

Illumina Cambridge Limited
Terms and Conditions of Sale – In-Vitro Diagnostic Use Products
February 2014

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. Documentation may contain additional terms and conditions and any such terms and conditions are hereby incorporated herein by reference. Documentation may be provided (including by reference to a website) 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 that are intended by Seller for use with, and are to be consumed through the use of, IVD Hardware. “**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 (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 for human in-vitro diagnostic use. Products may be IVD Hardware, IVD Consumables, or IVD Software. IVD Software may be embedded in or installed on IVD Hardware or provided separately. “**Purchaser**” means the person or entity acquiring the Product hereunder. “**Seller**” means the entity selling the Product hereunder. The selling entity is identified on the quotation, order acknowledgment or similar communication, or Seller website if the order is being placed electronically at Seller’s website. “**Specifications**” means Seller’s written 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 intend 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 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 “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 England and Wales.

2. Rights to Products upon Purchase. Subject to these terms and conditions, including without limitation, any terms, conditions, and limitations set forth in the Documentation, Purchaser is granted only a non-exclusive, non-transferable, non-sublicensable, perpetual and worldwide 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 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 to third parties), in each of the preceding (A) and (B), only in Purchaser’s facility, **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 (except in the case of a Test Specific Product, which comes with rights to certain Application Specific IP), (c) is a re-use of a previously used IVD Consumable, (d) to the extent otherwise permitted by law is the disassembling, reverse-engineering, reverse-compiling, or reverse-assembling of the Product, (e) to the extent 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 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 IVD Hardware (does not apply if the Specifications or Documentation state otherwise), or (h) is the transfer to a third-party of, or sub-licensing of, IVD Software or any third-party software. All IVD 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, expressly, by implication, or otherwise, to Purchaser hereunder.

“**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 and Core IP are separate, non-overlapping, subsets of all intellectual property rights 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 pre-natal testing, for specific diagnostic methods, for specific forensic methods, and for specific nucleic acid biomarkers, sequences, or combinations of biomarkers or sequences are examples of Application Specific IP.

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

Subject to the rights conferred hereunder to Purchaser with respect to Test Specific Products, Purchaser is solely responsible for determining whether Purchaser has all 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 representation, warranty or undertaking that Purchaser’s intended uses will not infringe the intellectual property rights of a third party or Application Specific IP of Seller or Seller’s affiliates and to the extent permitted by law any such representation, warranty or undertaking, howsoever implied is excluded under these terms and conditions.

3. Unauthorized Uses of Products. Purchaser agrees: (a) to use each IVD Consumable only one time, and (b) to use only Seller’s consumables/reagents with Seller IVD Hardware. The limitations in (a)-(b) do not apply if the Documentation or Specifications for the Product state otherwise. Purchaser agrees not to, nor authorise any third party to, engage in any of the following activities: (i) to the extent not otherwise permitted by law to disassemble, reverse-engineer, reverse-compile, or reverse-assemble the Product, (ii) to the extent not otherwise permitted by law to separate, extract, or isolate components of the Product or subject the Product or components thereof to any analysis not expressly authorised in the Product’s Documentation, (iii) to the extent not otherwise permitted by law to gain access to or attempt to determine the methods of operation of the Product, or (iv) transfer to a third-party, or grant a sublicense to, any IVD Software or any third-party software. 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. The restrictions found in these terms and conditions control the sale of and use of the Products by Purchaser.

3. Unauthorized Uses of Products. Purchaser agrees: (a) to use each IVD Consumable only one time, and (b) to use only Seller’s consumables/reagents with Seller IVD Hardware. The limitations in (a)-(b) do not apply if the Documentation or Specifications for the Product state otherwise. Purchaser agrees not to, nor authorise any third party to, engage in any of the following activities: (i) to the extent not otherwise permitted by law to disassemble, reverse-engineer, reverse-compile, or reverse-assemble the Product, (ii) to the extent not otherwise permitted by law to separate, extract, or isolate components of the Product or subject the Product or components thereof to any analysis not expressly authorised in the Product’s Documentation, (iii) to the extent not otherwise permitted by law to gain access to or attempt to determine the methods of operation of the Product, or (iv) transfer to a third-party, or grant a sublicense to, any IVD Software or any third-party software. 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. The restrictions found in these terms and conditions control the sale of and use of the Products by Purchaser.

