

## Thermo Fisher Scientific Instrument Services Terms and Conditions

Welcome to Thermo Fisher Scientific and thank you for your interest in our instrument services. We at Thermo Fisher Scientific strive to provide industry leading services for your instruments. We value your business and our goal is to make your purchasing experience as smooth as possible. If you have any questions about our quotation or ordering process, please call 1- 800-955-6288.

**1. Services we provide.** We offer repair, maintenance, relocation, recertification, training, qualification, technical and application support services for your instruments and devices (we will refer to these services as “Instrument Services” in this document). We provide (i) time and materials Instrument Services, (ii) fixed-price Instrument Services (a la carte), and (iii) post-product warranty maintenance and repair contracts we call “Service Plans”. We will perform most Instrument Services in your lab, but we may perform some Instrument Services for smaller instruments at Thermo Fisher Scientific.

**2. Our contract with you.** These are the contract terms and conditions under which we sell our Instrument Services to you (“Service Terms”) unless we specifically designate other terms to apply to a specific service, or if you and we have entered into a master services agreement or other written agreement that expressly provides that its terms supersede and replace these Service Terms with respect to the services covered by the master purchase or other agreement. These Service Terms, together with our quotation, and, if you are buying a Service Plan, the service level description of individual Service Plan that you buy, create the contract (“Contract”) between you and us for the purchase and sale of Instrument Services. The Contract between you and us is created when we accept your order, either by sending a written confirmation or performing the Instrument Services. The Contract is between you and the Thermo Fisher Scientific’s entity that appears on our quotation, order confirmation, or dispatch note. If any terms within the Contract documents conflict with each other, we will give them the following order of precedence with the document listed first being given a higher order of priority: these Service Terms, the quotation, and, if you are buying a Service Plan, the service level description of the Service Plan.

**3. Price.** The price for Instrument Services is shown in our quotation to you. If we do not provide you with a quotation, the price will be the list price that applies to your country on the date we receive your order. Our prices do not include any taxes (including VAT), duties, levies or other government fees that may apply to your order. If they apply, it will be your responsibility to pay them. If we pay them, we will add them to your invoice.

**4. Payment Terms.** Unless we indicate another period on our quotation, you must pay invoices within thirty (30) days from the invoice date in the currency specified in our invoice. Each order is a separate transaction, and you may not setoff payments from one order against another. If you are late in making payment, without affecting our other rights, we may suspend performance or cancel your contract, reject your future orders, and charge you a late-payment charge, from the due date until paid, at the rate of one percent (1%) per month (12% per year) or, if less, the maximum amount allowed by law. You agree to pay this late charge upon request. You agree to pay all reasonable costs of collection, including reasonable attorneys’ fees.

**5. Scheduling.** We provide Instrument Services Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time), excluding holidays, and we will work with you to schedule Instrument Services at a time that is mutually convenient.

**6. Decontamination and Safe Working Environment.** Before we perform any Instrument Services on your instrument, you will fully decontaminate your instrument or its component of radioactive, biological, toxic or other dangerous materials or substances or any material and, if we request, you will submit to us an accurate and completed certificate of decontamination. If we request, you agree to move your instrument to another location that we reasonably deem is safe for our employees to perform Instrument Services. We do not service instruments in biosafety level-3 laboratories, unless we agree otherwise in writing in advance. There may be an additional charge and additional terms for Instrument Services in such facilities. We do not service instruments in biosafety level-4 laboratories.

**7. Spare Parts.** We will repair or replace any parts of the instrument on the basis of which approach will provide the customer with the best service. We may use new, used, or reconditioned parts. We may retain any replaced part as our property.

### 8. Service Plans

8.1 For service level descriptions of our Service Plans, please go to: <http://www.thermofisher.com/instrumentservices>. We may require instrument recertification on a time and materials basis before we cover your instrument under a Service Plan if your instrument has not been under our warranty or our service plan immediately prior to the time of coverage.

8.2 Service Plans cover only our instruments and do not include ancillary equipment even if we have supplied them unless we stated otherwise in our quotation. Our Service Plans do not cover replacement of consumables.

