illumina®

Terms and Conditions of Sale -- Research Use Products

1. **Definitions**

"**Collection Territory**" means the Ship-To Country. "**Consumable(s)**" means Seller branded reagents and consumable items that are intended by Seller to be consumed through the use of Hardware. "**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. "**Hardware**" means Seller branded instruments, accessories, or peripherals. "**Marketed Device**" means a medical device that is intended for use in the diagnosis of or screening for disease or other conditions that either: (a) requires pre-market approval, notification or clearance by the United States Food & Drug Administration ("FDA") or listing with FDA (or similar listing or approval from the applicable regulatory agency of the Ship-To Country) before it may be used (collectively, "**Regulatory Approval**"), and received such Regulatory Approval for distribution to third parties; or (b) uses, as a component of any test for which it seeks Regulatory Approval, a Product that is a research use only assay standing on its own (i.e., includes both the sequencer and the applicable assay-specific test kit) or the assay-specific test kit. **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 made available on the Hardware acquired hereunder (e.g., Hardware operating software and related installers) or other Seller branded software provided by Seller and accessed or otherwise used by Purchaser. "**Specifications**" means Seller's written technical specifications for the Product in effect on the date that the Product ships from Seller.

2. **Rights to Products upon Purchase**

Subject to these terms and conditions, Purchaser is granted only a non-exclusive, non-transferable, personal right under Seller's Core IP to use the Product in Purchaser's facility in accordance with the Product's Specifications and Documentation, specifically excluding the following "**Excluded Uses**": any use that (a) is a use of the Product to perform non-invasive pre-natal testing, (b) is a use of the Product as, or as a component of, a Marketed Device, (c) is a use of the Product to perform testing of human samples and specimens collected from outside the Collection Territory, excluding testing for internal research (which includes research services provided to third parties), or (d) 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 or is inconsistent with the principles set forth in Illumina's Human Rights Policy (available at https://www.illumina.com/content/dam/illumina-marketing/documents/company/human-rights-policy.pdf). Additionally, Purchaser is granted a non-exclusive, non-transferable, personal, non- sublicensable license under Seller's Core IP to install and use Software made available by Seller with the Product, solely in accordance with the Product's Specifications and Documentation, specifically excluding the Excluded Uses; this license will terminate upon Purchaser's failure to comply with these terms and conditions, or by Purchaser discontinuing use of the Software and destroying or removing all copies thereof. All Software, whether provided separately, installed on, or embedded in a Product, is licensed to Purchaser, not sold. 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 Product are proprietary to Seller and the Product contains or embodies trade secrets of Seller. These terms and conditions convey no right to transfer, reverse engineer, copy, modify, decompile, disassemble, distribute, resell, or assign the Hardware or Consumables or any component thereof. "**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 pertain to or cover aspects or features of the Product (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.

a. **Unauthorized Uses of Products**. Purchaser agrees: (i) to only use the Product in accordance with the Product's Documentation and Specifications and not to, nor authorize any third party to, use the Products as described in any Excluded Uses, (ii) to use each Consumable only one time, (iii) to use only Seller Consumables with Seller Hardware, and (iv) to not use the Products in a manner that deprives any individual or group of individuals her, his, or their fundamental human rights. The limitations in (ii)-(iii) do not apply if the Documentation or Specifications for the Product expressly state otherwise. Purchaser and any user of the Products shall comply with this Section 3 and all internationally-recognized human rights standards and best practices. Purchaser shall notify Seller of any suspected or actual breach of this section, or of any disappearance, theft, or confiscation of Products promptly, but no later than 15 days following knowledge of the applicable incident.

b. **Software License Restrictions**. Licenses to the Software are not transferable. Purchaser acknowledges that certain Software may be subject to additional terms and conditions including, without limitation, the terms and conditions found at https://www.illumina.com/content/dam/illumina-marketing/documents/terms-conditions/united-states/illumina-software-subscription-agreement.pdf. Purchaser may not use, copy, modify, create derivative works of, reverse engineer, decompile, disassemble, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare or otherwise transfer the Software, nor permit any other party to do any of the foregoing. Purchaser may not remove from the Software, or alter, any of the trademarks, trade names, logos, patent or copyright notices or markings, or add any other notices or markings to the Software. Purchaser may not (and may not attempt to) defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any protection mechanisms in the Software including without limitation any such mechanism used to restrict or control the functionality of the Software.

