1. Definitions, Interpretation. “Documentation” means Seller’s user manual, package insert, and similar documentation, for the Product in effect on the date that the Product ships from Seller. Documentation may be provided with the Product at time of shipment or provided electronically from Seller. “General Purpose Product(s)” means all Products other than Test Specific Products (e.g., an instrument that can be used with multiple test specific IVD Consumables). “Intended use” means Seller's specific intended use of a Product as set forth in the intended use statement of the Documentation for such Product. “IVD Consumables” means Seller branded reagents and consumable items labeled by Seller for human in-vitro diagnostic use. Products may be IVD Hardware, IVD Consumables, or IVD Software. IVD Software may be embedded in or installed on IVD Hardware or provided separately. “Purchaser” means the person or entity acquiring the Product with the intent to use the Product, from (i) Seller or (ii) Seller’s authorized distributor or reseller. Thirty 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. “Specifications” means Seller’s written technical specifications for the Product in effect on the date that the Product ships from Seller. “Test Specific Product(s)” means those Product(s) having a specific intended use set forth in its Documentation (e.g., an in-vitro diagnostic reagent kit whose Documentation includes an intended use statement stating that the Product is intended to be used to test for specific nucleic acid sequences, combination of nucleic acid sequences, diseases, or conditions).

Sections, titles and headings in these terms and conditions are for convenience only and are not intended to affect the meaning or interpretation hereof. Whenever required by the context, the singular term shall include the plural, the plural term shall include the singular, and the gender of any pronoun shall include all genders. As used in these terms and conditions except as the context may otherwise require, the words “include”, “includes”, “including”, “such as”, “e.g.” or “example(s)” are deemed to be followed by “and” or “or” or similar words or phrases.

The right to use the Product as set forth in the intended use statement of the Documentation for such 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 is the separation, extraction, or isolation of components of the Product or other unauthorized analysis of the Product,

2. Rights to Products upon Purchase. Subject to these terms and conditions, Purchaser is granted only a non-exclusive, non-transferable, perpetual, worldwide non-sublicensable right under Seller’s (A) Core IP and Application Specific IP to use Test Specific Products only for the specific intended use set forth in the Test Specific Product’s Documentation, and (B) Core IP to use General Purpose Products only for the specific intended use set forth in the General Purpose Product’s Documentation and for Purchaser’s internal research use (which includes research services provided by Purchaser to third parties), in each of the product categories (A) and (B), only in Purchaser’s facility (“Permitted Rights”), specifically excluding any use that (a) is not in accordance with the Product’s Specifications or Documentation, (b) requires grants of rights or a licence to Application Specific IP (except in the case of a Test Specific Product containing IVD Software), (c) is not in accordance with the Product’s intended use, (d) is the use of a previously used IVD Consumable, (e) to the extent not otherwise permitted by law is the disassembling, reverse-engineering, reverse-compiling, or reverse-assembling of the Product, or (f) is not in accordance with the Product’s Specifications or Documentation, and (g) 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.

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.

a. Unauthorized Uses of Products. Purchaser agrees: (i) to use each IVD Consumable only one time, and (ii) to use only Seller’s reagents/reagents with Seller IVD Hardware. The limitations in (i)-(ii) do not apply if the Documentation or Specifications for the Product state otherwise. Purchaser agrees not to, nor authorize any third party not to, use the Products for any purpose not set forth in the 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. Unauthorised Transfer of Products. Purchaser agrees to not sell, rent, lease, transfer or assign or otherwise dispose of any IVD Hardware or component thereof containing IVD Software to any third party (“Unauthorised Transfer”) unless Purchaser stops or removes the IVD Software prior to such action. For the avoidance of doubt, Purchaser understands that in the event of an Unauthorised Transfer, any rights to use the IVD Software granted to Purchaser by Seller and the Permitted Rights immediately cease, and the third party transferee will have no rights to use the IVD Software and no Permitted Rights. Additionally, in the event of an Unauthorised Transfer, any existing warranties for the IVD Hardware or IVD Software shall be void and of no effect, as of the date of such Unauthorised Transfer.