8.3 Our Service Plans do not cover replacement of parts or repairs needed for defects or damage resulting from (i) your neglect, carelessness, or misuse, for example, connecting the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, using incompatible solvents or samples with the instrument, operating the instrument not in conformance with our instructions or specifications, or your improper or inadequate maintenance of the instrument; (ii) installation of software or use in combination with software or products that we did not supply or authorize; (iii) modification, repair, service transfer to another location of the instrument that you or your employees, agents or an unauthorized contractor made; (iv) intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations; from acts of nature or accident; or (v) any defects or damage that we did not cause.

8.4 You or we may cancel your Service Plan by sending a written notice of cancellation to the other thirty (30) days before the cancellation becomes effective. However, we may immediately terminate a Service Plan if the instrument covered by the Service Plan is transferred to another location without our advance written consent. If a Service Plan is cancelled, we will charge you for the total price of services actually performed and expenses actually and reasonably incurred in servicing the covered equipment under the underlying Service Plan from its effective date until the cancellation date or the prorated price of the underlying Service Plan from its effective date until the cancellation date, whichever is greater, plus fifteen percent (15%) of the total fee paid for the underlying Service Plan. We will credit you for any payment that you made to us in excess of this amount and you may use the credit toward future purchases from us of instruments, consumables or Service Plans. We do not provide cash refunds on account of the early cancellation of any Service Plan or other agreement for Instrument Services.

## **9. Support**

Technical and application support through telephone and email is available during normal working hours (5:00 AM to 5:00 PM (PST), excluding holidays).

## **10. Planned Maintenance Services**

We will perform planned maintenance services ("PM") in accordance with our PM procedures and checklist for the instrument or component we are servicing.

**11. Training Services.** We will conduct training in accordance with the course agenda indicated in our quotation or our training documentation. Except as indicated in our quotation, we will conduct training at one of our locations and you will pay for the travel, accommodation, and other expenses of your employees.

**12. Relocation Services.** We offer relocation services on a time and materials basis. We will de-install and re-install your instruments but you are responsible for the transport of your instrument to the new location.

**13. Limited Warranty for Instrument Services.** We warrant that the Instrument Services we provide to you will be in accordance with the generally accepted standards prevailing in the Instrument Service industry. You must make any claim for breach of this warranty within ninety (90) days of the date the Instrument Services were performed and prior to any unauthorized repair, change, or modification has been made to any part of the instrument. Our total liability under this warranty is limited to, at our option: (i) re-performance of the defective Instrument Services, or (ii) refunding to you the fee paid for the defective Instrument Services. **WITH RESPECT TO INSTRUMENT SERVICES, WE MAKE NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.**

## **14. Data Storage and Monitoring**

The IP address of the Remote Monitoring agent does not need to be visible from outside the local area network. If a Web browser on the instrument computer can access <https://drm.appliedbiosystems.com> (port 443), then the agent will be able to communicate with the Remote Monitoring enterprise server. The computer or device where the Remote Monitoring agent is installed does not require a fixed IP address. Communication through firewalls and proxy servers eliminates the cost and time needed for establishing a VPN between the equipment and the service provider. Persistent connection is not required between the Remote Monitoring agent and the enterprise server. Communication works through firewalls and proxy servers that allow HTTPS protocols on port 443 to pass through. If an organization uses a proxy server, the installation technician will need to know the settings and authentication requirements to set up and test the Remote Monitoring agent. The Remote Monitoring agent runs on a stand-alone computer system or is embedded in the instrument firmware or operating system and does not have to be logged on to the local security domain to operate. Security information is only needed to enable authenticated communication through certain types of proxy servers.

The Remote Monitoring agent runs in the background of the operating system, and restarts automatically when the computer is rebooted. The Remote Monitoring agent can be disabled by accessing Services in the Windows™ operating system.

Remote Monitoring uses the following protocols to provide security and communications:

- VeriSign™ security certification
- Firewall-Friendly™ communications
- HTTPS, PKI and 128-bit SSL encryption data protection

Communications between the Remote Monitoring agent and the enterprise server present minimal impact on network bandwidth—typically less than adding another workstation user with a Web browser. The Remote Monitoring agent only sends information periodically or when the equipment is reporting a problem. Communication to the Remote Monitoring enterprise server is initiated by the Remote Monitoring agent. We do not make changes remotely to the instrument or instrument software. The Remote Monitoring agent reads information about the instrument and instrument software only for monitoring and diagnostics purposes.

