

Terms and Conditions of Sale--Illumina Advantage Products

- 1. Definitions.** “**Advantage Consumables**” means those Consumables that are designated with the prefix “TG” in their catalogue number or product name, except for ForenSeq™ products. “**Approved**” means that a Product has, by appropriate regulatory authorities in the territory in which it is marketed, been approved, registered, licensed, cleared, certified, or otherwise determined to be able to be lawfully marketed as an IVD in such territory. “**Clinical Use**” means use of the Product to perform testing of human samples and specimens with Customer’s own Laboratory Developed Tests in a clinical laboratory in the Territory where results are reported, directly or indirectly, to patient or health care practitioner, specifically excluding Excluded Uses. “**Collection Territory**” means the country or countries from which samples and specimens may be collected for testing by Purchaser for Clinical Use. “**Consumable(s)**” means Seller branded reagents and consumable items that are intended by Seller to be consumed through the use of Hardware. Consumables are either Advantage Consumables or Temporary Consumables. All references in this Agreement to Consumables means both Advantage Consumables and Temporary Consumables unless specified otherwise. “**Consumable Kit(s)**” means individual boxes containing Advantage Consumables. “**Documentation**” means Seller’s user manual, package insert, and similar technical 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. “**Excluded Use**” means any use that (a) is a use of the Consumables to perform NIPT, (b) is a use of a Consumable as, or as a component of, an IVD, as defined below, or (c) is a use of the Product (or information generated from the use of the Product) that is either prohibited by applicable law or regulation, or contrary to ethical guidelines promulgated by established national and international ethical bodies. “**Facility**” means a facility in the Territory that is owned by, leased by or otherwise under the contractual control of, Purchaser. “**Hardware**” means Seller-branded hardware instruments, accessories, or peripherals purchased by Purchaser. “**IVD**” means a medical device that is used to diagnose or screen for a disease or other conditions and that may be used at any facility where its use is Approved by the appropriate regulatory authorities, or may otherwise be marketed under applicable law, excluding Laboratory Developed Tests. “**Laboratory Developed Test**” means a diagnostic test developed by Purchaser or on behalf of Purchaser (to the extent permitted under applicable law in the Territory) and performed and validated by Purchaser solely in its own laboratory Facility (which if in the United States would be regulated under the Clinical Laboratory Improvements Act (CLIA)), excluding an IVD. “**NIPT**” means non-invasive prenatal testing and includes without limitation all testing of nucleic acids of fetal or placental origin present in maternal tissue (including maternal blood and blood components). “**OTS Consumables**” are comprised of the Advantage Consumables referenced at <http://www.illumina.com/IAOTS> that are generally commercialized in the Territory and subject to the maximum order quantities stated thereon. “**Product(s)**” means the Consumables acquired hereunder. “**Purchaser**” 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. “**Seller**” means the Illumina entity selling the Product. Seller 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 technical specifications for the Consumables, or Consumable Kit, as applicable, in effect on the date that the Product ships from Seller. “**Temporary Consumables**” means those Consumables that are not designated with the pre-fix “TG” in their catalogue number or product name and which Illumina has authorized in writing for Purchaser to purchase for use under these terms and conditions. “**Territory**” means the country or countries in which Purchaser may use the Products.
 - 2. Rights to Products upon Purchase.** Subject to these terms and conditions, Purchaser is granted a non-exclusive, non-transferable, personal, right under Seller’s Core IP to use Consumables for Clinical Use (only on samples from the Collection Territory) and for internal research, both only with Hardware in Purchaser’s Facility and in accordance with the Consumables’ Specifications and Documentation, excluding all Excluded Uses. Except as expressly stated in this Section no right or license under any intellectual property rights of Seller or Seller’s affiliates is or are granted, expressly, by implication, or by estoppel, to Purchaser and any such rights are expressly reserved to Seller and its affiliates. Purchaser agrees that the contents of and methods of operation of the Products are proprietary to Seller and the Products contain or embody trade secrets of Seller. “**Core IP**” means the intellectual property owned or controlled by Seller and Seller’s wholly-owned 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 but does not include intellectual property that pertains to or covers aspects or features of the Products (and use thereof) only with regard to specific field(s) or specific application(s).
- Purchaser is solely responsible for determining whether Purchaser has all intellectual property rights that are necessary for Purchaser’s intended uses of the Product.**
- 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 Purchaser. Consumables and Hardware were specifically designed and manufactured to operate together. Purchaser acknowledges and agrees it will only use Consumables with the Hardware. Purchaser is not granted any right under these terms and conditions to (i) manufacture, or have manufactured, any reagent, consumable, or substitute therefor, for use in place of a Consumable or for its own use, or (ii) market or place on the market, distribute, offer to sell, or sell any kit or product, including any in-vitro diagnostic kit based on, incorporating or for use with the Products. Purchaser agrees: (i) to only use the Product in accordance with the Product’s Documentation and Specifications, including for Clinical Use, (ii) to use each Consumable only one time, and (iii) to use only Seller Consumables with Seller Hardware, and (iii) not to, nor authorize any third party to, use the Products as described in any Excluded Uses. The limitations in (i)-(ii) in the immediately preceding sentence do not apply if the Documentation or Specifications for the Product expressly state otherwise.

