

TERMS AND CONDITIONS OF SALE

The terms and conditions set forth herein ("**Conditions**") govern the sale of Products by Thermo Fisher pursuant to the Thermo Fisher quote that references and incorporates these Conditions.

1. **Definitions.** These Conditions include the following defined terms:
 - 1.1. "**Affiliate**" means with respect to (i) Customer, any entity that is Controlled by Customer as of Customer's Acceptance, for so long as such Control exists; (ii) Thermo Fisher, Life Technologies Corporation and its subsidiaries and other entities under the direct or indirect Control of Life Technologies Corporation, but will not include any entity having Control of Life Technologies Corporation nor the subsidiaries of any such entity, except Thermo Fisher. For the purposes of this definition, "**Control**" means the actual power, directly or indirectly, to direct or cause the direction of the management and policies of such entity, whether by the ownership of fifty percent (50%) or more of the voting stock of such entity, or by contract or otherwise.
 - 1.2. "**Agreement**" means these Conditions together with the Quote.
 - 1.3. "**Approvals**" means all necessary governmental and regulatory requirements that must be fulfilled/complied with relating to the use of the Products as set forth in this Agreement.
 - 1.4. "**Confidential Information**" of a Party means any commercial or technical data, documents, materials, procedures, and similar information of such Party that is not generally known to the public and is maintained in a confidential manner by such Party, whether in oral or tangible form, that is disclosed by such Party pursuant to the Quote or these Conditions or is observed at such Party's facilities. Confidential Information shall not include any information that the receiving Party can demonstrate:
 - (i) is or subsequently becomes publicly available without the receiving Party's breach of any obligation owed to the other Party;
 - (ii) was known to the receiving Party prior to the other Party's disclosure of such information pursuant to the terms of these Conditions;
 - (iii) is received by a Party from a Third Party, who has the legal right to disclose information to the Party; or
 - (iv) is independently developed by a Party without the aid, application, or use of information disclosed hereunder, as can be evidenced by written records.Without limiting the foregoing, Confidential Information of Thermo Fisher includes all commercial terms of the Quote, these Conditions, and all know-how disclosed or made available by Thermo Fisher or its Affiliates hereunder.
 - 1.5. "**Custom Products**" means Products which are customized, modified, designed, manufactured, processed, compounded, packaged, filled, stored, shipped, labeled or tested to meet Customer's written instructions, specifications, designs, or requirements, including but not limited to, Products manufactured using Specific Components, Customer Materials, or under Customer IP Rights.
 - 1.6. "**Customer IP**" means the intellectual property that is owned, controlled, licensed or developed by or for Customer or its Affiliates that is necessary for Thermo Fisher to manufacture the Custom Products, as specified in the Quote (if applicable).
 - 1.7. "**Customer Materials**" means the materials provided by Customer to Thermo Fisher for the manufacture of the Custom Products, as specified in the Quote (if applicable).
 - 1.8. "**Customer Products**" means Product manufactured by Customer on behalf of itself or for/with a Partner using the Products as raw, ancillary, or starting materials that are chemically modified during Customer's and/or Partner's manufacturing process.
 - 1.9. "**Defect**" means a failure of a Product to comply with the Specifications; "**Defective**" will be construed accordingly.
 - 1.10. "**Development**" means research, preclinical and clinical drug development activities up to and including phase II clinical trials, but at all times excludes further development activities (such as use in other phases of clinical trials), marketing authorization activities and commercialization activities.
 - 1.11. "**Lead Time**" means the estimated time from Thermo Fisher's acceptance of a PO and Customer Materials, if any, until shipment of Products, as specified in the Quote.
 - 1.12. "**Partner**" means a Third Party with whom Customer partners for the Development of Customer Products.
 - 1.13. "**Party**" means either the Thermo Fisher or Customer individually; Thermo Fisher and Customer are collectively referred to as "**Parties**".
 - 1.14. "**Products**" means the products supplied by or on behalf of Thermo Fisher and listed on the Quote. For the avoidance of doubt, Products includes Custom Products.
 - 1.15. "**Quote**" means the quote issued by Thermo Fisher to Customer for Products that references and incorporates these Conditions.
 - 1.16. "**Quote Term**" means the period starting on the date of Customer's Acceptance and ending on the Quote's expiry date.
 - 1.17. "**Specific Components**" means any specific components, sources, or brands identified on the Quote that Customer requests Thermo Fisher uses in the manufacture or assembly of the Custom Products.
 - 1.18. "**Third Party**" means any party other than Customer, Thermo Fisher, or an Affiliate of Customer or Thermo Fisher.
2. **Supply and Terms of Use; Labeling; Trademarks.**
 - 2.1. Thermo Fisher will manufacture and sell Products to Customer on a non-exclusive basis in accordance with the provisions of the Quote.
 - 2.2. Always subject to Customer's compliance with its obligations hereunder, Thermo Fisher grants to Customer, and Customer accepts, the right to:
 - (i) use the Products for Customer's internal research and Development of Customer Products,
 - (ii) Transfer Customer Products to Partners for Partner's Development.
 - 2.3. Customer has no rights to sublicense, assign or otherwise transfer or share its rights hereunder subject to Section 2.4.
 - 2.4. Any rights granted to Customer under Section 2.2 may be exercised, and any obligations of Customer under this Agreement may be performed, by any Affiliate of Customer. Customer is responsible for its Affiliates compliance with the terms of this Agreement and all acts or omissions of Customer's Affiliates will, for the purposes of this Agreement, be deemed to be acts or omissions of Customer.
 - 2.5. Customer must impose limitations and obligations on each Partner that are no less burdensome than the limitations and obligations imposed on Customer hereunder. Customer will be liable to Thermo Fisher for acts or omissions of its Partners. Any non-compliance with the terms of this Agreement by a Partner will be regarded as a breach of this Agreement by Customer.
 - 2.6. Notwithstanding the rights granted in Section 2.2, nothing in this Agreement shall be construed as conferring explicitly or by implication, estoppel or otherwise any licence, right or immunity under any intellectual property rights other than those explicitly granted in Section 2.2. Customer agrees not to use the rights granted in Section 2.2 against Thermo Fisher in any dispute unrelated to the Products purchased by Customer from Thermo Fisher pursuant to this Agreement.
3. **Order, Manufacture and Supply.**
 - 3.1. To purchase Products, Customer must submit a PO to Thermo Fisher at the contact details stated in the Quote, specifying the Product(s), quantities, place of delivery, Price(s), and desired delivery date(s) (subject to the Lead Times).
 - 3.2. All POs are subject to review and acceptance by Thermo Fisher. Once a PO is accepted by Thermo Fisher, it becomes binding on the Customer and cannot be cancelled or amended without written Thermo Fisher's consent. Thermo Fisher may accept Customer's reasonable requests to amend a PO but is not required to do so. Additionally, Thermo Fisher, in its discretion, may reject any PO received less than the amount of weeks equivalent to the Lead Time prior to the end of the Quote Term. A PO is non-binding on Thermo Fisher until Thermo Fisher issues an order confirmation against Customer's PO.
 - 3.3. Thermo Fisher, in its discretion, may reject any orders for a quantity of Products lower than its lowest MOQ, as set forth in the Quote.
 - 3.4. Thermo Fisher will manufacture the Products in accordance with the Specifications.
 - 3.5. Upon Customer's request and if applicable, Thermo Fisher will provide Customer with the results of a Product's analytical tests in the form of a certificate of analysis.
 - 3.6. Thermo Fisher reserves the right to manufacture for and sell to any Third Party any products that are the same as or substantially similar to the Products, provided that Thermo Fisher will not use any Customer Materials, Customer IP Rights or Customer's Confidential Information when doing so.
 - 3.7. For Products containing animal origin components, Customer might require a special import permission according to local regulations. Customer has to check any such requirements with the applicable

