

TERMS AND CONDITIONS OF SERVICE

Thermo Fisher Scientific (Asheville) LLC (hereinafter defined as "Thermo Fisher") agrees to perform and Customer (hereinafter defined as "Customer") agrees to pay for the servicing of equipment subject to the following terms and conditions. This order shall be deemed accepted upon the commencement of Service by Thermo Fisher. Thermo Fisher objects to any additional or different terms contained in Customer's response.

1. Service Thermo Fisher will repair those instruments identified which are not operating and restore them to product specifications as determined by Thermo Fisher within the 48 contiguous United States and the District of Columbia, Monday through Friday (excluding Thermo Fisher holidays) during the hours of 8:00 a.m. to 5:00 p.m. local standard time ("Normal Hours"). For service calls requested outside of Normal Hours or weekends or nationally observed holidays, Thermo Fisher will bill Customer at Thermo Fisher's after hours service rate.

(a) No repairs or modifications have been made by anyone other than an authorized Thermo Fisher Service Representative.

(b) The instrument was installed within ninety (90) days of shipment from the manufacturer's or dealer's location, whichever applicable, and was installed by an authorized Thermo Fisher Service Representative when required by Thermo Fisher.

(c) Any replacements by Thermo Fisher do not extend the original warranty period.

(d) During the applicable warranty period, Thermo Fisher will, subject to service terms and conditions and with reasonable promptness, at its cost repair those instrument malfunctions which occur notwithstanding that the instrument is being operated in accordance with Thermo Fisher's instruction manual for such instrument. A service call shall be considered complete when Thermo Fisher demonstrates by an appropriate test procedure that the instrument is operating in accordance with its performance specifications. Thermo Fisher shall provide to the customer a copy of the Field Service Report detailing the work performed by Thermo Fisher's Field Service Representative. Thermo Fisher reserves the right to make any changes in the design or construction of this instrument at any time, without any obligation.

(e) Thermo Fisher warrants that instrument service rendered by Thermo Fisher to the customer hereunder shall be performed by Thermo Fisher in a workmanlike manner resulting in satisfactory instrument performance.

2. Payment

(a) Customer agrees to make payment of the total charge as a single payment within thirty days of the invoice. All payment is net 30 (thirty) days.

(b) Charges are exclusive of all state, local, use, excise and other taxes. Any such tax shall be paid by the Customer unless the Customer furnishes a valid exemption certificate to Thermo Fisher.

3. Replacement Parts

There shall be no charge to customer for parts provided by Thermo Fisher for warranty service repair other than

supplies of consumables, customer maintenance items, printer paper, pens, specialized lamps and fuses. Thermo Fisher provides a three (3) month warranty with replacement parts.

4. Key Operator

Customer shall designate a key operator who shall be made available to Thermo Fisher to describe instrument malfunctions to Thermo Fisher Representatives by telephone and who shall be qualified to perform simple adjustments and corrections as requested by Thermo Fisher's representatives. Failure to designate a key operator or to perform customer maintenance as specified in the instrument instruction manual, may result at Thermo Fisher's option in a service call invoiced by Thermo Fisher at its standard rates for service, travel or move, labor and parts.

5. Equipment Modification

Thermo Fisher reserves the right to make any changes in the design or construction of Thermo Fisher's instruments without incurring any obligation to make any changes whatsoever in the instruments described in this agreement. User agrees to allow Thermo Fisher at Thermo Fisher's expense to make retrofits or design changes which improve instrument reliability but do not change instrument performance characteristics.

6. Limitations

(a) 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 labor and parts:

i. Shipping damage incurred enroute to 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.

ii. Flood, lightning, earthquake, tornado, hurricane or fire, bombing, armed conflict, malicious mischief, sabotage or other natural or manmade disasters.

iii. Physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation.

iv. Repairs, maintenance, or modifications made by anyone other than Thermo Fisher trained personnel or without Thermo Fisher's supervision and/or approval.

v. Relocation and reinstallation of equipment are not covered under this Agreement; although upon request Thermo Fisher, will supervise the removing, crating, relocation and reinstallation of equipment at Thermo Fisher's current service rate.

