

TERMS & CONDITIONS OF BUSINESS - EQUIPMENT SERVICE & MAINTENANCE (NEW ZEALAND)

- 1 **General**
- These terms and conditions constitutes a contract between Thermo Fisher Scientific New Zealand Limited (Thermo Fisher) and the Customer when accepted in writing by the Customer or on the commencement of Service by Thermo Fisher, whichever is earlier (the Agreement). Any of the terms or provisions of the Customer's order which are in any way inconsistent with, or in addition to, the terms and conditions contained herein shall not be binding on either party unless expressly accepted in writing by its authorised representatives.
- 2 **Scope**
- 2.1 These terms and conditions apply to all tasks, obligations and services set forth in any Equipment Support Plan ("ESP") or service quotation issued by Thermo Fisher and any service activities undertaken on a "time and material" basis.
- 2.2 All service work will be conducted to ISO 9001 standard and any specific requirements agreed to by Thermo Fisher as specified in the ESP.
- 2.3 All testing and calibration will be conducted to ISO 17025 standard and any specific requirements agreed by Thermo Fisher as specified in the ESP.
- 3 **Prices and taxes**
- Unless otherwise stated, all prices are stated in NZ dollars and are exclusive of GST. Any GST or any like tax imposed by law on the provision of equipment service and maintenance will be recoverable from the Customer. Where applicable, freight to the nominated Customer site will be at the Customer's expense.
- 4 **Purchasing**
- The Customer shall submit one (1) purchase order for the total amount as specified in any ESP or in any service quotation issued by Thermo Fisher.
- 5 **Term**
- Where the parties have contracted on the basis of an ESP, the agreement shall remain in effect for the period stated in the 'Details of Agreement' Schedule forming part of the ESP, unless terminated earlier as provided herein.
- 6 **Payment**
- 6.1 Thermo Fisher shall invoice the Customer in advance, for services specified in this Agreement. Payment of such invoices is due within 30 days of invoice date.
- 6.2 Services undertaken on a "time and material basis" shall be invoiced upon completion of the work and is due within 30 days of invoice date.
- 6.3 On accounts showing as past due (defined as having an outstanding balance of 45 days or more), Thermo Fisher reserves the right to suspend services until the account is returned to current status. If the Customer fails to pay any amounts when due, the Customer shall pay Thermo Fisher interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses incurred by Thermo Fisher in collecting such overdue amounts or otherwise enforcing its rights hereunder.
- 7 **Exclusions**
- Work not covered under an ESP or service quotation will be quoted and billed on a "time and material" basis. Thermo Fisher shall invoice the Customer for such work as incurred, and the Customer shall pay such invoices within the time specified thereon. Any goods sold to the Customer by Thermo Fisher shall be subject to Thermo Fisher's standard terms and conditions of sale related to goods.
- 8 **Reimbursement of expenses**
- 8.1 Excluding those specified within an ESP or service quotation, Thermo Fisher will be reimbursed for all reasonable and necessary expenses incurred in connection with the performance of its duties under this Agreement. Thermo Fisher shall provide an itemised account as well as documentation and receipts to support reimbursable expenses.
- 8.2 **Specific exclusions**
- The following services, as listed below, are not included in the ESP or service quotation (this work will be considered an "exclusion" to this Agreement and may be quoted and billed on a "time and material" basis):
- (a) repair of damage not caused by Thermo Fisher including without limitation, damage resulting from accident, negligence, transportation, misuse, failure or fluctuation of electrical or other power, telephone equipment or communication lines failure, use of parts which do not adhere to Thermo Fisher's approved specifications, modifications to software, or causes other than ordinary use;
 - (b) work required as a result of maintenance or repair performed by anyone other than authorised Thermo Fisher personnel or as a result of improper operation, repair, maintenance, or modification by the Customer or other third-party;
 - (c) service on equipment connected to other devices or service on equipment that is not reasonably physically accessible;
 - (d) work requested on account of damages arising from a catastrophe such as wind, flood, lightning, earthquake or other such phenomenon;
 - (e) work resulting from changes in specification of the supplied equipment / system;
 - (f) work resulting from changes in equipment / system configuration required as a result of customer's modification of plant operation;
 - (g) work requested by the Customer for rearrangement, such as additional wiring, rewiring, moving other equipment or cables, relocating equipment or repairing a previously prepared site;
 - (h) electrical or mechanical work external to the equipment;
 - (i) adding or removing accessories, attachments, or other devices not supplied by Thermo Fisher;
 - (j) painting, refinishing, or furnishing materials for any of the foregoing;
 - (k) work requested by the Customer to diagnose or identify a corrective action, the source of which is not attributable to Thermo Fisher or to the supplied equipment or system; or
 - (l) if the work of a Thermo Fisher employee is postponed or suspended by the Customer, or is delayed or does not proceed with reasonable dispatch, due to no fault of Thermo Fisher, Thermo Fisher may withdraw the person or return another service representative to the job when needed and available, and any additional costs (including travel time and expenses) incurred by Thermo Fisher because of this will be an additional charge to the Customer.
- 9 **Charges for services**
- 9.1 Charges for services shall include work time, travel time and standby time in accordance with the following conditions and as per the Schedule of Rates:
- (a) work time - shall include all hours that Thermo Fisher service personnel are on the customer's job site, either working or ready for work and shall be payable at the applicable specified rates;
 - (b) travel time - shall include the time spent by Thermo Fisher service personnel in travelling between their customary headquarters and the Customer's job site and in returning (including travel occurring on Saturdays, Sundays and Public Holidays). Travel time shall be paid for at the applicable rate and travel time will not be cumulative with work time in determining overtime;
 - (c) standby time - shall include all time that Thermo Fisher service personnel are available for work at the Customer's job site, whether on the job site or not, up to a maximum of eight (8) hours per day, between the hours of 8:00 a.m. and 5:00 p.m., Sunday through Saturday, including holidays if availability has been requested by the Customer. Standby time shall be paid for at the applicable rate; however, standby

