

Illumina Purchase Order Terms and Conditions 06152020 (EU)

1. Definitions

“Affiliate” means any company controlling, controlled by or under common control with Buyer where control means direct or indirect ownership of at least 50% of the voting stock or interest in a company or control of the composition of the board of directors. “Agreement” means the Purchase Order provided by Buyer to Seller, including these Illumina Terms and Conditions of Purchase which form a part thereof, and the Specifications. “Buyer” means the entity named on this Purchase Order. “Buyer Confidential Information” means any of the following information of Buyer or a Buyer Affiliate that was or is disclosed to, provided to, or otherwise obtained or observed by Seller: (i) this Agreement, the subject matter of this Agreement, and the terms of this Agreement; (ii) the Buyer Property; (iii) all materials of every kind (e.g., samples, software, models, prototypes, enzymes, proteins and other biological materials, including DNA); (iv) information of every kind (e.g., business plans, product roadmaps, personnel lists, customer lists, marketing and technical information, including the Specifications), provided to, obtained by, or otherwise observed by Seller previously or in the future. “Goods” means all goods, items, articles, materials, apparatus, equipment, labor, work, services, work product, and operations of Seller, whether specified, listed, mentioned, scheduled or implied in the Agreement. “Intellectual Property Rights” means all proprietary legal rights covering designs, techniques, ideas, discoveries, inventions, including trade secrets, know-how, patents, copyrights, trademark, service mark and trade dress rights, current or future, under the laws of any jurisdiction or international treaty or convention, together with all applications and registrations therefor. “Inventory Liability Agreement” means the terms and conditions pertaining to the disposition of and Buyer’s liability, if any, for Seller’s inventory of raw materials, components, work in progress, and other materials or services necessary to provide Goods under the Agreement in the event of cancellation, change, or other reduction in the quantity of Goods by Buyer. The Inventory Liability Agreement will be on the face of the Purchase Order or in a separate written agreement between Buyer and Seller, if applicable. Purchase Order(s) means the purchase order provided by Buyer to Seller respecting the provision of Goods to Buyer. “Seller” means the person, firm, business, entity, corporation, company, organization, whether for profit or not for profit, undertaking to perform or deliver the Goods under the Purchase Order. “Specifications” means Buyer’s specifications, drawings, or information, whether provided verbally, attached to the Purchase Order, typed or written on the Purchase Order, or referred to in the Purchase Order.

2. Acceptance

The Agreement is Buyer’s offer to purchase Goods from Seller and becomes a binding contract upon the earliest to occur of acknowledgement by Seller (whether orally, in writing including email, or otherwise), upon shipment or performance of any portion of the Goods to Buyer, or expiration of 3 business days after Buyer has provided the Agreement to Seller and Seller has not rejected this Agreement in writing. None of the terms and conditions of this Agreement may be added to, modified, superseded, or otherwise altered except by a written instrument signed by an authorized representative of Buyer, and each performance or delivery of Goods to Buyer by Seller shall be deemed to be only upon the terms and conditions contained in this Agreement. Any terms or conditions in Seller’s acknowledgment, invoice, other similar forms or documents of Seller including, without limitation, package inserts and labels, relating to the Goods, that are inconsistent with or in addition to, or that alter in any way, the provisions of this Agreement, are hereby null and void. In the event of any inconsistency or conflict between these Buyer Purchase Order Terms and Conditions and the Purchase Order, the following order of precedence shall apply: (i) Buyer machine-typed provisions of the Purchase Order; (ii) machine-typed provisions of the Specifications; (iii) these Buyer Purchase Order Terms and Conditions.

3. Pricing

The prices stated on the Purchase Order are not subject to increase, and, if no price appears thereon, shall not be higher than the last price quoted by Seller for similar Goods. Unless otherwise specified on the Purchase Order, prices include all charges for packaging, storage, and transportation to the point of delivery, and all taxes, duties, or other similar costs. No additional charges of any kind will be allowed.

4. Shipment and Delivery Schedules

Time is of the essence. Shipment and delivery of Goods shall be in accordance with the schedules, dates, and delivery destinations specified in the Purchase Order. Schedules and delivery dates shall refer to the date Goods are due at the delivery destination. In addition to other rights or remedies available by law or these Purchase Order Terms and Conditions, if Seller does not, or it appears that Seller will not, meet the delivery schedule, Buyer may require that Seller ship the Goods via expedited routing to meet the schedule, and Seller shall pay the difference in shipping costs.

