

Směnná smlouva

uzavřená dle ust. § 2184 zák. č. 89/2012 Sb., občanský zákoník, v platném znění,
níže uvedeného dne mezi těmito smluvními stranami:

1. Vysoká škola báňská – Technická univerzita Ostrava

Sídlo: 17. listopadu 15/20172, 708 33 Ostrava - Poruba
IČ: 61989100
DIČ: CZ 61989100
Zastoupena: [REDACTED] děkanka FMT

(dále také jako „VŠB - TUO“)
na straně jedné

a

FEI Europe B.V.

Sídlo: Achtseweg Noord 5, 5651GG Eindhoven, Nizozemsko
IČ: 805698656
DIČ: NL805698656B01
Společnost zapsaná v obchodním rejstříku Nizozemské obch. komory pod číslem
zápisu 17097158
Zastoupena: [REDACTED] Manager Controller

(dále také jako „FEI“)
na straně druhé

takto:

I.

1. VŠB - TUO prohlašuje, že je na základě kupní smlouvy ze dne 14. 7. 2010 výlučným vlastníkem mikroskopu Aspex Explorer:
Specifické vlastnosti: dle kupní smlouvy ze dne 14.7.2010
Číslo: S/N: 8831:1006120-00
(dále také jako „Mikroskop Aspex“)
2. FEI prohlašuje, že je výlučným vlastníkem mikroskopu Explorer 4 Analyzer:
Specifické vlastnosti:
Příloha č. 1 - Specifikace_QUO-97370-C0V9 R0.pdf,
Číslo: 0521-L
(dále také jako „Mikroskop Explorer 4 Analyzer“)



III.

1. Smluvní strany se dohodly, že následující mikroskopy budou mezi smluvními stranami směněny:
 - a) Mikroskop Aspex ve vlastnictví VŠB – TUO bude převeden do vlastnictví FEI,
 - b) Mikroskop Explorer 4 Analyzer ve vlastnictví FEI bude převeden do vlastnictví VŠB – TUO.
2. VŠB – TUO převádí podpisem této smlouvy vlastnické právo k Mikroskopu Aspex společnosti FEI. Společnost FEI vlastnické právo k Mikroskopu Aspex přijímá.
3. Společnost FEI převádí podpisem této smlouvy vlastnické právo k Mikroskopu Explorer 4 Analyzer VŠB – TUO. VŠB – TUO vlastnické právo k Mikroskopu Explorer 4 Analyzer VŠB – TUO přijímá.
4. Smluvní strany se dohodly, že vzájemné předání a převzetí obou mikroskopů bude provedeno do 21.12.2018. O předání a převzetí mikroskopů bude mezi stranami sepsán předávací protokol podepsaný oběma stranami.. Směna bude provedena v sídle VŠB – TUO.

IV.

1. Obě smluvní strany shodně prohlašují, že:
 - a) každá z nich je jediným a výlučným vlastníkem mikroskopů specifikovaných v čl. I této smlouvy a není jakkoli smluvně či zákonně omezena v dispozici s nimi a že tyto mikroskopy řádně a legálně nabyly;
 - b) mikroskopy jsou prosty jakýchkoli dluhů, zástavních práv, omezení, nájemních či jiných smluv omezujících vlastníka v plné realizaci obsahu jeho vlastnického práva, zcela prosty právních i faktických vad a jakýchkoli finančních i daňových závazků, a práv třetích osob; a že je takto nezatíženo do doby předání mikroskopů dle č. III. odst. 4 smlouvy;
 - c) mikroskopy jsou a ke dni předání budou v řádném stavu, způsobilé k řádnému a bezproblémovému použití podle jejich specifikací a návodů k použití, mikroskop Explorer 4 Analyzer je nové zařízení se zárukou min. 12 měsíců, mikroskop Aspex je bez záruky,

přičemž pro případ zjištění, že jakékoli prohlášení v tomto článku se ukáže neúplné či nesprávné, nebo pokud dojde kteroukoliv ze stran k porušení povinností a závazků shora uvedených, dohodly se smluvní strany výslovně, že strana, která své prohlášení učinila úplně a správně a žádný svůj závazek shora uvedený neporušila, má právo bez dalšího odstoupit od smlouvy. Pokud se strana, která svá prohlášení učinila úplně a správně a žádný svůj závazek neporušila, o takovém porušení druhé strany dozví až po předání a převzetí mikroskopů a od smlouvy odstoupí, vrátí si smluvní strany mikroskopy.

2. Odstoupení od smlouvy musí být učiněno písemnou formou a doručeno druhé smluvní straně na adresu uvedenou v záhlaví této smlouvy, přičemž se smluvní strany výslovně dohodly, že odstoupení se považuje za doručené 15. dnem po jeho odeslání na adresu druhé smluvní strany uvedenou v záhlaví této smlouvy, ledaže si druhá strana převezme zásilku dříve.



V.