**15. Compliance with Law.** We make no representation that the Instrument Services we provide to you will meet or satisfy standards of any governmental body, including the U.S. Food and Drug Administration. You agree that it is your responsibility to ensure that such services are adequate to meet your regulation or certification requirements and that all requirements of any governmental body or other organization, including, but not limited to, any requirement of the U.S. Food and Drug Administration are your responsibility.

**16. Indemnification.** We will indemnify and hold you harmless from and against any and all third-party claims for injury to persons, including death, or damage to tangible property occurring while our employees are on your premises to the extent the claims are caused by our employees' negligent acts or negligent omissions, provided we are given prompt notice of any claim and the opportunity to control the defense and settlement of the claim.

**17. Limitation of Liability.** 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 CONTRACT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH OUR PRODUCTS OR SERVICES, EVEN IF WE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. WE WILL NOT BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF INSTRUMENT, EQUIPMENT, OR PRODUCT ERROR OR THE FAILURE OF AN INSTRUMENT, EQUIPMENT, OR OTHER PRODUCT TO PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS. WITHOUT LIMITING THE FOREGOING, EXCEPT SOLELY FOR ANY PAYMENTS MADE UNDER OUR THIRD PARTY INDEMNITY AS SET FORTH IN SECTION 15, OUR TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THESE SERVICE TERMS, ANY SERVICE PLAN, OR INSTRUMENT SERVICES, INCLUDING WITHOUT LIMITATION ANY SERVICES RENDERED THEREUNDER, OR BREACH THEREOF OR FAILURE TO PERFORM IN CONTRACT, TORT, WARRANTY, OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES YOU PAID US FOR THE SPECIFIC SERVICE PLAN OR, INSTRUMENT SERVICES THAT GIVE RISE TO YOUR CLAIM.

**18. Assignment.** You may not transfer or assign your Service Plan or any contract with us for Instrument Services. Any attempted transfer or assignment will be void.

**19. Intellectual Property.** Nothing in these Service Terms shall be deemed or construed as a license or grant of any intellectual property rights, whether express, implied, by estoppel, or otherwise to you, or to limit our rights to enforce our patent or other intellectual property rights.

**20. Governing Law.** The Contract and performance under it will be governed by the laws of the State of California, USA, without regard to provision on the conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

**21. Miscellaneous.**

20.1 We will not be responsible or liable for failing to perform our obligations under the Contract to the extent caused by circumstances beyond our reasonable control.

20.2 Our failure to exercise any rights under the Contract 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 Contract 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 contract. No person other than you or us will have any rights under the Contract. Headings are for convenience only and shall not be used in the interpretation of these Terms.

20.3 You agree to keep confidential any non-public technical information, commercial information (including prices, without limitation), manuals or instructions received from us as a result of discussions, negotiations and other communications between us in relation to our products or services.

## **22. Entire Contract.**

21.1 The Contract represents the entire agreement between you and us regarding the Instrument Services we provide to you under it, and supersedes and replaces any previous agreements between us (whether written or oral) covering the same subject matter unless you and we have entered into a master services agreement or other written agreement that expressly provides that its terms supersede and replace these Service Terms with respect to the services covered by the master purchase or other agreement. Any of your additional or different terms and conditions that you may provide to us, are material alternations and we reject them. Our offer to sell and perform Instrument Services is expressly limited to

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the terms of the Contract. If you submit a purchase order, or other document for the purchase of products or services, whether or not in response to a quotation, you are deemed to have accepted and agree to the Contract, to the exclusion of (a) any other terms and conditions appearing in or referenced in your purchase order or other documents you give to us, and (b) any previous course of dealing, course of performance, trade usage or co-existent agreement. The Contract cannot be amended or modified unless you and we agree in writing.

21.2 We reserve the right to change these Terms at any time. Any changes made to these Terms will not apply to the Contract between us for any order we receive before the changes are made. The most recent revision date can be found at the end of these Terms.

**04.16.2012**

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