- local authority and apply for such special permission prior to ordering the Products, if applicable.
- 3.8. For the avoidance of doubt, Thermo Fisher is under no obligation to issue any further quotes for Products or other products to Customer.
 - 3.9. If Customer requests Products to be from a single lot, Thermo Fisher will use commercially reasonable efforts to supply Products from a single lot, but is not obliged to do so.
- 4. Custom Products.**
- 4.1. Customer is responsible for obtaining all Third Party required consents, intellectual property rights, approvals, or licenses necessary for Thermo Fisher to fulfill its obligations hereunder with respect to the Custom Products, including the use of Specific Components ("**Consents**"). Customer represents and warrants to Thermo Fisher that it will obtain any necessary Consents prior to submitting a PO for any Custom Products requiring such Consents, and agrees that submission of a PO will be deemed to be Customer's representation that it has obtained all necessary Consents. If during the performance of any PO, either Party learns that the necessary Consents have not been obtained, without limiting Thermo Fisher's other rights and remedies under this Agreement, Thermo Fisher will be relieved of its obligations under this Agreement and Customer will be obligated to reimburse Thermo Fisher for all costs incurred to date under this Agreement.
 - 4.2. Customer hereby grants, and causes its Affiliates to grant, to Thermo Fisher and its Affiliates a non-exclusive, non-transferable, world-wide, royalty-free license under the Customer IP and to use the Customer Material to manufacture and sell Custom Products to Customer under this Agreement and for no other purpose.
 - 4.3. Customer Materials provided by Customer and Specific Components required by Customer for the manufacture of Custom Products must conform to the specifications set forth in the Quote. If Customer Materials do not conform to the agreed specifications, Thermo Fisher may, at its sole discretion, decline to manufacture the Custom Products. If Thermo Fisher elects to manufacture the Custom Products using the non-conforming Customer Materials or Specific Components, the Custom Products are supplied "as-is" with no warranties that such Custom Products will conform to the Specifications.
 - 4.4. Prior to providing Thermo Fisher with any Customer Materials, Customer must provide Thermo Fisher with all information that Customer is aware of regarding any biological, radiological, and chemical hazards associated with the handling, transport, exposure or other usage of said Customer Materials.
 - 4.5. The price of Custom Products manufactured using the Specific Components will be subject to increases at any time if such price increase is due to changes in the Specific Component's prices. Thermo Fisher will not be obligated to provide quantities of Custom Product manufactured using Specific Components in the event of a failure of such Specific Component.
 - 4.6. Thermo Fisher reserves the right to decline the design or manufacture of a Custom Product, at any stage of the design or manufacture process if the Custom Product is unsuitable or commercially impractical to be manufactured in that way. Notwithstanding anything to the contrary in this Agreement, if the completion of the manufacturing of the Custom Products is not feasible, Thermo Fisher may terminate the respective part of the Agreement or Customer's respective PO and/or deliver and invoice sub-fragments to Customer in Thermo Fisher's discretion.
 - 4.7. The Customer IP Rights, and all information about Customer IP Rights, whether provided by Customer or generated by Thermo Fisher in the manufacture and sale of Custom Products to Customer hereunder (such information collectively referred to as "**Data**"), will be subject to the confidentiality requirements of Section 14. Upon termination or expiration of this Agreement, Thermo Fisher will maintain records of the Data for a period of no less than one (1) year.
 - 4.8. Thermo Fisher will use Customer IP, Customer Materials, and Data only for the purposes of manufacturing and selling Custom Products to Customer hereunder, and will not otherwise modify nor reverse engineer Customer Material. Any Customer Material not consumed in the performance of this Agreement will be destroyed after six (6) months.
 - 4.9. Thermo Fisher will not transfer Customer Material or Customer IP, in whole or in part, to any Third Party other than a subcontractor, or use the Customer Material or Customer IP for any other purpose without Customer's prior written approval.
- 5.1. Thermo Fisher will package the Products in containers designed to protect the Products from damage in the ordinary course of delivery and in accordance with the terms of the Quote. Unless otherwise set forth on the Quote, international shipments will be made FCA (Thermo Fisher's facility) Incoterms 2020; notwithstanding the foregoing, Customer gives its consent for Thermo Fisher to arrange for carrier of the Product on Customer's behalf and waives Customer's right to arrange carriage or to give Thermo Fisher any specific instructions regarding carriage. For domestic shipments, shipping terms set out in the local standard terms and conditions for sale of Thermo Fisher will be applied. Thermo Fisher will add all shipping related costs to Customer's invoice. Any shipment of Products may be postponed or terminated, as required by law. In addition, if Thermo Fisher has reasonable grounds to dispute that Customer is in compliance with a specified provision of this Agreement, Thermo Fisher reserves the right to require pre-payment for Products or to suspend shipment of Products to Customer until Thermo Fisher determines that Customer is in compliance with said specified provision.
 - 5.2. The shipment date will be confirmed with Customer upon receipt of a PO and Thermo Fisher will use commercially reasonable efforts to ship the Products on the shipment date. Unless otherwise agreed to by the Parties in writing, Thermo Fisher reserves the right to ship the Products in installments.
 - 5.3. Requests for proof of delivery for any invoice must be submitted in writing within sixty (60) days from the date of issuance of such invoice. Thermo Fisher is not responsible for supplying proof of delivery after sixty (60) days from the issuance of an invoice.
- 6. Inspection, Rejection, and Returns.**
- 6.1. Customer will inspect the Products upon receipt and will notify Thermo Fisher in writing within ten (10) business days of receipt if any Products are short against order, apparently Defective, or visually damaged. Thermo Fisher will have no liability for any claims of which it is not notified within this ten (10) business day period. Unless rejected within this ten (10) business day period, Products will be deemed accepted but Customer will not lose any product warranty rights as set forth in Section 9.1.
 - 6.2. Upon Thermo Fisher's receipt of a notice of Product shortfall in delivery, Thermo Fisher will deliver the shortfall quantity as soon as commercially practicable.
 - 6.3. Upon Thermo Fisher's receipt of Customer's notice of an apparently Defective Product or visually damaged Product ("**Rejected Product**"), Thermo Fisher will provide Customer with instructions on returning or destroying the Rejected Product which Customer agrees to follow. Subject to Customer's compliance with the instructions Thermo Fisher may, in its sole discretion, either (a) replace said Rejected Products with Products that conform to the Specifications as soon as commercially practicable, or (b) refund all amounts paid by Customer for the Rejected Products (including, without limitation, all shipping costs). THIS IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY SHORTFALL IN DELIVERY OR REJECTED PRODUCTS.
 - 6.4. Thermo Fisher is not responsible for any shortfall, damage, or apparent Defects in the Products that (i) are created after Thermo Fisher's shipment of the Products by, including those resulting from Customer's or the freight carrier's handling, maintenance or storage of the Products; or (ii) result from modifications to the Products by Customer or any Third Party.
- 7. Payment.**
- 7.1. Product pricing is set forth in the Quote is only valid when Customer places a purchase order directly with Thermo Fisher.
 - 7.2. Upon or after delivery of the Products, Thermo Fisher will invoice Customer for the amount and type of Products shipped. Each invoice issued by Thermo Fisher hereunder will specify: (a) the type and quantity of Products; (b) the Prices; (c) the amount of sales tax due (if any); and (d) any other amounts reimbursable to Thermo Fisher (if any) pursuant to this Agreement.
 - 7.3. Unless otherwise specified on the Quote, (i) invoiced amounts are payable in US Dollars (\$) in accordance with instructions specified in the Thermo Fisher's invoice and (ii) Customer must make the payments within thirty (30) days of the date of the invoice.
 - 7.4. All Product prices are as stated and are exclusive of: (a) all shipping and handling charges, unless otherwise stated on the Quote, (b) and sales, value added, or other taxes and duties imposed with respect to the sale, delivery, or use of any Products, and will be paid by Customer. Each Party is responsible for all taxes legally imposed upon its business, including but not limited to, taxes imposed upon its income, gross revenue, duties, exports, personnel or property.
- 5. Delivery.**

- Customer will pay and Thermo Fisher will be solely responsible for collecting, remitting and the reporting of applicable transaction taxes such as sales, use, value added, manufacture, excise, or similar taxes, unless a valid exemption is provided by Customer. Transaction taxes are in addition to established prices and will be shown as a separate line item on the invoice.
- 7.5. The payments set forth in this Agreement shall, if overdue, bear interest until paid of three percent (3%) over the prime rate then offered by Citibank N.A. Such interest shall accrue daily basis from the due date until the payment of the overdue amount. The payment of such interest shall not foreclose Thermo Fisher from exercising any other rights it may have as a consequence of the lateness of any payment. Where invoices for Products are not timely paid, subsequent shipments may be delayed or subject to prepayment until overdue amounts are paid.
- 8. General Warranties.**
- 8.1. Each Party warrants to the other that it has authority to enter into and comply with this Agreement.
- 8.2. Thermo Fisher hereby represents and warrants to Customer that each Product delivered to Customer under these Conditions shall (i) be delivered with full title and (ii) at the time of shipment conform to the Specifications.
- 8.3. Thermo Fisher does not represent or warrant that the rights granted under this Agreement are all the intellectual property rights required by Customer for (i) its use of the Products, or (ii) its combination of Products with other products or components. As between the Parties, Customer agrees that securing access to such proprietary rights is Customer's sole responsibility.
- 8.4. Customer hereby warrants and represents to Thermo Fisher that:
- (i) it has, or will obtain in a timely manner, all commercial licenses and intellectual property rights (other than the rights expressly granted by Thermo Fisher under Section 2.2) and Approvals necessary for Customer to develop Customer Products as contemplated by this Agreement;
 - (ii) Customer has obtained and will maintain all necessary Consents;
 - (iii) Customer is entitled to grant the rights in Section 4.2 with respect to Customer IP and Customer Materials to Thermo Fisher and will maintain said rights for Thermo Fisher's performance under this Agreement;
 - (iv) Customer will perform sufficient incoming testing of Products to confirm the suitability of each Product on a lot-by-lot basis for the uses to which the Product will be put by Customer;
 - (v) Customer will comply with all handling instructions, if any, furnished by Thermo Fisher relating to the Products;
 - (vi) without limiting Customer's right to perform inspection and quality testing of the Product's compliance with the Specifications, Customer must not, and will require each Partner and End-User to not reverse engineer, deconstruct, disassemble, analyze, or otherwise modify any Product; and
 - (vii) without limiting Thermo Fisher's remedies or causes of action for the same, Customer will not exceed the scope of the rights granted to Customer pursuant to Section 2.2 hereunder, whether directly, by inducement, by contribution or otherwise.
- 8.5. Customer hereby acknowledges that:
- (i) nothing in this Agreement will be construed as (1) a warranty or representation by Thermo Fisher as to the validity, enforceability or scope of any rights granted hereunder; (2) an obligation on Thermo Fisher to bring or prosecute actions or suits against third parties for infringement; or (3) an obligation on Thermo Fisher to furnish any know-how;
 - (ii) the Products have no Approvals for use in clinical, diagnostic, or therapeutic procedures, or for any other use requiring compliance with any law or regulation regulating clinical, diagnostic or therapeutic products or any similar product (hereinafter collectively referred to as "**Regulatory Laws**");
 - (iii) Thermo Fisher has not tested or validated the Products for any particular use or purpose or for safety or effectiveness. It is Customer's responsibility to test, validate or take other actions necessary for any specific use or applications, to obtain all necessary Approvals, and to ensure Customer's use of the Products, the Customer Products, and any materials generated therefrom meet applicable regulatory, certification, validation or other requirements and all necessary Approvals have been obtained.
- 9. Product Warranties.**
- 9.1. Subject to Section 9.4, Thermo Fisher warrants to Customer that the Products will conform to the Specifications for the Warranty Period.
- "**Warranty Period**" with respect to non-Custom Products means the sooner of (i) the "retest" date, expiration date or "use by" date specified on the Product label or the Product's certificate of analysis, or (ii) a period of twelve (12) months from shipment of the Product in question.
- 9.2. The warranty in Section 9.1 does not apply to Custom Products; Thermo Fisher only warrants that Custom Products will meet the Specification set forth in the Product's certificate of analysis at the time of shipment.
- 9.3. The Product warranty in this Section 9 is only for the benefit of Customer and may not be transferred by Customer to End-Users.
- 9.4. To submit a product warranty claim, Customer will (i) notify Thermo Fisher's customer service department if a Product does not meet its applicable warranty (as set forth in Section 9.1 or 9.2) for (a) non-Custom Products within the Warranty Period, and/or (b) for Custom Products within ten (10) business days of receipt any Defective Custom Products (collectively referred to as "**Warranty Claims**"), and (ii) will send to Thermo Fisher's customer service department (electronically or as otherwise indicated by Thermo Fisher) the results of the tests performed by Customer (including an initial test and a confirming test) on the Product that identified the Product as Defective ("**Customer Test Results**"). Upon receipt of such Warranty Claim and Customer Test Results: (1) if Thermo Fisher has samples of the Product from the same lot that is subject to Customer's Warranty Claim in stock, Thermo Fisher will test such Product, or (2) if Thermo Fisher does not have such sample in stock, Thermo Fisher will notify Customer and Customer will ship to Thermo Fisher a sample of the Product from the same lot that is subject to the Warranty Claim, at Thermo Fisher's expense. Upon completion of Thermo Fisher's testing and if Thermo Fisher achieves the same results as the Customer Test Results, Thermo Fisher will provide Customer with instructions on destroying or returning the Defective Products. If the instructions require returning the Defective Products to Thermo Fisher, Customer will do so within five (5) days of receipt of the instructions at Thermo Fisher's expense. Upon receipt of said Defective Product or in the case of destruction per the instructions, Thermo Fisher may in its sole discretion either (a) replace said Defective Products with Products that conform to the Specifications as soon as commercially practicable, or (b) refund all amounts paid by Customer for returned Defective Product (including, without limitation, all shipping costs).
- 9.5. Notwithstanding anything the contrary in this Section 9, Thermo Fisher is not responsible for any Warranty Claims that (i) are created after shipment by Thermo Fisher, including those resulting from Customer's or its carrier's handling, maintenance or storage of the Products; (ii) result from modifications to the Products by Customer or others, or (iii) any failure by Customer to comply with the timeframes set forth in Section 9.4.
- 9.6. CUSTOMER'S SOLE REMEDY FOR A PRODUCT WARRANTY CLAIM IS REPAIR OR REPLACEMENT OF THE PRODUCT SUBJECT OF SAID CLAIM.
- 10. Warranty Negations and Limitations.**
- 10.1. Customer acknowledges that nothing in this Agreement will be construed as: (i) an obligation on Thermo Fisher to bring or prosecute actions or suits against Third Parties for infringement; (ii) unless otherwise expressly set forth herein, conferring the right to use in advertising, publicity or otherwise any trademarks, trade names, names, or any contraction, abbreviation, simulation or adaptation thereof, of Thermo Fisher; (iii) an obligation on Thermo Fisher to furnish any know-how, and should Thermo Fisher provide such know-how, Thermo Fisher makes no warranty or representation as to the sufficiency or accuracy of such know-how; or (iv) a warranty or representation by Thermo Fisher that Customer will obtain the applicable Approvals from the governmental authority to sell Customer Products.
- 10.2. THERMO FISHER'S WARRANTIES SET FORTH IN THIS AGREEMENT EXTEND ONLY TO CUSTOMER, AND DO NOT RUN TO THE BENEFIT OF ANY OF CUSTOMER'S AFFILIATES, PARTNERS OR END-USERS, AND CUSTOMER CANNOT TRANSFER THEM. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTIONS 8 AND 9, THERMO FISHER AND ITS AFFILIATES MAKE NO OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE MANUFACTURE, USE, IMPORT OR SALE OF THE PRODUCTS AND/OR CUSTOMER PRODUCTS OR OTHER EXPLOITATION OF THE RIGHTS GRANTED HEREIN WILL NOT INFRINGE ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT. ADDITIONALLY, THE ONLY REMEDY AND THERMO

FISHER'S ONLY LIABILITY FOR THERMO FISHER'S BREACH OF THERMO FISHER'S PRODUCT WARRANTY AS SET FORTH IN SECTION 9.6.

11. Limitation of Liabilities.

11.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THERMO FISHER AND ITS AFFILIATES WILL NOT BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR ANY COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOSS OF REVENUE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THERMO FISHER HAD NOTICE OF THE POSSIBILITY OF SAID DAMAGES.

11.2. IN ADDITION, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THERMO FISHER'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO THE AGGREGATE AMOUNT PAID TO THERMO FISHER BY CUSTOMER UNDER THE RELEVANT PO FOR THE PRODUCT GIVING RISE TO THE CLAIM.

12. Indemnification; Insurance.

12.1. Customer will indemnify, defend and hold harmless Thermo Fisher, its Affiliates, and their respective directors, officers, employees and agents (the "**Thermo Fisher Indemnified Parties**") from all losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) that any of Thermo Fisher Indemnified Parties may suffer as a result of any claims, demands, actions or other proceedings ("**Claims**") made or instituted by any Third Party and arising out of or relating to (i) Customer's, its Affiliates', Partners', or its or their End-Users' possession or use (or misuse) of the Products; (ii) Customer's, its Affiliates', or Partner's failure to obtain necessary Approvals or Consents; (iii) the manufacture or sale of a Custom Product by Thermo Fisher for Customer pursuant to instructions, specifications, methods, directions provided by Customer; (iv) the use by Thermo Fisher of Specific Components, Customer Materials and/or Customer IP in the manufacture of the Custom Products and/or (v) Customer's, its Affiliates', or Partner's recklessness or willful misconduct, to the extent such Claims are not arising out of Thermo Fisher's recklessness or willful misconduct.

12.2. Thermo Fisher will provide Customer with prompt written notice of any Claims for which indemnification is sought under this Agreement. Customer will, at its own expense, provide attorneys reasonably acceptable to Thermo Fisher to defend against any such claim. Thermo Fisher will cooperate fully with the Customer in such defense and will permit Customer to conduct and control such defense and the disposition of such Claims (including all decisions relative to litigation, appeal, and settlement); provided, however, that any of Thermo Fisher Indemnified Parties may retain its own counsel, at the expense of Customer, if representation of such Thermo Fisher Indemnified Party by the counsel retained by Customer would be inappropriate because of actual differences in the interests of such indemnitee and any other party represented by such counsel. Customer will keep Thermo Fisher informed of the progress in the defense and disposition of such claim and will consult with the Thermo Fisher with regard to any proposed settlement. Customer may not settle any such claim with an admission of liability of Thermo Fisher without Thermo Fisher's prior written approval, which will not be unreasonably withheld, conditioned, or delayed.

12.3. Customer will maintain public and product liability insurance with limits of at least \$10,000,000 per occurrence with reputable insurers preferably rated B+ or better by A.M. Best or like rated insurance company. The insurance policy shall name Thermo Fisher and its Affiliates as an additional insured. Notwithstanding the foregoing, the insurance policy of Customer established in Japan, the Republic of India or the People's Republic of China should be issued with limits per claim and aggregate limits, in accordance with current insurance market standards (not less than compulsory limits) and the statutory standard wording.

Any Customer's insurance will be primary over Thermo Fisher's insurance with respect to product liability. Customer will respond to any third-party claims with respect to its indemnification obligations. Customer's insurance policies will not be construed to mean any form of limitation of Customer's liability or obligations. Thermo Fisher will be given at least thirty (30) days prior written notice of the lapse or termination of such insurance. Customer will provide to Thermo Fisher

a Certificate of Insurance or its equivalent substantiating the existence of the insurance required by this provision within ten (10) days upon request by Thermo Fisher. Any claims made insurance policy will include a provision accounting for a reporting period of no less than two (2) years after the expiration or termination of this Quote.

13. Thermo Fisher's Intellectual Property.

13.1. Customer will promptly notify Thermo Fisher in writing of any Third Party claim made against Customer that: (i) any Product, including but not limited to, the way in which it is used or sold; or (ii) any other materials supplied hereunder infringes such Third Party's intellectual property. Thermo Fisher will determine, in its sole discretion, an appropriate response to such claim and will have sole control of the defense of any claim. Customer will cooperate with Thermo Fisher, at Thermo Fisher's request and expense, as may be reasonably required, to assist Thermo Fisher in taking or resisting any proceedings in relation to any infringement or claim referred to in this Section 13.1. Customer may not settle any such dispute with any Third Party nor disclaim any intellectual property right of Thermo Fisher or its Affiliates, without the prior written consent of Thermo Fisher. For the avoidance of doubt, any claims relating to Custom Products would continue to be subject to the obligations in Section 12.1(iii).

