



TUMIGLOW™ TERMS AND CONDITIONS

TUMIGLOW™. Customer hereby agrees to the following terms and conditions (“**Terms & Conditions**”) pertaining to the purchase of TUMIGlow™, equipment, software, kits, supplies, and other add-ons from Colorado Genomics LLC, a Colorado limited liability company, d/b/a TUMI Genomics (“**TUMI**”). TUMI reserves the right to update these Terms & Conditions at any time and agrees to provide written notice to the Customer of any changes to these Terms & Conditions.

TUMIGLOW™ PURCHASE. Customer is agreeing to purchase from TUMI the TUMIGlow™ equipment described in the applicable order or invoice (the “**Equipment**”) and additional orders as may from time-to-time hereafter be executed by TUMI and Customer. Accepted orders cannot be canceled, in whole or in part, without TUMI’s written consent. Any cancellation of an order submitted by Customer to TUMI shall be at TUMI’s sole option. TUMI’s failure to meet estimated ship dates will not be sufficient cause for the cancellation of an order.

PAYMENTS. The purchase price of all Equipment will be payable in accordance with the terms set forth in the applicable order or invoice, provided that if no terms are included in a purchase order or invoice, payment for any Equipment is due at receipt of TUMI’s invoice and prior to shipment of the Equipment. In addition, Customer shall pay any tax, duty, custom, or other fee that any Federal, State, or local governmental authority may impose on the Equipment or other TUMIGlow™ hardware or software purchased by Customer. Customer may not set off any amount owing to TUMI against any amount owing from TUMI to Customer against any amount payable by Customer to TUMI. TUMI’s published prices, extras and payment terms are subject to change without notice and those terms in effect at the time of shipment shall apply. TUMI reserves the right to divide an order into separate shipments and separately invoice such shipments, in which case each shipment shall be deemed a separate order.

DEMO EQUIPMENT. TUMI and Customer may agree to a “demo” of the TUMIGlow™ system. Should TUMI agree to provide any part of the TUMIGlow™ equipment to Customer as a demo (a “**Demo Unit**”), the following provisions shall apply: (a) Customer shall be charged a demo fee to be determined on a case-by-case basis; (b) when the demo period ends, Customer shall immediately return the Demo Unit back to TUMI, at its own expense; (c) TUMI will inspect the Demo Unit upon receipt, and if the Demo Unit is damaged, normal wear and tear notwithstanding, Customer shall be charged the repair costs to return it back to full functionality, or the costs of a new TUMIGlow™ system, whichever is less.

LATE FEES / COLLECTION. Invoices that are past due will incur interest at a rate of two and one-half percent (2.5%) per month on any outstanding balance, or the maximum amount permitted by law, whichever is lower. In addition, Customer shall be responsible for all of TUMI’s costs and expenses of collection, including reasonable attorneys’ fees. If Customer fails to fulfill the terms of payment to TUMI, or if TUMI has any reasonable doubt as to Customer’s financial ability to pay, TUMI may, at its option, and without limitation: (a) require full payment in advance; (b) demand payment and suspend deliveries until payment is received; (c) decline to make further deliveries except upon receipt of cash on delivery. Shipments and deliveries hereunder shall be subject to the approval of TUMI’s accounting department.

MAINTENANCE OF EQUIPMENT. Customer shall at all times and at Customer’s own expense keep the Equipment in good and efficient working order. TUMI, its employees and/or agents shall at all times have access to the Equipment for the purpose of inspecting it. In the event TUMI desires to inspect the Equipment, it shall provide to Customer advance written notice of no less than two (2) business days of such on-site inspection. Customer shall not, without the prior written consent of TUMI, make alterations, additions, or improvements to the Equipment. All such alterations or improvements so made shall belong to and remain the property of TUMI.

