Illumina Cambridge Limited
Terms and Conditions of Sale – Research Use Products
January 2015

1. Definitions, Interpretation. “Consumable(s)” means Seller branded reagents and consumable items that are intended by Seller to be consumed through the use of Hardware. “Document(s)” means a document(s) of a similar nature, including any and all associated documents, for the Product in effect on the date that the Product ships from Seller. Documentation may be provided with the Product at time of shipment or provided electronically from Seller. “Hardware” means Seller branded instruments, accessories, or peripherals. “Product(s)” means the item(s) acquired hereunder. Products may be Hardware, Consumables, or Software. Software may be embedded in or installed on Hardware or provided separately. “Purchaser” means the person or entity acquiring the Product with the intent to use the Product, from (i) Seller or (ii) Seller’s authorised distributor or reseller. “Seller” means the Illumina entity selling the Product. The Seller is identified on the quotation, order, warranty or undertaking, howsoever implied is excluded under these terms and conditions.

2. Rights to Products upon Purchase. Subject to these terms and conditions, Purchaser is granted only a non-exclusive, non-transferable, non-sublicensable perpetual and worldwide right under Seller’s Core IP to use the Product only in Purchaser’s facility only for Purchaser’s Research Use (“Permitted Rights”). “Research Use” means use for internal research (which includes research services provided by Purchaser to third parties), specifically excluding any use that (a) is not in accordance with the Product’s Specifications or Documentation, (b) requires grants of rights or a license to Application Specific IP, (c) is a re-use of a previously used Consumable, (d) to the extent not otherwise permitted by law is the disassembling, reverse-engineering, reverse-compiling, or reverse-assembly of the Product, (e) to the extent not otherwise permitted by law is the separation, extraction, or isolation of components of the Product or other unauthorized analysis of the Product, (f) to the extent not otherwise permitted by law gains access to or determines the methods of operation of the Product, (g) is the use of Software 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 extension of patent rights that would otherwise result if the sale was made for other than Research Use. Except as expressly stated in this Section no right or license under any law or regulation whether foreign or domestic for any specific intended use, whether research, commercial, diagnostic, or otherwise, and (ii) Purchaser must ensure it has undertaken any assessments and made any declarations and has any regulatory certifications, approvals, clearances and registrations that are necessary for Purchaser’s intended uses of the Product. Purchaser further agrees to comply with all applicable laws and regulations when using, maintaining, and disposing of 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 of and use of the Products by the Purchaser.

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

5. 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 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, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STATUTORY DUTY 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.
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. NOTWITHSTANDING THE FOREGOING, 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 for the duration specified in these Terms and Conditions and are implied and do not transfer if the Product is moved to another facility of Purchaser, unless Seller conducts such move. The warranties described in these terms and conditions exclude any stand-alone third party goods that may be acquired or used with the Products.

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

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

c. Exclusions from Warranty Coverage. The foregoing warranties do not apply to the extent a non-conformance is due to (i) abuse, misuse, neglect, negligence, accident, improper storage, or use contrary to the Documentation or Specifications, (ii) improper handling, installation, maintenance, or repair (other than if performed by Seller’s personnel), (iii) unauthorized alterations, (iv) Force Majeure events, or (v) use with a third party’s goods that may be acquired or used with the Products, or (vi) use of the Products in any manner or for any purpose other than Research Use, (ii) 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, (iii) use of the Product in combination with any other products, materials, or services not supplied by Seller, (iv) use of the Product to perform any assay or other process not supplied by Seller, (v) Seller’s compliance with specifications or instructions for such Product furnished by, or on behalf of, Purchaser, (vi) Purchaser’s breach of any of these terms and conditions, (vii) use of stand-alone third party goods that may be acquired or used with the Products, or (viii) use of the Products in any manner or for any purpose that requires rights to Other IP (each of (i) – (viii), is referred to as an “Excluded Claim”).

d. Sole Remedy under Warranty. Pursuant to the effectiveness of Seller’s sole remedy 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. 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.