- 4. Regulatory.** The Product is labeled with a For Research Use Only, or similar labeling statement and is not Approved for use in diagnostic procedures. Purchaser acknowledges that (i) the Product has not been Approved by the United States Food and Drug Administration (“FDA”) or any other regulatory entity whether foreign or domestic for any specific intended use, whether research, commercial, diagnostic, or otherwise, and (ii) Purchaser must ensure it has any regulatory approvals that are necessary for Purchaser’s intended uses of the Product. Purchaser shall promptly disclose to Seller any communication that it makes to or receives from a government body, agency, or other regulatory or accrediting body pertaining to the Products or Purchaser’s use of the Products. Illumina intends that its products be used only in a lawful and ethical manner. Purchaser agrees to comply with all applicable laws, regulations, and ethical guidelines promulgated by established national and international ethical bodies when using, maintaining, and disposing of the Product and the information generated from the use of the Product. In the event a Product becomes Approved by a regulatory agency, including without limitation the FDA, then the Product may be subject to additional terms and conditions related to products of that type (e.g., products labeled for an Approved diagnostic use), and Purchaser agrees to abide by any such terms and conditions. If Seller reasonably determines that it is proper from a regulatory standpoint to discontinue sale of any Product to Purchaser and Seller makes available for purchase by Purchaser a product or combination of products that has a relevant regulatory status more appropriate for such application, then Purchaser will transition to the use of that product or combination of products and cease using the applicable Product for that application. To the extent permitted under applicable law, Seller will honor purchase orders for the Products that were accepted prior to such discontinuation.
- 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, 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 (WHETHER 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 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), 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.

- 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, IMPLIED, OR STATUTORY) WITH RESPECT TO THE PRODUCT, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, 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.
- 7. Expiry Date; Single Lot Shipments; Lot Testing for Advantage Consumables.** Seller shall use commercially reasonable efforts to ensure that Advantage Consumables shall have an expiry date that is no less than six months at the time of shipment. Expiry date will be pre-printed on the Advantage Consumable packaging. Seller shall use commercially reasonable efforts to ensure each shipment of a given Advantage Consumable includes only such Advantage Consumable manufactured from the same lot. Seller shall use commercially reasonable efforts to test each component reagent supplied under these terms and conditions that comprises a given Advantage Consumable. Seller shall provide a Certificate of Analysis for each lot of Advantage Consumables sold to Purchaser.
- 8. Temporary Consumables.** If Seller has an Advantage Consumable available for purchase that is intended by Seller to replace a Temporary Consumable, Seller will give notice of the availability of such Advantage Consumable. Purchaser agrees that (i) it will promptly modify or cancel existing open purchase orders as needed so as to ensure that Purchaser will no longer receive the applicable Temporary Consumable after the date that is 90 days after the date of the notice, unless Purchaser will use such Temporary Consumables only for uses permitted under these terms and conditions, excluding Clinical Use, and (ii) Purchaser will not place additional purchase orders for the applicable Temporary Consumable for Clinical Use after receipt of such notice.
- 9. 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, 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 will conform to their Specifications until the later of (i) for Advantage Consumables, six months from the date of shipment from Seller, and for Temporary Consumables, three months from the date of shipment from Seller, or (ii) any expiration date or the end of the shelf-life pre-printed on such Consumable by Seller, but in either event, no later than 12 months from the date of shipment.
- b. 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) use that is an Excluded Use, (iii) improper handling, installation, maintenance, or repair (other than if performed by Seller’s personnel), (iv) unauthorized alterations, (v) force majeure events, or (vi) use with a third party’s good (unless the Product’s Documentation or Specifications expressly state such third party’s good is for use with the Product).
- c. 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 authorized repair personnel access to the Product in order to confirm the non-conformance and make repairs.

d. **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 confirm such nonconformance. Seller will use commercially reasonable efforts to provide replacement Advantage Consumables in Purchaser's next scheduled shipment where single lot per shipment can be maintained. The warranty period for repaired or replaced Consumables is 90 days from the date of shipment, or the remaining period on the original Consumables warranty, whichever is later. In no event will the warranty for repaired or replaced Consumables be later than 12 months from the date of shipment. The preceding states Purchaser's sole remedy and Seller's sole obligations under the warranty.