1. Touto smlouvou smluvní strany směňují mikroskopy uvedené v čl. I této smlouvy, odstavci 1) a 2), s veškerými součástmi a příslušenstvím.
2. Důvodem směny je zájem společnost FEI na vlastnictví Mikroskopu Aspex z důvodu možnosti jeho rozdělení a dále práce s radioaktivním materiálem.
3. Smluvní strany shodně prohlašují, že se vzájemně seznámily se stavem směňovaných mikroskopů a v tomto stavu je bez dalších připomínek a podmínek přijímají, aniž požadují jakékoliv opravy či úpravy.
4. Dojde-li k nahodilé zkáze věci před přechodem nebezpečí škody na věci, hledí se na smlouvu, jako by nebyla uzavřena. Dojde-li před odevzdáním věci k jejímu nahodilému zhoršení do té míry, že hodnota věci klesne pod polovinu, má druhá strana právo od smlouvy odstoupit. K nepatrnému snížení hodnoty věci se nepřihlíží.
5. Nebezpečí škody na věci přechází předáním a převzetím mikroskopů dle čl. III odst. 4 Smlouvy.
6. Veškeré náklady spjaté se směnou mikroskopů, jako je doprava a instalace Mikroskopu Explorer 4 Analyzer a odvoz Mikroskopu Aspex, jde k tíži společnosti FEI.
7. VŠB-TUO se zavazuje poskytnout FEI veškerou součinnost při směně mikroskopů podle této smlouvy, kterou může FEI požadovat, především pak zajištění bezproblémového přístupu do prostor VŠB-TUO.

VI.

1. Smluvní strany se dohodly na tom, že dohodnutá cena mikroskopu uvedeného v čl. I. odstavci 1) této smlouvy činí 1452300,- Kč bez DPH (slovy: jedenmilionpětsetdvacetřítisícťřista korun českých bez DPH) a dohodnutá cena mikroskopu uvedeného v čl. I. odstavci 2) této smlouvy činí 7531200,-Kč bez DPH (slovy: sedmmilionů pětsetřicetjednatisícďestě korun českých bez DPH). Po provedení směny dle této smlouvy budou účastníci vyrovnáni a nemají vůči sobě vzájemně žádné nároky z titulu vypořádání hodnoty směňovaných mikroskopů a pro vyloučení pochybností se takových případných nároků vzdávají. Finanční rozdíl cen obou mikroskopů jde k tíži FEI Europe B.V.
2. Smluvní strany se dohodly, že na vztah založený tuto smlouvou se neaplikují obchodní podmínky ani jakékoliv jiné podmínky žádné ze smluvních stran nebo třetích osob.

VII.

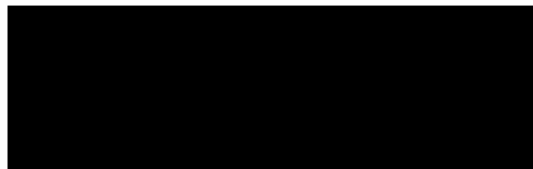
1. Změny obsahu této smlouvy směnné mohou být činěny pouze formou písemného a číslovaného dodatku, odsouhlaseného oběma stranami nebo jejich oprávněnými zástupci.
2. Smluvní strany smlouvu poté, co tuto přečetly, podepisují svými vlastnoručními podpisy na důkaz toho, že jde o jejich svobodnou a vážnou vůli, že s obsahem této smlouvy souhlasí, a že ji nepodepisují v tísní ani za nápadně nevýhodných podmínek.
3. Smlouva směnná je vyhotovena ve 2 stejnopisech, z nichž každý má povahu originálu.
4. Nedílnou přílohou smlouvy jsou parametry nového mikroskopu Explorer 4 Analyzer.

Dne - 7. 12. 2018

Dne Eindhoven, 4-12-2018

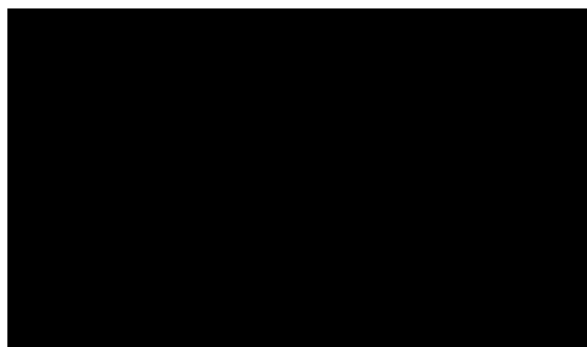
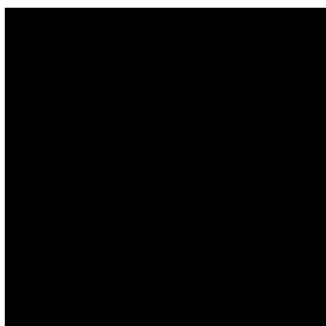


za VŠB- TUO



za FEI Europe B.V.

Manager Controller



Quotation - Specifikace

Explorer 4 Analyzer QUOTATION for
VŠB - Technical University of Ostrava

Quote Date: November 26, 2018
Quote Number: QUO-97370-COV9 R0
Expires: December 20, 2018

Prepared By

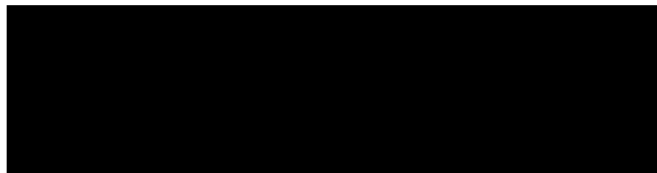


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Thermo Fisher Scientific is a Total Solution Provider

Thermo Fisher Scientific's philosophy is to offer the total solution to you as a customer. That means we not only build and install the tools for you, but we also provide a wide array of solutions for all life cycle phases of the instruments. Training, application specialists, remote tool services, an upgrade portal and a trade-in program are just a few examples of what Thermo Fisher can offer. Below is an overview of the most important services that make us a true total solution provider:

Service

Thermo Fisher Scientific's Electron Microscopy Service Organization is ready to assist our customers derive optimum performance and value from their tool investment. Our Customer Service Operations Centers are available 24/7 in over 50 countries, each with a knowledgeable support staff on hand to facilitate our customers' requests.

NanoPorts

Thermo Fisher Scientific's four NanoPorts, located in China, Japan, the Netherlands and the United States, are open doors to our customers and prospective customers. Our NanoPorts are a welcoming and private environment providing invited customers and guests with a valuable, interactive experience that showcases our electron microscopy solutions and their capabilities.

NanoPort Academy

At Thermo Fisher Scientific NanoPort Academy, our application engineers train hundreds of new and existing customers every year on the latest tools and techniques. This training covers applications for all of our customers, from fields such as Materials Science and Life Sciences to Semiconductors and Electronics.

Certified

The Thermo Fisher Scientific Certified Tools program features factory-refurbished Thermo Scientific systems that are fully-tested and warrantied to meet original factory specifications. With the Certified Tools program, customers will have greater flexibility and added confidence while they plan capital equipment acquisitions.

Software

Thermo Fisher Scientific is a leader in the development and support of state-the-art software for 3D visualization, data analysis and image processing. Our mission is to develop and deliver cutting-edge software products and services using advanced software quality methods and technologies. By understanding customer requirements, employing qualified developer engineers and scientists, and utilizing a test-driven quality management system we are able to produce high-quality 3D software solutions for a variety of research institutes and private corporations worldwide

Proposed Solution

Line #	Part Number	Description	Qty	Amount
Explorer 4 Analyzer				
1	1134754	Explorer 4 Analyzer The core instrument (Explorer 4 Analyzer) includes: - 24" LCD Monitor - Keyboard & Mouse - Computer Desk - Data storage PC with 2x 1 TB storage, 16 GB RAM, Xeon E5 CPU, Microsoft Windows 10 Professional 64-bit - Variable Pressure - BSED Detector - Integrated EDS - Integrated UPS - Integrated Diaphragm Pump - 100 x 100 XY manual Z stage		
Software				
2	1134762	Metal Quality Analyzer (MQA)		
Detectors				
3	1134756	SE Detector Explorer		
Carrier Options				
4	1134774	Holder: 4x 40 mm (d) x 25 mm Round Metallurgical Mounts		
Training				
5	FP 2490/36	On-site Applications Training - EMEAI (1 day)		
Trade In Item(s)				
6	TI01	Waiting for approval		
Installation & Warranty				
7	4022 404 21183	Installation Labor Explorer 4 Analyzer Europe		
8	4022 404 02183	Installation Material Explorer 4 Analyzer Europe		
9	4022 404 23183	Warranty Labor Explorer 4 Analyzer Europe		
10	4022 404 04183	Warranty Material Explorer 4 Analyzer Europe		
Shipping				
11	4022 400 52691	DDP Eindhoven / Named place of destination; receiving dock in Europe Zone 1 (T-29)		
			List Price Total	K€7,531,200.00

SW upgrade for x-ray mapping, picture rotation and ZAF will be provided free of charge once it's available. Software updates will be provided free of charge as well. A software update includes bug fixes and minor software improvements.



PRICING Summary		
	Total Pricing Summary (Czech Koruny)	System Summary (Czech Koruny)
List Price	Kč7,531,200.00	
Discount	- Kč7,531,200.00	-
Subtotal Including Discount	Kč0.00	Kč0.00
Taxes		
VAT	Not Included	Not Included
Grand Total	Kč0.00	Kč0.00

Key Term Summary	
Billing Terms	0% / 90% / 10%
Payment Terms	Net 30 days
Payment Method	
INCOTERMS 2010	DDP CPIT, 17. listopadu 15/2172, 708 33 Ostrava- Poruba
Indicative Delivery Period	
This proposal is valid until	December 20, 2018

The contracting entity for these goods is FEI Company and the PO should be issued to :

**FEI Europe B.V., P.O. Box 80066, 5600 KA, Building AAE-III-0-056
Achtseweg Noord 5, Eindhoven, The Netherlands
Tel: +31 40 23 56000 Fax: +31 40 23 56634**



Solution Description

1134754 Explorer 4 Analyzer

The Thermo Scientific™ Explorer™ 4 Analyzer is the fourth generation of dedicated SEM/EDX solutions designed for industrial environments and rapid data acquisition. Using scanning electron microscope (SEM) technology and EDX spectrometry, the Explorer 4 Analyzer rapidly characterizes particles and surface features. Explorer 4 Analyzer's powerful automation software and dedicated hardware delivers full morphological and chemical characterization of each individual feature in a high-throughput and automated solution.

Key benefits of the Explorer 4 Analyzer are:

- Data matched with industry leading previous generation Explorer
- Optimized BSE and EDX detectors for high throughput particle and surface characterization
- Removable sample drawer improves efficiency, minimizes downtime and reduces cross contamination
- Maximize uptime with integrated UPS
- Vibration isolation for industrial environments
- 100 mm x 100 mm motorized staging
- Low cost of ownership

Features and specifications:

Automated analysis

Explorer 4 Analyzer delivers full morphological and chemical characterization of up to 10,000 features per hour and full morphological characterization of up to 30,000 features per hour with a sizing accuracy of 0.5 µm or better and precision of 0.09 µm or better.

Sample navigation

Explorer 4 Analyzer's integrated optical camera automatically captures an image of the sample and overlays it on stage map for ease of navigation.

Imaging

Explorer 4 Analyzer uses quad BSE detector and optional SE detector for imaging of a large variety of samples. Unique zoombox imaging provides quick high magnification investigation of features in the lower magnification image. Still images can be saved in TIFF file format with and without chemical composition. Imaging parameters are stored in the TIFF image files as private data. Finally, image measurements and annotations can be performed live on the image and the results can be stored together with the images.

Vacuum

Explorer 4 Analyzer uses an entirely oil-free vacuum system featuring turbo-molecular pump and diaphragm pump. Automated pump down sequence provides imaging within 90 seconds of loading the sample. Multiple charge reduction modes allow for analysis of a range of materials under optimal conditions.

Chemical Analysis

Explorer 4 Analyzer's integrated 25 mm² EDX detector provides chemical composition for elements from Boron to Americium. EDX can be acquired from point mode or area acquisition and overlaid with previously acquired EDX. EDX data can be stored in the TIFF image files as private data. A Quick-Print function provides easy saving and printing of the image and EDX in a single report.

System control and data storage

Explorer 4 Analyzer uses Perception 2 software for integrated SEM/EDX user interface on a MS-Windows 10 workstation. The workstation is based on an Intel Xeon E5-1620 CPU with 16 GB RAM, 2x 1 TB HDD, and 24" monitor, keyboard, mouse and computer desk. Advanced data storage and retrieval is provided by

Microsoft SQL Server database while Perception 2's Particle Inspector allows for easy review of the acquired data. Reports can be generated in Microsoft Office 2016.

Electron Optics

Explorer 4 Analyzer features a pre-aligned electron optical column, supporting accelerating voltages from 5 to 20 kV.

Power

Explorer 4 Analyzer can be powered by a single electrical outlet providing 105 – 240 VAC at 7.4 A. An integrated UPS and battery provide protection against brown-outs and power outages.

Rapid

This instrument is RAPID-enabled. RAPID (Remote Access Program for Interactive Diagnostics) is a highly secure connectivity tool that enables Thermo Fisher Scientific's service engineers to connect directly to the instrument to address system issues remotely. RAPID can significantly speed up repair time and thus reduce instrument downtimes, while improving Thermo Fisher Scientific's overall quality of service. Thermo Fisher Scientific's service engineers use RAPID to perform remote system diagnostics and repairs, support user operation and view images for enhancing system performance. However, customers maintain complete control of how and when RAPID is used -- each RAPID session must be initiated by the customer. RAPID requires a high-speed internet connection (> 5 MB/sec recommended, 1 MB/sec required). For full details please browse to the [RAPID pages](#) on the Thermo Fisher Scientific website

1134774 Sample insert for 4X 40 (d) x 25 (h) mm Round

Insert for holding round metallurgical samples with diameter from 38 to 40 mm. Holds up to 4 samples with maximum thickness of 25 mm. Provides imaging view of 4 samples and unobstructed EDS from 2 samples.

1134756 SE Detector Explorer 4 Analyzer

Optional Everhart Thornley detector for collection of secondary electrons.

