

# MASTER TERMS AND CONDITIONS for Off-the-Shelf, Standard, Configured, or Stock Products and Related Services

These Master Terms and Conditions ("Agreement") are entered into between Customer and Thermo Fisher for the purchase of off-the-shelf, standard, configured, or stock products and related services by Customer and Customer's Affiliates (as such term is defined below). The Agreement does not apply to hourly service charges or repair parts covered by a separate service contract, used equipment, demonstration equipment, factory-rebuilt products, leasing programs, support agreements such as software support or compliance services, contract manufacturing agreements, managed services, product development agreements, products subject to certain promotions, or to purchases made through the website that are expressly governed by any other written agreement between the parties.

## 1. DEFINITIONS

1.1 "Affiliate" with respect to parties hereto, shall mean (1) any corporation or business entity fifty percent (50%) or more of the voting stock or voting equity interests of which are owned directly or indirectly; or (2) any corporation or business entity which directly or indirectly owns fifty percent (50%) or more of the voting stock or voting equity interests of such party; or (3) any corporation or business entity directly or indirectly controlling or under control of a corporation or business entity as described in (1) or (2).

1.2 "Order" shall mean submission of all electronic orders from Customer to Thermo Fisher for Products or Services.

1.3 "Products" shall mean Thermo Fisher's manufactured instruments, equipment, consumables, software and related accessories, options or spare parts provided by Thermo Fisher to Customer from time to time pursuant to this Agreement; provided, however, the Parties acknowledge that some Products may contain third party software.

1.4 "Services" shall mean commercial services that do not require any statements or work, milestones or deliverable items and are provided by or on behalf of Thermo Fisher to Customer to install, implement, repair, maintain or support Thermo Fisher manufactured Products purchased under this Agreement.

1.5 "Specifications" shall mean with respect to Products, Thermo Fisher's published specifications regarding the performance and other relevant characteristics of such Product.

1.8 "Territory" shall mean the Customer's end-user ordering site and/or the delivery location specified in Customer's Order.

## 2. ORDERING.

2.1 From time to time, Customer may submit an electronic request a quote from any Thermo Fisher Affiliate for delivery of Products or Services at Thermo Fisher's applicable country list prices in effect for the Territory at the time of such request.

2.2 All Orders must identify the Products and Services, quantity, ultimate destination, requested delivery date(s) and any other information requested by Thermo Fisher to fill the Order. If Customer submits an Order for Products or Services not offered by Thermo Fisher by electronic purchasing or requests delivery to a Territory into which Thermo Fisher does not offer Products or Services via the internet, Thermo Fisher shall use reasonable efforts to forward the Order to the appropriate Thermo Fisher Affiliate, distributor, sales agents or service providers authorized to sell in the Territory to provide Customer with a quotation and terms of purchase for such Order.

2.3 Customer shall have no obligation to purchase any Products or Services from Thermo Fisher, except pursuant to Orders submitted to and confirmed as accepted by Thermo Fisher in writing; except that, shipment of the Products or commencement of the Services (as the case may be) shall also be deemed acceptance of the Order by Thermo Fisher. No terms or conditions contained in an Order submitted by Customer shall operate to vary any of the terms and conditions set forth in this Agreement, except

as expressly acknowledged and agreed by the Thermo Fisher Affiliate supplying the Products or Services.

## 3. SHIPMENT; TITLE AND RISK OF LOSS; INSPECTION

3.1 The Products will be shipped to the destination specified by Customer, ExWorks Thermo Fisher's applicable facility, freight and insurance prepaid and added to the invoice. All shipping dates are approximate only, and Thermo Fisher will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Thermo Fisher's reasonable control; however, Customer shall have the right, without liability, to reject any Products that are not delivered in a timely manner, provided such rejection shall occur prior to Products shipping.

3.2 Title to and risk of loss of the Products will pass to Customer upon delivery of possession of the Products by Thermo Fisher to the carrier transporting the Products to the Customer's point of destination; provided, however, that title to any software Products, including software incorporated within or forming a part of the Products, shall at all times remain with Thermo Fisher or the licensor(s) thereof, as the case may be.

## 4. CANCELLATION OF ORDERS; RETURNS; DISCONTINUED PRODUCTS.

4.1 Orders in process may only be canceled by Customer prior to shipment subject to Thermo Fisher's written consent and Customer's payment of applicable cancellation charges and/or restocking fees. Orders in process may not be changed except with Thermo Fisher's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price and delivery schedule therefor.

