

Illumina GmbH  
Terms and Conditions of Sale – Research Use Only Products  
January 2015

**1. Definitions, Interpretation.** “Consumable(s)” means Seller branded reagents and consumable items that are intended to be consumed through the use of Hardware. “Documentation” means Seller’s user manual, package insert, and similar documentation, for the Product in effect on the date that the Product ships from Seller. Documentation may be provided with the Product at time of shipment or provided electronically from Seller. “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 authorized distributor or reseller. “Seller” means the Illumina entity selling the Product. The 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. “Software” means Seller branded software (e.g., Hardware operating software, data analysis software). All Software is licensed and not sold and may be subject to additional terms found in the Software’s end user license agreement. “Specifications” means Seller’s written technical specifications for the Product in effect on the date that the Product ships from Seller.

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 recognized in the Federal Republic of Germany.

**2. Rights to Products upon Purchase.** Subject to these terms and conditions, the Purchaser is granted only a non-exclusive, non-transferable, perpetual, non-sublicensable 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-assembling 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 non-Seller reagent/consumables with Seller’s Hardware (does not apply if the Specifications or Documentation state otherwise), (h) is the transfer to a third-party of, or sub-licensing of, Software or any third-party software provided by Seller, or (i) is a clinical, diagnostic, or other non-research use of the Product (each of (a) – (i), is referred to as an “Excluded Use”). All 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 to Purchaser.

“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 intellectual property 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) Purchaser’s use of Product in any manner or for any purpose other than Research Use is a breach of these terms and conditions, (ii) actual knowledge by Seller, or Seller’s affiliates, that Purchaser is using Product

in any manner or for any purpose other than Research Use 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/or at law, (B) grant Purchaser a license to any intellectual property rights owned or licensed by Seller or Seller’s affiliates with respect to such use of the Product, and (iii) any trade usage, course of performance or course of dealing between Seller and Purchaser, will not be used to interpret these terms and conditions, including without limitation, the scope of the Research Use rights for Product conferred under this Section.

**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 guarantee or warranty that Purchaser’s specific intended uses will not infringe the intellectual property rights of a third party or Application Specific IP of Seller or Seller’s affiliates.**

**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.

**a. Unauthorized Uses of Products.** Purchaser agrees: (i) to use each Consumable only one time, and (ii) to use only Seller Consumables with Seller Hardware. The limitations in (i)-(ii) do not apply if the Documentation or Specifications for the Product expressly state otherwise. Purchaser agrees not to, nor authorize any third party to, use the Products as described in any Excluded Uses. 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.

**b. Unauthorized Transfer of Products.** Purchaser agrees to not sell, rent, lease, loan, transfer or assign or otherwise dispose of any Hardware or component thereof containing Software to any third party (“Unauthorized Transfer”) unless Purchaser erases or removes the Software prior to such action. For the avoidance of doubt, Purchaser understands that in the event of an Unauthorized Transfer, any rights to use the Software granted to Purchaser by Seller and the Permitted Rights immediately cease, and the third party transferee will have no rights to use the Software and no Permitted Rights. Additionally, in the event of an Unauthorized Transfer, any existing warranties for the Hardware or Software shall be void and of no effect, as of the date of such Unauthorized Transfer.

**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, 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 Product.

**5. Liability and Warranties. TO THE EXTENT PERMITTED BY LAW, ALL OF SELLER’S LIABILITIES ARE HERewith EXCLUDED. TO THE EXTENT PERMITTED BY LAW AND SUBJECT TO THE EXPRESS PRODUCT WARRANTY MADE IN THESE TERMS AND CONDITIONS SELLER MAKES NO (AND EXPRESSLY DISCLAIMS ALL) WARRANTIES.**

**6. Product Warranty.** All warranties are personal to the Purchaser and may not be transferred or assigned to a third-party, including an affiliate of Purchaser. All warranties are facility specific and do not transfer if the Product is moved to another facility of Purchaser, unless Seller conducts such move. The warranties described in these terms and conditions exclude any stand-alone third party goods that may be acquired or used with the Products.

**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 the 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 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 is covered by this warranty provided that Seller can reasonably identify and confirm such nonconformance. 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. Hardware may be repaired or replaced with functionally equivalent, reconditioned, or new Hardware or components (if only a component of Hardware is non-conforming). If the 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 Hardware warranty, whichever is 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 Hardware warranty, whichever ends later. The preceding states Purchaser’s sole remedy and Seller’s sole obligations under the warranty.

## 7. Indemnification.

**a. Infringement Indemnification by Seller.** Subject to these terms and conditions, including without limitation, the Exclusions to Seller’s Indemnification Obligations (Section 7(b) below), the Conditions to Indemnification Obligations (Section 7(d) below), Seller shall (i) defend, indemnify and hold harmless Purchaser against any third-party claim or action alleging that 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 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 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.** 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 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 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.

**8. Payment Terms.** The price of the Product will be the price set out in the Seller’s quote, or, if no price is quoted, the price set out in the Seller’s published price list in force as at the date of shipment. Seller will invoice upon shipment. All payments are due within 30 days of the date of the invoice. All amounts due shall be paid in the currency found on the invoice. If payment is made by wire 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 legal fees) incurred by Seller in connection with the collection of late payments. Each purchase order is a separate, independent transaction, and Purchaser herewith waives his right to 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.

**9. 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.

**10. Taxes.** Purchaser agrees that any applicable sales, use, excise, VAT (value added tax), GST (goods and services tax), withholding and other taxes will be calculated based on both the tax rates in effect on the date of shipment and the ship to address for the Product. Any amounts for tax listed on a quotation, if any, are for reference purposes only and are not binding on Seller. All prices and other amounts payable to Seller are exclusive of and are payable without deduction for any taxes, customs duties, tariffs or charges hereafter claimed or imposed by any governmental authority upon the sale of Product, all of which will be paid by Purchaser. In the event Seller is required by law or regulation to pay any such tax, duty, tariff or charge, such amount will be added to the purchase price 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.

## 11. 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 override any conflicting, amending and/or additional terms contained in any purchase orders, invoices, or similar documents all of which are hereby rejected and are null and void. Seller’s failure to object to any such terms shall not constitute a waiver by Seller, nor constitute acceptance by Seller of such terms and conditions.

**b. Order Changes/Cancellations.** Orders for Products may not be changed or cancelled once placed. If Purchaser cancels an order, Purchaser forfeits to Seller any deposit paid related to such order.

**c. Governing Law.** These terms and conditions shall be governed by and interpreted in accordance with the laws of Germany, without reference to conflict of law principles. International purchase laws, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall not apply.

**d. Arbitration.** Any dispute relating to the validity, performance, construction or interpretation of these Terms and Conditions, which cannot be resolved amicably between Customer and Illumina shall be submitted to final and binding arbitration in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS). Place of Arbitration shall be Munich, Germany. The number of arbitrators shall be three (3). The language of the arbitration proceeding shall be English provided, however, that written evidence may be submitted in either German or English language. The award of the arbitration shall be final, non-appealable and binding upon the parties and their respective successors and permitted assignees. Judgement upon the award may be entered in any court having the jurisdiction thereof.

**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 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.

**f. Remedies for Breach.** In addition to any remedies specified elsewhere under these terms and conditions, and any remedies available to Seller under law, Seller may, immediately upon notice to the Purchaser, do any, all, or any combination of the following in the event Purchaser breaches any of 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 cooperation.

**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 exclusively govern such extended 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 ("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 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.

**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. 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.

**m. Assignment.** Purchaser shall not assign or transfer these terms and conditions or any rights or obligations, whether voluntary, by operation of law or otherwise, without the prior written consent of Seller; provided that, only notice to Seller and no consent shall be required for any assignment in connection with any change of control 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. 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. Purchaser grants to Seller a non-exclusive, fully paid-up, royalty-free, worldwide, irrevocable, perpetual right and licence, with the right to sub-license, to use in any manner suggestions, ideas or comments provided by Purchaser to Seller related to the Products.

**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 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.

**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, the terms of 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) Compliance.** The Purchaser shall exclusively finance the collection and delivery of waste electrical and electronic equipment (WEEE) 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.

**r. Miscellaneous.** 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. No amendment to these terms and conditions 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.