

THERMO FISHER SCIENTIFIC (MILWAUKEE) LLC TERMS AND CONDITIONS OF SALE

The terms and conditions set forth herein ("**Conditions**") govern the sale of products by Thermo Fisher Scientific (Milwaukee) LLC ("**Thermo Fisher MKE**") pursuant to the Thermo Fisher MKE 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 MKE, 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 MKE. 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**" means any proprietary information relating to the subject matter of this Agreement disclosed by one Party (the "**Discloser**") to the other Party (the "**Recipient**") under this Agreement. Thermo Fisher MKE's Confidential Information includes, without limitation, information, technology, methods, processes, techniques, formulae, compounds, compositions, organisms, equipment, research data, know-how and trade secrets owned by Thermo Fisher MKE or in its possession, business, financial, regulatory or marketing plans, or information related thereto, including information associated with regulatory filings, information disclosed during site visits, and materials, drawings, tooling, molds, dies or samples furnished to or disclosed at any time by Thermo Fisher MKE to Customer relating, but not limited to, the Products and Specifications or pursuant to this Agreement, whether or not reduced to writing.
 - 1.5. "**Consents**" is defined in Section 4.2.
 - 1.6. "**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.
 - 1.7. "**Customer**" means the entity or institution specified under Customer Details on the Quote.
 - 1.8. "**Customer Acceptance**" has the meaning set forth in the Quote.
 - 1.9. "**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 MKE to manufacture the Custom Products, as specified in the Quote (if applicable).
 - 1.10. "**Customer Materials**" means the materials provided by Customer to Thermo Fisher MKE for the manufacture of the Custom Products, as specified in the Quote (if applicable).
 - 1.11. "**Customer Products**" means products manufactured by Customer using the Products.
 - 1.12. "**Defect**" means a failure of a Product to comply with the Specifications; "**Defective**" will be construed accordingly.
 - 1.13. "**Distributor**" means a Third Party that resells Customer Products, unaltered in any way, to End-Users under Customer's label.
 - 1.14. "**End-User**" means the Third Party ultimate purchaser of any Customer Product whose use consumes or destroys the commercial utility of said Customer Product or after whose use any remaining Customer Product is discarded.
 - 1.15. "**Lead Time**" means the estimated time from Thermo Fisher MKE's acceptance of a PO until shipment of Products, as specified in the Quote.
 - 1.16. "**MOQ**" has the meaning set forth in the Quote.
 - 1.17. "**MPC**", if applicable, has the meaning set forth in the Quote.
 - 1.18. "**Party**" means either the Thermo Fisher MKE or Customer individually; Thermo Fisher MKE and Customer are collectively referred to as "**Parties**".
 - 1.19. "**PO**" means a purchase order.
 - 1.20. "**Products**" means the products set forth in the Quote. For the avoidance of doubt, Products includes Custom Products.
 - 1.21. "**Quote**" means the quote issued by Thermo Fisher MKE to Customer for Products that references and incorporates these Conditions.
 - 1.22. "**Quote Term**" means the period starting on the date of Customer's Acceptance and ending on the Quote's expiry date.
 - 1.23. "**Specifications**" means the Specifications set forth in the Quote
 - 1.24. "**Specific Components**" means any specific components, sources, or brands identified on the Quote that Customer requests Thermo Fisher MKE uses in the manufacture or assembly of the Custom Products.
 - 1.25. "**Territory**" means worldwide.
 - 1.26. "**Third Party**" means any party other than Customer, Thermo Fisher MKE, or an Affiliate of Customer or Thermo Fisher MKE.
2. **Supply and Terms of Use; Labeling; Trademarks.**
 - 2.1. Thermo Fisher MKE 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 MKE grants to Customer, and Customer accepts, the right to (i) use the Products for its internal research and development purposes, and (ii) use the Products for further manufacturing of Customer Products and import, sell, and/or have sold by Distributors Customer Products in the Territory solely under Customer's trademarks and trade names.
 - 2.3. Customer has no rights to sublicense, assign or otherwise transfer or share its rights hereunder.