4.2 Without limiting the generality of the above, in the event Thermo Fisher, in its sole discretion, authorizes the Customer to return any Products purchased under this Agreement or under the Product Warranty, Thermo Fisher will also provide the Customer with a Return Material Authorization (RMA) number to be included on all shipping documents and written on the outermost shipping containers containing returned Products. Except for Warranty returns, all Product returns will at all times be subject to cancellation charges, including without limitation, shipping and handling expenses and cancellation or restocking fees charged to Thermo Fisher by a third-party manufacturer. Returns made without an RMA number may be returned to the Customer, freight collect. No returns shall be authorized for (i) Products that have been discontinued, (ii) Products that are personalized or customized in any way, (iii) Products not purchased from Thermo Fisher, (iv) Refrigerated or temperature controlled Products, (v) Products that are outdated, shelf-worn, used or defaced or are otherwise deemed unsuitable for return to stock and resale as new, (vi) reagents, diagnostics, or chemicals, which have been opened, or (vii) Products that Customer has caused to be shipped outside of the United States.

4.3 If Thermo Fisher discontinues any Product(s) that have been ordered, but not yet shipped to Customer, Thermo Fisher will use reasonable efforts to notify Customer of such discontinuation using the contact information provided by Customer when submitting the Order and provide information about alternative Products available, if any. If Customer does not cancel the Order(s) within five (5) business days, Thermo Fisher shall, at its option, either: (i) fill all unshipped Order(s) with the discontinued Product(s); (ii) fill all unshipped Order(s) with Product(s) that contain, at a minimum, functionalities, capacities and prices, which are substantially equivalent to those of the discontinued Product(s); or (iii) cancel the Order if no Products are available.

## 5. PRICE AND PAYMENT.

5.1 The prices for Product(s) and Services purchased hereunder shall be Thermo Fisher's list price then in effect at the time of the Order for the Territory. Thermo Fisher reserves the right to maintain differentiated price schedules with respect to various regions or territories in the world.

5.2 Thermo Fisher shall invoice Customer upon shipment of the Product(s). Services shall be invoiced upon completion, if the Services are of duration of less than one (1) month, or on a monthly basis for Services performed in arrears, if the Services are of duration longer than one (1) month. Payments shall become due and payable to the specific Thermo

Fisher Affiliate selling the particular Products or Services purchased net thirty (30) days from the date of receipt of the applicable invoice. In the event that any invoice submitted by Thermo Fisher in accordance with this Agreement is not paid by Customer when due and such nonpayment is not cured within the (10) days following written notice from Thermo Fisher, then Customer shall pay interest on any past due amounts at the rate of one and one-half percent (1 ½%) per month, and Thermo Fisher shall have the right to withhold any or all Services with respect to the Products from Customer in addition to any other remedies available to Thermo Fisher.

5.3 Prices for Products and Services are exclusive of all (i) excise, sales, use, transfer and other taxes and duties imposed by any federal, state, municipal or other governmental authority with respect to the sale, purchase, manufacture, delivery, storage, processing, use, consumption or transportation of any Products or Services covered hereby; and (ii) shipping, insurance, and handling costs and expenses. All such taxes, duties, costs and expenses will be paid by Customer.

## 6. LIMITED WARRANTY AND CERTIFICATION.

6.1 Thermo Fisher warrants that the Products and Deliverables will operate substantially in conformance with Thermo Fisher's Specifications applicable to such Products and will be free from defects in design, materials and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the applicable warranty period set forth in the Thermo Fisher documentation accompanying the Product from the date of delivery to Customer (the "**Warranty Period**"). If no Warranty Period is specified in the Product documentation, the Warranty Period shall be twelve (12) months from the date of delivery for instruments/equipment, six (6) months from the date of delivery for spare parts, and ninety (90) days from the date of delivery for all other items. Thermo Fisher agrees during the applicable Warranty Period, provided it is promptly notified in writing upon the discovery of any non-conformity or defect, at Thermo Fisher's option, to repair or replace the defective or non-conforming Product so as to remedy the defect or cause the same to operate in substantial conformance with the Specifications or provide a full refund to Customer of the full purchase price paid for the defective or non-conforming Product or Deliverable. Replacement parts shall be new or refurbished, at the election of Thermo Fisher. All replaced Products and parts will become the property of Thermo Fisher and will be returned, only if instructed by Thermo Fisher, in accordance with the RMA procedures of Section 4.3 above. Lamps, fuses, bulbs and other expendable items are expressly excluded from this warranty. The foregoing warranties shall survive any delivery, inspection, acceptance or payment by Customer. All warranties shall run to Customer and Customer's customers.

6.2 For any Warranty returns properly authorized by Thermo Fisher, upon request by Customer, Thermo Fisher will provide packaging materials for return shipment at no cost, and all freight, insurance and other costs and expenses incurred in connection with the return of such Product(s) shall be borne by Thermo Fisher. Thermo Fisher will not charge any fee for returns authorized under the Warranty.

6.3 Notwithstanding the foregoing, Products supplied by Thermo Fisher that are obtained from an original manufacturer or third party supplier are not warranted by Thermo Fisher, but Thermo Fisher agrees to assign to Customer any warranty rights in such Product(s) that Thermo Fisher may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier. In no event shall Thermo Fisher have any obligation to make repairs, replacements or corrections, or provide a refund, in whole or in part, required as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Customer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage of the Products or (vii) use of the Products in combination with equipment or software not supplied by Thermo Fisher.

6.4 Thermo Fisher warrants that the Services shall be performed with reasonable skill and care. Customer must notify Thermo Fisher promptly in writing of any claimed breach of warranty for Services and Customer's sole and exclusive remedy for any such breach shall be, at Thermo Fisher's sole discretion, re-performance of the relevant Services

or reimbursement of that portion of the fees paid in relation to such Services.

6.5 THE OBLIGATIONS CREATED BY THIS SECTION TO REPAIR OR REPLACE A NON-CONFORMING OR DEFECTIVE PRODUCT OR TO PROVIDE A REFUND SHALL BE THE SOLE REMEDY OF CUSTOMER IN THE EVENT OF A NON-CONFORMING PRODUCT. THE OBLIGATIONS CREATED BY THIS SECTION TO RE-PERFORM A SERVICE OR TO PROVIDE A REFUND OF THAT PORTION OF THE FEES PAID FOR THAT SERVICE SHALL BE THE SOLE REMEDY OF CUSTOMER IN THE EVENT OF A NON-CONFORMING SERVICE. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THERMO FISHER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, DELIVERABLES AND SERVICES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THERMO FISHER DOES NOT WARRANT THAT THE PRODUCTS, DELIVERABLES AND SERVICES, ARE ERROR-FREE, OR WILL ACCOMPLISH ANY PARTICULAR RESULT. FURTHER, WITH RESPECT TO ANY SOFTWARE PRODUCT OR LICENSED SOFTWARE PROVIDED TO CUSTOMER HEREUNDER, THERMO FISHER MAKES NO REPRESENTATIONS OR WARRANTY THAT ALL ERRORS HAVE BEEN OR CAN BE ELIMINATED FROM THE SOFTWARE, THAT IT WILL OPERATE WITHOUT INTERRUPTION OR THAT IT WILL OPERATE WITH OTHER PRODUCTS.

## 7. INDEMNIFICATION.

7.1 By Thermo Fisher. If notified promptly in writing of any action or claim brought against Customer based on a claim that a Product infringes any valid U.S. patent, copyright or trade secret, Thermo Fisher shall indemnify, defend and hold harmless Customer, 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 such claim. Thermo Fisher shall have sole control of the defense of any such action and all negotiations for its settlement or compromise. Customer shall cooperate fully with Thermo Fisher in the defense, settlement or compromise of any such action. Notwithstanding anything to the contrary contained herein, Thermo Fisher shall not have any liability to Customer to the extent that any infringement or claim thereof is based upon (i) use of a Product in combination with equipment or software not intended to be used in combination with the Product, (ii) compliance with Customer's designs, specifications or instructions, (iii) use of the Product in an application or environment for which it was not designed or (iv) modifications of the Product by anyone other than Thermo Fisher or Thermo Fisher authorized personnel without Thermo Fisher's prior written approval. Notwithstanding the above, Thermo Fisher may, at its discretion and at its own expense, (a) procure for Customer the right, at no additional expense to Customer, to continue using the Product; (b) replace or modify the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the Specifications or functionality of the Product; or (c) in the event (a) and (b) are not practical, refund to Customer the full amounts paid by Customer with respect thereto less a usage fee. THE FOREGOING INDEMNIFICATION PROVISION STATES THERMO FISHER'S ENTIRE LIABILITY WITH RESPECT TO INFRINGEMENT OR ALLEGED INFRINGEMENT BY THE PRODUCTS AND SERVICES OF PATENTS, COPYRIGHTS, TRADE SECRETS OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF THIRD PARTIES. Thermo Fisher shall further indemnify, defend and hold harmless Customer, 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 and disbursements and court costs) brought against such parties by a third party pertaining to bodily injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Thermo Fisher, its employees, agents or representatives or contractors in connection with the performance of Services at Customer's premises under this Agreement. Notwithstanding anything to the contrary herein, Thermo Fisher shall have no obligation or liability under this Agreement for any claim to the extent caused by or

attributable to the negligence or willful misconduct of an indemnified party.