USE OBLIGATIONS. Customer agrees to comply with all requirements for the Equipment, which may be updated from time to time, on TUMI’s website or otherwise made known to Customer. In connection with the purchase or use of the Equipment, Customer shall (a) maintain adequate security, safety, utilities, and environmental standards, and (b) exercise reasonable care and caution in storing, using, or transporting any part of the Equipment. The Equipment shall not be tampered with, opened, repaired, or modified without TUMI’s prior written authorization.

LOSS OR DAMAGE. Customer shall be responsible for all freight and shipping costs FOB point of shipment to Customer, with the routing and carrier selected by TUMI. Title to (subject to any security interest retained by TUMI) and risk of loss of the Equipment will pass to Customer upon shipment to Customer. Any stated delivery dates are approximate. Customer assumed the entire risk of loss or damage to the Equipment. No loss or damage to the Equipment or any part thereof shall affect or impair the obligations of Customer hereunder, which shall continue in full force and effect. The Equipment will be conclusively deemed accepted by Customer unless a written notice setting out the rejected goods and the reason for the rejection is sent by Customer to TUMI within 10 days of delivery of the Equipment. Customer will place rejected goods in safe storage at a reasonably accessible location for inspection by TUMI.



SUPPORT SERVICES. Provided that Customer is in compliance with these Terms & Conditions and has paid the applicable fees for all purchase orders and/or invoices, TUMI will provide technical support to (a) troubleshoot, identify and repair an error with the Equipment, (b) install software updates to the Equipment, and (c) assist Customer in the use or provide guidance on the use of the Equipment and its functions and features (collectively, the “**Support Services**”). Customer acknowledges that Support Services may be provided by TUMI’s technical support provider via telephone, email or online through TUMI’s website, and hereby authorizes such technical support provider to remotely access Customer’s Equipment. In order to provide Support Services, TUMI will have access to the Equipment’s system, which may include accessing and using Customer’s data and/or information, such as information about the sample and any diagnostic data, internal instrument temperature, system performance, calibration, software version, and operator. Customer hereby grants TUMI and its technical support providers the right to access Customer’s Equipment and the Equipment’s system and such data and information for the limited purpose of providing Support Services. TUMI shall use commercially reasonable efforts to provide Support Services between the hours of 9:00am to 5:00pm Mountain Standard Time, Monday through Friday, excluding federal holidays. TUMI will make its technical support providers available by phone, online chat, or email, and will use commercially reasonable efforts to acknowledge requests for support within one (1) business day. TUMI shall not be obligated to repair any errors if TUMI reasonably believes that the error is a result of (a) modifications to the Equipment or software not performed by TUMI, (b) any alterations or additions to the Equipment or software not performed by TUMI, (c) failures in operation of the Equipment or software that are not reproducible in standalone form, (d) the Equipment or software otherwise operated in violation of these Terms & Conditions or the TUMIGlow™ User Manual, (e) failures which are caused by Customer’s software, hardware or other products not licensed hereunder, (f) Customer’s misuse of the Equipment or software. To the extent repair is not feasible, TUMI’s sole obligation and Customer’s sole remedy with respect to the Support Services will be to replace the Equipment that is refurbished but fully functional. Customer understands that TUMIGlow™ software platform, that the Equipment makes use of, is subject to changes after Customer’s purchase, and such changes may result in Customer incurring fees in the form of upgrade fees and/or subscription fees for the access and use of the TUMIGlow™ software. TUMI agrees to provide Customer at least ninety (90) days advance written notice of such changes to the TUMIGlow™ software and the associated fees to be billed to Customer.

PROHIBITED USES. Customer recognizes that the Equipment is subject to use restrictions that are a condition of purchase. Customer agrees to comply with all such restrictions set forth in these Terms & Conditions, TUMI’s printed materials or website, TUMI’s documentation and manuals, or as otherwise provided to Customer by TUMI, as well as any applicable regulatory requirements. Customer agrees not to make any disposition by way of transshipment, re-export, diversion, resale, or otherwise, of the Equipment including but not limited to U.S. origin goods and technical data (including computer software, if applicable), or the direct product thereof, supplied by TUMI hereunder without the prior written authorization of TUMI. Customer agrees not to export the Equipment provided hereunder outside of the country of delivery without the requisite export license from the relevant body of the United Nations or other similar organization, the United States Government, the European Union, the country of origin or the original country of export. In the event Customer contemplates such export of the Equipment, Customer shall furnish TUMI with copies of all documents relating to such export, at least sixty (60) days in advance of such export of Equipment.

DEVICE DATA. Customer acknowledges and agrees that the Equipment purchased by Customer records and logs usage data, including, without limitation: raw instrument data, analysis, results and timestamp, cultivar, sample ID, operator and other Customer entered information (collectively, “**Device Data**”). Device Data is associated with Customer’s unique product serial number. Customer acknowledges that Device Data may be transmitted automatically to TUMI via remote means and is stored on TUMI’s servers. TUMI will have access to Device Data stored on its servers. TUMI will only use the Device Data to provide Customer with services offered or performed by TUMI, for its internal business purposes, to understand product usage characteristics, to improve and provide support for the Equipment, and to offer additional products and services to Customer related to the Equipment. TUMI may use certain Device Data, aggregated and anonymized with information collected from other users or sources to attempt to improve the quality and value of TUMI’s products and services. TUMI agrees to only share with third parties Device Data that is aggregated and anonymized, except that TUMI may engage third parties to assist TUMI in its internal business research, development, and support activities, in which TUMI may share Device Data with such third parties solely as necessary for them to assist TUMI in performing services offered by TUMI or requested by Customer, or to assist TUMI in offering additional products and services to Customers.

INSURANCE. Customer will insure the Equipment against all hazards in form and amounts that are customary and reasonable for Customer’s business operations and the applicable industry. If Customer fails to obtain insurance, TUMI shall have the right to obtain it at Customer’s expense without waiver of any other remedy and Customer assigns to TUMI all right to receive proceeds of insurance not exceeding the unpaid balance (including any costs of collection, attorney’s fees, or other costs actually incurred in connection with it) and directs any insurer to pay all proceeds directly to TUMI. In the event of damage to the Equipment and payment of insurance, TUMI shall have the option of replacing the Equipment or applying the proceeds on any obligation secured by these Terms &



Conditions. TUMI may, upon default under by Customer in the payment or performance of any obligation secured by hereunder, cancel any insurance on goods after repossession of them or on that portion of the goods repossessed if less than all.

RETENTION OF SECURITY INTEREST. Until TUMI has received payment in full for the Equipment, and all other amounts due under by Customer to TUMI have been paid by Customer, TUMI shall retain a security interest in the Equipment and any and all parts, accessories, attachments, additions, and other goods and all replacements of them installed in, affixed to, or used in connection with the Equipment. Customer acknowledges that TUMI may file and record a UCC-1 financing statement to ensure security of the Equipment. Upon payment in full of all of Customer's payment obligations, TUMI agrees to release any filed UCC-1 financing statements. TUMI shall also retain a security interest in the proceeds of a sale or disposition (including accounts receivable) if Customer sells or otherwise disposes of any part of the Equipment in violation of the terms of these Terms & Conditions. Customer shall sign and deliver to TUMI such documentation reasonably requested by TUMI to perfect the security interest in the proceeds of such sale or disposition (including accounts receivable).

INTELLECTUAL PROPERTY. All of the intellectual property rights in the Equipment will remain the property of TUMI. All patents, trademarks, service marks, tradenames, logos, know-how, techniques, designs, devices, improvements, derivative works, data, specifications, software, algorithms, discoveries, or inventions (whether or not reduced to practice) shall remain the property of TUMI and/or its licensors. Any user license that may be granted to Customer shall be non-transferable, non-sublicensable, and nonexclusive and shall only be used for Customer's own business purposes of operating the Equipment. Any such license shall immediately terminate in the event of Customer's breach of these Terms & Conditions.

GOVERNMENTAL APPROVALS. Customer acknowledges that use of the Equipment in Customer's jurisdiction may require regulatory approvals. Customer must obtain any such approvals on its own accord. Customer shall not provide to any person, export, re-export, allow the export or re-export of the Equipment, software, or any TUMIGlow™ products purchased by Customer in violation of any restrictions, laws, or regulations of the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Customer further agrees that the Equipment will not be used, transferred to, exported, or re-exported to any country which the United States maintains an embargo ("**Embargoed Countries**"), or to a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders ("**Designated Nationals**"). Customer hereby warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National.

EVENTS OF DEFAULT. The following constitute "**Events of Default**" under these Terms & Conditions: (a) failure by Customer to make any payments when due hereunder; (b) a material breach by Customer of any of the provisions of these Terms & Conditions, which remains uncured thirty (30) days' after receipt by Customer of notice of such breach; or (c) in the event Customer becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors. Upon the occurrence of an Event of Default, TUMI may (i) accelerate any remaining payments owed by Customer, such that any outstanding payments that are not then due and payable shall thereupon become and be immediately due and payable, in which case TUMI shall have the right to obtain judgment for the full amount of the purchase price, plus interest at the rate set forth above on any delinquent payments from the due date; and (ii) terminate Customer's use of the Equipment, software, or any TUMIGlow™ products, effective immediately upon notice to Customer.

RETURNS. In the event Customer wishes to return Equipment, Customer must first obtain TUMI's prior written authorization by submitting, in writing, a request for a return merchandise authorization (RMA) to TUMI, with a detailed description of the reason for the return request. Approved RMAs are not eligible for a cash refund and may only receive store credit. Any return of Equipment is subject to a restocking fee of Five hundred dollars (\$500).

WARRANTY. TUMI warrants that the Equipment to be supplied by TUMI to Customer to be free from defects in parts and labor for a period of one (1) year from the date of shipment from the factory. The liability of TUMI applies solely to repairing, replacing, or issuing credit (at TUMI's sole discretion) for any Equipment manufactured by TUMI and returned by Customer during the warranty period. Customer acknowledges that testing results from the TUMIGlow™ System are not guaranteed to be 100% accurate. TUMI will be excused from any failure to perform its obligations under this warranty with respect to any damage to the Equipment resulting from Customer's acts or omissions. Any warranty claim for any Equipment must be made in writing prior to the end of the warranty period. Service for the Equipment after the warranty period has expired shall be provided only pursuant to a duly executed written agreement for such services between TUMI and Customer.



DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE SET FORTH IN THESE TERMS & CONDITIONS, THE EQUIPMENT IS BEING SOLD “AS IS,” AND TUMI DISCLAIMS ALL WARRANTIES OF QUALITY, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT NO STATEMENT OR REPRESENTATION OF ANY PERSON REGARDING THE EQUIPMENT’S QUALITY OR CONDITION HAS INDUCED CUSTOMER TO PURCHASE THE EQUIPMENT AND THAT NO SUCH STATEMENTS OR REPRESENTATIONS HAVE BEEN MADE. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED SOLELY ON THE INVESTIGATIONS, EXAMINATIONS, AND INSPECTIONS CUSTOMER HAS CHOSEN TO MAKE AND THAT TUMI HAS AFFORDED CUSTOMER THE OPPORTUNITY FOR FULL AND COMPLETE INVESTIGATIONS, EXAMINATIONS, AND INSPECTIONS.

LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, TUMI WILL NOT BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY ACTUAL, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES IN CONNECTION WITH THIS TRANSACTION OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH OR RELATING TO THE SALE OR USE OF ANY GOODS OR EQUIPMENT, INCLUDING THE FAILURE TO FOLLOW APPROPRIATE STANDARD OPERATING PROCEDURES, THE MISUSE OR UNINTENDED USE OF ANY PART OF THE TUMIGLOW EQUIPMENT OR THE INACCURACY OF ANY TUMIGLOW EQUIPMENT TESTING RESULT OR DEVICE DATA, WHETHER SUCH CLAIM IS BASED ON BREACH OF WARRANTY, CONTRACT, TORT, OR OTHER LEGAL THEORY AND REGARDLESS OF THE CAUSES OF SUCH LOSS OR DAMAGES OR WHETHER ANY OTHER REMEDY PROVIDED HEREIN FAILS. IN NO EVENT WILL TUMI’S TOTAL AGGREGATE LIABILITY EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID FOR THE EQUIPMENT PURCHASED HEREUNDER.

LIMITATION OF ACTIONS. No action arising out of or in connection with the Equipment may be commenced against TUMI more than twelve (12) months after the basis for such claim could reasonably have been discovered.

INDEMNIFICATION. Customer hereby indemnifies TUMI against and hold TUMI, its officers, directors, employees, agents, and affiliates harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including legal fees, arising out of or connected with or resulting from (a) the breach by Customer of any of Customer’s covenants, representations, or warranties in these Terms & Conditions, (b) any act of fraud, gross negligence, or intentional or willful misconduct by Customer or Customer’s representatives, or (c) any damage resulting from the misuse or unintended use of any part of the Equipment or TUMIGlow™ system.

MISCELLANEOUS.

- Choice of Law, Jurisdiction. These Terms & Conditions shall be governed by and construed under the laws of the state of Colorado. All disputes arising out of or in connection with Customer’s purchase and/or use of the Equipment shall be exclusively determined by the state or federal courts in Colorado. Nothing in this section shall limit TUMI’s right to bring an action (including without limitation an action for injunctive relief) against Customer in the jurisdiction where Customer’s place of business is located.
- Assignment. Customer shall not transfer, delegate, or assign these Terms & Conditions, or the rights and obligations hereunder without the prior written authorization of TUMI. Any purported assignment of rights or delegation of performance in violation of these Terms & Conditions shall be null and void. These Terms & Conditions are binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, and assigns.
- Force Majeure. TUMI shall not be liable for delays in performance or for non-performance caused by circumstances beyond TUMI’s control (“**Force Majeure**”), including but not limited to, fire, flood, riot, civil commotion, government action, accident, terrorist act, epidemic, pandemic, quarantine, labor trouble or shortage, energy shortage, inability to obtain materials or equipment, and transportation delays.
- Notice. Any notice or other communication given or made to any party shall be in writing and delivered by hand, sent by overnight courier service, or sent by certified or registered mail, return receipt requested, to the address stated below or to another address as that party may subsequently designate by notice and will be deemed given on the date of receipt.

To TUMI:

TUMI Genomics
320 E. Vine Dr., Suite 129
Fort Collins, CO 80524

To Customer:



- Waiver/Severability. No party will be deemed to have waived any provision of these Terms & Conditions or the exercise of any rights held under these Terms & Conditions unless such waiver is made expressly in writing. Waiver by any party of a breach or violation of any provision of these Terms & Conditions will not constitute a waiver or any other subsequent breach or violation. If any provision of these Terms & Conditions is held to be invalid or unenforceable, it will not affect the validity or enforceability of any other provision of these Terms & Conditions.
- Counterparts. These Terms & Conditions may be signed electronically, in one or more counterparts, which together will form a single document.
- Entire Agreement. These Terms & Conditions constitute the entire agreement between the parties with respect to the Equipment and its use by Customer, and supersedes all prior agreements, negotiations, discussions, and understandings, whether written or oral, between the parties. There are no other terms, conditions, obligations, representations, or warranties on the part of either party, whether oral, written, express, implied, statutory, or otherwise, governing or affecting the transactions contemplated in hereby or which may give rights to Customer or restrict the rights and remedies of TUMI. TUMI reserves the right to revise these Terms & Conditions at any time and agrees to provide written notice to Customer of any changes to these Terms & Conditions.

IN WITNESS WHEREOF, Customer agrees to these Terms & Conditions as of the date written below.

CUSTOMER

By: _____

Name: _____

Title: _____

Date: _____