13.2. For non-Custom Products, if a Third Party alleges that the Products infringe its rights or if, in Thermo Fisher's reasonable opinion, such an allegation is likely to be made, Thermo Fisher may, at its option and its own cost: (i) modify or replace the Products in order to avoid the infringement; (ii) procure for the Customer the right to continue using the Products; or (iii) repurchase any Products which Customer is holding in stock at the price paid by the Customer.

13.3. Any inventions (patentable or otherwise), discoveries, improvements, data, know-how, or other results that are conceived, developed, discovered, reduced to practice, or generated by or for Thermo Fisher, or jointly by Thermo Fisher and Customer, in relation to processes, methods, or related synthesis of a Product, or otherwise in connection with the design or manufacture of a Product, will be and will remain Thermo Fisher's sole and exclusive intellectual property, and Customer hereby transfers and assigns all of its right, title and interest in and to any such joint intellectual property to Thermo Fisher and will assist Thermo Fisher, at Thermo Fisher's request and expense, in securing and recording Thermo Fisher's rights in such intellectual property.

14. Confidentiality.

14.1. Confidentiality Obligations. During the Term of this Agreement and for a period of five (5) years thereafter, each Party will (i) maintain the other Party's Confidential Information in confidence, (ii) limit dissemination to those of its employees who require said Confidential Information in order to perform this Agreement and who have agreed in writing to maintain the confidential nature of all information (including that of Third Parties and Affiliates) received by them in the course of their engagement on terms no less stringent than those set forth in this Agreement, (iii) not disclose said Confidential Information to any other person, and (iv) use said Confidential Information only to the extent necessary to perform this Agreement.

14.2. Exceptions. The confidentiality and non-use obligations of this Agreement will not apply to Confidential Information disclosed to the Recipient that: (i) can be shown by written evidence to be in the Recipient's possession before receipt of the Confidential Information from the Discloser; (ii) is or becomes publicly available through no fault of the Recipient; (iii) is rightfully received by the Recipient from a Third Party or an Affiliate without breach of a duty of confidentiality to the Discloser; (iv) is independently developed by the Recipient without use of the information disclosed; or (v) is required to be disclosed by government, regulatory authority or court of law, provided that Recipient will promptly notify Discloser in writing prior to making any said disclosure in order to allow Discloser to seek a protective order or other appropriate remedy from the proper authority and in the event that said protective order or other remedy is not obtained, Recipient will furnish only that portion of the Confidential Information that Recipient is legally required to disclose.

14.3. Relief. Because an award of money damages would be inadequate for any breach of Section 14.1 by a Party and any said breach would cause the other Party irreparable harm, each Party also agrees that in the event of a breach or threatened breach of Section 14, the other Party will also be entitled to seek equitable relief, including injunctive relief and specific performance. Said remedies will not be the exclusive remedies for any said breach, but will be in addition to all remedies available at law or in equity.