7.2 By Customer. Customer shall indemnify, defend with competent and experienced counsel and hold harmless Thermo Fisher, 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 Customer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Thermo Fisher where the Product itself would not be infringing; (iii) Thermo Fisher's compliance with designs, specifications or instructions supplied to Thermo Fisher by Customer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Thermo Fisher without Thermo Fisher's prior written approval.

## 8. SOFTWARE AND DELIVERABLES.

8.1 All software embedded or incorporated in Products sold to Customer shall be governed by the terms of this Section 8. Stand-alone software Products, including without limitation, Thermo Fisher's informatics software Products, shall be governed by Thermo Fisher's standard licensing terms for such Products or such other terms as mutually agreed upon by the parties.

8.2 With respect to any software (including without limitation any enhancements, modifications, customizations, upgrades and updates thereto) incorporated in or forming a part of the Products, Thermo Fisher and Customer intend and agree that such software is being licensed and not sold, and Thermo Fisher or its licensor, as the case may be, retains ownership of and title to all software provided hereunder. Upon payment of all applicable fees therefor, Thermo Fisher shall grant to Customer a non-exclusive, nontransferable license, in object code form only without the power to sublicense, to use the software provided hereunder solely for Customer's own internal business purposes on the hardware Products provided hereunder and to use the related documentation solely for Customer's own internal business purposes. This license terminates when Customer's lawful possession of the hardware Products provided hereunder ceases, unless earlier terminated as provided herein. Customer agrees not to (i) sell, transfer, license, loan or otherwise make available to third parties the software and related documentation provided hereunder, except for permitted assignments under Section 13; (ii) modify, enhance or otherwise change or supplement the software provided hereunder without Thermo Fisher's prior written consent; (iii) disassemble, decompile or reverse engineer the software supplied hereunder; (iv) remove any identification, trademark, copyright or other notices from the software or documentation. Customer agrees, upon termination of this license, immediately to return to Thermo Fisher all software and related documentation provided hereunder and all copies and portions thereof.

8.3 Certain software provided by Thermo Fisher may be owned by one or more third parties and licensed to Thermo Fisher. Thermo Fisher and Customer intend and agree that software owned by third parties and provided hereunder are being sublicensed to Customer, that such third parties retain ownership of and title to such software, and that such third parties may directly enforce Customer's obligations hereunder in order to protect their respective interests in such software. The warranty and indemnification provisions set forth herein shall not apply to software owned by third parties and provided hereunder.

8.4 Thermo Fisher and its suppliers shall retain all right, title, and interest, including all copyrights, patent, trade secret and other intellectual property rights throughout the world, in and to any Products, software, documentation, materials, information or other items provided to Customer under this Agreement, including without limitation any and all tools, utilities, methodologies, design concepts, techniques, knowledge or know-how owned, used or developed by Thermo Fisher or its suppliers or resulting from Thermo Fisher's performance under this Agreement. Nothing in this Agreement shall transfer or limit ownership of any intellectual property of Thermo Fisher or its suppliers, including without limitation Thermo Fisher's or its suppliers' ownership or right to use any Products, software, documentation, materials, information or other items,

including without limitation any tools, utilities, methodologies, design concepts, techniques, knowledge or know how owned, used or developed by Thermo Fisher or its suppliers or resulting from Thermo Fisher's performance of its obligations under this Agreement.

## 9. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, (i) THE LIABILITY OF EACH PARTY, ITS AFFILIATES, SUPPLIERS, DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS UNDER THIS AGREEMENT (WHETHER BY REASON OF BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, OR OTHERWISE) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNTS PAID BY CUSTOMER, SPECIFIC TO THE ORDER UNDER WHICH THE PRODUCT(S) OR SERVICES GAVE RISE TO SUCH LIABILITY, TO THERMO FISHER UNDER THIS AGREEMENT; AND (ii) IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, SUPPLIERS, DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS 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 BUSINESS, LOSS OF DATA OR INFORMATION, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS WHETHER SUCH PARTY (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