10. Indemnification.

a. **Indemnification by Seller.** Subject to these terms and conditions, including without limitation, the Exclusions to Seller Indemnification Obligations (Section 10(b) below) and the Conditions to Indemnification Obligations (Section 10(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 Clinical Use on samples from the Collection Territory, or for internal research, in accordance with these terms and conditions, in accordance with the Documentation or Specifications, where such third-party claim or action could be brought without regard to any specific fields of use or specific applications, infringes the valid and enforceable intellectual property rights of a third party, and (ii) pay all settlements entered into by, and all final judgments and costs (including reasonable attorneys' 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, 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 Excluded Use, (ii) use of the Product in any manner not in accordance with the rights expressly granted to Purchaser under these terms and conditions, (iii) use of the Product in combination with any third party products, materials, or services (unless the Product's Documentation or Specifications expressly state such third party's good is for use with the Product), (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, or (vii) use of stand-alone third party goods that may be acquired or used with the Products (each of (i) – (vii), 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 reasonable attorneys fees), 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) any Excluded Claim, or (ii) Purchaser's marketing, sale, and/or provision of services, including without limitation, harm from misdiagnosis, missed diagnoses, and actions or inactions taken as a result of information provided directly or indirectly by Purchaser to patients, physicians, or other entities.

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 indemnifying party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance.

11. **Discontinuation/Changes to Consumable Kits.** A Consumable Kit may be phased out of production and no longer available and/or there may be a new, reconfigured, or repackaged version of a Consumable that embodies a material change to form, fit or function of such Consumable Kit with respect to its Specifications identified on Seller's certificate of analysis for such Consumable Kit ("**Changed Consumable**"). To the extent Seller is aware that Purchaser has purchased affected Consumable Kits within the nine month period prior to the Discontinuation Date or change, Seller will use commercially reasonable efforts to notify Purchaser of the discontinuation or change and will make the Changed Consumable Kits available no later than six months prior to the date that the original Consumable Kit is discontinued ("**Discontinuation Date**"). Upon Purchaser request, Seller may in good faith provide a reasonable quantity of Changed Consumable Kits free of charge to facilitate Purchaser's validation efforts in support of the change. Use of Changed Consumable Kits is subject to these terms and conditions. Seller will use commercially reasonable efforts to honor accepted purchase orders for shipments of Changed Consumable Kits, provided such shipments are scheduled no later than 30 days after the Discontinuation Date.
12. **Payment Terms.** Seller will invoice upon shipment. Subject to Seller's credit review of Purchaser (following which Seller shall inform Purchaser of applicable payment terms), all payments are due within 30 days of the date of the invoice, except that payments in Japan are due within 60 days of the date of the invoice. All amounts due shall be paid in the currency found on the invoice. If payment is made by wire or other electronic funds transfer, Purchaser is solely responsible for any bank or other fees charged, and will reimburse Seller for any such fees. If any payment is not made by the due date Seller may exercise all rights and remedies available by law. 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.