4. Regulatory. Purchaser shall obtain and maintain all necessary licenses and consents and agrees to comply with all applicable laws and regulations when using, maintaining, and disposing of Product. If the Seller has affixed a CE Mark to the Product, the Seller warrants that it has complied with all applicable laws and regulations when affixing the CE Mark.

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, special, incidental, or consequential damages of any kind arising out of or in connection with, without limitation, the sale of the Product, its use, Seller’s performance hereunder or any of these terms and conditions, however arising or caused and on any theory of liability (whether in contract, tort (including negligence), misrepresentation, statutory duty or otherwise).

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 use thereof) and Seller’s performance hereunder, whether in contract, tort (including negligence), misrepresentation, statutory duty or otherwise, shall in no event exceed the amount paid to Seller for the Product.

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 satisfactory quality, fitness for a particular purpose, care and skill, non-infringement, or arising from course of performance, dealing, usage or trade. Without limiting the generality of the foregoing, Seller makes no claim, representation, or warranty of any kind as to the utility of the Product for Purchaser’s intended uses. Nothing in these terms and conditions shall limit liability of a party or its affiliated entities for death or personal injury caused by negligence or fraud.

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.

a. Warranty for IVD Consumables. Seller warrants that IVD Consumables will conform to their Specifications until the later of (i) 3 months from the date of shipment from Seller, and (ii) any expiration date or the end of the shelf-life pre-printed on such IVD Consumables by Seller, but in no event later than 12 months from the date of shipment.

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b. Warranty for IVD Hardware. Seller warrants that IVD Hardware, other than Upgraded Components, will conform to its Specifications for a period of 12 months after its shipment date from Seller unless the IVD Hardware includes Seller provided installation in which case the warranty period begins on the date of installation or 30 days after the date it 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. Seller warrants that Upgraded Components will conform to their Specifications for a period of 90 days from the date the Upgraded Components are installed. 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, 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 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 it confirms is covered by this warranty. Repaired or replaced IVD Consumables come with a 30-day warranty. IVD Hardware may 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 hereunder.

f. Third-Party Goods and Warranty. Seller has no warranty obligations with respect to any goods originating from a third party and supplied to Purchaser hereunder. Third-party goods are those that are labeled or branded with a third-party’s name. The warranty for third-party goods, if any, is provided by the original manufacturer. Upon written request Seller will attempt to pass through any such warranty to Purchaser.

8. Indemnification.

a. Infringement Indemnification by Seller. Subject to these terms and conditions, including without limitation, the Exclusions to Seller’s Indemnification Obligations (Section 8(b) below), the Conditions to 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 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, becomes, or in Seller’s opinion may become, 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, licence, 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, no refund will be given for used-up or expired IVD Consumables. This Section states the entire liability of Seller for any infringement of third party intellectual property rights.

b. Exclusions to Seller Indemnification Obligations. Seller has no obligation to defend, indemnify or hold harmless Purchaser for any Seller Infringement Claim to the extent such infringement arises from: (i) the 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 limitation, any use of the Product beyond the specific *intended use* set forth in its Documentation, (ii) the use of the Product in combination with any other products, materials, or services not supplied by Seller, (iii) the use of the Product to perform any assay or other process not supplied by Seller, (iv) Seller’s compliance with specifications or instructions for such Product furnished by, or on behalf of, Purchaser, (v) Purchaser’s breach of any of these terms and conditions, or (vi) the use of the Products in any manner or for any purpose that requires rights to Other IP (each of (i) – (vi), is referred to as an “**Excluded Claim**”).

c. 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, representatives and employees against any claims, liabilities, damages, fines, penalties, causes of action, 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, (iii) any use of the Products not in accordance with the Product’s Specifications or Documentation, or (iv) 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.

e. Third-Party Goods and Indemnification. Seller has no indemnification obligations with respect to any goods originating from a third party and supplied to Purchaser. Third-party goods are those that are labeled or branded with a third-party’s name. Purchaser’s indemnification rights, if any, with respect to third party goods shall be pursuant to the original manufacturer’s or licensor’s indemnity. Upon written request Seller will attempt to pass through such indemnity, if any, to Purchaser.