c. **Third Party Code**. Purchaser acknowledges that certain Software may be subject to additional terms and conditions. To the extent third party code is included in Software and any term or condition of a third party license applicable to such third party code directly conflicts with the terms and conditions set forth herein, the applicable term(s) or condition(s) of that third party license will be applicable only to that third party code and only to the extent necessary to remove the conflict.

4. **Regulatory**

The Product is labeled "For Research Use Only. Not for use in diagnostic procedures" or with a similar labeling statement. Purchaser acknowledges that (i) the Product has not been approved, cleared, or licensed by the United States Food and Drug Administration 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.

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.

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. **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 and requires 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 provided pursuant to the Base Hardware Warranty. 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 Base Hardware Warranty unless the upgrade was conducted by Seller at Seller's facilities in which case the upgraded Hardware shipped to Purchaser comes with a new 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) 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).

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 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 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.

8. Indemnification

a. **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 in accordance with these terms and conditions 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 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, or (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 (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 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 indemnifying party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance.

9. 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. Purchaser shall pay all invoiced amounts 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.

10. Shipping Terms; Title and Risk of Loss

Unless otherwise set forth in these terms or otherwise in writing by Seller or agreed in writing between the parties, all shipments are made DAP (Incoterms 2020) 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 2020) at the address designated by Purchaser at the time of ordering. Title (except for Software and third-party software) and risk of loss transfers to Purchaser when Product is made available at such address; provided, however, if Purchaser requires shipment of Product by means of Purchaser's selected carrier, risk of loss transfers to Purchaser when the Product is delivered to Purchaser's selected carrier.

11. Taxes

Purchaser agrees that any applicable sales, use, excise, VAT (value added tax), GST (goods and services tax), withholding or 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. Tax amounts 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 other charges to the extent claimed or imposed by any governmental authority in connection with the manufacture, sourcing, shipment or sale of the Product, all of which will be passed through to and paid by Purchaser. In the event Seller is required by law or regulation to pay any such tax, duty, tariff or other charge, such amount will be added to the purchase price of the Product and invoiced to and paid by the Purchaser. For Purchasers in New Zealand, Seller and Purchaser agree that subsection 8(4) of the Goods and Services Tax Act 1985, as may be amended, does not apply to the Products.

12. 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. 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.

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, (ii) the Province of British Columbia and the federal laws of Canada applicable in the Province of British Columbia, if Purchaser is located in Canada, or (iii) the laws of the country where the Seller entity is located, if Purchaser is not located in the United States or Canada. 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 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.

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 into 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, including without limitation Sections 2-4, 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 service contracts then in effect for affected Product, (iv) terminate any remaining product warranty for the affected Product, or (v) require Purchaser to immediately pay any unpaid invoices.

g. **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.

h. **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.

i. **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.

j. **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. 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.

k. **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.

l. **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.

m. **Export Compliance**. The Products, any related technology, or information provided to Purchaser may be subject to restrictions and controls imposed by United States export control laws and regulations and other countries' applicable export control laws and regulations. Notwithstanding anything to the contrary in these terms and conditions, Purchaser agrees not to export, re-export, transfer, distribute, release, or use the Products, any related technology, or information sold 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.

n. **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 herein including financial terms, and the subject matter (e.g., the U.S. Sunshine Act, and state and foreign equivalents). Seller agrees it, and its affiliates, will disclose the least amount of information as possible in order to comply with such Healthcare Laws.

o. **Publicity**. Purchaser agrees that it shall not issue any press release or make any public statement regarding acquisition of the Products, without prior written approval from Seller, which approval shall not be unreasonably withheld or delayed.

p. **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.