

## Services Terms and Conditions

1. **GENERAL.** Thermo Fisher Scientific (Mississauga) Inc. ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the annual support plans ("Support Plan(s)") and/or billable services ("Technical Support") as listed on the face hereof on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein ("Agreement"). Support Plans and Technical Support may be referred to collectively as "Services". Any new or different provisions contained in any document issued by Buyer in response to this offer are expressly rejected, and if Buyer's response is deemed to be an offer, this document is a rejection of Buyer's offer and a counteroffer by Seller and shall not constitute acceptance of any proposal by Buyer. Seller's commencement of the Services hereunder will constitute Buyer's acceptance of this Agreement. This is the final, complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Services specified herein, which terms may not be altered in any way by Buyer's purchase order terms. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding upon Seller unless agreed in writing and signed by Seller. Seller's failure to object to additional or different terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein and all such proposals contained in Buyer's order are subject to acceptance in writing by an authorized representative of Seller.
2. **DELIVERY OF SERVICES.**
  - 2.1 Seller agrees to maintain and/or repair those products or instruments identified on the face hereof as covered under the Services ("Covered Equipment") in a manner consistent with the specifications and entitlements included in the purchased Services as specified by Seller on the face hereof, which may include various levels of service at the Buyer's site(s) and/or Seller's depot repair locations (the "Support Service(s)"). The Support Services will only be valid for the Covered Equipment within the Region covered by the Services (as identified on the face hereof, e.g. 48 contiguous U.S.), Monday through Friday (excluding Seller's holidays) during the hours of 8:00am to 5:00pm local standard time ("Normal Hours") during the term of the Agreement. The Covered equipment must be operated according to the manufacturer's supplied instructions, including without limitation the operator's manual(s) and any malfunction must be promptly reported to Seller. Support Service calls requested outside of Normal Hours or for any non-Covered Equipment or for services not included in the purchased Services will be billed at Seller's standard rates for Technical Support in effect at the time of Buyer's request. Seller reserves the exclusive right to determine the assignment of its employees in the performance of Support Services.
  - 2.2 Parts and Consumables: The Support Plan level or Technical Support quote defines when and if the cost of parts is included under the Services. Notwithstanding the foregoing, the cost for parts that are consumed in the normal and usual operation of the Covered Equipment including, but not limited to, sample preparation and analysis, consumables, paper, ink cartridges, ribbons, pens, lamps and/or data media are not covered under any Services.
  - 2.3 Key Operator: Buyer will designate a key operator of Covered Equipment who can describe instrument malfunctions to Seller's service representatives by telephone and who is qualified to perform simple adjustments and corrections to the Covered Equipment as requested by Seller's service representatives. Buyer's failure to designate a key operator or to perform or to have an authorized representative perform the routine maintenance specified in the Covered Equipment's instructions or owner's manual may result, at Seller's option, in Buyer being invoiced at Seller's standard Technical Support rates to provide such non-covered services.
  - 2.4 Equipment Modification: Seller reserves the right to make any changes in the design or construction of Seller's products without incurring any obligation to make any updates or changes whatsoever in the Covered Equipment under the Services. Buyer agrees to allow Seller, at its expense and option, to make retrofits or design changes which improve product reliability, but do not change its performance characteristics. Any Buyer requests to modify or add devices or accessories to Covered Equipment that are not manufactured by Seller are outside the scope of the Services and covered Support Services.
  - 2.5 Buyer Responsibilities: If Seller advises Buyer that the Support Services should be performed at Buyer's site, Buyer will use its best efforts to provide Seller with all requested diagnostic information for any products requiring the Support Services. Subject to compliance with Buyer's reasonable security requirements, Buyer will give Seller's personnel reasonable access to the Covered Equipment whenever Support Service is required, including relevant documentation and records. Buyer will cooperate with Seller's personnel so that Support Services can be performed efficiently and without interruption. Buyer will permit Seller the use of Buyer's equipment, including Covered Equipment, that Seller's personnel deem necessary to perform the Support Services. Buyer is solely responsible for the procurement, installation, maintenance and fees associated with all third-party communication equipment and media as needed for the performance of Support Service under the Services including, but not limited to, telephone and equipment for remote transmission of data.
  - 2.6 Field Service Report: At the completion of the Support Services, Seller's representatives will provide Buyer with a field service report on which will be indicated the number of hours spent and the materials used in completing the work. Buyer's signature on the field service report will signify approval of the information in the report and Seller's satisfactory completion of the Support Services. If Buyer does not sign the report or provide written objection within five (5) business days after receipt, then the report will be deemed unequivocally approved and accepted by Buyer.
3. **SUPPORT PLAN EXCLUSIONS.** The following occurrences are not covered by any Support Plan purchased by Buyer from Seller under this Agreement.
  - a Covered Equipment malfunctions caused by any of the following abnormal conditions; and if Buyer performs Support Services as a result thereof, Seller will invoice Buyer at Seller's standard billable rates for service, travel or move, labor and parts:
    - i Shipping damage incurred en route to Buyer's site or any subsequent transport thereafter;
    - ii Force Majeure events, including for example, floods, lightning, earthquake, tornado, hurricane or fire, bombing, terrorism, armed conflict, malicious mischief, sabotage or other such natural or manmade disasters;
    - iii Physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation;
    - iv Repairs, maintenance, or modifications made by anyone other than Seller's trained personnel or without Seller's supervision and/or approval; and
  - b Maintenance or replacement of media (i.e. printer supplies, etc.) whatever the reason for loss, failure or damage;
  - c Servicing of material or instruments manufactured by anyone other than Seller, including third-party material or instruments purchased for engineering specials;
