

Thermo Fisher Scientific Services Marketplace Terms and Conditions

Updated: January 18, 2019

Thank you for your interest in purchasing services via the Thermo Fisher Scientific Services Marketplace (“Services”). We value your business and our goal is to make your experience as smooth as possible. If you have any questions about our quotation or ordering process, please call 1-800-955-6288 x46142. Unless otherwise expressly agreed in writing, your purchase of Services (described in more detail below) is subject to the following terms and conditions:

1.1 Thermo Fisher Services Marketplace, performed by Science Exchange. Thermo Fisher Scientific Inc. (“Thermo Fisher”) has partnered with Science Exchange, Inc., a Delaware corporation with its principal place of business at 555 Bryant St., Ste. 939, Palo Alto, CA 94301, USA (“Science Exchange”) to create the Thermo Fisher Services Marketplace, incorporating the Science Exchange Platform that enables you to search, compare, and order scientific research services via a network of service providers who have been qualified and contracted by Science Exchange.

1.2 General Terms. These terms and conditions (“Terms”), the quotation for the Services (“Quote”), the Science Exchange Terms, and Supplementary Services Terms, if any, comprise the agreement (“Agreement”) between you and Life Technologies Corporation, an affiliate of Thermo Fisher, (“Life Technologies”). Unless your order is subject to a valid, written, executed agreement between you and Life Technologies Corporation, in which case such agreement applies, you agree to accept and be bound by the Agreement when ordering Services using the Thermo Fisher Services Marketplace. This Agreement is the complete and exclusive contract between us with respect to your purchase of the Services.

1.3 Science Exchange Terms. The Thermo Fisher Services Marketplace incorporates the Science Exchange Platform so the performance of all Services requested by you will be performed by Science Exchange and its service providers. The Science Exchange terms are available at <https://www.scienceexchange.com/po-terms> and will apply to Services requested by you and are incorporated into this Agreement by reference (“Science Exchange Terms”).

1.4 Supplementary Services Terms. Some of the Services ordered on the Thermo Fisher Services Marketplace may be subject to other written contract terms that you will not find here (“Supplementary Services Terms”). You might find Supplementary Services Terms in the Science Exchange quotation to you, on thermofisher.com, or in literature made available at the Thermo Fisher Services Marketplace.

1.5 Terms Conflict. If any conditions within the Agreement documents conflict with each other, we will give them the following priority: the Quote, Supplementary Services Terms, these Terms, and finally the Science Exchange Terms. We expressly reject any different terms or provisions contained in any document you provide, and if the terms and conditions in this Agreement differ from the terms of your offer, this Agreement will serve as the governing terms for our contract.

1.6 Ordering Services on the Thermo Fisher Marketplace. You can order Services by submitting a request for a Quote (“Request”) to Science Exchange via the Thermo Fisher Marketplace. To enable Science Exchange to provide you with a Quote, you will need to include a detailed description of the specific Services to be completed (“Statement of Work”) and any protocols, report, material (tangible or intangible), data, images or other deliverable you are requesting be delivered (“Deliverables”). Science Exchange will use reasonable efforts to ensure that you receive a Quote in accordance with each Request. Once you receive a Quote that meets your needs, you accept the Quote on the Platform and such Quote will then become an order (“Order”) to (i) pay Life Technologies the fees for the Deliverables (all set out in the Quote) (“Fees”); and (ii) instruct Science Exchange to proceed with issuing a purchase order to the respective service provider to perform Services set out in such Quote.

1.7 Science Exchange and Performance of the Services. In the event Services provided do not meet the specifications as set forth in your Order, the rights granted to you under the terms defined in Section 1.3 will apply. You will be entitled to exercise those rights exclusively against Science Exchange and not Life Technologies. We will ensure that you are properly invoiced for Services performed and Deliverables provided to you in accordance with your Order, but we are not responsible for the performance of those Services or the provision of those Deliverables to you. You acknowledge and understand that Services contemplated in an Order are for research use and that neither we, Science Exchange nor its service providers represent or warrant that service provider will achieve the results desired by you.

1.8 Fees Payable to Life Technologies for Services. Fees included in your Quote are valid for 30 days, unless otherwise stated in the Quote and become binding on you if you accept a Quote to create an Order as set forth in Section 1.6 above. Life Technologies will invoice you for the applicable Fees when the Services or portion of Services (in the case of milestone payments) have been performed and the applicable Deliverables provided in accordance with the Order have been accepted or deemed accepted under the Agreement. Unless we have agreed otherwise in writing, you will pay us within 30 days from our invoice date. Each Order is a separate transaction, and you may not off-set payments from one Order against another. We reserve the right to require you to make full or partial payment in advance, or other security to our satisfaction, if we believe in good faith that your financial condition does not justify the payments terms otherwise specified. If you are late in making payment, we may, without affecting our other rights:

(A) suspend delivery or cancel the Agreement;

(B) reject your future orders or Requests; and/or

(C) charge you a late-payment charge, from the due date until paid, at the rate of 1.5% per month, or, if less, the maximum amount allowed by law-which you must pay upon our demand.

1.9 Cancellation Changes. Once you have accepted a Quote you will be deemed to have placed your Order and you cannot cancel it, unless we consent in writing, and you pay any applicable cancellation charges. You may not change Orders in process, except with Science Exchange’s and the applicable service provider’s written consent and agreement as to an appropriate adjustment in the Fee payable for the applicable Services. In the event a cancellation or changes requested to an Order is approved, you will be responsible for payment for Services already performed.

1.10 Materials Supplied by You. To the extent that you supply (or you have a third-party supply) certain materials (“Materials”) to us, Science Exchange (or any of its service providers) in the course of this Agreement, you retain all right, title, and interest to those Materials.

1.11 Handling of Personal Data. To the extent that any personal data is shared with us in the course of this Agreement, we will adhere to our privacy statement available at <https://www.thermofisher.com/us/en/home/global/privacy-policy.html>. To the extent that any Personal Data is transferred to, processed, or accessed by Science Exchange in the course of this Agreement, Science Exchange shall process such Personal Data in accordance with the then current Science Exchange Privacy Policy at: <https://www.scienceexchange.com/privacy>.

1.12 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NONE OF THERMO FISHER AND ITS AFFILIATES, SCIENCE EXCHANGE OR ITS SERVICE PROVIDERS WILL 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 THE PRODUCTS, DELIVERABLES, OR SERVICES PURCHASED BY YOU UNDER THIS AGREEMENT, EVEN IF WE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, THE MAXIMUM TOTAL LIABILITY OF THERMO FISHER AND ITS AFFILIATES, SCIENCE EXCHANGE AND ITS SERVICE PROVIDERS, IN AGGREGATE, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, OR ANY PRODUCT, DELIVERABLE, OR SERVICE, IS LIMITED TO THE LESSER OF (A) THE AMOUNT YOU PAID TO US FOR THE PRODUCT, DELIVERABLE, OR SERVICE PURCHASED, OR (B) \$1,000,000 USD. HOWEVER, THESE PROVISIONS DO NOT LIMIT OUR LIABILITY THAT CANNOT BE LIMITED BY LAW. OTHER THAN THOSE WARRANTIES EXPRESSLY SET OUT IN THIS AGREEMENT, WE, SCIENCE EXCHANGE AND ITS SERVICE PROVIDERS SPECIFICALLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR QUALITY.

1.13 Indemnity. If a third party makes a claim against us for infringement of its intellectual property rights based on (a) the performance of the Services requested, (b) your failure to comply with the Agreement, (c) your provision of Materials or use of those Materials by us, Science Exchange (or its service providers), (d) your modification, use or resale of any Deliverables generated by the Services, then you will indemnify and hold Thermo Fisher and its affiliates, Science Exchange and its service providers harmless from and against any and all claims, losses, damages, liabilities and expenses (including reasonable attorneys’ fees and other costs of defending and/or settling any action) that we may have to pay as a result of the claim.

1.14 No Assignment. You may not delegate any duties nor assign any rights or claims hereunder without our prior written consent, and any such attempted delegation or assignment will be void.

1.15 Governing Law. The Agreement and performance under it will be governed by Delaware law, without reference to its choice of law provisions. In the event of any legal proceeding between you and us relating to this Agreement, neither party may claim the right to a trial by jury. Any action arising under this Agreement must be brought within 1 year from the date that the cause of action arose. The U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

1.16 Regulatory Restrictions. Unless otherwise expressly stated on the product, in an Order or in the documentation accompanying our products, the Services, and any Deliverables generated by the Services, are for research only and are not to be used for any other purpose, including without limitation, unauthorized commercial uses, in vitro diagnostic uses, ex vivo or in vivo therapeutic uses, or any type of consumption by or application to humans or animals. You are solely responsible for making sure that the way you use the Deliverables, Services, and products provided complies with applicable laws, regulations and governmental policies. You must obtain all necessary approvals and permissions you may need.

1.17 Uncontrollable Circumstances. We will not be responsible or liable for failing to perform our obligations under the Agreement to the extent caused by circumstances beyond our reasonable control.

1.18 No Waiver; Invalidity. Our failure to exercise any rights under the Agreement is not a waiver of our rights to damages for your breach of contract and is not a waiver of any subsequent breach. If any provision or part of the Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the Agreement. No person other than you or us will have any rights under the Agreement.

1.19 Headings. Headings are for convenience only and shall not be used in the interpretation of these Terms.

1.20 Confidentiality. You agree to keep confidential any non-public technical information, commercial information (including prices, without limitation) or instructions received from us, Science Exchange or its service providers, as a result of discussions, negotiations and other communications between us, Science Exchange or its service providers in relation to our/their products, Deliverables, or Services.

1.21 Notices. Any notice or communication required or permitted under these Terms must be in writing and will be deemed received when personally delivered, or 3 business days after being sent by certified mail, postage prepaid, to a party's specified address.

1.22 Requirement to Reduce to Writing. No waiver, consent, modification, amendment or changes to the terms of this Agreement will be binding unless in writing and signed by both of us. Our failure to object to terms contained in any subsequent communication from you will not be a waiver or modification of our Agreement.