 - 2.4. Any rights granted to Customer under Section 2.2 of this Agreement 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 Distributor for Customer Products that are no less burdensome than the limitations and obligations imposed on Customer hereunder. Customer will be liable to Thermo Fisher MKE for acts or omissions of its Distributors. Any non-compliance with the terms of this Agreement by a Distributor will be regarded as a breach of this Agreement by Customer.
 - 2.6. Customer will sell, and will require Distributors to sell, Customer Products only under Customer's own labeling, trademarks and trade names. Customer is responsible for ensuring that the labeling of Customer Products complies with all applicable laws and regulations. Unless otherwise specified on the Quote, Customer has no right to use any trademarks of Thermo Fisher MKE and/or its Affiliates, whether or not such trademarks are registered with the US Patent and Trademark Office or other governmental body.
 - 2.7. 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 MKE in any dispute unrelated to the Products purchased by Customer from Thermo Fisher MKE pursuant to this Agreement.
3. **Order, Manufacture and Supply.**
 - 3.1. To purchase Products, Customer must submit a PO to Thermo Fisher MKE 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 MKE. Once a PO is accepted by Thermo Fisher MKE, it becomes binding on the Customer and cannot be cancelled but Thermo Fisher MKE may accept Customer's reasonable requests to amend a PO but is not required to do so. Additionally, Thermo Fisher MKE, 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.
 - 3.3. Thermo Fisher MKE, 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. In the event the Quote specifies an MPC for any Products, Customer agrees to take delivery and pay for the full MPC quantity of each said Product during the Quote Term. If Customer does not purchase the full MPC by the last day of the Quote Term, Thermo Fisher MKE will invoice Customer for the shortfall, which Customer will pay in accordance with Section 7.
 - 3.5. Thermo Fisher MKE will manufacture the Products in accordance with the Specifications.
 - 3.6. Thermo Fisher MKE may appoint any subcontractor, person, or entity to carry out Thermo Fisher MKE's obligations under this Agreement, provided always that Thermo Fisher MKE will (i) remain responsible to Customer for the performance of Thermo Fisher MKE's obligations herein, and (ii) ensure any such subcontractor or other person is subject to obligations of confidentiality at least as stringent as those set forth in this Agreement.
 - 3.7. Upon Customer's request and if applicable, Thermo Fisher MKE will provide Customer with the results of a Product's analytical tests in the form of a certificate of analysis.
 - 3.8. Thermo Fisher MKE 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 MKE will not use any Customer Materials, Customer IP Rights or Customer's Confidential Information when doing so.
4. **Custom Products.**
 - 4.1. In addition to all other terms and conditions set forth in this Agreement, this Section 4 applies to all Products designated as Custom Products on the Quote.
 - 4.2. Customer is responsible for obtaining all Third Party required consents, intellectual property rights, approvals, or licenses necessary for Thermo Fisher MKE 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 MKE 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 MKE's other rights and remedies under this Agreement, Thermo Fisher MKE will be relieved of its obligations under this Agreement and Customer will be obligated to reimburse Thermo Fisher MKE for all costs incurred to date under this Agreement.
 - 4.3. Customer hereby grants, and causes its Affiliates to grant, to Thermo Fisher MKE 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.
 - 4.4. 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 MKE may, at its sole discretion, decline to manufacture the Custom Products. If Thermo Fisher MKE 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.
 - 4.5. Prior to providing Thermo Fisher MKE with any Customer Materials, Customer must provide Thermo Fisher MKE 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.
 - 4.6. 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 MKE will not be obligated to provide quantities of Custom Product manufactured using Specific Components in the event of a failure of such Specific Component.
 - 4.7. Thermo Fisher MKE 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 MKE 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 MKE's discretion.
 - 4.8. The Customer IP Rights, and all information about Customer IP Rights, whether provided by Customer or generated by Thermo Fisher MKE 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 MKE will maintain records of the Data for a period of no less than one (1) year.
 - 4.9. Thermo Fisher MKE 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.
