

# **THERMO FISHER SCIENTIFIC**

## **Perbio Science BVBA**

### **TERMS AND CONDITIONS OF SALE**

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **GENERAL.** Perbio Science BVBA ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") 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 differ from the terms of Buyer's offer, this document shall be construed as a counter offer and shall not be effective as an acceptance of Buyer's document. Buyer's receipt of Products 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. 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 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. All prices are subject to adjustment on account of specifications, quantities, raw materials, special packaging, cost of production, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation.

3. **TAXES AND OTHER CHARGES.** Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products 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 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. 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 will be made in Euros or USDs as indicated on the invoice.

5. DELIVERY; CANCELLATION OR CHANGES BY BUYER. Unless agreed otherwise, the Products will be delivered Delivery Duty Paid (Incoterms 2000) from Seller's facility. 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 stop delivery of Products in transit and 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. 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 for Buyer by Seller at Buyer's risk and expense. 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 therefore. Credit will not be allowed for Products returned without the prior written consent of Seller.

Product returns shall be permitted solely in accordance with Seller's standard returns policy (available upon request).

6. TITLE AND RISK OF LOSS. Notwithstanding the trade terms indicated above risk of loss of the Products will pass to Buyer upon delivery. Ownership of the Products shall not pass to the Buyer until the Seller has received in full all sums due to it in respect of the Products and all other sums that are or may become due and owing by Buyer to Seller on any account. 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. The Seller shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Seller.

7. WARRANTY. Products are warranted to operate or perform substantially in conformance with published Product specifications in effect at the time of sale, as set forth in the Product documentation, specifications and/or accompanying package inserts ("Documentation") and to be free from defects in material and workmanship. No claim of suitability for use in applications regulated by FDA or applicable EU regulatory authority is made. The warranty provided herein is valid only when used by properly trained individuals. Unless otherwise stated in the Documentation, this warranty is limited to one year from date of shipment when the Product is subjected to normal, proper and intended usage. This warranty does not extend to anyone other than Buyer. **No other warranties, express or implied, are granted, including without limitation, implied warranties of merchantability, fitness for any particular purpose, or non infringement. Buyer's exclusive remedy for non-conforming Products during the warranty period is limited to replacement of or refund for the non-conforming**

**Product(s).** There is no obligation to replace Products as the result of (i) accident, disaster or event of force majeure, (ii) misuse, fault or negligence of or by Buyer, (iii) use of the Products in a manner for which they were not designed, or (iv) improper storage and handling of the Products.

## 8. INDEMNIFICATION.

8.1 By Seller. Seller agrees to indemnify, defend and save Buyer, its officer, 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) for injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors. Buyer will provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller will 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.

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 the Products for any *non*-research purpose or by a *non*-technically qualified individual; (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iv) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (v) use of a Product in an application or environment for which it was not designed; or (vi) modifications of a Product by anyone other than Seller without Seller's prior written approval.

9. LIMITATION OF LIABILITY. (A) 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 TOTAL PURCHASE PRICE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY. 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. (C) NOTHING SHALL EXCLUDE OR RESTRICT THE SELLER'S RESPONSIBILITY FOR ANY MANDATORY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

10. EXPORT RESTRICTIONS. Buyer acknowledges that each Product and any related technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, 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. Buyer will 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. Buyer will not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to 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. Buyer will cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and will indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, agents, or customers.

11. CONFIDENTIALITY. Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller. Buyer agrees to (i) keep such information confidential and not disclose such information to any third party, and (ii) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein will restrict the use of information available to the general public.

12. MISCELLANEOUS.

12.1 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.

12.2 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 will be void.

12.3 This contract will be governed in all aspects by the laws of Belgium and both parties shall submit to the exclusive jurisdiction of the courts of Belgium. 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. The application to this

Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

12.4 In the event that any one or more provisions contained herein will 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 will remain in full force and effect, unless the revision materially changes the bargain.

12.5 Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein will not constitute a waiver of any other breach or of such provision.

12.6 Any notice or communication required or permitted hereunder will be in writing and will be deemed received when personally delivered or three (3) business days after being sent by certified mail, 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.