4. Regulatory. Purchaser 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, EXEMPLARY, CONSEQUENTIAL (GEGEVENSCHADE) OR PUNITIVE DAMAGES (SCHADEVERGOEDENGEN) 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 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 PRODUCER 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 OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES OF NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO CLAIM, REPRESENTATION, OR
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 not set forth in its Documentation, or the rights expressly granted to Purchaser under these terms and conditions, including without limitation, any use of the Product beyond the specific intended use set forth in its Documentation, (ii) use of the Product in combination with any other products, materials, or services not supplied by Seller, (iii) use of the Product to perform any assay or other process not supplied by Seller, (iv) Seller’s compliance with specifications or instructions for such Product furnished by, or on behalf of, Purchaser, (v) Purchaser’s breach of any of these terms and conditions, (vi) use of stand-alone third party goods that may be acquired or used with the Products, or (vii) the use of the Products in any manner or for any purpose that requires rights to Other IP (each of (i) through (vii) referred to as an “Excluded Claim”).

c. Indemnification by Purchaser. Purchaser shall defend, indemnify and hold harmless Seller, its affiliates, their non-affiliate collaborators and development partners that contributed to the development of the Product, and their respective officers, directors, representatives and employees against any claims, liabilities, damages, fines, penalties, causes of action, and losses of any and every kind, including without limitation, personal injury or death claims, and infringement of a third party’s intellectual property rights, resulting from, relating to, or arising out of (i) Purchaser’s breach of any of these terms and conditions, (ii) failure of Purchaser to follow 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. 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, Seller’s authorized 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 non-conformance. The warranty period for repaired or replaced IVD Consumables is 90 days from the date of shipment, or the remaining period on the original IVD Consumables warranty, whichever is later. IVD Hardware may be repaired or replaced with functionally equivalent, reconditioned, or new IVD Hardware or components (if only a component of IVD Hardware is non-conforming). If the IVD Hardware is replaced in its entirety, the warranty period for the replacement is 90 days from the date of shipment, or the remaining period on the original IVD Hardware warranty, whichever ends later. If only a component is being repaired or replaced, the warranty period for such component is 90 days from the date of shipment or the remaining period on the original IVD Hardware warranty, whichever ends later. The preceding states Purchaser’s sole remedy and Seller’s sole obligations under the warranty provided.

8. Indemnification (wijziging).

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 (verwijzert) and hold harmless Purchaser against any third-party claim or action alleging that the (A) Test Specific Products when used for the specific intended use set forth in its Documentation, and (B) the General Purpose Products when used for the specific intended use set forth in its Documentation or its (y) Purchaser’s internal research use (which includes research services to third parties, and 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 to Seller in connection with any 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) 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 returnable Product at the time of such return; provided that, no refund will be given for use of up or expired IVD Consumables. This Section states the entire liability of Seller for any infringement of third party intellectual property rights.
c. Governing Law. These terms and conditions, their interpretation, and the performance of the parties shall be governed by the laws of The Netherlands. 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. Any dispute which may arise out of or in connection with these terms and conditions and any other document executed in connection these terms and conditions, or the breach, termination or invalidity thereof, which cannot be resolved in a friendly manner, shall be finally resolved by arbitration in Amsterdam, the Netherlands under the Rules of Arbitration of the Netherlands Arbitration Institute (Nederlandse Arbitrage Instituut).

e. Arbitration Costs. In all cases of arbitration each party shall bear its own costs and expenses and an equal share of the arbitrator’s and administrator’s fees of arbitration. Neither party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both parties, unless required by law; the decision of the arbitrator shall be final and binding on the parties, provided that, the arbitrator shall not have the authority to alter any explicit provision of these terms and conditions; judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Notwithstanding anything herein to the contrary, any award or order in favor of action involving infringement, validity, or enforceability of a party or its affiliate’s intellectual property rights are not subject to this arbitration clause.

f. Representations and Warranties. Purchaser is not an authorised dealer, representative, reseller, or distributor of any of Seller’s, or its affiliates’, products or services. Purchaser agrees, represents and warrants that (i) it is not purchasing the Product on behalf of a third party, (ii) it is not purchasing the Product in order to resell or distribute the Product to a third party, (iii) it 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.

g. 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.

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

i. IVD Hardware Compatibility. Due to the slower rate of updates to IVD Hardware, Purchaser acknowledges that Seller’s research use reagents and consumables may not be compatible with the IVD Hardware and IVD Software. Please contact Seller’s technical support department prior to purchasing any Seller research use reagents and consumables for use with IVD Hardware and IVD Software.

j. 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 may request that the Service contracts be 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.

k. 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.

l. 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 shipping, servicing, invoicing and receipt of payment.

m. Force Majeure. The term “Force Majeure” has the meaning set out in section 6:75 of the Dutch Civil Code. Seller shall not be in breach of these terms and conditions, nor liable for any failure to perform or delay in the event of Force Majeure. 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.

n. 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.

o. Assignment. Purchaser shall not assign or transfer these terms and conditions or any right, condition, or breach will be effective unless made in a writing signed by both parties. 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.

p. Seller Information. Seller may maintain and use a database of orders and account information pertaining to Purchaser for purposes of order processing, maintaining records, and the subject matter of any order, and 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.

q. Export Compliance. The Products, any related technology, or information provided by Seller, or any authorized Seller representative, reseller, or distributor of any of Seller’s, or its affiliates’, products or services must be purchased 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.

r. Healthcare Law Compliance. Purchaser acknowledges and agrees that as a healthcare company, Seller, and Seller’s affiliates, may be required by applicable law and regulation (including codes of practice enforceable by law) (“Healthcare Laws”) to disclose the existence of these terms and conditions, these terms and conditions including financial terms, and the subject matter (e.g. the Dutch Code of Conduct on Transparency of Financial Relations, the COCIR Code of Conduct on Interactions with Healthcare Professionals, the AdvAmed Code of Ethics on Interactions with Healthcare Professionals, the EucoMed Code of Ethical Business Practice, the Nefemed Code of Conduct, the Edma Code of Ethics and any similar laws and regulations, and any comparable, or superseding equivalents). Seller agrees it, and its affiliates, will disclose the least amount of information as possible in order to comply with such Healthcare Laws.

s. Waste Electrical and Electronic Equipment (WEEE) and Waste Industrial Batteries and Accumulators (WIBA) Compliance. The Purchaser shall exclusively finance the collection and delivery of waste WEEE and WIBA to the recycler's address specified by the Seller, as required by the Directive 2002/96/EC and applicable national law. This clause applies to all new electrical and electronic equipment (EEE) put on the market by the Seller after 13 August 2005 (known as new WEEE), as well as all EEE put on the market before 13 August 2005 (known as historic WEEE) which becomes waste as a result of a purchase of new EEE from the Seller after August 2005. If the Purchaser resells the EEE to a customer, the Purchaser will ensure that this clause in its entirety is included in the contractual arrangements governing the sale to the customer. The Purchaser agrees to indemnify and keep indemnified and hold harmless the Seller and ENVIRON (as the operator of B2BWEEE-Scheme) from and against all costs and expenses which ENVIRON or the Seller incurs or suffers, as a result of a direct or indirect breach or negligent performance or failure in performance by the Purchaser of its obligations in this clause. For the avoidance of doubt, this applies to all arrangements for waste industrial batteries, please contact your local Illumina sales representative.

t. Miscellaneous. Except as expressly stated in these terms and conditions, no right or license with any of Seller, or Seller’s affiliates, intellectual property rights is or shall be granted expressly or by implication. All references to days mean calendar days unless specifically stated otherwise. To the extent permitted by law, Seller may cease performance (including cancellation of any order outstanding) immediately without liability to Purchaser if Purchaser becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors. These terms and conditions, including any terms and conditions in the Documentation, represent the entire agreement between the parties regarding the subject matter hereof, including any prior understandings of any kind between the parties. No amendment to these terms or waiver of any right, condition, or breach shall 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 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.