 - 4.10. Thermo Fisher MKE 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. **Delivery.**
 - 5.1. Thermo Fisher MKE 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, shipment will be made FCA (Thermo Fisher MKE's facility) Incoterms 2020; notwithstanding the foregoing, Customer gives its consent for Thermo Fisher MKE to arrange for carrier of the Product on Customer's behalf and waives Customer's right to arrange carriage or to give Thermo Fisher MKE any specific instructions regarding carriage. Thermo Fisher MKE 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 MKE has reasonable grounds to dispute that Customer is in compliance with a specified provision of this Agreement, Thermo Fisher MKE reserves the right to require prepayment for Products or to suspend shipment of Products to Customer until Thermo Fisher MKE 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 MKE will use commercially reasonable efforts to ship the Products on the shipment date.

- Unless otherwise agreed to by the Parties in writing, Thermo Fisher MKE 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 MKE 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 MKE in writing within ten (10) business days of receipt if any Products are short against order, apparently Defective, or visually damaged. Thermo Fisher MKE 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 MKE's receipt of a notice of Product shortfall in delivery, Thermo Fisher MKE will deliver the shortfall quantity as soon as commercially practicable.
- 6.3. Upon Thermo Fisher MKE's receipt of Customer's notice of an apparently Defective Product or visually damaged Product ("**Rejected Product**"), Thermo Fisher MKE 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 MKE 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 MKE is not responsible for any shortfall, damage, or apparent Defects in the Products that (i) are created after Thermo Fisher MKE'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.
- 7.2. Upon or after delivery of the Products, Thermo Fisher MKE will invoice Customer for the amount and type of Products shipped. Each invoice issued by Thermo Fisher MKE 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 MKE (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 MKE's invoice and (ii) Customer must make the payments within thirty (30) days following the date of Customer's receipt 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. Customer will pay and Thermo Fisher MKE 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 MKE 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 MKE hereby represents and warrants to Customer that: (i) Thermo Fisher MKE will manufacture Products in accordance with all applicable laws and regulations of the United States relevant to the manufacture of the Products; and (ii) Thermo Fisher MKE will convey good title to each Product supplied hereunder and each Product will be delivered free from any lawful security, interest, lien or encumbrance.
- 8.3. Thermo Fisher MKE 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 MKE that:
- 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 MKE under Section 2.2 of this Agreement) and Approvals necessary for Customer to develop, manufacture and sell Customer Products as contemplated by this Agreement;
 - Customer has obtained and will maintain all necessary Consents;
 - Customer is entitled to grant the rights in Section 4.3 with respect to Customer IP and Customer Materials to Thermo Fisher MKE and will maintain said rights for Thermo Fisher MKE's performance under this Agreement
 - 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;
 - Customer will comply with all handling instructions, if any, furnished by Thermo Fisher MKE relating to the Products;
 - 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 End-User to not reverse engineer, deconstruct, disassemble, analyze, or otherwise modify any Product; and
 - without limiting Thermo Fisher MKE'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:
- nothing in this Agreement will be construed as (1) a warranty or representation by Thermo Fisher MKE as to the validity, enforceability or scope of any rights granted hereunder; (2) an obligation on Thermo Fisher MKE to bring or prosecute actions or suits against third parties for infringement; or (3) an obligation on Thermo Fisher MKE to furnish any know-how.
 - 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**").
 - Thermo Fisher MKE 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.
- (iv) Products are not medical devices under the U.S. Federal Food, Drug and Cosmetic Act and regulations promulgated thereunder, for the purposes of the Medical Devices Regulations 2002 or any other Regulations derived from Directive 98/79/EC ("**Medical Devices**") and are not in any circumstances to be sold or distributed for use as Medical Devices.