4022 404 21183 Installation Labor Explorer 4 Analyzer Europe

Standard Installation Labor coverage - see Terms and Conditions

4022 404 02183 Installation Material Explorer 4 Analyzer

Standard Installation Material coverage - see Terms and Conditions

4022 404 23183 Warranty Labor Explorer 4 Analyzer Europe

Standard Warranty Labor coverage - see Terms and Conditions

4022 404 04183 Warranty Material Explorer 4 Analyzer

Standard Warranty Material coverage - see Terms and Conditions

4022 400 52691 DDP Eindhoven / Named place of destination; receiving dock in Europe Zone 1 (T-29)

Delivered Duty Paid to named place of destination in Europe Zone 1 Incoterms 2010. The Seller's obligation is fulfilled when the goods have been made available at a specified point in the Buyer's country. With this term the Seller is also responsible for payment of duties, taxes and other customs clearance charges. The risk of loss or damage passes to the Buyer at the moment the goods have been delivered to the named destination. In accordance with Thermo Fisher Scientific's standard terms and conditions of sale, title transfers at the same point that risk of loss transfers. The price indicated here does not include taxes and/or import duties except as expressly specified by the Seller in this Quotation.

1134762 Metals Quality Analyzer (MQA) Software

The Explorer 4 Analyzer with Metal Quality Analyzer (MQA) software delivers up-to-date information of the composition of non-metallic inclusions on lollipop, as cast, and final product samples in a rapid and concise manner. The Explorer 4 Analyzer with MQA's contributions to a more efficient workflow can result in savings through avoiding nozzle clogging, improved energy management, reducing re-melt activity and more efficient consumption of raw materials.

Explorer 4 Analyzer with MQA is the industry leading integrated SEM/EDX for monitoring non-metallic inclusions in steels. With its best-in-class throughput, the Explorer 4 Analyzer with MQA measures size, shape and chemistry of more inclusions than ever before

MQA Software includes Recipe Automated Feature Analysis (RAFA) for creating and executing powerful automation recipes of the SEM/EDX.

MQA includes a powerful suite of reporting software, including Particle Inspector, Tabular Reporter, Tab Graph, and Metals Cleanliness Reporter. Particle inspector allows users to automatically relocate inclusions of interest and create reports containing individual inclusion images, morphological parameters, and chemistry composition. This powerful program also provides an offline tabulated view of every inclusion freeing up the instrument for continued analysis. Tab Graph reports can include charts, ternary diagrams, composition tables, thumbnail images, and EDX spectra for inclusions characterized in a single analysis or for a batch of analyses. Ternary trending visualizes the phase changes and their compositional relationship of the non-metallic inclusions under various chemical and thermal conditions during steel making. A custom implementation of clustering software provides information to help understand clusters of inclusions.

In addition to reporting for process monitoring of steel making, MQA supports reporting to various metals cleanliness ratings to support modern steel making practices. The ASTM E2142, ASTM E45, JIS G0555, ISO 4967, DIN 50 602, and EN 10247 industry standards are supported.

TI01 **Waiting for approval**
Waiting for approval

FP 2490/36 **On-site Applications Training - EMEAI (1 day)**

On-site applications training, per day, including all travel and expenses. For customers located in EMEAI (Europe, Middle East, Africa, India) and CIS (Commonwealth of Independent States). Training will be fully customized to the customer needs and is typically delivered in blocks of two (2) to three (3) consecutive days. This training will usually be provided by the Netherlands-based NanoPort team and should be scheduled within one (1) year of microscope installation completion (or within one (1) year of purchase in case training is not ordered as part of a microscope purchase).

Terms and Conditions

Terms and Conditions of Sale

Any order by the original buyer ("**Buyer**") of the goods and/or services specified in this quotation ("**Quote**") issued by or on behalf of FEI Company or its subsidiary ("**Company**") is subject to the following terms and conditions. "**Equipment**" shall mean the goods and services specified in this quotation. Equipment, including any repair parts, may include reconditioned or refurbished parts or components and until July 2024 repair parts may contain lead, cadmium, hexavalent chromium, and PBDE in accordance with Annex IV, point 31a, to European directive 2011/65/EU. Unless otherwise agreed, this Quote is valid for 30 days from the date of issuance.