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- time preceded and/or followed by work time is cumulative in determining overtime;
- (d) straight time rate - this rate shall be paid for time worked on a regular schedule of eight (8) hours per day, Monday through Friday, between 8:00 a.m. and 5:00 p.m.;
- (e) time and one-half rate - the rate of one and a half times the straight time rate shall be paid for any time worked in excess of eight (8) hours or between the hours of 5:00 p.m. and 8:00 a.m., but not exceeding fourteen (14) hours per day, Monday through Friday, and for any time on Saturdays, not to exceed fourteen (14) hours;
- (f) double time rate - the rate of twice the straight time rate shall be paid for time worked in excess of fourteen (14) hours per day, without an eight (8) hour break, Monday through Saturday, and for all time on Sundays and public holidays. Public Holidays shall be those observed by Thermo Fisher;
- (g) Service Rates - as per Schedule of Rates or as included in the ESP; and
- (h) Minimum Service Charge - one (1) hour labour and one (1) travel time.
- 10 Delivery and title**
- Except where specified within the ESP or service quotation, Thermo Fisher shall deliver any and all shipments ex-works, customer site, or other point of origin, to the carrier designated by the Customer. Title and risk of loss and / or damage in transit shall pass from Thermo Fisher to the Customer at that time. In the event the Customer is unable to take delivery when scheduled, Thermo Fisher is hereby authorised to "ship-in-place" whereby the Customer agrees to take title and pay all invoiced amounts as if delivered. In addition, the Customer agrees to pay any and all associated storage costs.
- 11 Access to customer's facilities**
- In connection with Thermo Fisher's performance of service hereunder at the Customer's facilities (if necessary or appropriate), the Customer shall allow Thermo Fisher, at no charge to Thermo Fisher:
- (a) full and free access to all equipment specified under this Agreement and any and all associated peripherals;
- (b) to use necessary machines, communications facilities and the like; and
- (c) to use other reasonable facilities, including without limitation secure storage space and a designated work area with adequate heat and light.
- 12 Proprietary information**
- All proprietary information which is specifically designated as such, disclosed by either party to the other in connection with this Agreement, shall be used solely for design, manufacture, installation, operation, maintenance, or support of the specified equipment, software, and services furnished under this Agreement only, and shall be protected by the recipient from disclosure to others with the same degree of care as that which is accorded its own proprietary information.
- 13 Force majeure**
- Thermo Fisher shall not be liable to the Customer for any delay or failure by Thermo Fisher to perform its obligations under this Agreement or otherwise if such delay or failure arises from any cause or causes beyond the reasonable control of Thermo Fisher including, without limitation, delays caused by labour disputes, strikes, other labour or industrial disturbances, acts of god, floods, power outages or power surges, lightning, shortages of materials, rationing, utility or communication failures, earthquakes, casualty, war, acts of the public enemy, riots, insurrections, embargoes, blockages, action, restrictions, regulations or orders of any government, agency or subdivision thereof, or temporary unavailability of qualified service personnel at Thermo Fisher's offices due to service call(s) received prior to the Customer's call.
- 14 Limited warranty; Disclaimer**
- (a) Thermo Fisher shall provide to the Customer a ninety (90) day warranty for all parts installed by and all labour performed by qualified Thermo Fisher personnel or agents. Except for the warranties stated herein, Thermo Fisher makes no warranties, express or implied and disclaims all warranties including, but not limited to implied warranties of due care and skill and fitness for a particular purpose.
- (b) **Warranty limitations:** The following shall not be covered under Thermo Fisher's warranty:
- (i) exceptional causes of equipment malfunction. Repair of equipment malfunction for the following abnormal conditions is not covered by this Agreement and will be performed by Thermo Fisher at its current service rate for travel, labour and parts:
- A. shipping damage incurred en route to the Customer's site or because of moving equipment. Thermo Fisher will promptly provide a cost estimate for repairs to the consignee for filing claims to carriers for shipping damage;
- B. flood, lightning, earthquake, tornado, hurricane, fire, bombing, armed conflict, malicious mischief, sabotage or other natural or man-made disasters;
- C. physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation.
- (ii) repairs, maintenance, or modifications made by anyone other than Thermo Fisher's supervision and/or approval;
- (iii) relocation and reinstallation of equipment, although upon request Thermo Fisher will supervise the removing, crating, relocation and reinstallation of equipment at Thermo Fisher's current service rate;
- (iv) maintenance or replacement of media regardless of the reason for loss, failure or damage;
- (v) the service of non-Thermo Fisher material or equipment, including non-Thermo Fisher material or equipment purchased for engineering specials; and
- (vi) beta-site support.
- If it is found that there is no breach by Thermo Fisher of the warranties set out in this clause 14, Thermo Fisher shall be entitled to charge the Customer for any carriage administration and inspection costs incurred by Thermo Fisher in relation to any return or inspection of the goods.
- 15 Termination for bankruptcy**
- Thermo Fisher shall have the right at its option to terminate this Agreement immediately upon written notice to the Customer in the event:
- (a) of an assignment by the Customer for the benefit of creditors;
- (b) of the Customer's insolvency;
- (c) of the Customer's dissolution or loss of charter by forfeiture;
- (d) the Customer is adjudged bankrupt or insolvent by a court of competent jurisdiction;
- (e) a trustee or receiver is appointed for the Customer or its assets or any substantial part thereof;
- (f) the Customer files a voluntary petition under any bankruptcy or other similar law providing for reorganisation, dissolution or liquidation;
- (g) the Customer consents to the appointment of a receiver or a trustee for itself or its assets or any substantial part thereof; or
- (h) the Customer fails to prove a default hereunder.

