith 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.

7. Warranty for IVD Consumables. Seller warrants that IVD Software Conformality will conform to their specifications and use thereof only without any warranty that the third party’s Product, and, (vii) any expiration date or the end of the shelf-life pre-printed on such IVD Consumables by Seller, but in either event no later than 12 months from the date of shipment. It is the responsibility of the Purchaser to ensure that the Software and Hardware is compatible with the Purchaser’s intended use of the Product, and ensure that the Software and Hardware is compatible with the Purchaser’s intended use of the Product.
Components’ means Seller provided components, modifications, or enhancements to IVD 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 IVD Hardware unless the upgrade was conducted by Seller at Seller’s facilities in which case 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, 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), (iv) failure to reasonably attend to, or use, (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 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, along with any shipping charges prepaid to Seller following Seller’s instructions or, if agreed by Seller and Purchaser, grant Seller’s authorized repair personnel access to the Product upon Seller’s request.

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 identify and remove such non-conformance. The warranty period for repaired or replaced IVD Consumables is 90 days from the date of shipment, or the remaining period on the original IVD Consumables warranty, whichever is later. IVD Hardware may not be repaired or replaced with functionally equivalent, reconditioned, or new IVD Hardware or components (if only a component of IVD Hardware is non-conforming). If the IVD Hardware is replaced in its entirety, the warranty period for the replacement is 90 days from the date of shipment or the remaining period on the original IVD Hardware warranty, whichever ends later. If only a component is being repaired or replaced, the warranty period for such component is 90 days from the date of shipment or the remaining period on the original IVD Hardware warranty, whichever ends later. The preceding states Purchaser’s sole remedy and Seller’s sole obligations under the warranty provided.

7. Indemnification.

a. Infringement Indemnification by Seller. Subject to these terms and conditions, including without limitation, the Exclusions to Seller’s Indemnification Obligations (Section 7(b) below), the Conditions to Indemnification Obligations (Section 7(d) below), Seller shall (i) defend, indemnify and hold harmless Purchaser against any third-party claim or action alleging that (A) Test Specific Products when used for the intended use stated in its Documentation, and (B) the General Purpose Products when used for (x) the stated 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 infringes the valid and enforceable 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, in Seller’s or Purchaser’s possession, infringes any intellectual property right without prior written consent of the other party, (iv) not enter into any settlement or compromise of any such claim or action without the other party’s prior written consent, and (iii) refrain from any assumption of liability or defense on the part of 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.

b. Indemnification by Purchaser. Purchaser shall defend, indemnify and hold harmless Seller, its affiliates, their non-affiliate collaborators and development partners that contributed to the development of the Product, and their respective officers, directors, and/or employees of any claims, liabilities, damages, losses, causes of action, and losses of any kind, death or 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.

c. Conditions to Indemnification Obligations. The parties’ indemnification obligations shall be subject to 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 entering into any settlement or compromise of any such claim or action without the other party’s prior written consent and providing reasonable assurance 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.

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 shall be paid in the currency found on the invoice. If payment is made by wire transfer, Purchaser’s banker is solely responsible for any bank or other fees charged, and will reimburse Seller for any such fees. The parties agree that any late payment shall bear interest at a rate of 1.5% per month, or the maximum amount allowed by law, if lower.

9. Shipping Terms; Title and Risk of Loss. Unless otherwise set forth in these terms and conditions, the Exclusions to, or amendments made to, these terms and conditions, including without limitation, the Exclusions to Seller’s Indemnification Obligations (Section 7(b) below), the Conditions to Indemnification Obligations (Section 7(d) below), Seller shall (i) defend, indemnify and hold harmless Purchaser against any third-party claim or action alleging that (A) Test Specific Products when used for the intended use stated in its Documentation, and (B) the General Purpose Products when used for (x) the stated 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 infringes the valid and enforceable 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, in Seller’s or Purchaser’s possession, infringes any intellectual property right without prior written consent of the other party, (iv) not enter into any settlement or compromise of any such claim or action without the other party’s prior written consent, and (iii) refrain from any assumption of liability or defense on the part of 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.

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. 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, 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. If any payment is due and Seller 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 the Order has been confirmed. Seller reserves the right to cancel any order, Purchaser forfeits to Seller any deposit paid related to such order.

c. Governing Law. These terms and conditions, their interpretation, and the performance of the parties’ obligations hereunder shall be governed by the laws of Switzerland. Seller and Purchaser agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

d. Arbitration. Any dispute 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 Zurich before one arbitrator
appointed under the rules of UNCITRAL ("Arbitral Rules") and administered under the Rules, 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 an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both parties, unless required by law or a court or an arbitrator shall be final and binding on the parties, provided that, the arbitrator shall not have the authority to alter any explicit provision of this Agreement; judgment on the award may be entered in any court having jurisdiction. This clause 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 incongruence, validity, enforceability of a party or its affiliate's intellectual property rights are not subject to this arbitration clause.

c. 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 to any country other than the Ship-to Country.

d. 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 the terms of these terms and conditions: (i) cease performance, including without limitation, cease full or partial 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.

e. Facility Requirements and Installation of IVD Hardware. Purchaser acknowledges that it is responsible for ensuring at Purchaser’s sole cost that the 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.

f. 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.

g. 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 its affiliates, will disclose the least amount of information as possible in order to comply with such Healthcare Laws.

h. Waste Electrical and Electronic Equipment (WEEE) Compliance. The Purchaser is subject to the Integrated Circuit Directive ("ECD"). 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.

i. Miscellaneous. 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, receivership, liquidation or composition for the benefit of creditors. 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 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 waive of any breach by either party of any breach shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any Nonexistent breach of, the same or any other term of this Agreement. Seller shall not constitute or create a joint venture, partnership, or any other similar arrangement between the parties.