

THERMO ENVIRONMENTAL INSTRUMENTS INC. ("Seller")
TERMS AND CONDITIONS OF SALE FOR PRODUCTS AND SERVICE

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY (rev11-2013)

1. **GENERAL.** Seller hereby offers for sale to the buyer named on the face hereof ("Buyer") the products (the "Products") and services (the "Services") listed on the face hereof on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any document issued by Buyer are expressly rejected and if the terms and conditions in this agreement ("Agreement") differ from the terms of Buyer's offer, this document shall be construed as a counter offer and shall not constitute acceptance of Buyer's document. Buyer's receipt of Products or Seller's commencement of the services provided hereunder will constitute Buyer's acceptance of this Agreement. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products and Services. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.

2. **PRICE.** All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products or Services will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment or delivery of service. All prices are subject to adjustment for the provision, incurrence or performance of any specifications, quantities, raw materials, production costs, shipment or other conditions that Seller's original price quotation did not include.

FIRM FIXED SERVICE PRICING: This form of service contract provides for a daily rate for field service which includes travel time, on site labor and living expenses. Air travel and car hire related expenses will be charged in addition to the day rate at cost plus a 10% administration fee. The daily rate represents up to ten (10) hours of work time within the window of 6:00 a.m. to 6:00 p.m. Overtime shall be charged in two hour blocks. Travel time shall be charged at the daily rate and shall be billed in five-hour blocks. Any parts used shall be invoiced at Seller published rates. Work Time shall include all hours that Seller's service personnel are on the Buyer's job site, either working or ready for work and shall be payable at the applicable specified rates. Standby Time shall include all time that Seller's service personnel are available for work at the Buyer's job site, whether on the job site or not, up to a maximum of 12 hours a day, between the hours of 6:00 a.m. and 6:00 p.m., Sunday through Saturday, including holidays if availability has been requested by Buyer. Standby Time shall be paid for at the applicable daily rate; however, Standby Time, as well as Travel Time, preceded and/or followed by Work Time is cumulative in determining Overtime. Travel Time shall include the time spent by Seller's service personnel traveling between their customary headquarters and the Buyer's job site and in returning (including travel occurring on Saturdays, Sundays and holidays). Cancellation of scheduled service shall be subject to a cancellation fee if Seller is not notified at least seven days prior to the scheduled date of service. Radioactive material transfers pricing shall be quoted on an individual basis. Work postponed or suspended by Buyer, due to no fault of Seller, shall be subject to Seller withdrawal and rescheduling, and any costs (including travel time and expenses) incurred by Seller will be charged to the Buyer.

3. **TAXES AND OTHER CHARGES.** Prices for the Products and Services exclude all sales, use, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products or Services covered hereby, all of which taxes and duties must be paid by Buyer. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

4. **TERMS OF PAYMENT.** Seller may invoice Buyer upon shipment or completion of Products and Services for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. International service may require payment in advance. If Buyer fails to pay any amounts when due, Buyer shall pay Seller 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 (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars.

5. **DELIVERY; CANCELLATION OR CHANGES BY BUYER; BUYER RESPONSIBILITIES.** The Products will be shipped to the destination specified by Buyer, Ex-Works Seller's shipping point. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller 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 Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without the prior written consent of Seller.

Buyer shall provide Seller personnel reasonable access to Buyer's job site as required. Buyer shall cooperate with Seller personnel so that Seller personnel may perform the Services efficiently and without interruption. Seller shall be allowed use of Buyer equipment which Seller personnel deem necessary for performance of service. Buyer shall be responsible for the procurement, installation, and maintenance of all non-Seller communication media including but not limited to telephone and communication equipment for the remote transmission of data.

6. TITLE AND RISK OF LOSS. Notwithstanding the trade terms indicated above and subject to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer in accordance with trade terms Ex-Works Seller's shipping point; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be. Seller may assist Buyer in arranging transportation of the Products at Buyer's cost. Buyer agrees that such assistance by Seller will not modify the transfer of title herein.

