

## TERMS AND CONDITIONS OF SALE

Reference: Fisher HealthCare Quote No. S1790397

Thank you for your interest in purchasing products. 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 Customer Services at 1-800-955-6288. Unless otherwise expressly agreed in writing, your purchase of products is subject to the following terms and conditions:

As used herein, the terms “we” “us” or “our” refer to Life Technologies Corporation, and the terms “you” and “your” refer to the City of Corpus Christi, Texas.

### 1. Contract Terms

1.1. General Terms. These terms and conditions (“Terms”), our quotation (if any) and Supplementary Terms, if any, comprise the agreement (“Agreement”) between you and Life Technologies Corporation. 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 by ordering products on thermofisher.com or if you receive ordering or sales documents that reference these Terms. This Agreement is the complete and exclusive contract between us with respect to your purchase of the products.

1.2. Supplementary Terms. Some of our products are subject to software licenses, limited use label licenses or other written contract terms that you will not find here (“Supplementary Terms”). You might find Supplementary Terms in our quotation to you, on thermofisher.com, or in literature that accompanies the product. You may also obtain copies from Customer Services.

1.3. Terms Conflict. If any conditions within the Agreement documents conflict with each other, we will give them the following priority: the quotation, Supplementary Terms, and finally these 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.

1.4. When Agreement takes Effect. The Agreement between us is created when we accept your order, either by sending a written confirmation, or by shipping the product or otherwise initiating action to provide what you have ordered.

### 2. Price

2.1. Determining Price. We may change our prices at any time without notice. Prices we quote you are valid for 30 days, unless we state otherwise in writing. Additionally, the price as shown in our quotation to you, is subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of our original price quotation. If no price has been specified or quoted to you, the price will be the product price on thermofisher.com in effect at the time we accept your order.

2.2. Taxes and Fees. Our product 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. If you claim any exemption, you must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

2.3. Delivery Fees; Freight Policy. You are also responsible for standard delivery and handling charges, if any. We will also add these charges to your invoice. For details of our freight policy, please call Customer Services.

### 3. Payment

3.1. Payment Terms. We will invoice you for the product price and all other charges due when we ship you the products. 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. You will make all payments in U.S. Dollars.

3.2. Late Payment. 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; 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.

3.3. 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.

### 4. Delivery; Cancellation; Changes

41. Delivery. We will ship products to the U.S. destination you specify in your order, FOB ~~our shipping point~~ Destination, Freight Prepaid and Added. We may, in our discretion, (a) make partial shipments and invoice each shipment separately; and/or (b) stop delivery of products in transit and withhold shipments in whole or in part if you do not pay us when due, or if you otherwise do not perform your obligations in this Agreement. Our shipping dates are approximate only, and we 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 our reasonable control. If we do delay shipment because of a cause beyond our reasonable control, we may terminate the affected order, or reschedule the shipment, and we will do so within a reasonable period of time. You may not refuse delivery or otherwise be relieved of any obligations as the result of such delay. If our delivery of a product to you is delayed due to any cause within your control, we will place the delayed products in storage at your risk and expense and for your account.

42. Cancellation. Once you have placed your order, you cannot cancel it, unless we consent in writing, and you pay any applicable cancellation charges.

43. Changes. You may not change orders in process, except with our written consent and agreement as to an appropriate adjustment in the purchase price for the applicable products. You will not receive credit for products returned without our prior consent.

## **5. Risk of Loss and Title**

5.1. Risk of Loss. Aside from the trade terms indicated above, products are delivered when ~~we load them onto~~ the commercial carrier delivers the products to you at our facility. At this point you become responsible for risk of loss and damage.

5.2. Title. Title to products will pass to you (except software incorporated within or forming part of a product, which we or our licensors continue to own) when ~~we deliver the product to~~ the carrier delivers the products to you.

## **6. Returns and Shortages**

6.1. Returns and Shortages. We want you to receive our products in good condition. You may return a product that is damaged or defective on delivery, or correct any shortages, if you contact Customer Services within 5 days after receiving the product. If you do not contact us within this 5-day period, we will deem the product accepted, but you will not lose any warranty rights.