5. Packing and Marking

Goods shall be packaged in accordance with any special requirements specified in this Agreement; or, if none are specified herein, in accordance with standard commercial practices customary for similar goods according to common carriers’ requirements and to secure the lowest transportation costs. Each package shall be numbered (e.g., 1 of 3, 2 of 3, etc.) and labeled with the Purchase Order number and shall contain an itemized packing list.

6. Delivery, Title, and Risk of Loss

All Goods shall be delivered FCA Supplier Location (Incoterms 2020). Title and risk of loss to Goods transfers to Buyer when the Goods are made available at the named supplier location. For international shipments, supplier is responsible for export clearance and providing export documentation. Illumina will provide shipping instructions in the Purchase Order.

7. Inspection and Rejection

Goods received under this Agreement are subject to Buyer’s right to inspect and reject. Buyer shall have 30 business days from date of receipt to inspect Goods. Upon expiration of such 30 business days, Buyer shall have 10 business days to provide Seller notice of its election to reject such defective or nonconforming Goods. In the absence of rejection by Buyer within such 10 business days, Buyer shall be deemed to have accepted such delivered Goods. If Buyer determines, in its sole discretion, that any Goods are defective or otherwise nonconforming, then Buyer reserves the right, in addition to all other remedies available at law, to reject such Goods and do any one or more of the following: (i) hold such rejected Goods for a reasonable time and at Seller’s risk, until Seller retrieves such defective Goods; (ii) return such rejected Goods to Seller at Seller’s expense; (iii) require Seller to provide conforming replacement Goods at no additional cost to Buyer. Payment for any Goods prior to acceptance shall not be deemed an acceptance of such Goods.

8. Changes to Purchase Order

Buyer may, at any time prior to shipment of Goods, change its Purchase Order.

9. Changes by Seller

Seller shall not make any changes to the Goods, Specifications, or changes to Seller's manufacturing process or techniques (collectively or individually "Changes") unless Buyer has both Validated such Goods after the Changes have been implemented and given Seller written approval to begin providing such Goods to Buyer on an on-going basis. "Validated" means that the Goods perform in accordance with Buyer's requirements and are fit for Buyer's intended uses. For clarity, if the Changes result in the Goods not being validated, then the Changes may not be made and Seller shall continue to supply the affected Good without making any Changes.

10. Warranty

Seller warrants that the Goods (i) meet all requirements of this Agreement; (ii) have been and/or will be manufactured or performed in accordance with all applicable laws and regulations; (iii) conform to specifications and designs provided by Seller to Buyer and conform to the Specifications; (iv) are and will continue to be free from defects in materials, workmanship, and design (except to the extent the design and materials were supplied by Buyer) until the earlier of 18 months from delivery or 12 months from delivery to Buyer's customer; (v) are suitable for Buyer's intended purposes; (vi) are new items containing new component parts, unless otherwise stated in this Agreement; (vii) are free from any liens or encumbrances of title; (viii) are free from claims by third parties; and (ix) have been performed in a good workman-like manner according to industry standards. The foregoing warranties shall survive any inspection, acceptance, or payment for such Goods. In the event a defect or non-conformance is discovered, Buyer shall give Seller notice of such defect and Seller shall, at Seller's sole expense, promptly repair or replace such Goods. In the event Seller fails to repair or replace such defective Goods, Buyer may, at its election, repair and replace such defective Goods and Seller shall promptly repay Buyer for all such costs of repair or replacement.

11. Insurance

In the event that Seller performs any work or services for Buyer on or off Buyer's premises, and throughout the performance of such services, Seller agrees to comply with all Buyer policies and all reasonable instructions of Buyer personnel and agrees to maintain at Seller's sole expense all legally required insurance, including, but not limited to, workers' compensation and unemployment insurance. In addition, Seller shall maintain general liability and property damage liability insurance coverage. Such insurance shall have policy limits of no less than €1,000,000 per occurrence for death or personal injury, €1, 000,000 per occurrence for real and personal property damage, and €5, 000,000 umbrella aggregate liabilities per year.

12. Ownership

Any documents, materials, tooling, equipment, software, Specifications, and Intellectual Property Rights that are furnished by Buyer, paid for by Buyer, or developed by Seller for Buyer in connection with this Agreement (collectively "Buyer Property") shall be and remain the property of Buyer, and may be used by Seller only in fulfilling Seller's obligations under this Agreement, and shall, at Buyer's request, be returned to Buyer. Seller hereby assigns and agrees to assign to Buyer all of Seller's right title and interest in Buyer Property.