7. WARRANTY. With respect to Products, Seller warrants that on the date of delivery, the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the product documentation, published specifications or package inserts. With respect to Services, Seller warrants that it shall perform the Services in a professional, workmanlike manner. If a period of time is not specified in Seller's product documentation, published specifications or package inserts, the product warranty period shall be one (1) year from the date of shipment to Buyer for Products; provided however the warranty period for spare parts shall be ninety (90) days from the date of shipment, and for Services ninety (90) days from the date of delivery (the "Warranty Period"). With respect to Products, Seller agrees, during the applicable Warranty Period, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that Buyer shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with service data and/or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions. Then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions hereunder. Consumables and normal wear and tear are expressly excluded from this warranty. With respect to Services, upon receipt, during the applicable Warranty Period, from Buyer, of written notice that any Services fail the limited service warranty set forth herein, Seller shall promptly re-perform such Service or, at Seller's option, grant Buyer a credit for the amount paid by Buyer with respect to such Service.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller, but Seller agrees to assign to Buyer any warranty rights in such Product that Seller 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 Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of or with respect to: (a) use of the Products in a manner for which they were not designed; (b) improper storage and handling of the Products; (c) use of the Products in combination with equipment or software not supplied by Seller (d) shipping damage incurred en route to Buyer's site or because of moving equipment, in which case Seller will promptly provide a cost estimate for repairs to the consignee for filing claims to carriers for shipping damage; (e) flood, lightning, earthquake, tornado, hurricane or fire, bombing, armed conflict, malicious mischief, sabotage or other natural or man-made disasters; (f) physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation; (g) repairs, maintenance, or modifications made by anyone other than Seller trained personnel or without Seller's supervision and/or approval; (h) relocation and reinstallation of equipment; although upon request Seller will supervise the removing, crating, relocation and reinstallation of equipment at Seller's current service rate; (i) maintenance or replacement of media whatever the reason for loss, failure or damage; (j) the service of non-Seller material or equipment; (k) beta-site or demo support; or (m) service calls made to train operators, repair an equipment malfunction wherein the fault is not with the equipment. Seller reserves the right to make any changes in the design or construction of Seller's instruments. Buyer agrees to allow Seller at Seller's expense to make retrofits or design changes which do not substantially impair performance.

If Seller determines that Products or Services for which Buyer has requested a warranty remedy are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. 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 SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT AND REPERFORM (OR, AT SELLER'S OPTION, CREDIT AMOUNTS PAID WITH RESPECT TO SERVICES) SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT OR DEFECTIVE SERVICES. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT. WARRANTIES EXTEND ONLY TO THE ORIGINAL PURCHASER AND ARE NOT ASSIGNABLE OR OTHERWISE TRANSFERABLE. ANY ASSIGNMENT OR TRANSFER BY BUYER SHALL BE VOID.

8. INDEMNIFICATION.

8.1 By Seller. Seller agrees to indemnify, defend and save Buyer, 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 attorney's fees) ("Indemnified Items") for (a) bodily injury to or death of persons or damage to tangible property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of services at Buyer's premises under this Agreement and (b) claims that a Product infringes any valid United States patent, copyright or trade secret; provided, however, Seller shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (iv) compliance with Buyer's designs, specifications or instructions, (v) use of the Product in an application or environment for which it was not designed or (vi) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer shall provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (x) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (y) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (z) in the event (x) and (y) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN.

8.2 By Buyer. Buyer shall indemnify, defend with competent and experienced counsel and hold harmless Seller, 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 Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (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 Seller without Seller's prior written approval.

9. SOFTWARE. With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Buyer agrees 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. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Accordingly, Seller and Buyer agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

10. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 7 ABOVE) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THERETOFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER 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 DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

11. EXPORT RESTRICTIONS. Buyer acknowledges that export controls of the U.S. Government, and other governments, may apply in respect of each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"). Such export controls may include, but are not limited to, 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. Buyer shall not export, re-export, distribute or supply any Item to (i) any country, person or entity, in each case, without first obtaining from the appropriate government agency any license required to do so lawfully; (ii) any person or entity in any country then the subject of a United States embargo, or any person or entity considered a part of the government of any such country or (iii) any person or entity who is involved in improper development or use of nuclear weapons, or of chemical/biological weapons (CBW) or missiles, or in terrorist activities. Buyer shall, if requested by Seller, provide information on the end user and end use of any Item exported or to be exported by Buyer. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, or agents.

12. INSURANCE. Seller will maintain and carry liability insurance which includes but is not limited to employer's liability, worker's compensation, general liability, public liability, property damage liability, product liability, completed operations liability and contractual liability in amounts set forth below with insurance companies rated B+ or better by "BEST" rating services. Insurance includes (a) Commercial general liability insurance for a limit of \$2,000,000 (two million) for each occurrence and \$4,000,000 (four million) in the aggregate, (b) Statutory workers' compensation and employer's liability insurance for a limit of \$1,000,000 (one million) and (c) Automobile liability of \$2,000,000 (two million) dollars.

13. MISCELLANEOUS. (a) Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void. (b) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without reference to its choice of law provisions. (c) In the event of any legal proceeding between the Seller and Buyer 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. Any action arising under this

Agreement must be brought within one (1) year from the date that the cause of action arose. (d) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (e) 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. (f) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. (g) Unless otherwise expressly stated on the Product or in the documentation accompanying the Product, the Product is intended for research only and is 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. (h) Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller. (i) Buyer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public. (j) 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 (or by any nationally or internationally recognized carrier including DHL, FedEx or similar carrier), postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other. (k) Seller's employees will present Buyer at the end of each week, or at the completion of the job if less than one week, a field service report on which will be indicated the number of hours spent and the material used in completing the work. Buyer shall sign the field service report thus signifying approval of the time spent and material expense incurred on this work. If Buyer does not sign report or provide written objection within five (5) business days after receipt then the report shall be deemed as approved.