6.2. Authorization for Returns. Customer Services must authorize all product returns. If your product return is authorized, Customer Services will provide you directions regarding the return process. Customer Services may not authorize some items for return.

6.3. Product-Credit Eligibility. To be eligible for product credit, a product must be authorized in writing for return and must arrive at our facilities in a condition satisfactory for resale. Any return not due to our error is subject to a restocking charge of \$25 or 25% of the sale price—whichever is greater. We do not credit shipping charges. You may not return a product for credit more than 20 days after you receive it.

6.4. Custom-Product Returns. You may return a custom product we make to your specifications only if the product does not conform to the given specifications as of the date of shipment. In that case, we will, in our sole discretion, either replace the custom product or refund you the purchase price.

## **7. Warranties**

7.1. Limited Warranties for Consumables and General Labware. Unless a different written warranty period is included with product literature in the Supplementary Terms such as, but not limited to, product literature or thermofisher.com product pages, we warrant that each consumable (including general labware) will meet its specifications stated in our published catalogs or associated Supplementary Terms. This warranty lasts from the time we ship the consumable until the earlier of: (1) the consumable's expiry or "use by" date, or (2) its specified number of uses. If we do not specify the expiry date, the number of uses, or a different warranty period (for example, in Supplementary Terms), the warranty will last for twelve (12) months from the date we ship the consumable.

7.2. Limited Warranties for Instruments. Unless a different warranty is included in the Supplementary Terms, or in the applicable quotation, we warrant that instruments 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 instrument to you, or in the case of instruments that require installation by our personnel, 12 months from installation, but in no event longer than 15 months from the date we ship the instrument to you.

7.3. Limited Warranty for Spare Parts. We also warrant that spare parts you purchase from us and that we install, or are installed by a company we have certified as an authorized installer, will be free of defects in materials and workmanship for 3 months from the date we deliver them, or, if longer, the original warranty period of the instrument in which the part is installed. We do not warrant parts that you do not purchase from us or we do not install. These parts are sold "as is".

7.4. Exclusions. In addition to our exclusion for third party products as set out in Section 7.7, our warranties do not apply to (a) normal wear and tear, (b) accident, disaster or event of force majeure, (c) your misuse, fault or negligence, (d) use of the products in a

manner for which they were not designed, (e) causes external to the products such as, but not limited to, power failure or electrical power surges, (f) improper storage and handling of the products (g) use of the products in combination with equipment or software that we did not supply; (h); instruments sold to you as 'used' products; (i) contact with improperly used or unapproved chemicals or samples ;(j) installation, removal, use, maintenance, storage, or handling in an improper, inadequate, or unapproved manner, such as, but not limited to, failure to follow our instructions or operating guidelines, or protocols, operation outside of stated environmental or use specifications, or operation with unapproved software, materials or other products; (k) manufacture in accordance with specifications you gave us; or (l) installation of software or interfacing, or use of the instrument in combination with software or products we have not approved. 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 THE AFFECTED PRODUCTS. WE MAY ALSO VOID YOUR WARRANTY IF YOU SHIP THE PRODUCT OUTSIDE OF THE UNITED STATES.

If we determine that products for which you requested warranty services are not covered by the warranty, you will pay or reimburse us for all costs of investigating and responding to such request at our then prevailing time and materials rates. If we provide repair services or replacement parts that are not covered by this warranty, you will pay us at our then prevailing time and materials rates.

7.5. Limitations. OUR WARRANTIES EXTEND ONLY TO YOU, THE ORIGINAL PURCHASER AND YOU CANNOT TRANSFER THEM. OUR OBLIGATION TO REPAIR OR REPLACE A PRODUCT IS YOUR SOLE REMEDY. EXCEPT AS WE'VE OTHERWISE STATED, WE DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. WE DO NOT WARRANT THAT THE PRODUCTS ARE ERROR- FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

7.6. Remedies. During the applicable warranty period only, for products not meeting our warranty, we agree, in our sole discretion, to repair or replace the non-conforming product and/or provide additional parts as reasonably necessary to comply with our warranty obligations, but you must first (a) 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 Customer Services; and (b) after our review, assuming we authorize the product return, we will provide you with service data and/or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions that you must follow. For valid product warranty claims timely made in accordance with this Agreement, you must return the non-conforming products to us, unless we agree otherwise, and we will prepay the shipping costs. For instruments only, we may choose to provide you, new or refurbished replacement parts. All replaced parts will become our property. We will ship your repaired or replaced products according to our Delivery terms in Section 4 of these Terms.

7.7. Third Party Products. We do not support or make any warranties about products manufactured or supplied by third parties that you purchased through any of our sales channels. When you buy a third party product, we will let you know that this purchase is governed by the third-party's own contract terms. You must look directly to the relevant third-party manufacturer for product support, warranties, and to make warranty claims. We agree, however, to assign to you any warranty rights we may have from the original manufacturer or third party supplier, to the extent the original manufacturer or third party supplier allows.

## 8. Intentionally Omitted

### 8. ~~Indemnification~~

#### 8.1. ~~Our Indemnity.~~

(A) ~~Our General Indemnity.~~ We will defend and indemnify you against third-party claims for injury to persons, including death, or damage to tangible property occurring while our employees are on your premises performing instrument-related services, to the extent the claims are caused by our employees' negligent acts or negligent omissions, except to the extent caused by your negligent acts or negligent omissions.

(B) ~~Our Infringement Indemnity.~~ We will defend and indemnify you against infringement damages finally awarded in any legal action brought by a third party against you to the extent that the action is based on a claim that our manufacture and sale of a product infringes any patent, copyright, trademark or other intellectual property right of such third party if we had actual knowledge of such intellectual property right and the actual infringement at the time of delivery of the product to you. This infringement indemnity does not apply to claims that arose based on (a) your failure to comply with the Agreement, (b) your failure to acquire any applicable Additional Rights, (c) products that we made, assembled or labeled in reliance upon your instructions, specifications, or other directions, (d) your use or resale of products, (e) modifications made by you or any third party; or (f) products originating from third parties.

~~Additionally, our infringement related indemnity obligations will be extinguished if we, at our option and expense, either: (a) secure for you the right to continue using the product; (b) substitute the product with another suitable product with similar functionality; or (c) in the event (a) and (b) are not practical, refund to you the amortized amounts you paid for the infringing product, based on a 5-year amortization schedule.~~

~~THIS INDEMNITY IS OUR ONLY LIABILITY TO YOU, AND YOUR ONLY REMEDY, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY OR IN CONNECTION WITH ANY PRODUCT.~~

~~(C) 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.~~

~~8.2 Your Indemnity. You will indemnify, defend with competent and experienced counsel and hold us, including our parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, harmless 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) suffered by any of the foregoing entities or individuals to the extent arising from or in connection with (a) your or your agents', employees', representatives' or contractors' negligence or willful misconduct; (b) use of a product we supplied to you in combination with equipment or software we did not supply you, where the product itself would not be infringing; (c) our compliance with designs, specifications or instructions you gave us; (d) use of a product in an application or environment for which it was not designed; (e) product modifications we did not make or approve in writing; and (f) your failure to acquire any applicable Additional Rights.~~

## **9. Software**

9.1. Definitions. With respect to any software products incorporated in or forming a part of our products, you understand and agree that we are licensing such software products and not selling them, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "you" is understood and agreed to mean "licensee". We, or our licensor, as applicable, retain all rights and interest in software products we provide you.

9.2. License. We hereby grant to you a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software we provide you under this Agreement solely for your own internal business purposes on the hardware products we provide you hereunder, and to use the related documentation solely for your own internal business purposes. This license terminates when your lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided in this Agreement.

9.3. Restrictions. You agree to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. You may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without our prior written consent. We will be entitled to terminate this license if you fail to comply with any term or condition herein.

9.4. Return of Software and Documentation. You agree, upon termination of this license, immediately to return to us all software products and related documentation provided hereunder and all copies and portions thereof.

9.5. Third Party Software. The warranty and indemnification provisions set forth in this Agreement will not apply to third party owned software products we provide you.

## **10. Intellectual Property**

10.1. Limitation of Rights. As between you and us, we exclusively own all intellectual property rights relating to our products and services. Unless we expressly state otherwise in Supplementary Terms, our selling products to you grants you only a limited, nontransferable right under our intellectual property: only you may use the products you have bought from us, and only for your internal research purposes. No right to transfer, distribute or resell our products or any of their components is conveyed expressly, by implication, or by estoppel. Unless expressly permitted by us in writing, you will not modify, change, remove, cover or otherwise obscure any of our or our affiliates' brands, trade or service marks on the products. Nothing in the Agreement limits our ability to enforce our intellectual property rights.

10.2. Commercial Applications; Additional Rights. Unless we expressly state otherwise in Supplementary Terms, we give no rights to use our products in any commercial application, including manufacturing, quality control, or commercial services such as reporting the results of your activities for a fee or other consideration. If you need commercial use rights to our products (including the right to perform fee-for services), please contact our out-licensing department at [outlicensing@lifetech.com](mailto:outlicensing@lifetech.com). Where your use of our product is outside the scope of the Agreement, it is solely your responsibility to acquire additional intellectual property rights related to such use ("Additional Rights").

10.3. Intellectual Property Ownership. We exclusively own all intellectual property rights in any inventions (patentable or otherwise), discoveries, improvements, data, know-how, or other results that are conceived, developed, discovered, reduced to practice, or generated by or for us, or jointly by you and us, in relation to processes, methods, or related synthesis of a custom product, or otherwise in connection with designing or manufacturing a custom product. You agree to transfer and assign to us all your right, title, and interest in and to any joint intellectual property. And at our request and at our expense, you will help us secure and record our rights in the intellectual property.

## **11. Custom Products**

11.1. Declining to Make or Deliver. If you ask us to manufacture a custom product (such as an oligonucleotide kit intended to detect a nucleic-acid sequence you specified, a primer/probe, or another product with non-off-the-shelf elements), we may decline to design or manufacture that product—at any stage of the process—if the product is unsuitable or commercially impractical to be synthesized in the way you specified. If so, we will notify you, and you will not be obligated to pay any fees for any expenses we incurred in connection with the declined product. If a custom component or material fails, we may delay or cancel a custom product's delivery without liability to us.

11.2. Your Responsibilities. By submitting an order for a custom product, you represent and agree that you:

(A) have given us all information you know of regarding any biological, radiological, and chemical hazards associated with the handling, transport, exposure to, or other use of the materials you supply to us; and

(B) have the right, including but not limited to any necessary intellectual property rights, to cause to be manufactured the sequences that you asked us to manufacture.

11.3. Custom Antibody Services.

(A) Minimum titer. For custom-rabbit-antibody services we provide, the antibody will reach a minimum titer of 1:10,000 by our indirect ELISA assay if:

- (1) you designed and produced the peptides or proteins used for immunization;
- (2) the design criteria do not contain your mandated limitations, including but not limited to, cross-reactivity requirements and narrowed-protein-sequence region; and
- (3) the antibodies are generated in rabbits.

(B) Minimum Titer not Reached. If the antibody does not reach the minimum titer and all the above criteria are met, we will either boost one animal at no charge or alter the carrier or antigen to boost 1 animal for up to 2 months free of charge. Once one animal reaches the minimum titer of 1:10,000, our obligation is met. If a 1:10,000 titer cannot reasonably be achieved, we will give you a 50% discount on one custom rabbit antibody to be ordered within 6 months from the original antibody order date.