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16 Effect of termination

In the event of termination or expiration of the ESP or service quotation, all fees or charges payable for the entire term of this Agreement shall without notice or demand by Thermo Fisher immediately become due and payable and Thermo Fisher's obligations under this Agreement shall immediately end. The termination, expiration or non-renewal of this Agreement shall not relieve either party from any obligation that accrues pursuant to this Agreement before the effective date of the termination or expiration nor shall it release the parties from any obligation that may have been incurred as a result of operations conducted under this Agreement.

Where the parties agree that equipment covered under an ESP is deemed redundant for the Customer's requirements, the Customer shall pay outstanding fees or charges up to the date equipment is deemed redundant.

17 Indemnity

To the extent of its own negligence or willful misconduct, Thermo Fisher agrees to indemnify, defend and hold harmless the 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) for injury to or death of persons in connection with the performance of Thermo Fisher's obligations under this Agreement. The Customer shall provide to Thermo Fisher prompt written notice of any third party claim covered by Thermo Fisher's indemnification obligations hereunder. Thermo Fisher shall have the right to assume exclusive control of the defense of such claim or, at its option, to settle the same. The Customer agrees to cooperate reasonably with Thermo Fisher in connection with Thermo Fisher's performance of its obligations under this section. The Customer hereby represents that the Customer maintains public liability, property damage insurance and worker's compensation or other applicable insurance adequate to cover any such claims by its agents, employees, consultants or representatives. The Customer shall indemnify, defend and hold harmless Thermo Fisher, 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) for injury to or death of persons or damage to property in connection with the Customer's obligations under the ESP or service quotation.

18 Limitation of liability

Thermo Fisher's total liability hereunder shall not exceed the amount paid for services or support by customer to Thermo Fisher for the three (3) months immediately preceding the occurrence giving rise to any claim by customer. To the extent permitted by law, in no event shall Thermo Fisher have any liability to the Customer for any indirect, special, punitive, incidental or consequential damages arising out of any warranty or covenant contained herein or otherwise, including without limitation, damages for loss of use of facilities or equipment, loss of profits or revenue, loss of data, cost of capital or claims of customer or of customer's employees or agents. In no event is Thermo Fisher liable for loss of samples or specimens.

19 Miscellaneous

This Agreement and/or any right or obligation herein shall not be assigned or delegated by the Customer without the prior written approval of Thermo Fisher. Both parties will comply with applicable codes and federal, state, and local laws and the regulations regarding their obligations under the ESP or service quotation. The invalidity of any provision hereof shall not affect the validity of the remaining provisions hereof. This Agreement, with its exhibits, constitutes the entire understanding between the parties and there are no representations, warranties, covenants or obligations except as set forth herein. This Agreement supersedes all prior and temporary agreements, understandings and negotiations and discussions, written or oral, of the parties hereto, relating to the subject matter of this Agreement. This Agreement may only be amended by a written instrument duly executed by both parties.

20 Governing law; trial by jury

This Agreement shall be governed by the laws of New Zealand. In the event of any legal proceeding between the Thermo Fisher and customer relating to this agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury.

21 Repair of goods compliance statement

In the event that the tasks, obligations, and services set forth in the ESP or service quotation relates to the repair of equipment capable of retaining user-generated data, the repair of any such equipment may result in loss of the data. Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.
