

## Instrument Services Terms and Conditions

Reference: Fisher HealthCare Quote No. S1790397

These terms and conditions apply to instrument services purchased from Life Technologies Corporation (“we” “us” or “our”). If you purchase instrument services from other Thermo Fisher Scientific entities, different terms and conditions may apply. If you have any questions about our quotation, our ordering process, or what terms and conditions apply to your order, please call Customer Services at 1 800 955 6288.

As used herein, the terms “you” and “your” refer to the City of Corpus Christi, Texas.

### 1. **Contract Terms.**

1.1 **General Terms.** These are the contract terms and conditions under which we sell, and/or provide, our Instrument Services to you (“Service Terms”), unless (i) we specifically designate other terms to apply to a specific service; or (ii) if you and we have entered into a valid, active, written agreement that expressly provides that its terms supersede and replace these Service Terms with respect to the services covered by the other agreement. Any additional or different terms and conditions that you may provide to us, are material alternations and we reject them. These Service Terms collectively with any quotation provided by us constitute the “Agreement.” Our offer to sell and/or perform Instrument Services is expressly limited to the terms of the Agreement. By ordering or requesting Instrument Services from us, you agree to accept and be bound by these Service Terms. This Agreement is the complete and exclusive contract between us with respect to your purchase of, or request for, Instrument Services.

1.2 **Terms Conflict.** If any conditions within the Agreement 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.

1.3 **When Agreement takes Effect.** The Agreement between us is created when we accept your order or request, either by sending a written confirmation or by initiating performance of the Instrument Services.

### 2. **Service Offerings.**

2.1 **Service Offerings.** We offer repair, maintenance, relocation, recertification, training, qualification, and technical and application support services for your instruments and devices (collectively, “Instrument Services”).

2.2 **Manufacturer Warranty Services.** Some of our Instrument Services are provided as part of the limited instrument manufacturer warranty we offer you when you purchase our instrument.

2.3 **Service Plans.** We also provide post-manufacturer warranty maintenance and repair Instrument Services called “Service Plans”. Descriptions of our Service Plans are available at <http://www.thermofisher.com/instrumentservices>.

2.4 **Where we Perform Services.** We perform most Instrument Services in your lab, but we may perform some Instrument Services for smaller instruments at one of our facilities.

### 3. **Price.**

3.1 **Determining Price.** For Instrument Services you purchase, the price 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.

3.2 **Taxes and Fees.** 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.**

4.1 **Payment Terms.** Unless we indicate another period on our quotation, you must pay invoices within 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.

4.2 **Late Payment.** 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 1% per month (12% per year) or, if less, the maximum amount allowed by law. You agree to pay this late charge upon request.

4.3 **Collection Costs.** If we appoint a collection agency or an attorney to recover any unpaid amounts, you must pay all reasonable costs of collection, including all associated reasonable attorneys’ fees.

### 5. **Scheduling.**

5.1. Available Times. We provide Instrument Services Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time), excluding holidays.

5.2. Scheduling. We will work with you to schedule Instrument Services at a time that is mutually convenient.

## **6. Decontamination and Safe Working Environment**

6.1. Decontamination Obligations. Before we perform 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.

6.2. Moving Instrument. 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.

6.3. Biosafety Level-3 and 4 Laboratories. 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**

7.1. Repair or Replace. We may repair or replace any parts of the instrument based on our professional judgment.

7.2. New, Used or Reconditioned Parts. We will ~~may~~ use new, ~~used, or reconditioned~~ parts. We may retain any replaced part as our property.

## **8. Service Plans**

8.1. Service Level Descriptions. For service level descriptions of our Service Plans, please go to <http://www.thermofisher.com/instrumentservices>.

8.2. Instrument Recertification. If your instrument has not been under our warranty or our service plan immediately prior to the time of your requested coverage, before we cover your instrument under a Service Plan, we may require instrument recertification. We will provide instrument recertification services on a time-and-materials basis.

8.3. No Coverage for Ancillary Equipment. Unless we stated otherwise in our quotation, our Service Plans cover only our instruments and do not include ancillary equipment even if we supplied it.

8.4. No Replacement of Consumables. Our Service Plans do not cover replacement of consumable products used on the instruments.

8.5. Exclusions. In addition to the above exclusions, 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.

8.6. Terminating your Service Plan. Service Plans may be terminated in the following ways:

(A) Terminating for Any Reason. You or we may cancel your Service Plan by sending a written notice of termination to the other at least 30 days before effective date of termination.

(B) Terminating for Cause. 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.

(C) Effects of Termination. If a Service Plan is terminated by you under Section 8.6(A) or by us under Section 8.6(B), we will charge you for the total price of services actually performed and expenses actually and reasonably incurred in servicing the covered instrument under the underlying Service Plan from its effective date until the termination date, or the prorated price of the underlying Service Plan from its effective date until the effective termination date, whichever is greater, plus 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. Limited Warranty for Instrument Services.**

9.1. **Limited Warranty.** 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 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.

9.2. **Exclusions.** Our warranties do not apply to (i) your neglect, carelessness, or misuse, such as but not limited to, 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. ADDITIONALLY, ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN US WITHOUT OUR PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS WE HAVE NOT SUPPLIED, WILL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THESE INSTRUMENT SERVICES AND THE AFFECTED PRODUCTS.

9.3. **Remedies.** During the applicable warranty period only, for services not meeting our warranty, we agree, at our option to: (i) re-perform the defective Instrument Services, or (ii) refund to you the fee you paid to us for the defective Instrument Services, if applicable. This section states our entire liability for a valid warranty claim under this Agreement.

9.4. **Limitations.** OUR WARRANTIES EXTEND ONLY TO YOU, THE ORIGINAL PURCHASER, AND YOU CANNOT TRANSFER THEM. WITH RESPECT TO INSTRUMENT SERVICES, EXCEPT AS EXPRESSLY STATED, WE DISCLAIM ALL OTHER WARRANTIES OF ANY KIND, WHETHER OR EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

10. **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.

## **11. Intentionally Omitted**

### **~~11. Indemnification.~~**

~~11.1. **Our General Indemnity.** 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.~~

~~11.2. **Conditions to Our Indemnity.** As a condition to any of our indemnification obligations you must (a) notify us in writing, as soon as you become aware of any claim; (b) not admit any liability or take any other action in connection with the claim that could affect the defense; (c) allow us to solely control the defense or settlement of the claim; and (d) give us your reasonable information, co-operation and assistance.~~

12. **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 AGREEMENT, 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. 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.

### **13. Miscellaneous.**

13.1. **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.

13.2. 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.

13.3. Governing Law. The Agreement and performance under it will be governed by the laws of the State of ~~Delaware~~Texas, 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 Agreement.

13.4. 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.

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

13.6. Confidentiality. 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, unless such information must be released pursuant to government order, state law, or subpoena; provided, however, that in such an instance, you will give us sufficient prior notice to challenge or limit such disclosure, and further, you will limit any such disclosure to only information that is expressly required to be disclosed.

13.7. Notices. Any notice or communication required or permitted under these Service 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.

13.8. Changes to Terms. We reserve the right to change these Service Terms at any time. Any changes made will not apply to the Agreement 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 Service Terms.

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~~Revised May 2, 2017 for City of Corpus Christi~~  
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