  - d Beta-site support;
  - e Service calls made to train Buyer's operators; and/or Service calls made as a result of Buyer-identified areas of responsibility, i.e. malfunctions related to Buyer's site conditions, utilities and/or facilities (power, water, temperature, humidity, vibration, dust, etc.) or site computer/data network problems or integrity;
  - f Relocation and reinstallation of Covered Equipment; however, upon request Seller, will supervise the removing, crating, relocation and reinstallation of its products at Seller's standard billable rates for service, travel or move, labor and parts.
4. **WARRANTY.** Seller's sole obligation under any Services is to provide the Support Services in a workmanlike manner in accordance with the entitlements of the Services purchased by Buyer hereunder and if Buyer provides notice of defect in Support Services within ninety (90) days of completion of such Support Services, Seller will reperform the Support Services without charge to Buyer. THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT FOR SELLER TO REPERFORM THE DEFECTIVE SUPPORT SERVICES SHALL BE THE SOLE REMEDY OF BUYER FOR SUCH DEFECTIVE SUPPORT SERVICES UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER MAKES NO OTHER WARRANTIES FOR SUPPORT SERVICES PROVIDED UNDER A SUPPORT PLAN AND/OR TECHNICAL SUPPORT, EXPRESS OR IMPLIED, AND DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER OBLIGATIONS OR LIABILITIES WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE OR OTHERWISE.
5. **PRICE AND PRICING ASSUMPTION.** All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Services will be as specified by Seller. Except as otherwise agreed in writing, the annual charge for each Renewal (as defined in the Term section below) will be Thermo Fisher's standard Support Plan rates in effect at the start of the Renewal. All Support Plan pricing is based on the assumption that the Covered Equipment operates in accordance with product specifications as of the coverage start date; therefore, prior to the start of each Term (as defined in the Term section below) and Renewal, Seller reserves the right to verify and correct the condition of the Covered Equipment and invoice Buyer at Seller's current billable rates for any Support Services deemed reasonably necessary to bring the Covered Equipment into good operating condition. Notwithstanding the above, Seller agrees to waive its right to bill the Buyer for bringing the Covered Equipment into good operating condition if there is no lapse between the end date of the current Support Plan Term and the beginning of any Renewal.
6. **TERMS OF PAYMENT.** Seller may invoice Buyer immediately for the single lump sum amount equal to the total charges for the initial Term of the Services, in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at the greater of a periodic rate of one and one-half percent (1.5%) per month or the highest rate stipulated by applicable law, together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in Canadian Dollars unless otherwise specified in Seller's invoice.
7. **TAXES AND OTHER CHARGES.** Prices for the Services exclude all sales, use, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Services covered hereby, all of which taxes and duties must be paid by Buyer. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.
8. **INDEMNIFICATION.**
  - 8.1 By Seller. Seller will indemnify, defend and save Buyer, its officers, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees) ("Indemnified Items") asserted by another party against Buyer for bodily injury to or death of persons or damage to tangible property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of the Support Services at Buyer's premises under this Agreement; provided, however, Seller's liability under this Section does not extend to any such Indemnified Items caused by either (i) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (ii) by any third party. Buyer will promptly notify Seller in writing of any claim covered by Seller's indemnification obligations hereunder. Seller may assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR, AND BUYER'S SOLE AND EXCLUSIVE REMEDY IN RESPECT OF, THE CLAIMS DESCRIBED HEREIN.
  - 8.2 By Buyer. Buyer will indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; or (ii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer.
9. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE), BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH IS PROVIDED UNDER THE SUPPORT SERVICES WARRANTIES HEREIN)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THEREOF PAID BY BUYER TO SELLER WITH RESPECT TO THE SERVICES GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000), NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.
10. **INSURANCE.** For the Term of the Services, Seller agrees to maintain and carry liability insurance in amounts set forth below with authorized and financially secure insurance companies (AM Best rating of A-VII or foreign equivalent). Insurance includes (a) commercial general liability insurance for a limit of US\$2,000,000 (two million) for each occurrence and US\$4,000,000 (four million) in the aggregate, (b) Statutory workers' compensation and employer's liability insurance for a limit of US\$1,000,000 (one million), (c) Automobile liability of US\$2,000,000 (two million) and (d) Umbrella coverage of US\$5,000,000 (five million). Only with respect to and to the extent of the liabilities and obligations assumed by Seller under this Agreement (to the extent such coverages are commercially available), Seller's commercial general liability, automobile liability and umbrella policies shall (i) include Buyer as an additional insured; (ii) include a waiver of subrogation in favor of Buyer (this waiver shall not extend to the negligence or willful misconduct of Buyer); and (iii) if an indemnity obligation is owed, shall be primary and noncontributory to any insurance maintained by the Buyer. Upon request from Buyer related to applicable Services, Seller will provide to Buyer a certificate of insurance using the standard ACORD form to evidence the insurance coverage required herein.
11. **TERM.** The Services will begin and remain effective for the period of time stated on the face hereof ("Term"). To renew a Support Plan, Buyer must sign a renewal service agreement accompanied by a purchase order prior to the expiration of the current Term ("Renewal"), which shall also be subject to the terms and conditions of this Agreement. Either party may terminate the Services for any/no reason by providing at least thirty (30) days written notice to the other party. Seller will use commercially reasonable efforts to stop work and to incur no additional expenses. Regardless, if the Services are cancelled, Seller will charge Buyer for the total price of Support Services actually performed and expenses actually and reasonably incurred in servicing the Covered Equipment under the underlying Services from its effective date until the cancellation date or the prorated price of the underlying Services from its effective date until the cancellation date, whichever is greater, plus fifteen percent (15%) of the total fee paid for the underlying Services. In the event Buyer prepaid the Services fees in full and a credit balance exists for the