13. Confidential Information of Buyer

Seller shall not disclose Buyer Confidential Information to any third party and shall use Buyer Confidential Information only in the performance of this or subsequent Purchase Orders for Buyer. Buyer Confidential Information shall remain the property of Buyer and upon termination or expiration of this Agreement or upon request, Seller shall cease use of and, at Buyer's sole discretion, return to Buyer or destroy all Buyer Confidential Information. Unless otherwise agreed in writing by Buyer, Seller will not disclose to Buyer any information of Seller or a third party that Seller considers to be confidential. Buyer Confidential Information does not include any information that: (i) was already known to the Seller; (ii) is now or is later made known to the public through no default by Seller of its obligations under this Agreement, any other agreement between Seller and Buyer or a Buyer Affiliate, or any other confidentiality obligation owed to Buyer or a Buyer Affiliate; (iii) is disclosed to Seller by a third party under no obligation of confidentiality to Buyer or a Buyer Affiliate; or (iv) is independently developed by Seller without reference to any Buyer Confidential Information.

14. Compliance with Law

Seller represents and warrants that Seller is and will continue to comply with all laws and regulations applicable to this Agreement and the manufacture, sale, provision, and delivery of the Goods ordered hereunder by Buyer, including without limitation, all laws and regulations governing: (i) the workplace/labor/employees; (ii) environmental safety; (iii) product and health safety; and (iv) the country of origin. Seller certifies that the Goods do not require a license for export or re-export under U.S. export law or the laws of the country of origin of the Goods based upon the technology, composition, nature, or intended use of the Goods. Seller shall notify Buyer in writing if any Goods become subject to export and/or re-export control laws of the U.S. or the country of origin of the Goods.

15. Compliance with FCPA

In conformity with the U.S. Foreign Corrupt Practices Act ("FCPA") and with Buyer's established corporate policies regarding foreign business practices, Seller and its employees and agents shall not directly or indirectly make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any government (including a decision not to act) or inducing such a person to use his or her influence to affect any such governmental act or decision in order to assist Buyer in obtaining, retaining or directing any business. Seller shall ensure that its employees and agents understand their obligations under the FCPA, and shall take such measures as may be necessary to ensure that its employees and agents comply with its requirements. Seller's efforts in this regard shall include, at a minimum, providing formal training to its employees and agents regarding the FCPA. Upon Buyer's request, Seller shall provide to Buyer written confirmation that it has conducted such training.

16. Compliance with Ethical Obligations

Buyer is committed to conducting its business with the highest degree of ethics and honesty and in full compliance with applicable laws, as described in more detail in Buyer's Code of Ethics. Such obligations include, among others, prohibitions on receiving inappropriate gifts, payments or other compensation, and the obligation to report relationships or transactions that could be expected to give rise to a conflict of interest. Seller understands and agrees to comply with the relevant aspects of Buyer's policies and guidelines set forth in (i) Illumina, Inc.'s Code of Conduct, which is available at the corporate governance page of the investor relations section of Illumina, Inc.'s website and (ii) Illumina's Supplier Code of Conduct as set forth at <https://www.illumina.com/content/dam/illumina-marketing/documents/company/supplier-code-of-conduct.pdf>, both as amended by Illumina from time to time.

17. Labor Standards

Seller represents and warrants that in connection with its performance under this Agreement it (i) does not employ engage or otherwise use any child labor in violation of any applicable law or in circumstances such that the tasks performed by any such child labor could reasonably be foreseen to cause either physical or emotional impairment; (ii) does not use forced labor in any form (prison, indentured, bonded or otherwise); (iii) does not engage in or facilitate human trafficking or slavery in any form; (iv) does not discriminate against any employees on any ground (including race, religion, veteran status, sexual-orientation, disability, or gender) in violation of applicable laws; (v) complies with all applicable minimum wage, benefit, and other laws governing the workplace including, without limitation Workplace safety. Seller further certifies that its performance hereunder and the Goods provided hereunder are in compliance with all laws regarding slavery and human trafficking in the countries in which Seller does business. Upon request, Seller shall provide updated certifications regarding Seller's compliance under this Section. Seller agrees that it is responsible for managing its own supply chain and that it shall ensure compliance with ethical standards and human rights by its suppliers and service providers and their compliance with the standards set forth in this clause. Seller agrees that Buyer may upon reasonable notice enter upon Seller's premises to monitor compliance by the Seller of the representations and warranties set out in this clause and the Seller shall, subject to compliance with law, furnish Buyer with any relevant information requested by Buyer in relation thereto.

18. Personal Data Privacy

In the course of performance under this Agreement Seller may receive personal information that includes without limitation, business contact information, of customers and employees of Buyer and Buyer's affiliates (collectively "Personal Data"). In the event Seller receives any Personal Data under this Agreement, Seller shall protect Personal Data when transferring, using, and processing Personal Data as follows: Seller shall (a) provide notice about how Seller will protect and use Personal Data and provide, upon request, the affected individuals with appropriate options on how to receive such notices; (b) not transfer Personal Data to any third party without Buyer's express prior written consent; (c) provide individuals with reasonable access to their Personal Data as requested by Buyer; (d) take all reasonable security precautions to protect Personal Data from loss, misuse and unauthorized access, disclosure, alteration and destruction; and (e) take all reasonable steps to ensure Personal Data is reliable for its intended use when Seller will be using or processing Personal Data or transferring to a third party that will be using or processing Personal Data.

19. Intellectual Property of Others and Indemnification

Seller represents and warrants that the Goods will not infringe any Intellectual Property Rights of any third-party, except if and only to the extent that the infringement results from Seller's compliance with specifications, designs, or materials provided to Seller by Buyer. If any Goods are the subject of, or in Buyer's sole opinion are likely to be subject to a claim of infringement, then Seller, at its sole expense, must timely (i) procure for Buyer the right to continue the use and/or sale of such Goods; (ii) modify such Goods to render them non-infringing but functionally equivalent, subject to Buyer's acceptance of such modified Goods; (iii) substitute such Goods with replacements that are non-infringing but functionally equivalent, subject to Buyer's acceptance of such replacement Goods; or (iv) with Buyer's prior written consent, which may be withheld at Buyer's sole discretion, remove the infringing Goods at its sole expense and refund the purchase price and all associated costs paid by Buyer for such Goods. In addition to and without limiting the foregoing, Seller shall defend, indemnify and hold harmless Buyer, its Affiliates, and their respective officers, directors, employees, agents, and contractors from and against any claim or action alleging that the Goods or any component thereof infringes any Intellectual Property Rights of a third-party, and Seller shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) incurred by or awarded in connection with any such claim or action.

20. General Indemnification by Seller

Seller shall indemnify, defend, and hold harmless Buyer, its Affiliates, and their respective officers, directors, employees, agents, and contractors from and against all claims, liability, damage, loss, and expenses (including reasonable Attorneys' fees) (collectively "Claims") that arise out of Seller's performance or non-performance under this Agreement, except to the extent such Claims result from the gross negligence or intentional misconduct of Buyer.

21. Limitation of Liability

IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR ANY THIRD PARTY FOR LOST PROFITS OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE). BUYER'S TOTAL AND CUMULATIVE LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT WHETHER TO SELLER OR A THIRD PARTY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY BUYER FOR THE GOODS PURCHASED HEREUNDER.

22. Publicity

Seller will not without Buyer's prior written consent display or disclose the Goods to any third party, use Buyer or Buyer's Affiliates' names, any of their respective logos, trade names, and trademarks, the names of any Buyer products, or otherwise publicly announce or comment on the existence or terms of this Agreement without Buyer's prior written consent.

23. Termination

Buyer may terminate all or any part of a Purchase Order and this Agreement at any time in its sole discretion for convenience by providing notice to Seller. In the event of such termination by Buyer for convenience and unless an Inventory Liability Agreement exists pertaining to the Goods, Seller's compensation shall be limited solely to reasonable costs that Seller incurred up to its receipt of Buyer's notice of termination; provided that, Seller shall take reasonable steps to mitigate such costs by returning materials and components to its suppliers and repurposing materials and components for other customer orders or for internal purposes. In order for Seller to be entitled to recover costs arising from such termination, Seller shall provide Buyer with written notice addressed to Buyer's corporate headquarters to the attention of VP of Supply Chain detailing such costs and Seller's mitigation efforts, within 30 calendar days of its receipt of Buyer's notice of termination. Buyer will have no liability for such costs or any portion thereof that is not provided in writing to Buyer within such 30 calendar day time period. Buyer may terminate all or any part of a Purchase Order and this Agreement without liability if Seller breaches any term of the Purchase Order or this Agreement, including without limitation, delivery of defective Goods, Goods that do not conform with the Specifications, failure to deliver Goods by the delivery due dates found on the Purchase Order, and failure to deliver Goods in the quantities found on the Purchase Order.

24. Assignment

Seller may not assign, subcontract, or delegate this Agreement or any of Seller's obligations under this Agreement, in whole or in part, without the prior written consent of Buyer, and any assignment, subcontracting, or delegation in contravention of this Section shall be null and void.