- 9. Product Warranties.**
- 9.1. Subject to Section 9.4, Thermo Fisher MKE 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 MKE 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 MKE'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 MKE's customer service department (electronically or as otherwise indicated by Thermo Fisher MKE) 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 MKE has samples of the Product from the same lot that is subject to Customer's Warranty Claim in stock, Thermo Fisher MKE will test such Product, or (2) if Thermo Fisher MKE does not have such sample in stock, Thermo Fisher MKE will notify Customer and Customer will ship to Thermo Fisher MKE a sample of the Product from the same lot that is subject to the Warranty Claim, at Thermo Fisher MKE's expense. Upon completion of Thermo Fisher MKE's testing and if Thermo Fisher MKE achieves the same results as the Customer Test Results, Thermo Fisher MKE will provide Customer with instructions on destroying or returning the Defective Products. If the instructions require returning the Defective Products to Thermo Fisher MKE, Customer will do so within five (5) days of receipt of the instructions at Thermo Fisher MKE's expense. Upon receipt of said Defective Product or in the case of destruction per the instructions, Thermo Fisher MKE 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 MKE is not responsible for any Warranty Claims that (i) are created after shipment by Thermo Fisher MKE, 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 MKE 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 MKE; (iii) an obligation on Thermo Fisher MKE to furnish any know-how, and should Thermo Fisher MKE provide such know-how, Thermo Fisher MKE makes no warranty or representation as to the sufficiency or accuracy of such know-how; or (iv) a warranty or representation by Thermo Fisher MKE that Customer will obtain the applicable Approvals from the governmental authority to sell Customer Products in the Territory.
- 10.2. **THERMO FISHER MKE'S WARRANTIES SET FORTH IN THIS AGREEMENT EXTEND ONLY TO CUSTOMER, AND DO NOT RUN TO THE BENEFIT OF ANY OF CUSTOMER'S AFFILIATES, CUSTOMER'S DISTRIBUTORS, OR END-USERS AND CUSTOMER CANNOT TRANSFER THEM. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTIONS 8 AND 9, THERMO FISHER MKE 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 MKE'S ONLY LIABILITY FOR THERMO FISHER MKE'S BREACH OF THERMO FISHER MKE'S PRODUCT WARRANTY AS SET FORTH IN SECTION 9 ARE SET FORTH IN 9.6.**
- 11. Limitation of Liabilities.**
- 11.1. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THERMO FISHER MKE 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 MKE HAD NOTICE OF THE POSSIBILITY OF SAID DAMAGES. IN ADDITION, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THERMO FISHER MKE'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO THE AGGREGATE AMOUNT PAID TO THERMO FISHER MKE BY CUSTOMER UNDER THE RELEVANT PO FOR THE PRODUCT GIVING RISE TO THE CLAIM.**
- 11.2.
- 12. Indemnification: Insurance.**
- 12.1. Customer will indemnify, defend and hold harmless Thermo Fisher MKE, its Affiliates, and their respective directors, officers, employees and agents (the "**Thermo Fisher MKE Indemnified Parties**") from all losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) that any of Thermo Fisher MKE 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', its Distributor's, or its or their End-Users' possession or use (or misuse) of the Products; (ii) Customer's, its Affiliates', or its Distributors' failure to obtain necessary Approvals or Consents; (iii) the manufacture or sale of a Custom Product by Thermo Fisher MKE for Customer pursuant to instructions, specifications, methods, directions provided by Customer; (iv) the use by Thermo Fisher MKE of Specific Components, Customer Materials and/or Customer IP in the manufacture of the Custom Products and/or (v) Customer's, its Affiliates', or its Distributors' recklessness or willful

- misconduct, to the extent such Claims are not arising out of Thermo Fisher MKE's recklessness or willful misconduct. Customer's obligations under this Section 12.1 will survive the expiration or termination of this Agreement for any reason.
- 12.2. Thermo Fisher MKE 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 MKE to defend against any such claim. Thermo Fisher MKE 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 MKE Indemnified Parties may retain its own counsel, at the expense of Customer, if representation of such Thermo Fisher MKE 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 MKE informed of the progress in the defense and disposition of such claim and will consult with the Thermo Fisher MKE with regard to any proposed settlement. Customer may not settle any such claim with an admission of liability of Thermo Fisher MKE without Thermo Fisher MKE's prior written approval, which will not be unreasonably withheld, conditioned, or delayed.