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12 underlying Services. Seller will provide a credit or refund the amount remaining to Buyer.

**MISCELLANEOUS.** (a) Buyer may not delegate any duties or assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void. (b) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Delaware, U.S.A. without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in the State of Delaware U.S.A. for any action arising out of or relating to this Agreement. Each party hereby waives any other venue to which it may be entitled by domicile or otherwise. (c) In the event of any legal proceeding between the Seller and Buyer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. Any action arising under this Agreement must be brought within one (1) year from the date that the cause of action arose. (d) In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain. (e) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. (f) Seller agrees not to knowingly disclose any confidential information or data obtained by it during the performance of Support Services when such information or data is clearly identified in writing by Buyer as confidential. Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller. The parties agree to keep such information confidential and not disclose each other's confidential information to any third party for one (1) year hereafter, and to use such information solely for Buyer's internal purposes and in connection with the Support Services supplied hereunder. Nothing herein shall restrict the use of information available to the general public. (g) Any notice or communication required or permitted hereunder must be in writing and shall be deemed received when personally delivered, upon delivery by any internationally recognized carrier such as Federal Express or similar overnight delivery service, or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other.

## BUYER

By:  
Print Name:  
Print Title:  
Date:

## SELLER

By:  
Print Name:  
Print Title:  
Date:

Initial here to indicate Buyer's agreement to automatically apply the Services Terms and Conditions of Sale to all future orders for new Services from Seller, whether or not the Agreement is referenced on Seller's quote or Buyer's Purchase Orders, for \_\_\_\_\_(write # of years) from later date of the parties' signature, or until either party provides written notice that this Agreement is terminated.