- 1. Scope.** The Quote, including this Confirmation of Purchase Terms and Conditions of Sale, contains all agreements of the parties with respect to goods and services provided by Company to Buyer ("**Agreement**"), supersedes all preceding quotations and is in lieu of all other agreements (oral or written). This Agreement may be amended or modified only by a specific written amendment signed by the parties. Company hereby rejects and disclaims any rights of Buyer contained, or obligations imposed upon Company, in any document provided, referenced or otherwise submitted by Buyer, in each case, that Seller has not expressly included in these terms and conditions or a writing manually executed by Seller (including, without limitation, any rights of Buyer in respect of designs, specifications, source code or intellectual property, owned, created, developed or licensed, by Seller; any rights to items or services not specifically identified in the Quote; any audit rights or financial offset rights of Buyer; any penalties or liquidated damages imposed upon Seller; any obligation by Seller to comply with Health Insurance Portability and Accountability Act of 1996 (as amended), Current Good Manufacturing Practice regulations (as amended), the requirements, as amended, of the Customs-Trade Partnership Against Terrorism or any code of conduct, quality program or other guidelines, programs or policies, in each case, promulgated or required by Buyer; any obligation that Company comply with any law that, under law, would not otherwise apply to Company in respect of the transaction(s) contemplated hereby; any right of Buyer to withhold all, or any portion, of the purchase price of any products or services provided hereunder for any period of time; any right of Buyer, itself or through any third party, to remediate any defects in, replace or re-perform, any products or services provided hereunder at Company's cost or expense; any obligation of Company to waive, or require its insurers to waive, any rights of subrogation; any obligation of Company that would impair, restrict or prohibit Company's ability to freely conduct any business with any person or in any geography or market; any early-payment, or other, discount; any obligation of Seller to maintain a supply of spares, or otherwise make any services available, for any particular period of time; any representation, warranty or other obligation of Company to provide pricing comparable to, or more favorable than, the pricing that Company provides to others; any restriction of, or prohibition on, Company's ability to modify, change or discontinue any of its products or services; or any waiver by Company of any right to enforce any of the terms hereof.
- 2. Prices.** Prices do not include any duties, freight, shipping, insurance or taxes unless specifically noted. Buyer shall pay such amounts directly or reimburse Company for all such amounts.
- 3. Payment Terms.** Invoices will be issued by Company as follows, each due thirty (30) days from the date of invoice:
(I) 0% of the purchase price invoiced upon receipt of order document from Buyer ("**Order Retainer**");
(II) 90% of the purchase price invoiced upon delivery in accordance with the Incoterm; and
(III) 10% of the purchase price invoiced upon acceptance ("**Acceptance Payment**").
Notwithstanding the foregoing, with respect to orders totaling less than US\$100,000 (or local equivalent), 100% of the purchase price shall be due and payable within thirty (30) days from the date of invoice, which will be issued by Company upon shipment. In case of late payment, Buyer shall pay Company interest on unpaid invoices at the rate of one and one-half percent (1½%) per month (but in no event greater than the maximum rate allowed under applicable law).
- 4. Site Preparation; Installation.** Except as otherwise noted, Company or its representative or subcontractor will install Equipment without charge, and at time of installation will provide basic system testing. Company will furnish Buyer with the pre-installation site requirements. Buyer will furnish a safe and suitable place for installation of the Equipment in accordance with Company's standard procedures and pre-installation guide. If Buyer's site is not ready by the planned delivery date, or if the site does not meet Company's published specifications, Company is entitled to invoice Buyer for the Acceptance Payment and any applicable storage, insurance and any additional accrued freight costs. If Buyer causes the condition of the site to change such that the Equipment no longer meets the specifications, Company shall have no obligation to meet the specifications previously attained.
- 5. Shipping.** Shipping terms are the Incoterm shown on the front part of this Quote (Incoterms 2010). "Delivery" shall occur as specified in the Incoterm.

6. **Risk of Loss and Title Transfer.** Risk of loss passes to Buyer in accordance with the Incoterm applicable to this order and title transfers at the same point. Solely for the purpose of securing payment of the purchase price, limited title to the Equipment shall remain with Company, at Buyer's risk, until the purchase price and all other amounts payable by Buyer hereunder have been paid. Notwithstanding the foregoing, provided Buyer has not defaulted on payment of the purchase price, Company is not entitled to direct the disposition of the Product, cannot rescind the transaction, and cannot prohibit Buyer from moving, selling, or otherwise using the Equipment in the ordinary course of business.

7. **Acceptance.** Equipment will be deemed accepted on completion by Company (or Company's representative) of Company's applicable published acceptance tests or such other acceptance test that is expressly set forth in this Quote. If the Equipment initially fails the acceptance tests, Company shall have a reasonable opportunity to repair the Equipment and re-perform the acceptance tests. Acceptance of Equipment constituting a single system cannot be delayed due to failure of other Equipment constituting a separate system to meet acceptance tests. Any use of the Equipment by Buyer, its employees or agents prior to acceptance that delays acceptance of the Equipment will constitute Buyer's acceptance of the Equipment. If acceptance is delayed through no fault of Company beyond sixty (60) days from Delivery, Company reserves the right to invoice Buyer for the Acceptance Payment. Buyer shall give Company written notice of acceptance and such acceptance shall not be unreasonably delayed or withheld.