- 12.3. From the commercialization of Customer Products in accordance with the terms of this Agreement and for a period of not less than five (5) years following the last sale of Customer Products manufactured through the use of Products, Customer will maintain in effect a commercial general liability insurance policy, products and professional liability inclusive, covering Customer's obligations under this Agreement, including its indemnification obligations and cost for defense, on terms customary to the industry and naming Thermo Fisher MKE as an additional insured. Such insurance will be for an insured amount of not less than five million U.S. dollars (\$5,000,000) combined single limit for each occurrence. Thermo Fisher MKE will be given at least thirty (30) days prior written notice of the lapse or termination of said insurance. Upon request Customer will provide to Thermo Fisher MKE a Certificate of Insurance substantiating the existence of the insurance required by this provision within ten (10) days of any request by Thermo Fisher MKE. Any claims made insurance policy will include a provision accounting for a reporting period of no less than two years after the termination of the Agreement.
- 13. Thermo Fisher MKE's Intellectual Property.**
- 13.1. Customer will promptly notify Thermo Fisher MKE 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 MKE 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 MKE, at Thermo Fisher MKE's request and expense, as may be reasonably required, to assist Thermo Fisher MKE 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 MKE or its Affiliates, without the prior written consent of Thermo Fisher MKE. 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 MKE's reasonable opinion, such an allegation is likely to be made, Thermo Fisher MKE 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 MKE, or jointly by Thermo Fisher MKE 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 MKE'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 MKE and will assist Thermo Fisher MKE, at Thermo Fisher MKE's request and expense, in securing and recording Thermo Fisher MKE'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 of this Agreement 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 MKE 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 MKE. Termination by Thermo Fisher MKE for Customer's material uncured breach will, at Thermo Fisher MKE's option, relieve Thermo Fisher MKE of the obligation to deliver Products under an outstanding PO. In addition, Thermo Fisher MKE may terminate this Agreement immediately upon written notice to Customer if Thermo Fisher MKE 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 and its Affiliates, and Distributors 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 of this Agreement.
- 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 MKE 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. **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.
- 16.4. **Export Control.** Customer will 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.
- 16.5. **Compliance with Laws.** Notwithstanding any other provision of this Agreement, neither Customer nor Thermo Fisher MKE 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.
- 16.6. **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.
- 16.7. **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. **Relationship of the Parties.** The relationship of the Parties is that of independent contractors, and nothing herein will be construed as establishing one Party or any of its employees as the agent, legal representative, joint venturer, partner, employee, or servant of the other. Except as set forth herein, neither Party will have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.
- 16.9. **No Amendment.** This Agreement will not be amended except by an instrument in writing executed by both Parties.
- 16.10. **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.
- 16.11. **Headings.** Headings used herein are for descriptive purposes only and will not control or alter the meaning of this Agreement as set forth in the text.
- 16.12. **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.
- 16.13. **Force Majeure.** Each Party will be relieved of its obligations under this Agreement to the extent that fulfillment of said obligations will be prevented by acts of war, labor difficulties, riots, fire, flood, hurricane, windstorm, acts or defaults of common carrier, governmental laws, acts or regulations (including the inability to obtain any necessary permits), shortages of materials or any other occurrences, whether or not similar to the foregoing, beyond the reasonable control of the affected party; provided, however, that said relief will only continue for so long as the force majeure condition exists. In the event the force majeure condition exists for a term of six (6) months, either Party may terminate this Agreement at any time thereafter by notice to the other, and the Parties will have no liability, one to the other, under this Agreement, except as stated above in Section 15.4 for the payment to Thermo Fisher MKE of monies due and payable.
- 16.14. **Transmission.** The execution and delivery of this Agreement by either Party hereto by facsimile transmission or e-mail delivery of a ".pdf" or similarly formatted data file will constitute valid execution and delivery of this Agreement.

Web version date: May 21, 2020