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 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 any payment is not made by the due date Seller may exercise all rights and remedies available by law, including without limitation, suspending performance. Purchaser shall pay for all costs (including reasonable attorneys’ fees) incurred by Seller in connection with the collection of late payments. Each purchase order is a separate, independent transaction, and Purchaser has no right of 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. 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 similar 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 hereunder 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.

12. General.

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 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. Governing Law; Jurisdiction. These terms and conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by the laws of England and Wales. 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. Each party irrevocably agrees that the courts of England and Wales shall have [non-exclusive jurisdiction to settle any dispute or claim under or in connection with these terms and conditions or its subject matter or formation.

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c. Arbitration. In Seller's sole discretion, any dispute or claim arising out of these terms and conditions or its subject matter or formation including its existence, validity or termination, shall be referred to and finally resolved by confidential binding arbitration conducted in the English language to be held in London England before one arbitrator appointed under the rules of the London Court of International Arbitration ("LCIA Rules") and administered under the LCIA 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; the decision of the arbitrator shall be final and binding on the parties, provided that, the arbitrator shall not have the authority to alter any explicit provision of these terms and conditions; 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 infringement, validity, or enforceability of a party or its affiliate's intellectual property rights are not subject to this arbitration clause.

d. Purchaser Agreements. Purchaser is not an authorised 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.

e. Purchaser's 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 hereunder, 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.

f. Facility Requirements and Installation of IVD Hardware. Purchaser acknowledges that it is responsible for ensuring 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.

g. 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 IVD Software. Purchaser shall contact Seller's technical support department prior to purchasing any Seller research use reagents and consumables for use with IVD Hardware and Software.

h. Service Contracts. If a Seller extended service contract for IVD Hardware is being provided hereunder then Seller's standard terms and conditions for such service contract shall exclusively govern such 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 are subject to new part numbers, pricing, and specifications and the acquisition of Product hereunder is not in reliance on the availability of any such future products or services.

j. Seller Affiliates. Any actions or rights that may be performed or exercised by Seller hereunder 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. Except pursuant to this Section 12(j) no term of these terms and conditions is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person or entity who is not a party to these terms and conditions. The Parties to these terms and conditions may rescind or terminate these terms and conditions or vary any of its terms without the consent of any third party.

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, 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, 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.

l. Notices. Any notice required or permitted hereunder 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.

m. Assignment. Purchaser shall not assign or transfer these terms and conditions or any rights or obligations hereunder, whether voluntary, by operation of law or otherwise, without the prior written consent of Seller; provided that, 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 hereunder. 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.

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 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.

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 export or re-export the Products, any related technology, or information provided to Purchaser into any country, 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, 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) and Waste Industrial Batteries and Accumulators (WIBA) Compliance. The Purchaser shall exclusively finance the collection and delivery of waste WEEE and WBA 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.

r. 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 hereunder immediately without liability to Purchaser if Purchaser becomes the subject of a petition for winding up of the Purchaser or any proceeding relating to insolvency, receivership, administrative receivership, liquidation, company voluntary arrangement or scheme of arrangement with its 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. The parties acknowledge and agree that by entering into these terms and conditions, they do not rely on any statement, representation, assurance or warranty of any person or entity other than as expressly set out in these terms and conditions. Each party agrees that it shall have no right or remedy (other than for breach of contract) in respect of any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these terms and conditions. Nothing in this Section shall exclude or limit liability for fraud. No amendment to these terms will be effective unless made in writing signed by both parties. No waiver of any right, condition, or breach of these terms and conditions will be effective unless in writing and signed by the Party who has the right to waive the right, condition or breach and delivered to the other Party. If any provision or part-provision hereunder is held invalid, illegal or unenforceable, it 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 or delay of either party to exercise any right or remedy provided herein or to require any performance of any term these terms and conditions shall not be construed as a waiver and no single or partial exercise of any right or remedy provided herein or to require any performance of any term or the waiver by either party of any breach hereunder 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 hereunder. Except as expressly provided in these terms and conditions, the rights and remedies of each party under these terms and conditions are cumulative and not exclusive of any rights or remedies provided by law or regulation. Nothing herein shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties.