

TERMS AND CONDITIONS OF SALE AND SERVICES

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1. **GENERAL.** All offers of **Thermo Fisher Scientific Wissenschaftliche Geräte GmbH** ("Seller") for sale of products and / or services (the "Products") are subject to these Terms & Conditions. By placing an order the buyer ("Buyer") accepts these Terms & Conditions. The latter shall also apply to all future contracts between Seller and Buyer for the purchase of Products. General terms and conditions of Buyer shall be deemed rejected by Seller to the extent they conflict with these terms and conditions. The foregoing applies even if Seller does not expressly object. If the terms and conditions in this Agreement differ from the terms of Buyer's offer, this document shall be construed as a counter offer. Buyer's de facto receipt of Products and / or Seller's commencement of the services provided hereunder will constitute in any case Buyer's acceptance of these Terms & Conditions. Unless provided otherwise herein above an Agreement shall be deemed concluded when Seller sends a written order confirmation upon the receipt of Buyer's order. Statements made by Seller shall only be binding on Seller if confirmed in writing by persons authorized to represent Seller. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein.
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3. **TAXES AND OTHER CHARGES.** Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby, all of which taxes and duties must be paid by Buyer. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.
4. **TERMS OF PAYMENT.** Unless agreed otherwise Seller's invoices shall be due within 30 days from the invoice date without any discounts. All payments shall be made in the local currency of Seller. Buyer shall effect payment in such a way that Seller is able to freely dispose over the funds on the date payment is due. Buyer shall bear any bank fees. Buyer is not entitled to offset payments with warranty claims or any other claims, unless such counterclaims have been determined finally and legally binding or recognized by Seller. If Buyer fails to pay amounts when due (default of payment), Buyer shall pay Seller interest in the amount of 1.5% per month, together with all costs and expenses (including all necessary attorneys' fees and disbursements and court costs;) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. The foregoing is without prejudice to Seller's rights to claim any further damages incurred as a consequence of default and / or to rescind the contract with Buyer after having granted a reasonable grace period. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, if following the conclusion of the Agreement Seller becomes aware of circumstances, which give rise to the concern that Buyer will not be able to meet its payment obligations. Seller does not accept credit card information via fax or email.
5. **DELIVERY; CANCELLATION OR CHANGES BY BUYER.** Unless agreed otherwise, the Products will be delivered Ex-Works (Incoterms (EXW) 2010) from Seller's facility. Seller will have the right, at its reasonable discretion, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Orders in process may be canceled only with Seller's written consent. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefore. Credit will not be allowed for Products returned without the prior written consent of Seller.
6. **TITLE AND RISK OF LOSS.** Notwithstanding the trade terms indicated above, risk of loss of the Products will pass to Buyer upon delivery of possession of the Products to Buyer (or its carrier). Seller retains title to the Products until receipt of the purchase price in full. In case of breach of contract by Buyer including, without limitation, default in payment, Seller is entitled to claim the return of the Products following the withdrawal from the contract. As long as Seller is the owner of the Products, Buyer shall handle the Products with due care, maintain suitable insurance for the Products and, to the extent necessary, service and maintain the Products. As long as the purchase price has not been completely paid, Buyer shall immediately inform Seller in writing if the Products become subject to rights of third persons or other encumbrances. Buyer may resell Products subject to the above retention of title only in the course of his regular business. For this case, Buyer hereby assigns all claims arising out of such resale, whether the Products have been processed or not, to Seller. Buyer shall make the assignment apparent by book entries in its account books. Notwithstanding Seller's right to claim direct payment Buyer shall be entitled to receive the payment on the assigned claims. To this end, Seller agrees to not demand payment on the assigned claims to the extent Buyer complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments. Insofar as the above securities exceed the secured claim by more than 10%, Seller is obligated, upon his reasonable discretion, to release such securities upon the Buyer's request. Any transfer of title is made under the prerequisite that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.
7. **WARRANTY.** Any warranty obligation of Seller requires that the notice of defect was given on time. Buyer shall immediately within the meaning of sec. 377 and 378 UGB (Austrian Business Enterprise Code) inspect the Products raise any claims for defects. Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel. If a period of time is not agreed or specified, or is specified with more than 24 month in Seller's product documentation, published specifications or package inserts, or the period specified therein exceeds 24 month, the warranty period shall be 24 month from the date of shipment to Buyer. Unless supplied with a specific warranty or shelf life, consumable products are warranted at delivery only. Seller agrees under the Warranty, to repair or replace defective Products so as to cause the same to operate in substantial conformance with published specifications; provided that Buyer shall promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim. After Seller's review, Seller will provide Buyer with service data and / or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions, then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions of Seller's Terms and Conditions of Sale and Services. Consumables are expressly excluded from this warranty. Buyer's warranty claims as regards consumables are limited to a reduction of price. In no event shall Seller have any obligation for warranty claims in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse fault of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY NOT AUTHORIZED BY SELLER OR QUALIFIED, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS. If defects for which Buyer has requested warranty services are not covered by the warranty, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefore at Seller's then prevailing time and materials rates. Seller will provide Buyer with its actual rates upon Buyer's request. If Seller accepts a defective medical device instrument for repair, Seller may, if available, provide a replacement loaner instrument to Buyer as necessary for use while the instruments are being repaired. EXCEPT AS EXPRESSLY PROVIDED HEREIN ABOVE, SELLER DISCLAIMS ALL OTHER WARRANTIES; IN PARTICULAR ANY WARRANTIES OF MERCHANTABILITY; FITNESS FOR ANY PARTICULAR PURPOSE AND ACCOMPLISHMENT OF ANY PARTICULAR RESULT.
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10. **EXPORT RESTRICTIONS.** Buyer acknowledges that each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to applicable export controls, including those of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer shall comply with all the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not, without first obtaining the required license to do so from the appropriate government agency; (i) export or re-export any Item, or (ii) With regard to exports and re-exports, Buyer represents and warrants that no product supplied by Seller either to Buyer or over which Buyer has control for Seller, will be shipped, directly or indirectly, to any person or organization (i) in Cuba, Iran, North Korea, Sudan, or Syria, or who is considered a part of the government of those countries, or (ii) who is involved in improper development or use of nuclear weapons, or of chemical/biological weapons (CBW) or missiles, or in terrorist activities, or (iii) who is listed by the government of the United States, the EU and/or the EU Member States or by the government of any other country as prohibited from receiving the product, or from participating in export transactions involving the product. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, agents, or customers.

11. **MISCELLANEOUS.** (a) Buyer shall not assign or transfer rights and / or obligations under this Agreement without Seller's express prior written consent Austrian substantive law, excluding any conflict of law rules and excluding the CISG, shall apply exclusively to all legal relations between Seller and Buyer. Unless agreed otherwise, the place of performance is Vienna. For any disputes arising from or in connection with contracts concluded between Seller and Buyer regarding Products the Courts in Vienna, (Austria) competent for commercial matters shall have jurisdiction, unless expressly agreed otherwise in writing. Seller shall also be entitled to bring law suits against Buyer with any other Court with jurisdiction for these law suits. (b) If any provision or clause of this Agreement is or becomes invalid, null and void or unenforceable, this shall not affect the validity or enforceability of the remaining Agreement. (c) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. (d) Buyer agrees that all information, in particular pricing, discounts and technical information, that Seller provides to Buyer are the confidential and / or proprietary information of Seller. Buyer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public. (e) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other. **US MEDICARE/MEDICAID REPORTING REQUIREMENTS:** If Buyer is a recipient of US Medicare/Medicaid funds, Buyer 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. Buyer shall make written request to Seller in the event Buyer requires additional information from Seller in order to meet its reporting requirements. Buyer acknowledges that agreement to such reporting requirement was a condition precedent to Seller's agreement to provide Products and that Seller would not have entered into this Agreement had Buyer not agreed to comply with such obligations. If Buyer is a legal entity located outside of France, Seller may, in its sole discretion, provide (1) applicable Product training to Buyer or its employees, or (2) samples of Products to Buyer for distribution to patients of Buyer. Buyer agrees that any such samples shall be distributed to patients for patient use or, if not so distributed, returned to Seller. Buyer shall not use such samples to provide care to patient and shall not bill patients or third party payers for the provision of such samples. If Buyer is a legal entity located in France, Seller may, in its sole discretion, provide samples of Products to Buyer for distribution to patients of Buyer. Buyer agrees that any such samples shall be distributed to patients for patient use or, if not so distributed, returned to Seller. Buyer shall not use such samples to provide care to patient and shall not bill patients or third party payers for the provision of such samples. If training is provided for by Seller as indicated in this agreement / terms and conditions, as the case may be, the cost of this training and all expenses relating thereto are part of the total price agreed upon by Seller and Buyer in this agreement. This document is made in German and English language. In case of conflict the German version shall prevail.