- 13. Lead Time; Shipping Schedule and Terms; Title and Risk of Loss.** Subject to these terms and conditions, if a purchase order for Advantage Consumables is submitted (i) by the fifth business day of the calendar month, the first shipment of Advantage Consumables on the purchase order will be no earlier than 90 days from the date the purchase order is accepted by Seller, and (ii) after the fifth business day of the calendar month, the first shipment of Advantage Consumables on the purchase order will, unless otherwise agreed by Seller and Purchaser, be no later than 120 days from the date the purchase order is accepted by Seller (“**Lead Time Requirement**”). Notwithstanding the foregoing, the Lead Time Requirement shall not apply to OTS Consumables. Each purchase order for Consumables must include a ship schedule, to be agreed to between Seller and Purchaser prior to Seller accepting that purchase order, that details the quantity of and type of Consumables (on a Consumable-by-Consumable basis) that Purchaser requires to be delivered in each calendar month that is covered by the purchase order. Unless otherwise set forth in writing by Seller or otherwise agreed between the parties, all shipments are made DAP (Incoterms 2010) at the address designated by Purchaser at the time of ordering, and Purchaser is responsible for freight and insurance, which will be added to the invoice and paid by Purchaser, except that all shipments to member countries of the E.U. 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. All software is licensed and not sold and may be subject to additional terms found in the software end user license agreement.
- 14. 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, or charge, such amount will be added to the purchase price or subsequently invoiced to the Purchaser. For Purchasers in New Zealand, Seller and Purchaser agree that subsection 8(4) Goods and Services Tax Act 1985, as may be amended, does not apply to the Products.
- 15. General.**
- a. Applicability of Terms and Conditions.** These terms and conditions 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. Acceptance of a purchase order occurs when Seller provides an order confirmation. 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. Third party products may be subject to additional terms and conditions.
- b. Order Changes/Cancellations.** Orders for Products may not be changed or cancelled once placed. Seller reserves the right to charge Purchaser up to 50% of the purchase price of the canceled order for such Advantage Consumables, and Purchaser agrees to make payment on any and all invoices provided by Seller for such charges.
- c. Governing Law.** These terms and conditions, their interpretation, and the performance of the parties shall be governed by the laws of (i) the State of California, U.S.A., if Purchaser is located in the United States or (ii) the laws of the country where the Seller entity is located, if Purchaser is not located in the United States. Seller and Purchaser agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions, including any terms in the Documentation.
- d. Arbitration.** In Seller’s sole discretion, any dispute, claim, or controversy arising out of or relating to these terms and conditions shall be determined by confidential binding arbitration conducted in the English language, under generally accepted arbitration rules and procedures in a venue to be determined by Seller. In all cases of arbitration, (i) each party shall bear its own costs and expenses and an equal share of the arbitrator’s and administrator’s fees of arbitration, (ii) 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, (iii) 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, and (iv) judgment on the award may be entered in any court having jurisdiction. This subsection shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
- e. Representations and Warranties.** Purchaser is not an authorized dealer, representative, reseller, or distributor of any of Seller’s, or its affiliates’, products or services. Purchaser represents, and warrants that it (i) is not purchasing the Product on behalf of a third party, (ii) is not purchasing the Product in order to resell or distribute the Product to a third party, (iii) is not purchasing the Product in order to export the Product from the country in which Seller shipped the Product pursuant to the ship-to address designated by Purchaser at the time of ordering (“**Ship-To Country**”), and (iv) will not export the Product out of the Ship-To Country.
- f. Remedies for Breach.** In addition to any remedies specified elsewhere under these terms and conditions, and any remedies available to Seller under law or in equity, in the event Purchaser breaches these terms and conditions, Seller may do any, all, or any combination of the following: (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 remaining product warranty for the affected Product, or (iv) require Purchaser to immediately pay any unpaid invoices.
- g. 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.
- h. Seller Affiliates.** Any actions or rights that may be performed or exercised by Seller may be performed or exercised by Seller itself or by any of its affiliates. By way of non-limiting example, Seller’s affiliates may carry out shipment, servicing, invoicing, and receipt of payment.

- i. **Force Majeure.** Seller is not responsible 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, government actions, 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, shortage of energy, raw materials or equipment, or Purchaser's fault or negligence.
- j. **Notices.** Any notice required or permitted shall be in writing and shall be deemed received (i) when delivered personally; (ii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or 10 days for international mail); or (iii) one day after deposit with a commercial express courier that provides written verification of receipt.
- k. **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 may not disclose any financial terms of this transaction to any third party without the prior written consent of the Seller, except as (and only to the extent) required by securities or other applicable law. Purchaser grants to Seller a non-exclusive, fully paid-up, royalty-free, worldwide, irrevocable, perpetual right and license, with the right to sublicense, to use and commercialize in any manner suggestions, ideas, or comments provided by Purchaser to Seller related to the Products.
- l. **Export Compliance.** The Products, any related technology, or information provided to Purchaser may be subject to restrictions and controls imposed by applicable laws, the United States Export Administration Act and the regulations thereunder (or the export regulations and laws of another country). Notwithstanding anything to the contrary in these terms and conditions, Purchaser agrees not to use the Products in, or export or re-export the Products, any related technology, or information provided to Purchaser into, any country or to any person or entity, or in any manner, in violation of such controls or any other laws, rules, or regulations of any country, state, or jurisdiction.
- m. **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 ("**Healthcare Laws**") to disclose the existence of these terms and conditions, the terms of herein including financial terms, and the subject matter. Seller agrees it, and its affiliates, will disclose, as determined in its reasonable discretion, the least amount of information as possible in order to comply with such Healthcare Laws.
- n. **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, receivership, liquidation, or composition for the benefit of creditors. These terms and conditions represent the entire agreement between the parties regarding the subject matter hereof and supersede all prior discussions, communications, agreements, and understandings of any kind between the parties. No amendment to these terms or waiver of any right, condition, or breach will be effective unless made in a writing signed by both parties. If any provision is held invalid or unenforceable, such provision shall be enforced to the maximum extent permissible so as to give effect to the intent of the parties, and the remaining terms will continue in full force and effect. The failure of either party to exercise any right granted herein or to require any performance of any term or the waiver by either party of any breach shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term. Nothing herein shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties. There are no third party beneficiaries to these terms and conditions.