- 14.4. **Document Return.** Upon termination or expiration of this Agreement, or earlier upon receipt of written request from the Discloser, Recipient agrees to return or destroy all Confidential Information, including materials, received from the Discloser; provided, however, that (i) Recipient may retain in its confidential files one (1) copy of written Confidential Information for record purposes only, and (ii) nothing herein will require Recipient to delete or purge any records in backup or archival systems kept in the normal course of business.
- 14.5. **Publicity.** Except as required by law or deemed necessary under applicable federal or state securities laws or regulations, neither Party will use the name of the other Party, nor the name of any member of the other Party's staff, in connection with any publicity without the prior written approval of the other Party.
15. **Termination and Expiration.**
- 15.1. **Termination.** Thermo Fisher may terminate this Agreement upon or after the material breach of this Agreement by Customer and/or its Affiliates if Customer or its Affiliates has not cured such material breach within thirty (30) days after written notice thereof is provided by Thermo Fisher. Termination by Thermo Fisher for Customer's material uncured breach will, at Thermo Fisher's option, relieve Thermo Fisher of the obligation to deliver Products under an outstanding PO. In addition, Thermo Fisher may terminate this Agreement immediately upon written notice to Customer if Thermo Fisher determines that termination is required for biosecurity, biosafety, patent infringement, and/or feasibility reasons.
- 15.2. **Effect of Termination.** Upon termination of this Agreement, (i) Customer will have no right to continue any use of Products (other than for Customer's internal research use) purchased prior to or delivered subsequent to the effective date of the termination or expiration of this Agreement, and (ii) all rights of Customer, its Affiliates, and Partners granted under this Agreement will terminate.
- 15.3. **Effect of Expiration.** Unless this Agreement is sooner terminated pursuant to Section 15.1, upon expiration of the Quote Term, Customer may no longer place new POs for Products under this Agreement but Customer may continue to use the Products purchased and delivered prior to the Quote expiration in accordance with these Terms and Conditions.
- 15.4. **Outstanding Obligations.** For clarification, all Customer obligations to pay for Products purchased prior to said termination or expiration will continue in full force after termination or expiration. Upon any expiration or termination of this Agreement, each Party will promptly return to the providing Party, at its request, all Confidential Information of the providing Party, in accordance with Section 14.4.
16. **Miscellaneous.**
- 16.1. **Assignment.** Neither Party may assign or otherwise transfer this Agreement nor any right or obligation hereunder without the prior written consent of the other Party, except that Thermo Fisher may assign or otherwise transfer this Agreement or any right or obligation hereunder without the written consent of Customer (i) to any of its Affiliates, (ii) to any Third Party with which it may merge or consolidate, or (iii) to any Third Party to which it transfers all or substantially all of the assets, goodwill, and business to which this Agreement relates.
- 16.2. **Governing Law.** This Agreement is governed by the laws of California, without regard to its conflicts of laws rules; provided however, that those matters pertaining to the validity or enforceability of patent rights shall be interpreted and enforced in accordance with the laws of the territory in which such patent rights exist. The Parties agree that any application of the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded and shall NOT apply to this Agreement.
- 16.3. **Dispute Resolution.** In the event any Party claims breach of this Agreement, the Parties will consult with each other in good faith on the most effective means to cure the breach and to achieve any necessary restitution of its consequences. This consultation will be undertaken within a period of ten (10) days following the receipt of a written request to consult, and the consultation period will not exceed thirty (30) days. During the consultation period, neither litigation nor arbitration may be pursued until attempts at consultative dispute resolution have been exhausted.
- 16.4. **Notices.** All communications concerning this Agreement shall be given in writing and shall be considered to have been duly delivered when received. The addresses to be used for such notices shall be the addresses set forth in the Quote, unless and until changed by either Party by providing proper notice to the other Party.
- 16.5. **Export Control.** Customer will not and shall ensure that Partners shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any Products (including, but not limited to, samples, materials, equipment, information, and technical data) to any destination, entity, or person prohibited by United States, European Union or local laws or regulations.
- 16.6. **Compliance with Laws.** Notwithstanding any other provision of this Agreement, neither Customer nor Thermo Fisher shall be required to take or refrain from taking any action impermissible or penalized under the laws of the U.S. or any applicable foreign jurisdiction, including without limitation the anti-boycott laws administered by the U.S. Commerce and Treasury Departments.
- 16.7. **Entire Agreement.** This Agreement constitutes the entire, full, and complete agreement between the Parties concerning the subject matter hereof, and supersedes all prior agreements, negotiations, representations, and discussions, written or oral, express or implied, between the Parties in relation thereto. In the event of a conflict between the Quote and these Terms and Conditions, the Quote shall prevail.
- 16.8. **No Waiver.** The Parties hereto mutually covenant and agree that no waiver by either Party of any breach of the terms of this Agreement will be deemed a waiver of any subsequent breach thereof. Any purported waiver of any breach of the terms of this Agreement must be in writing.
- 16.9. **Severability.** Should one or more of the provisions contained in this Agreement be held invalid, illegal or unenforceable by a court or tribunal with jurisdiction to do so, then the validity, legality and enforceability of the remaining provisions contained herein will not be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affect the Parties' substantive rights. In said instance, the Parties will use their best efforts to replace the invalid, illegal or unenforceable provision(s) with valid, legal and enforceable provision(s) which, insofar as practical, implement the purposes of this Agreement.
- 16.10. **Survivability.** Sections 2.6, 8.4 (ii), 11, 12, 14 and 16 (inclusive) will survive expiration of this Quote, along with such other provisions of this Agreement which by their nature are intended to survive.
- 16.11. **Force Majeure.** Each Party's obligations under these Conditions shall be suspended if performance is prevented or delayed by any future event which (i) is beyond the reasonable control of that Party, and (ii) could not have been prevented by that Party taking commercially reasonable steps. As soon as commercially reasonable after the suspension, the Party seeking to rely thereon shall give written notice to the other Party stating the anticipated consequences. In the event of the suspension, the Party seeking to rely thereon shall take such measures as it deems appropriate to minimize the impact of any suspension and to resume performance of its obligations as soon as is reasonably practicable.
- 16.12. **Transmission.** The execution and delivery of this Agreement by either Party hereto by e-mail delivery of a ".pdf" or similarly formatted data file will constitute valid execution and delivery of this Agreement.

Web version date: November 7, 2022