11.4. Animal Disposition. After we complete any custom-antibody service protocol, you have 7 business days to evaluate the antibody quality and to instruct us on the requested animal disposition. If we do not receive your instructions within that time, we will place the animals on hold and charge you daily maintenance fees according to our then-current fee schedule. If we do not receive your instruction within 30 days, we will schedule the animals for termination. We will send you an invoice for accrued charges. You must pay those fees before we will provide additional products or services.

## **12. Instrument-Related Services and Installation**

12.1. Providing Services. When you purchase an instrument, we may install it and provide training, maintenance, repairs, or any other services that you and we expressly agree on. We also offer annual and other instrument-service plans. For full details of our instrument-service plans, please contact Customer Services.

12.2. Service and Installation Restrictions. If we install or service an instrument at your premises, it is your responsibility to ensure that the workplace where the instrument is to be located or serviced is safe. It is also your responsibility to move the instrument (uncrated) to the installation location, and onto any tabletop where it will be installed, to avoid any additional handling. We do not install or service instruments in biosafety-level-3 laboratories, unless you and we agree otherwise in writing in advance. Under no circumstances do we install or service instruments in biosafety-level-4 laboratories.

**13. 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. IN ADDITION, OUR MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, OR ANY PRODUCT OR SERVICE, IS LIMITED TO THE LESSER OF (A) THE AMOUNT YOU PAID TO US FOR THE PRODUCT OR SERVICE PURCHASED, OR (B) \$1,000,000 USD. HOWEVER, THESE PROVISIONS DO NOT LIMIT OUR LIABILITY THAT CANNOT BE LIMITED BY LAW.

## **14. Export Restrictions**

141. Items. You acknowledge that each product and any related software and technology, including technical information we supply you, including those contained in product documents (collectively "Items"), is subject to U.S. government export controls.

142. 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 from other countries.

143. Compliance Requirements. You must 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. You must not, directly or indirectly, without first obtaining the required license to do so from the appropriate U.S. government agency, export re-export, distribute or supply any Item to (a) 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, or (b) any person or entity who is involved in improper development or use of nuclear weapons or of chemicals/biological weapons, or missiles, or in terrorist activities.. You will, if we request, provide information on the end user and end use of any Item you export or plan to export.

144. Audit Cooperation. You will cooperate fully with us in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, ~~and will indemnify and hold us harmless from, or in connection with, your or your consultants', agents' or employees' violation of this Section 14.~~

**15. Medicare/Medicaid Reporting Requirements:** If you are a recipient of Medicare/Medicaid funds, you acknowledge and agree that:

(A) you have been informed of and agree to fully and accurately account for, and report on your applicable cost report, the total value of any discount, rebate or other compensation paid hereunder in a way that complies with all applicable federal, state and local laws and regulations which establish "Safe Harbor" for discounts.

(B) you will make written a request to us in the event that you require additional information from us in order to meet your reporting requirements.

(C) your agreement to comply with such reporting requirement was a condition precedent to our agreement to provide products and that we would not have entered into this Agreement had you not agreed.

**16. Miscellaneous**

161. 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.

162. Governing Law. The Agreement and performance under it will be governed by ~~Delaware~~ Texas 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.

163. Regulatory Restrictions. Unless otherwise expressly stated on the product or in the documentation accompanying our products, our products are intended 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 must use our products in accordance with our instructions. You are solely responsible for making sure that the way you use our products complies with applicable laws, regulations and governmental policies. You must obtain all necessary approvals and permissions you may need. It is solely your responsibility to make sure the products are suitable for your particular use.

164. 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. In certain situations, we may use our reasonable judgment and apportion products then available for delivery fairly among our customers.

165. 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.

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

167. Confidentiality. You agree to keep confidential any non-public technical information, commercial information (including prices, without limitation) or instructions (including any gene sequences, oligo types or sequences) 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.](#)

168. 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.

169. 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.

*Updated August 3, 2016*

[\*Revised May 2, 2017 for City of Corpus Christi\*](#)

[\*Revised May 23, 2017 for City of Corpus Christi\*](#)