

# Terms and Conditions of Sale and Service

## Thermo Fisher Scientific (Schweiz) AG

### 1. Area of Application

1.1 These terms and conditions of sale and service (T&C) apply to all sales, work and service contracts of Thermo Fisher Scientific (Schweiz) AG (hereinafter "Thermo Fisher Scientific").

1.2 Differing agreements must be made in writing. The application of conflicting terms and conditions issued by the customer is herewith excluded.

### 2. Conclusion of Agreement

2.1 Except where offers made by Thermo Fisher Scientific stipulate an acceptance period, they shall be non-binding and only become binding upon written confirmation by Thermo Fisher Scientific of the order placed by the customer or upon delivery of the products.

### 3. Prices

3.1 Unless specified otherwise in an offer, in the confirmation of order or in price lists, prices are DDP (free domicile) in accordance with Incoterms 2000.

3.2 All prices quoted by Thermo Fisher Scientific or representatives of Thermo Fisher Scientific are valid for acceptance for a period of thirty (30) days, unless otherwise stated in writing. All prices published by Thermo Fisher Scientific or quoted by representatives of Thermo Fisher Scientific in price lists etc. may be changed at any time without notice.

3.3 Where no price was specified or offered by Thermo Fisher Scientific, the latter's prices in effect at the time the order was placed will be the basis for pricing. All prices are subject to adjustment on account of specifications, quantities, raw materials, special packaging, cost of production, shipment arrangements or other terms or conditions which are not part of Thermo Fisher Scientific's original price quotation.

3.4 Thermo Fisher Scientific reserves the right to adjust the quoted prices accordingly in the event of substantial changes in the exchange rate or customs duties.

### 4. Taxes and Other Charges

Prices include all sales, value added and other taxes and duties imposed with respect to the sale and delivery of any products covered hereby. A processing fee of CHF 35.00 will be charged on small orders up to CHF 3'000.00.

### 5. Terms of Payment

5.1 Unless otherwise provided in the order confirmation, the offer or the invoice, deliveries of products and services are payable without any deductions within thirty (30) days from the date of invoice.

5.2 All payments shall be made in the local currency of Thermo Fisher Scientific.

5.3 Thermo Fisher Scientific reserves the right to require from the customer full or partial advance payment, or other security that is satisfactory to Thermo Fisher Scientific.

5.4 The customer may only exercise a right of retention or set-off on the basis of undisputed or legally established claims. A set-off with claims against companies affiliated with Thermo Fisher Scientific is excluded.

### 6. Delivery, Cancellation or Changes by the Customer

6.1 Unless agreed otherwise, the products will be delivered DDP (free domicile).

6.2 Delivery periods are approximate. All confirmed orders and delivery dates shall be subject to Thermo Fisher Scientific receiving correct and timely delivery itself from its own suppliers. Delivery periods shall begin on receipt of the

order confirmation, but under no circumstances before clarification of all details of the execution of the order or before provision of any necessary certification by the customer.

6.3 Events of force majeure shall entitle Thermo Fisher Scientific – even if behind schedule – to postpone delivery for the duration of the impediment or to withdraw from the agreement with respect to the part of the agreement not yet performed, without such action giving entitlement to bring any claim whatsoever against Thermo Fisher Scientific. All circumstances which are beyond the control of Thermo Fisher Scientific and which from time to time render performance of the service impossible or significantly more difficult shall be deemed to be equivalent to force majeure, e.g. strikes, lockouts, mobilizations, wars, warlike conditions, blockades, import and export bans, traffic bans, governmental measures, shortages of energy and raw materials, among others, regardless of whether they involve Thermo Fisher Scientific or one of its upstream suppliers or subcontractors.

6.4 A delay in acceptance or delivery due to any cause within the customer's control will entitle Thermo Fisher Scientific to place the products in storage at the customer's risk and expense and to treat said products as delivered.

6.5 If the order is changed or cancelled, Thermo Fisher Scientific will charge a processing fee equivalent to the additional expenses incurred by Thermo Fisher Scientific. This fee shall be no less than CHF 100.00.

### 7. Passage of Risk

The risk of damage to and loss of products shall pass to the customer:

1. insofar as the products are delivered ex works (Incoterms 2000), at the moment that Thermo Fisher Scientific notifies the customer that the products are ready to be picked up;
2. insofar as the products are delivered DDP (free domicile), upon delivery of possession to the customer;
3. in the event of a delay in acceptance due to any cause within the customer's control, upon notification by Thermo Fisher Scientific that the products are ready for delivery.

### 8. Title

8.1 Thermo Fisher Scientific retains title to the products delivered by it until receipt of all payments in full. Thermo Fisher Scientific is entitled to have said retention of title entered in the appropriate register. In placing his signature to his agreement or order, the customer consents to such entry, permitting Thermo Fisher Scientific to have the retention of title entered without involving any actions on the customer's part.

8.2 If products under retention of title in favour of Thermo Fisher Scientific are seized at the customer's premises, Thermo Fisher Scientific must be notified immediately and the seizing party informed of the retention of title. All costs incurred as a consequence of such seizure shall be borne by the customer.

8.3 Title to any software incorporated within or forming a part of the products shall at all times remain with Thermo Fisher Scientific or the licensor(s) thereof, as the case may be.

### 9. Installation of Hardware

9.1 The installation of hardware requires proper preparation of the location of operation and the provision of precautionary arrangements by the customer. The specifications contained in the preinstallation manual must be followed.

9.2 The price for complete systems shall include the installation of hardware and brief instructions from the

Thermo Fisher Scientific service engineer after commissioning. Costs for deliveries of all other hardware, will be invoiced separately as per offer.

9.3 Work done to connect other manufacturers' hardware to Thermo Fisher Scientific systems or to connect Thermo Fisher Scientific hardware to other manufacturers' systems will be invoiced separately.

9.4 Unless otherwise stipulated, Thermo Fisher Scientific shall perform agreed or statutory acceptance tests and agreed commissioning tests within ten working days from delivery in collaboration with the customer. During these tests, the customer and Thermo Fisher Scientific shall jointly produce a log detailing test cases and data, the performance tests conducted and the errors identified. The Warranty Period shall commence upon signature of the acceptance report.

### 10. Warranty

10.1 The statutory rights of warranty are hereby expressly excluded.

10.2 The scope and duration of warranty shall be stipulated in the offer or, as the case may be, in the applicable product specifications. Where no specific arrangements have been made, the warranty period for hardware and hardware parts (e.g. motors) shall be 12 months and for expendable parts (e.g. pump head pistons) 3 months from signature of the acceptance report.

10.3 Thermo Fisher Scientific agrees during the warranty period to repair or replace, at its own option, defective products so as to cause the same to operate in substantial conformance with said published specifications; provided that

- (a) the customer examines the delivered products immediately upon receipt; and
- (b) promptly notifies Thermo Fisher Scientific in writing upon the discovery of any defect: notice must include the model number and serial number (if applicable) of the product and details of the warranty claim.

Should the customer fail to observe the form and deadline for reporting defects, the products shall be deemed accepted.

10.4 Consumables are expressly excluded from the above-named warranty.

10.5 In respect of any products or product parts not manufactured by Thermo Fisher Scientific, the warranty rights and periods granted by the manufacturer or supplier shall apply.

The functioning of software is warranted only on PC systems offered by the manufacturer. Software modifications carried out by the user shall release Thermo Fisher Scientific from any warranty obligations.

10.6 No warranty shall be given for defects or damage caused by premature, operational or natural wear, glass breakage, improper handling, excessive use, unsuitable operating fluids (e.g. low-grade solvents), faulty operation, use in connection with equipment or software not supplied by Thermo Fisher Scientific, connection to unsuitable power sources, operation with the wrong current type, faulty repairs carried out by third parties, use of replacement parts not approved by Thermo Fisher Scientific, or caused by force majeure. Any costs incurred by Thermo Fisher Scientific in investigating such defects and damage and responding to warranty claims based on such defects and damage may be charged to the customer at the then prevailing time and materials rates.

10.7 If Thermo Fisher Scientific provides repair services or replacement parts that are not covered by this warranty, the customer shall pay Thermo Fisher Scientific for these at Thermo Fisher Scientific's then prevailing time and ma-

terials rates.

10.8 The customer shall bear any additional expense caused by the object of performance being brought to a place of delivery other than that contractually agreed or by the defect being attributable to a stipulation made by the customer.

10.9 The satisfaction of warranty claims has no effect on the warranty period. The warranty period shall neither start anew nor be interrupted.

10.10 All replaced parts shall become the property of Thermo Fisher Scientific.

#### 11. Indemnification

The customer shall indemnify, defend with competent and experienced counsel and hold harmless Thermo Fisher Scientific, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of the customer, its agents, employees, representatives or contractors; (ii) improper storage or handling of the products or use by unqualified personnel; (iii) use of a product in combination with equipment or software not supplied by Thermo Fisher Scientific where the product itself would not be infringing any third party rights; (iv) use of the product for any purpose for which it is not designed, or by a not suitably qualified individual; (v) Thermo Fisher Scientific's compliance with designs, specifications or instructions supplied to Thermo Fisher Scientific by the customer; (vi) use of a product in an application or environment for which it was not designed; or (vii) modifications of a product by anyone other than Thermo Fisher Scientific without Thermo Fisher Scientific's prior written approval.

#### 12. Software

12.1 With respect to any software products incorporated in or forming a part of the products hereunder, Thermo Fisher Scientific and the Customer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Customer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Thermo Fisher Scientific or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

12.2 Thermo Fisher Scientific hereby grants to the customer a royalty-free, non-exclusive, non-transferable license, without power to sublicense, to use software provided hereunder solely for the customer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for the customer's own internal business purposes. This license terminates when the customer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. The customer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. The customer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Thermo Fisher Scientific's prior written consent. Thermo Fisher Scientific will be entitled to terminate this license if the customer fails to comply with any term or condition herein. The customer agrees, upon termination of this license, immediately to return to Thermo Fisher Scientific all software products and related documentation provided hereunder and all copies and portions thereof. Notwithstanding the aforementioned stipulations the customer is entitled to sell the hardware together with the software, which comes along with the hardware, to a third party. The third party will take the position of the Licensee provided

the third party accepts in a legally binding way the provisions of this chapter 12. and as long as there are no other legal provisions, e.g. export control regulations, which oppose this. The customer will inform a third party about these provisions and the customer will make these provisions part of the agreement with the third party.

12.3 Certain of the software products provided by Thermo Fisher Scientific may be owned by one or more third parties and licensed to Thermo Fisher Scientific. Accordingly, Thermo Fisher Scientific and the customer agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

#### 13. Confidentiality

13.1 The customer shall keep strictly confidential all information made known to him in connection with the preparation and performance of the agreement by Thermo Fisher Scientific, even if said information is not protected by law (e.g. by copyright legislation). This applies in particular to technical information (e.g. drawings, material descriptions, calculations), sales documentation (e.g. specifications, price lists and discounts) or other business information (e.g. delivery capacity). Thermo Fisher Scientific retains title to cost estimates, offers, drawings and other documentation. If so requested, the customer will return all documentation to Thermo Fisher Scientific.

13.2 The duty of confidentiality shall not apply to information from Thermo Fisher Scientific which is in the public domain or has been lawfully conveyed to the customer by third parties or when the customer is required to make such information available to the authorities or courts.

13.3 The duty of confidentiality shall also apply after the agreement has been performed or in the event it does not materialize.

#### 14. Liability

14.1 Thermo Fisher Scientific shall be liable solely for wilful misconduct and gross negligence and, insofar as permitted by law, for a total of no more than the lower of the following amounts: a) the amount of the total purchase price paid by the customer to Thermo Fisher Scientific in respect of the products on which said liability is grounded, or b) one million Swiss francs (CHF 1,000,000.00).

14.2 Liability for third-party damage, indirect damage, consequential damage and loss of earnings is expressly excluded.

#### 15. Export Restrictions

15.1 In no event shall the customer ship or export deliveries and services to any country subject to a US embargo. Nor shall they be made accessible to persons, companies and institutions on particular specified lists drawn up by the US authorities. The same reservation shall also apply in respect of the export regulations of the European Union and Switzerland.

15.2 The customer shall cooperate fully with Thermo Fisher Scientific in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Thermo Fisher Scientific harmless from, or in connection with, any violation of this section by the customer or its employees, consultants, agents, or customers.

#### 16. US Medicare/Medicaid Reporting Requirements

If the customer is a recipient of US Medicare/Medicaid funds, the customer acknowledges that it has been informed of and agrees to fully and accurately account for, and report, including on its cost report if applicable, the total value of any discount, rebate or other compensation paid hereunder in a way that complies with all applicable federal, state and local laws and regulations which establish "Safe Harbor" for discounts. The customer shall make written request to Thermo Fisher Scientific in the event the customer requires additional information from Ther-

mo Fisher Scientific in order to meet its reporting requirements. The customer acknowledges that agreement to such reporting requirement was a condition precedent to Thermo Fisher Scientific's agreement to provide products and that Thermo Fisher Scientific would not have entered into this agreement had the customer not agreed to comply with such obligations.

#### 17. Data Protection

17.1 Thermo Fisher Scientific shall process and publish personal data for purposes in connection with the performance of the agreement under the present T&C. This also includes the use of data for marketing purposes.

17.2 Thermo Fisher Scientific may also pass on the data to associated companies or third parties which process data on Thermo Fisher Scientific's behalf in Switzerland or abroad (including the US).

17.3 The customer shall have the right to inspect and amend personal data and may assert such right against Thermo Fisher Scientific at no cost.

#### 18. Miscellaneous

18.1 The customer may neither delegate any duties nor assign any rights or claims hereunder without Thermo Fisher Scientific's prior written consent.

18.2 Unless otherwise expressly stated on the product or in the documentation accompanying the product, the product is intended for research or testing only. It is not to be employed for any other purposes, commercial uses, in vitro diagnostic uses, ex vivo or in vivo therapeutic uses, or any type of consumption by or application to humans or animals.

#### 19. Applicable law, place of jurisdiction

19.1 The present agreement is governed by Swiss material law to the exclusion of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980.

19.2 The place of jurisdiction for all disputes arising from the business relationship shall be the ordinary courts at Thermo Fisher Scientific's place of business, namely Reinach.