1. Agreement Terms

1.1 General Terms. These Bioproduction Product and Services Supplementary Terms and Conditions of Sale (“Bioproduction Supplementary Terms”) apply to our provision, and your use, of Bioproduction Products (defined below), provided by Life Technologies Corporation and affiliated entities Life Technologies Limited; Advanced Scientifics, Incorporated; Doe & Ingalls Management, LLC; Doe & Ingalls Ltd.; Finesse Solutions, Inc.; Life Technologies BPD UK Limited; EP Scientific Products LLC; Thermo Electron LED GmbH; Nalge Nunc International; and/or Avances Cientificos de Mexico, S. de R.L. de C.V (individually, and collectively, referred to in these Bioproduction Supplementary Terms as “us”, “we”, or “our” or “Thermo Fisher”). These Bioproduction Supplementary Terms are included as Supplementary Terms to the thermofisher.com Terms and Conditions of Sale (“Terms and Conditions of Sale”), available at www.thermofisher.com/legal and defined therein, and, together with our quotation (if any), Documentation (defined below), and any other applicable Supplementary Terms, comprise the agreement (“Agreement”) between you and us for your purchase, and our sale of Bioproduction Products and Services. In the event of a conflict among the contract documents, the following order will apply as to the conflicting terms: our quotation, the Bioproduction Product Documentation, other Supplementary Terms, these Bioproduction Supplementary Terms, and then the Terms and Conditions of Sale. Unless your order is subject to a valid, written, executed agreement between you and Thermo Fisher, in which case such agreement applies, you agree to accept and be bound by these Bioproduction Supplementary Terms by ordering Bioproduction Products and/or Services on thermofisher.com or otherwise via Thermo Fisher when you receive ordering or sales documents. The Agreement is the complete and exclusive contract between you and us with respect to your purchase and our sale of the Bioproduction Products and/or Services. We reserve the right to change these Bioproduction Supplementary Terms at any time, and any changes we make to these Bioproduction Supplementary Terms will apply to the Agreement between us for any order we receive after the changes are made.

1.2 Bioproduction Supplementary Terms – Specific Definitions. For purposes of these Bioproduction Supplementary Terms, the following definitions apply. All other capitalized terms have the meanings assigned in the Terms and Conditions of Sale.

“Binding Forecast” means a written 6 month forecast for Consumables submitted by you to us as part of the Forward PO, which, once confirmed in writing by us, becomes binding on the parties.

“Bioproduction Product(s)” means, generally, individually, and collectively, Consumables and/or Equipment.

“Confirmation” means our written confirmation of your participation in the Forward PO program for the Consumables listed in the Forward PO and which are part of the Binding Forecast.

“Consumable(s)” means consumable Bioproduction Products used in bioproduction processes, including but not limited to: cell culture media; sera; reagents; buffers; process liquids; chemicals; components; supplements; single-use, flexible and rigid fluid containment systems for bioprocessing and liquid handling, including system components such as containers, bags, liners, ports, tubing, fittings, manifolds, filters, sensors and end treatments; contaminant and impurity detection, quantitation, and identification products; protein characterization products; affinity ligands; and chromatography resins, provided by us to you.

“Custom” means customized or special Bioproduction Products and/or Services that are manufactured or performed to written instructions, specifications or designs agreed to in writing by you and us.

“Deliverables” means the written results of the Services performed by us for you.

“Documentation” means labels affixed to Bioproduction Products or packaging; documentation, specifications, limited use label licenses and/or accompanying package inserts shipped with Bioproduction Products or Deliverables; certificates of analysis or conformance made available for applicable Bioproduction Products; and/or documentation, specifications, use guidelines or instructions available in our catalogs, on our website, or that we provide to you for applicable Bioproduction Products.

“Equipment” means durable bioproduction and bioprocess liquid handling instruments and equipment including but not limited to bins, vessels, single-use bioreactors, single-use mixers, single-use fermentors, and related controllers and software provided by us to you.

“Forward PO” means a binding forward purchase order submitted by you to us in order to obtain continuity of supply for Consumables.

“Service(s)” means services or studies provided by us to you related to the form, fit and/or function of Bioproduction Products, including, but not limited to, those under the title Stability Studies, Factory Acceptance Testing Services, Site Acceptance Testing Services (or any combination thereof), as well as related to the procurement, storage, distribution, marketing and sale of chemicals and other Consumables. “Services” excludes media or cell line development services, media or cell line optimization services, media or cell line analytical testing services, and any services where the Deliverables include biological materials - which such services must be provided under a separate mutually executed agreement between you and us.

"SKU Number" means our stock-keeping unit, part number, or product identification number assigned to the Bioproduction Product or Service or the raw materials or components associated with the Bioproduction Product in our business systems.

“SOW” means written study or testing protocols and/or statement(s) of work mutually agreed upon between the parties.

“Specifications” means our current, documented specifications or designs for Bioproduction Products or Services in effect at the time of order acceptance and/or Confirmation; or, in the case of Custom Bioproduction Products, Specified Components or Custom Services, “Specifications” means the mutually agreed upon written specifications or designs for such Custom Bioproduction Products, or Specified Components, or the mutually agreed upon quotation or SOW for such Custom Services.

“Specified Components” means specified raw materials, components, sources, brands or suppliers requested by you to be used in the manufacture or assembly of Custom Bioproduction Products or the performance of Custom Services and includes Consumables and other products and substances manufactured or supplied by...
third parties, including those products that you purchase through any of our sales channels or affiliates.

2. **Price.**

2.1 **Determining Price.** The price as shown in our quotation or SOW to you is subject to adjustment on account of any change to Specifications, quantities, raw materials, cost of production, shipping arrangements, currency exchange or terms or conditions which are not part of our original price quotation.

2.2 **Delivery Fees; Freight Policy.** You are also responsible for delivery, insurance, Equipment installation, and handling charges, if any, and our Bioproduction Product prices do not include such charges unless expressly stated. If we pay such charges, we will add them to your invoice.

3. **Cancellation and Changes.** Once you have placed your order for Bioproduction Products or Services (Custom or otherwise), you cannot cancel or change it without our written consent. We have no obligation to perform Services after the expiration of a written quotation.

4. **Forward PO Program: Storage.**

4.1 **Consumables Forward PO Program.** If you desire to participate in Thermo Fisher’s Consumables Forward PO program, you will submit a Binding Forecast, which, once we issue a Confirmation, becomes binding on the parties. The Confirmation will contain the SKU Numbers for the raw materials or components to be used in the production of the Bioproduction Products in the Binding Forecast, and the price or quotation reference. You will have 2 business days from the date of the Confirmation to cancel or make modifications to the Confirmation in writing. If you do not cancel or make modifications to the Confirmation in writing, the Confirmation will be binding on both parties. You will then submit a Forward PO for the Consumables in the Binding Forecast. Upon receipt of the Forward PO, we will proceed to purchase the raw materials described in the Confirmation or as otherwise required and produce such Bioproduction Products according to the Specifications. We may deliver the Bioproduction Products up to 4 weeks prior to the originally requested delivery date described in the Binding Forecast upon written request by you and with confirmation by us. We will accept multiple release shipments against the Binding Forecast and will invoice each shipment separately. Upon the expiration of the Binding Forecast, any remaining Bioproduction Products produced but not yet shipped under the Binding Forecast will be shipped to you and invoiced, and if such Bioproduction Products have not been produced, we may invoice you for the burdened cost of raw materials described in the Confirmation or as otherwise required but not yet used in manufacture of the Bioproduction Products.

4.2 **Storage Fees.** If you fail to take delivery of the Bioproduction Products pursuant to your order or according to the Binding Forecast schedule, we may provide storage and assess storage fees for raw materials and/or finished Bioproduction Products that are held at Thermo Fisher facilities past the original requested delivery date. If you still have not taken delivery of the raw materials and/or finished Bioproduction Products 3 months past the original requested delivery date, unless we agree in a signed writing to continue to hold the raw materials and/or finished Bioproduction Products for additional storage fees and an excess inventory/reserve/storage fee which we will invoice you for and you will pay to us, we will ship the raw materials and/or finished Bioproduction Products to you and invoice you for them.

5. **Bioproduction Product Returns.**

5.1 **Returns.** Our Customer Service team must pre-authorize all Bioproduction Product returns. Our Customer Service team will approve return of any Bioproduction Product that is damaged, defective, or non-conforming to the Specifications on receipt, provided you contact our Customer Service team within 5 days after receiving the Bioproduction Product and provided such damage or defect has not been caused by any failure by you or the carrier to handle or store the Bioproduction Product using reasonable care or as otherwise indicated on the label, in Supplementary Terms, Documentation, or contained in any written instruction from us. If you do not contact us within this 5-day period, we will deem the Bioproduction Product accepted, but you will not lose any warranty rights described in Section 6 below. You may be required to provide a sample of any Bioproduction Product that you claim is damaged, defective or non-conforming to the Specifications for us to consider authorizing a Bioproduction Product return.

5.2 **Custom Bioproduction Product Returns.** You may return a Custom Bioproduction Product only if the Custom Bioproduction Product does not conform to the Specifications as of the date of shipment. In that case, we will, in our sole discretion, either replace the non-conforming Custom Bioproduction Product or provide a credit for the purchase price of the non-conforming Custom Bioproduction Product.

6. **Warranty; Restrictions.**

6.1 **Limited Warranty for Bioproduction Products and Services.** Unless a different warranty is included in applicable Supplementary Terms or Documentation, we warrant that each Bioproduction Product will meet its Specifications at the time of shipment and Services will be provided to you in conformance with our quotation or SOW. Unless we otherwise agree in writing, Services are not performed under cGMP or regulated conditions and Deliverables are not intended to be used in any regulatory filings or to support regulatory approvals. The warranty lasts from the date we ship the Bioproduction Product or perform the Services until the earlier of: (a) the expiry or “use by” date; (b) its specified number of uses; or (c) 12 months from the date we ship the Bioproduction Product or perform the Services.

6.2 **Limited Warranty for Equipment.** Unless a different warranty is included in applicable Supplementary Terms or Documentation, we warrant that Equipment will be free of defects in materials and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for 12 months from the date we ship the Equipment to you, or in the case of Equipment that requires installation by our personnel, 12 months from installation, but in no event longer than 15 months from the date we ship the Equipment to you.

6.3 **Exclusions.** In addition to our exclusions for Specified Components and third party products described in Section 6.5 below and those listed in the Terms and Conditions of Sale, our warranties for Bioproduction Products do not apply to (a) use of the Bioproduction Products in a manner for which they were not designed; (b) improper storage and/or handling of the Bioproduction Products; (c) use of the Bioproduction Products in combination with equipment and/or software that we did not supply; (d) installation, removal, use, maintenance, storage, and/or handling in an improper, inadequate, or unapproved manner by you or any third party (including the carrier), such as, but not limited to, failure to follow the Documentation, Supplementary Terms, or instructions in Deliverables, operation outside of applicable stated environmental Specifications, use Specifications or other Specifications or otherwise in a manner for which they were not intended or designed, or operation with unapproved software, materials or other products; (e) installation of software or interfacing, or use of the Equipment in combination with software or products we have not approved; (f) use of the Deliverables or any Documentation to support any regulatory approvals; (g) the performance efficacy or compatibility of...
Specified Components; and (h) the performance of Custom Bioproduction Products, Specified Components or achievement of any results from the Bioproduction Products, Specified Components or the Services within ranges desired by you, (e.g. pH level for media, or achievement of a specified titer), even if those ranges are communicated to us and are described in Specifications, our quotation, or a SOW. WE MAY ALSO VOID YOUR WARRANTY IF YOU SHIP THE BIOPRODUCTION PRODUCT OUTSIDE OF THE COUNTRY WHERE WE DELIVER THE BIOPRODUCTION PRODUCT TO YOU. You must pay for all manufactured lots of Custom Bioproduction Products so long as they comply with the Specifications, even if the Custom Bioproduction Products do not perform to your expectations in your own applications.

6.4 Services Remedies. During the applicable warranty period only, for Services not meeting our warranty only, we agree, in our sole discretion, to reperform that portion of the Services so that they conform with our quotation or SOW, and/or provide additional parts as reasonably necessary to comply with our warranty obligations, as applicable, but you must first promptly notify us in writing when you discover any defect or non-conformance, and include in the notice the details of your warranty claim as requested by our Customer Service.

6.5 Specified Components and Third Party Products. We do not support or make any warranties about Specified Components or products manufactured or supplied by third parties that you purchase through any of our sales channels. The provision and use of Specified Components may be governed by a third party manufacturer’s own contract terms. You must look directly to the relevant third party manufacturer for product support, warranties, and to make warranty claims concerning Specified Components. We agree, however, to assign to you any warranty rights we may have from the original manufacturer or third party supplier, concerning the Specified Components to the extent the original manufacturer or third party supplier allows. Custom Bioproduction Products and/or Custom Services which include Specified Components may be subject to price increases at any time, before or after the issuance of our quotation, due to changes in the Specified Component supplier’s prices. We will not be obligated to provide quantities of Custom Bioproduction Product or deliver Custom Services incorporating Specified Components due to a failure of such Specified Component suppliers. You represent and warrant that the inclusion of the Specified Component in a Custom Bioproduction Product, use with a Bioproduction Product, or use as part of Custom Services, will not infringe any third parties’ rights, and you will indemnify and hold us harmless from any such third party claims.

6.6 Use Restrictions. In the absence of any intended use statement in the Documentation or other Supplementary Terms associated with such Bioproduction Products, which will control, Bioproduction Products are intended for research use or further manufacturing in bioprocessing applications, and not for diagnostic use or any direct consumption by or application to humans or animals. We do not submit Bioproduction Products for regulatory review by any governmental body or other organization, and we do not validate them for clinical or diagnostic use, for safety and effectiveness, or for any other specific use or application. You may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the Bioproduction Products without our prior written consent.

6.7 Installation Requirements/Restrictions. If we provide Equipment Services at your premises, it is your responsibility to ensure that the workplace where the Equipment is to be located and/or Services are to be performed is safe and Equipment is suitably situated in accordance with our instructions within an agreed-upon timeframe prior to the scheduled installation. It is also your responsibility to move the Equipment (uncrated) to the installation location, and/or onto any tabletop where it will be installed, as applicable, and establish appropriate working utilities in accordance with our instructions to avoid any additional handling. We do not install Equipment or perform Services in biosafety-level-3 laboratories, unless you and we agree otherwise in writing in advance. Under no circumstances do we install Equipment or perform Services in biosafety-level-4 laboratories.

7. Limitation of Liability.

(A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE WILL NOT BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOSS OF REVENUE) THAT YOU MIGHT INCUR UNDER THE AGREEMENT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH OUR BIOPRODUCTION PRODUCTS OR SERVICES, EVEN IF WE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THE SOLE REMEDY FOR BREACH OF WARRANTY IS AS PROVIDED IN SECTION 6 ABOVE AND IN SECTION 8.6 OF THE TERMS AND CONDITIONS OF SALE.

(B) IN ADDITION, OUR MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY BIOPRODUCTION PRODUCT OR SERVICE IS LIMITED TO THE AMOUNT YOU PAID TO US FOR THE SPECIFIC BIOPRODUCTION PRODUCT PURCHASED OR SERVICE PERFORMED GIVING RISE TO THE LIABILITY.

(C) THE PROVISIONS IN THIS SECTION 7 DO NOT LIMIT OUR LIABILITY THAT CANNOT BE LIMITED BY LAW, INCLUDING BUT NOT LIMITED TO LIABILITY FOR FRAUD, DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE.

8. No Exclusivity. You acknowledge and agree that Thermo Fisher is in the business of manufacturing catalog and custom products for the bioproduction, bioprocessing, and biomanufacturing industries, as well as providing related development, consulting and custom manufacturing services. Nothing in the Agreement prohibits us, independently or in collaboration with third parties, from developing items, goods, products, materials, samples, information and/or data similar or identical to the Bioproduction Products, Services, Custom Bioproduction Products, or Deliverables we provide to you.

9. Export Restrictions. You acknowledge that each Bioproduction Product and Service, and any related software and technology, including technical information we supply you, including those contained in Documentation (collectively “Items”), is subject to U.S., EU and local government export controls. The export controls may include, among others, those of the Export Administration Regulations of the U.S. Department of Commerce (the “EAR”), which may restrict or require licenses for the export of Items from the United States and their re-export to/from other countries. You will, if we request, provide information on the end user and end use of any Item you export or plan to export, as well as written assurance(s) of compliance with EAR in the form we specify either prior to shipment/delivery of Items and/or upon our request.

10. Use of Affiliates. Thermo Fisher’s rights, duties and obligations under the Agreement, including but not limited to Bioproduction Product manufacture, shipment, invoicing, payment processing, import/export, or performance of Services, may be enforced or performed by any Thermo Fisher affiliate.