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 Product when used for Research Use, 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 substitute, or (C) require the return of the Product and terminate the rights, license, and any other permissions provided to Purchaser with respect to 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 Consumables. This Section states the entire liability of Seller for any infringement of third party intellectual property rights.

b. Exclusions to Seller Indemnification Obligations. For the avoidance of doubt, Seller has no obligation to defend, indemnify or hold harmless Purchaser for any infringement claim to the extent such infringement arises from: (i) use of the Product in any manner or for any purpose other than Research Use, (ii) 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, (iii) use of the Product in combination with any other products, materials, or services not supplied by Seller, (iv) use of the Product to perform any assay or other process not supplied by Seller, (v) Seller’s compliance with specifications or instructions for such Product furnished by, or on behalf of, Purchaser, (vi) Purchaser’s breach of any of these terms and conditions, (vii) use of stand-alone third party goods that may be acquired or used with the Products, or (viii) use of the Products in any manner or for any purpose that requires rights to Other IP (each of (i) – (viii), is referred to as an “Excluded Claim”).

c. Indemnification by Purchaser. Pursuer 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, costs, expenses, and losses of any 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 or (ii) 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 the 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 defending party, which may include access to books and records. The enforcing party must reimburse 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 at the date of shipment. Seller will invoice upon shipment. All payments are due within 30 days of the date of 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 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 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 are not binding on Seller. All prices and other amounts payable to Seller are exclusive of and are

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payable without deduction for any taxes, customs duties, tariffs or charges hereafter claimed or imposed by any governmental authority upon the sale of Product, all of which will be paid by Purchaser. In the event Seller is required by law or regulation to pay any such tax, duty, tariff or charge, such amount will be added to the purchase price or subsequently invoiced to the Purchaser. In the event Purchaser is required by law or regulation to deduct any such tax, duty, tariff or charge the Purchaser shall gross up any payment to the Seller.


a. Applicability of Terms and Conditions. These terms and conditions, including any terms in the Documentation, govern the ordering, purchasing, 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. Order Changes/Cancellations. Orders for Products may not be changed or cancelled once placed. If Purchaser cancels an order, Purchaser forfeits to Seller any deposit paid related to such order.

c. Governing Law; 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. Subject to Condition 12.1 below, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim under or in connection with these terms and conditions or its subject matter or formation.

d. Arbitration. In Seller’s sole discretion, any dispute or claim arising out of these terms and conditions or its subject matter or formation including, without limitation, any dispute regarding the validity or enforceability of these terms and conditions, shall be expressly resolved by an arbitrator before one arbitrator to be appointed by Seller. Subject to this Section 12.1, any party shall be entitled, by notice to the other party, to refer any dispute or claim to arbitration. Each party shall pay its own expenses and costs of such arbitration. The arbitrator shall be bound by these terms and conditions, and any remedies available to Seller under law or in equity, Seller’s rights granted to Purchaser pursuant to Section 2 (Rights to Product Upon Purchase), (iii) 1 day after deposit with a commercial express courier that provides written verification of delivery. 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 any applicable law. Seller grants to Seller a non-exclusive, fully paid-up, royalty-free, worldwide, irrevocable, perpetual right and licence, with the right to sublicense, in any manner, in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

e. Representation 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 or to provide any such product or service, (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 or in equity, 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, or (iv) terminate any remaining product warranty for the affected Product.

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

h. Service Contracts. If a Seller extended service contract for Hardware is being provided then Seller’s standard terms and conditions for such service contract shall prevail over these terms and conditions, subject to any agreement signed directly with Purchaser. Service contracts are personal to Purchaser and facility specific: services contracts cannot be transferred to a third party and may not be transferred to a new facility if the Hardware is relocated.

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

j. Seller Affiliates. Any actions or rights that may be performed or exercised by Seller may be performed or exercised by Seller’s affiliates or agents. In addition, any terms or 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 those 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.

d. 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 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.
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 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. 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.