(b) Maintenance or replacement of media (i.e., floppy disks, plotter supplies, etc.) whatever the reason for loss, failure or damage is not covered by this Agreement.

(c) The servicing of non-Thermo Fisher material or equipment is not covered by this Agreement. This includes non-Thermo Fisher material or equipment purchased for Engineering Specials.

(d) Beta-site support is not covered by this Agreement.

(e) Service calls made to train operators, not equipment

malfunction, are not covered by this Agreement.

7. Warranty

Subject to the conditions set forth in this Agreement, Thermo Fisher warrants that Service rendered by Thermo Fisher to the Customer hereunder shall be performed by Thermo Fisher in a workmanlike manner and thereafter, the instrument will perform in accordance with its published specifications for ninety (90) days from date of Service. Thermo Fisher's sole obligation under this Agreement is to provide Service as described in Section 1, Service. THERMO FISHER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY REPLACEMENTS BY THERMO FISHER DO NOT EXTEND THE ORIGINAL WARRANTY PERIOD.

8. Indemnification and Limitation of Liability

Thermo Fisher agrees to indemnify, defend and save Customer, its officers, directors, employees, agents and representatives harmless from all losses, expenses, demands and claims made against Customer, its officers, directors, employees, agents and representatives because of any personal injuries, death or property damage to the extent it is caused by the negligence or willful misconduct by Thermo Fisher, its employees, agents or representatives in connection with its performance of services.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOST PROFITS AND BUSINESS INTERRUPTION), REGARDLESS OF WHETHER EITHER PARTY: (A) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) IS NEGLIGENT. IN NO EVENT WILL THERMO FISHER'S TOTAL LIABILITY EXCEED THE CHARGE PAID BY CUSTOMER FOR THE SERVICE.

9. Insurance

Thermo Fisher maintains insurance policies which have the following minimum limits and coverage:

- (a) Comprehensive general liability insurance for a limit of \$1,000,000 (one million) for each occurrence and \$2,000,000 (two million) in the aggregate,
- (b) Statutory workers' compensation and employer's liability insurance. Copies of certificates of insurance evidencing the specified coverage are available upon

request.

10. Customer Responsibilities

- (a) Customer shall provide Thermo Fisher personnel reasonable access the equipment whenever service is required. Customer shall cooperate with Thermo Fisher personnel so that service can be performed efficiently and without interruption.
- (b) Thermo Fisher shall be allowed use of Customer equipment which Thermo Fisher personnel deem necessary for performance of service.
- (c) Customer shall be responsible for the procurement, installation, and maintenance of all non-Thermo Fisher communication media including but not limited to telephone and communication equipment for the remote transmission of data. Charges for such equipment or media in connection with the performance of service under this Agreement shall be borne by Customer.

11. General

- (a) Thermo Fisher agrees not to knowingly disclose any information or data obtained pursuant to the performance of this Agreement when such information or data is clearly identified as proprietary.
- (b) Thermo Fisher reserves the right to determine the assignment of its employees in the performance of this Agreement.
- (c) Neither party shall assign this Agreement without prior consent of both parties.
- (d) This document constitutes the complete and exclusive agreement between Thermo Fisher and the Customer concerning the servicing of equipment and no addition to or modification of any provision of this Agreement shall be binding on Thermo Fisher unless made in writing and signed by a duly authorized representative of Thermo Fisher.
- (e) This Agreement shall be governed by the internal laws of the State of Thermo Fisher's location in the United States. Customer consents to venue and jurisdiction over any action related to this Agreement in the county and state of Thermo Fisher's location. Any provision(s) of this Agreement which in any way contravenes the law of any state or country in which this Agreement is effective shall to the extent of such contravention of law, be deemed separable and shall not affect any other provision or the validity of this Agreement.