## 10. CONFIDENTIAL INFORMATION.

Each party shall keep confidential and secret any and all confidential and proprietary information disclosed to it by the other party. "Confidential Information" shall mean any proprietary, confidential information (whether or not patentable or copyrightable, and whether or not currently patented or copyrighted) which is owned or controlled by either party, including without limitation trade secrets, know-how, designs, product samples, product formulations, prototypes, data, processes, formulas, methods, materials, analyses, technology, manufacturing techniques, pricing, and sales and marketing information that may be disclosed, whether orally or in writing, to the other party or that may be otherwise received or accessed by the other party in the course of performing this Agreement without regard to the manner of preparation, transmittal or storage of such Confidential Information, including but not limited to physical devices or materials, electronic devices or media, magnetic media, optical media or any other method. The obligations and restrictions imposed by this Confidentiality Section shall not apply to information which: (a) was in the public domain or generally available to the public prior to receipt thereof by the receiving party from the disclosing party, or which subsequently becomes part of the public domain or generally available to the public other than as a result of a breach of this Agreement by the receiving party or an employee or agent of the receiving party; (b) was in the possession of the receiving party prior to receipt from the disclosing party, as evidenced by the receiving party's written records; (c) is later received by the receiving party from a third party on a non-confidential basis, unless the receiving party knows or has reason to know of an obligation of confidentiality (contractual, legal, fiduciary or otherwise) of the third party to the disclosing party with respect to such information, (d) is independently developed by the receiving party without reference to or reliance upon the Confidential Information received from the disclosing party, as evidenced by the receiving party's written records, or (e) is required to be disclosed pursuant to a statutory or regulatory provision or court order, after first providing the disclosing party with reasonable notice in order to contest such disclosure. The obligations under this Confidentiality Section shall survive any termination hereof for a period of five (5) years from the effective date of such termination.

## 11. TERM OF AGREEMENT; TERMINATION

11.1 This Agreement shall apply to each and every Order submitted by the Customer electronically through Thermo Fisher's websites.

11.2 This Agreement and any Order placed hereunder, may be terminated by Thermo Fisher immediately in the event that Customer becomes insolvent, files or has filed against it a petition in bankruptcy or undergoes a reorganization pursuant to a petition in bankruptcy filed with respect to it, which petition is not dismissed within sixty (60) days; or defaults or breaches any material provision of this Agreement and does not

remedy the default or breach within thirty (30) days after written notice from Thermo Fisher.

11.3 In the event of termination of this Agreement or any Order, whether with or without cause, Customer shall pay Thermo Fisher for all (i) Services performed through the date of termination and (ii) Products ordered and shipped as of the date of termination; provided however that, with respect to specialty or custom manufactured Products, Customer shall be liable for all of Thermo Fisher's actual expenditures in relation to such Products.

## **12. COMPLIANCE**

Customer acknowledges that each Product and any related software and technology, including technical information supplied by Thermo Fisher or contained in documents (collectively "Items"), are subject to export controls of the U.S. government. The export controls may include, but are not limited to, 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 from other countries. Customer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Customer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Customer shall cooperate fully with Thermo Fisher in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Thermo Fisher harmless from, or in connection with, any violation of this Section by Customer or its employees, consultants, agents, or customers.

## **13. MISCELLANEOUS PROVISIONS**

(a) Customer may not delegate any duties nor assign any rights or claims hereunder without Thermo Fisher's prior written consent, except Customer may delegate duties and assign any rights or claims hereunder to any Affiliate or any successor to all or substantially all of the assets of Customer to which this Agreement relates. Any attempted delegation or assignment in violation of the preceding sentence 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 Commonwealth of Massachusetts, without reference to its choice of law provisions. (c) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (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) A party's failure to enforce, or Thermo Fisher's a party's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision by such party. (f) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified in the Order and to the General Counsel at Thermo Fisher's corporate headquarters. (g) Neither party shall be considered in default or liable for any delay or failure to perform any provision of this Agreement if such delay or failure arises directly or indirectly out of an act of God, fire, natural disaster, acts of governments, unavailability of essential materials, accidents, freight embargoes, quarantine restrictions, unusually severe weather conditions, insurrection, terrorist acts, riot and other such causes beyond the reasonable control of the party responsible for the delay or failure to perform. Force majeure shall expressly exclude any payment obligations of Customer. (h) Thermo Fisher shall not advertise, publish, or otherwise disclose the fact that Customer has entered into this Agreement or placed any Orders without Customer's prior written consent except as may be necessary to comply with a proper request for information from an authorized representative of any governmental unit or agency.