25. Contract Manufacturer

Buyer may use one or more third party contract manufacturers ("CM") for the manufacture of its products. The Goods purchased under this Agreement may be used by such CM in the manufacture of such products for Buyer. Accordingly Seller agrees that such CM may purchase Goods under the terms and conditions of this Agreement in such situations upon the prior written consent of Buyer. Seller on its behalf and on behalf of its Affiliates agrees that Buyer and Buyer Affiliates shall be a third party beneficiary under any contract between Seller and such CM and that all terms of this Agreement shall be incorporated into any contract between Seller and such CM.

26. Conflict Minerals

Illumina, Inc., as a publicly traded company, must comply with the Conflict Mineral provisions of the Dodd-Frank Financial Reform Act (Section 1502) ("Conflict Minerals Law"). Affiliates of Illumina, Inc. must assist Illumina, Inc. in complying with the Conflict Minerals Law as well. The Conflict Mineral Law requires disclosure to the U.S. Securities and Exchange Commission (SEC) if any manufactured products contain certain metals (e.g., tin, tantalum, tungsten and gold) and the efforts to identify the source and chain of custody of such minerals if they were sourced from the Democratic Republic of Congo or adjoining countries. Accordingly, Seller agrees to comply with Illumina, Inc.'s Conflict Minerals Policy that it may publish from time-to-time. Seller further agrees to cooperate with Illumina, Inc. in Illumina Inc.'s efforts to comply with the Conflict Minerals Law, including without limitation, providing Illumina, Inc. with information and materials that Illumina, Inc. determines in its sole discretion are necessary for Illumina, Inc. to comply with the Conflict Minerals Law.

27. Employment Practices

To the extent applicable to Seller and its operations, Seller agrees to comply with the following laws: The Equal Employment Opportunity clauses in Section 202 of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 4212 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, 29 CFR Part 471, Appendix A to Subpart A (EO13496), and the implementing rules and regulations of the Office of Federal Contract Compliance Programs (41 CFR, Chapter 60), which are incorporated herein by reference.

28. Government Compliance

Seller represents and warrants to Buyer that Seller, its officers, directors, agents and employees (i) are not currently excluded, debarred, suspended, proposed for debarment or suspension, declared ineligible, or otherwise ineligible to (a) participate in any U.S. federal or U.S. state healthcare programs (or foreign equivalents), including without limitation, Medicare, Medicaid, and CHIP (the "HCPs"), or (b) be awarded contracts by any U.S. federal or state agency (or foreign equivalents); (ii) have not been convicted of any criminal offense related to the provision of items or services, including healthcare items or services, but have not yet been excluded, debarred, suspended, proposed for debarment or suspension, declared ineligible, or otherwise made ineligible to (a) participate in any HCPs, or (b) be awarded contracts by any federal or state agency (or foreign equivalents); and (iii) are not under investigation or otherwise aware of any circumstances which may result in Seller, its officers, directors, agents or employees being excluded, debarred, suspended, proposed for debarment or suspension, declared ineligible, or otherwise made ineligible to (a) participate in any HCPs, or (b) be awarded contracts by any federal or state agency (or foreign equivalents).

29. Survival of Obligations

Seller agrees that the sections entitled Definitions, Acceptance, Delivery, Title, and Risk of Loss, Inspection and Rejection, Warranty, Ownership, Confidential Information of Buyer, Compliance with Law, Compliance with FCPA, Compliance with Ethical Obligations, Labor Standards, Personal Data Privacy, Intellectual Property of Others and Indemnification, General Indemnification by Seller, Limitation of Liability, Publicity, Termination, Assignment, Conflict Minerals, Employment Practices, Government Compliance, Use, Goods and Third Parties, and General shall survive termination or expiration of this Agreement.

30. Use

Seller acknowledges and agrees that Seller is providing the Goods without any restriction on their use by Buyer, Buyer's Affiliates, or their respective customers for any purpose, including without limitation, commercial and research purposes, use in the provision of services, resale, and use in or with Buyer's research and diagnostic products.

31. Goods and Third Parties

Seller may not sell or otherwise provide any third party with Goods or services, products or components thereof based on or derived from the Goods, Buyer Confidential Information, Buyer Property, or the Specifications including as the Specifications may be revised over time.

32. General

This Agreement is the final, complete, and exclusive statement of the understanding between the Seller and Buyer with respect to the subject matter hereof. No terms, conditions, usages of trade, courses of dealing or agreements purporting to modify, vary, explain or supplement this Agreement shall be binding. This Agreement may not be waived, amended, or otherwise modified except by a writing signed by both Seller and Buyer. If any provision of this Agreement 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 remainder of this Agreement will continue in full force and effect. This Agreement shall be governed by the laws of England and Wales, without reference to conflicts of law principles thereof. Seller and Buyer consent to the exclusive jurisdiction of, and venue in, the courts within London England.