8. **Training/Applications Support/User Guide.** Training, if any, specified in this Quote is valid for use for twelve (12) months from the date of acceptance of the Equipment. Costs of travel and related expenses for Buyer's employees to and from the training location are Buyer's responsibility. Intellectual property or developments arising out of applications support, if any, specified in this Quote shall be subject to the provisions of this Section unless the parties have entered into a separate written agreement. The rights to any Intellectual Property (as defined below) developed by Company (either solely or jointly with Buyer) in connection with the services provided shall vest with Company. Buyer shall execute all documents reasonably required by Company to evidence Company's ownership in such Intellectual Property. Buyer is hereby granted free of charge a worldwide, irrevocable, perpetual license to such developed Intellectual Property for internal use in connection with the Equipment. "Intellectual Property" means all present and future (a) patent rights, (b) copyrights, mask work rights, and other rights associated with works of authorship, (c) trade secret rights, and (d) other forms of intellectual or industrial property rights and proprietary rights of any kind or nature including rights under and with respect to all applications, registrations, extensions, and renewals of the foregoing. Company will provide its standard user's guide with the Equipment, if any, free of charge. Such guide will be in the English language and may be provided in electronic form. Upon Buyer's request, Company provides the user's guide in local languages or in a non-electronic format.

9. **Warranty.** Company warrants to the original Buyer of the Equipment that the Equipment will be free from material defects for a period of twelve (12) months from the date of acceptance or fourteen (14) months from the date of Delivery if installation is delayed through no fault of Company, whichever occurs first plus any additional warranty period as noted on the Quotation ("Warranty Period"). Consumables will only be replaced under the warranty if they have failed prior to the end of their ordinary useful life. Consumables are excluded from the warranty under any additional warranty period beyond the standard 12 month period. Any Equipment repaired or replaced under this warranty is warranted only for the unexpired part of the original Warranty Period applicable to that Equipment. Warranties for third party items are the sole responsibility of the third party vendor. The warranty set forth above ("Warranty"), if any, does not apply and shall be of no force and effect if Buyer modifies the Equipment, uses the Equipment with other than Company-supplied parts or products designated "Works with FEI" or the equipment is maintained or repaired by parties other than Company authorized personnel. In addition, the Warranty shall not apply to, and Company shall have no responsibility for, defects caused in whole or in part by accident, vandalism, abuse, wrongful act, neglect, failure to use proper operational and safety procedures, improper integration, installation, application or maintenance or the use of Works with FEI products outside of the Company approved parameters. Company's sole obligation under the Warranty is to provide one of the following remedies, in Company's sole reasonable discretion: repair, replacement or removal and refund of purchase price. THE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE EQUIPMENT. NO WARRANTIES SHALL ARISE UNDER THIS AGREEMENT FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. COMPANY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR ANY PARTICULAR PURPOSE.

10. **Maintenance.**

(a) Definitions: (i) "Maintenance" means the services provided by Company or its representative under Company's Maintenance Policy in effect at the time such services are ordered. (ii) "Maintenance Fee" means the annual fee charged Buyer by Company for Maintenance. (iii) "Maintenance Period" means a period during which Company makes Maintenance available (which is ordinarily a one-year, renewable period), except as otherwise specified by Company. (iv) "Maintenance Policy" means Company's Maintenance Policy regarding the applicable Equipment (which may differ by type of product and service level), initially as in effect on the date of this Quote and as may be modified from time to time thereafter as set forth herein.

(b) Company's standard level Maintenance services applicable to the Equipment as noted in the Quotation specifications, if any, will be provided to Buyer at no additional charge during the Warranty Period, if any. For as long as Company provides

Maintenance for the Equipment, Company will make Maintenance available to Buyer for purchase; provided that Maintenance may not be available if Buyer has installed third party items on the Equipment other than those sold by Company or which are part of the Works with Company program. Company reserves the right to alter its standard Maintenance Policy from time to time, but will not reduce the level of Maintenance during any Maintenance Period for which a Maintenance Fee has been paid. Company makes available premium levels of Maintenance for many of its products and the price for such services can be quoted by Company on Buyer's request.

11. Liability. (a) WITH THE EXCEPTION OF A PARTY'S LIABILITY ARISING FROM A BREACH OF SECTION 15 ("CONFIDENTIALITY"), NEITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY. FOR (I) ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES; OR (II) LOSS OF REVENUE; (III) LOSS OF ACTUAL OR ANTICIPATED PROFITS; (IV) LOSS OF ANTICIPATED SAVINGS; (V) LOSS OF BUSINESS; (VI) LOSS OF OPPORTUNITY; (VII) LOSS OF GOODWILL; (VIII) LOSS OF REPUTATION; (XI) LOSS OR CORRUPTION OF DATA, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

(b) EACH PARTY'S LIABILITY HEREUNDER WILL BE LIMITED TO ACTUAL DIRECT DAMAGES, NOT TO EXCEED THE AMOUNT RECEIVED BY COMPANY HEREUNDER. THESE LIMITATIONS WILL APPLY FOR ALL CLAIMS, INCLUDING WITHOUT LIMITATION, CONTRACT WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. NOTHING HEREIN SHALL EXCLUDE OR LIMIT A PARTY'S LIABILITY FOR (I) FRAUD; (II) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; OR (III) ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED BY LAW.

12. Cancellation of Order. If Buyer cancels the order prior to shipment, then Buyer shall pay Company the following amount: (a) for standard Equipment: if written cancellation notice is given 61-180 days prior to scheduled shipment date, 30% of total purchase price; 0-60 days prior to scheduled shipment date, 50% of total purchase price; (b) for non-standard Equipment: if written cancellation notice is given 61-180 days prior to scheduled shipment date, 50% of total purchase price; 0-60 days prior to scheduled shipment date, 75% of total purchase price. Because of the difficulty of determining Company's actual damages upon cancellation by Buyer, Company and Buyer agree that the above amounts are reasonable estimates of actual damages and constitute liquidated damages and not penalties.

13. Software License. Software shall be subject to the standard Company licenses in existence as of the date of your purchase order for the listed product. You may also request copies of the licenses from Company.

14. Force Majeure. In addition to any excuse provided by applicable law, Company shall be excused, and free from liability for any failure to perform arising out of any event beyond Company's reasonable control, whether or not foreseeable by either party, including, but not limited to, labor disturbance, strike, war, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, or the inability of Company to obtain raw materials.

15. Confidentiality. Buyer understands that in the course of Company performing its obligations hereunder, Company may disclose confidential information ("Confidential Information"), to Buyer. Buyer may use Confidential Information only to assist Company in performing its obligations hereunder. Buyer agrees not to disclose Confidential Information, directly or indirectly, to any third party. Buyer may, however, disclose Confidential Information to its employees who have a need to know and are bound by confidentiality obligations no less restrictive than those set forth herein. Buyer will protect the Confidential Information using the same degree of care it uses to protect its own confidential information, but no less than a reasonable degree of care. Buyer's obligations of confidentiality hereunder shall not apply to information which: (a) is now, or hereafter becomes, through no act or failure to act on the part of Buyer, generally known or available; (b) is independently known by Buyer at the time of receiving such information; (c) is hereafter furnished to Buyer by a third party without a breach of any obligation to Company; (d) is independently developed by Buyer without using Company's Confidential Information or breaching this Agreement; or (e) is required by law to be disclosed in response to a valid order by a court or other governmental body, provided Buyer gives Company prompt written notice of such requirement prior to disclosure so that Company may attempt to obtain an order protecting such information from public disclosure. Buyer's obligation under this Section shall survive the termination or expiration of this Agreement.

16. Miscellaneous.

(a) Buyer may not assign or transfer this Agreement in whole or in part, by operation of law or otherwise, without the written consent of Company.

(b) If any term or provision of this Agreement or its application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

(c) All notices required to be sent hereunder shall be in writing and a notice shall be deemed to have been given upon (i) the date sent by confirmed facsimile, (ii) on the date it was delivered by recognized express courier or by hand delivery, or (iii) if by certified mail return receipt requested, on the date received.

(d) No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed directly by the party making the waiver.

17. **Export Controls.** Buyer will not export or re-export, either directly or indirectly, any Equipment or system incorporating such Equipment without first obtaining any required license or other approval from the appropriate host government, other applicable authorities, including but not limited to the U.S. Department of Commerce (or any other agency or department of the U.S. Government with appropriate authority), the Dutch Ministry of Foreign Affairs (Ministerie van Buitenlandse Zaken) and Czech Ministry of Industry and Trade (MPO); and/or from Company when applicable. If the delivery of products, services and/or documentation becomes (1) subject to export license, or (2) restricted or prohibited due to (changed) regulations, Company may suspend its obligations and/or terminate the relevant order in all cases without incurring any liability towards the Buyer.

18. **Reference.** With prior approval of Buyer, Company may identify Buyer as a user of Company's products or services in: (i) communications with other customers, potential customers, industry analysts, financial analysts and the like; and (ii) in press releases, sales materials, sales brochures, advertising, on the Company website and in other similar ways.

Governing Law. This Agreement shall be governed by the laws of the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or sales made pursuant hereto.

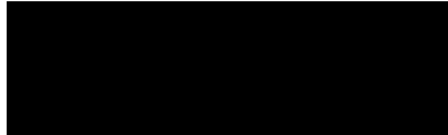


Service Terms and Conditions

NO service terms and conditions could be found , please add manually to the proposal in this section, and send a email to the crm support team, with quoteid

Quotation Acceptance

**Thermo Fisher Scientific
Account Manager**
Phone
Email



To accept this Quotation, please sign below, and fax this page along with your purchase order to your Account Manager listed above. The terms and conditions in this Quotation supersede and replace the terms in any previously sent Quotation and in any of your purchase orders relating to this order, and will exclusively control and govern the rights and obligations of Thermo Fisher Scientific and your entity with respect to this order (any additional or different terms contained in your purchase order will not be binding upon Thermo Fisher Scientific and are expressly deemed rejected). Thermo Fisher Scientific will send you an order acknowledgement upon Thermo Fisher Scientific receipt and acceptance of this Quotation Acceptance Form.

Agreed and accepted:

