





KUPNÍ SMLOUVA č. 203/OVZ/PJ/2025

1. Kupující: Univerzita Palackého v Olomouci

veřejná vysoká škola zřízená zákonem č. 111/1998 Sb., o vysokých školách a o změně a doplnění dalších zákonů (zákon o vysokých školách), ve znění pozdějších předpisů

Se sídlem: Křížkovského 511/8, 779 00 Olomouc

IČO: 61989592 DIČ: CZ61989592

Rektor: doc. JUDr. Michael Kohajda, Ph.D.

Osoba oprávněná jednat ve

věcech technických: Bankovní spojení:

Číslo účtu:

(dále jen "Kupující") na straně jedné

а

2. Prodávající: FEI Europe B.V.

Se sídlem: Achtseweg Noord 5, Eindhoven, 5651 GG, Netherlands

IČO: RSIN: 805698656 / CCI: 17097158

DIČ: CZ681073248

Statutární orgán: Nizozemská obchodní komora pod číslem zápisu

55197647

Bankovní spojení:

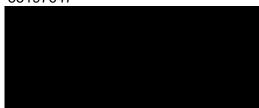
Číslo účtu:

Osoba oprávněná jednat ve věcech technických:

tel.

e-mail:

(dále jen "Prodávající") na straně druhé



uzavírají níže uvedeného dne, měsíce a roku podle ust. § 2079 a násl. zákona č. 89/2012 Sb., občanského zákoníku, ve znění pozdějších předpisů (dále jen "občanský zákoník"), tuto kupní smlouvu (dále jen "Smlouva") v rámci "Upgrade a modernizace VVI Nanomateriály a nanotechnologie pro ochranu životního prostředí a udržitelnou budoucnost (Pro-NanoEnviCZ III)", reg. č. CZ.02.01.01/00/23_015/0008171, v rámci Operačního programu Jan Amos Komenský.

Kupující s Prodávajícím uzavírají tuto Smlouvu v důsledku skutečnosti, že Prodávající byl Kupujícím vybrán v otevřeném zadávacím řízení dle zákona č. 134/2016 Sb., o zadávání veřejných zakázek, v účinném znění, s názvem "CATRIN/UPOL – Modernizace transmisního elektronového mikroskopu s vysokým rozlišením (HRTEM)" jako dodavatel této veřejné zakázky.

I. Předmět plnění

- 1. Předmětem této Smlouvy je upgrade software stávajícího vysokorozlišovacího elektronového mikroskopu (HRTEM) Titan G2, výrobní číslo D3321 (rok výroby 2013) (dále jen "Zboží") v druhu, množství, jakosti a provedení podle specifikace, která tvoří nedílnou součást této Smlouvy jako její příloha č. 1. Prodávající není oprávněn odevzdat Kupujícímu větší množství Zboží ve smyslu § 2093 občanského zákoníku. Smluvní strany si ujednaly, že § 2099 odst. 2 občanského zákoníku se nepoužije.
- 2. Prodávající se zavazuje odevzdat za touto Smlouvou sjednaných podmínek Kupujícímu Zboží specifikované v příloze č. 1 této Smlouvy a umožnit mu nabýt vlastnické právo k tomuto Zboží, včetně provedení jeho instalace a konfigurace a provést zaškolení uživatelů Kupujícího kvalifikovaným pracovníkem a poskytovat záruční servis a technickou podporu Zboží, za podmínek stanovených dále touto Smlouvou.
- 3. Kupující se zavazuje Zboží převzít a zaplatit za něj sjednanou kupní cenu způsobem a v termínu sjednanými touto Smlouvou.
- 4. Součástí dodání předmětu Smlouvy je i doprava a dodání zákonných dokladů ke Zboží.
- 5. Prodávající ve smyslu § 2103 občanského zákoníku ujišťuje, že Zboží je bez vad.
- 6. Zařízení musí být plně funkční, nové, nerepasované, bez dalších dodatečných nákladů ze strany Kupujícího.

II. Čas a místo dodání

- 1. Prodávající se zavazuje dodat a instalovat Zboží v místě dodání, včetně dodání všech zákonných dokladů ke Zboží, provedení všech zkoušek ověřujících splnění technických parametrů daných touto Smlouvou, provedení konfigurace a zaškolení uživatelů Kupujícího kvalifikovaným pracovníkem v rozsahu dle čl. V. odst. 2 této Smlouvy nejpozději do 180 kalendářních dnů od nabytí účinnosti této Smlouvy.
- 2. Místo dodání: Univerzita Palackého v Olomouci, Vysokoškolský ústav CATRIN, Šlechtitelů 27, 779 00 Olomouc, Česká republika. Osoba oprávněná k převzetí zboží za kupujícího: nebo jí pověřená osoba.
- 3. Smluvní strany si ujednaly, že ustanovení § 2126 a § 2127 občanského zákoníku o svépomocném prodeji se v případě prodlení Kupujícího s převzetím Zboží nepoužije.

III. Kupní cena

1. Celková kupní cena Zboží činí 2 420 000,00 Kč bez DPH. Prodávající je plátce DPH.

- 2. V kupní ceně jsou zahrnuty veškeré náklady spojené s dodáním Zboží a zisk Prodávajícího spojené s dodáním Zboží (zejména doprava Zboží na místo dodání, clo, pojištění, instalace Zboží, dodání všech zákonných dokladů ke Zboží, provedení konfigurace a zaškolení uživatelů Kupujícího kvalifikovaným pracovníkem, kompletní zajištění záručního servisu a technické podpory Zboží).
- 3. Kupní cena je sjednána jako cena pevná, nejvýše přípustná a maximální, zahrnuje veškeré náklady spojené s dodáním Zboží. Změna kupní ceny je možná pouze a jen za předpokladu, že dojde po uzavření této Smlouvy ke změnám sazeb daně z přidané hodnoty.
- 4. Prodávající odpovídá za to, že sazba daně z přidané hodnoty v okamžiku fakturace je stanovena v souladu s účinnými právními předpisy.

IV. Platební podmínky

- 1. Platba za dodávku Zboží proběhne na základě řádně vystaveného daňového dokladu (faktury), obsahujícího všechny náležitosti, ve lhůtě splatnosti do 30 kalendářních dnů ode dne jejího prokazatelného doručení Kupujícímu. Elektronické faktury budou zasílány na e-mail osoby oprávněné jednat za kupujícího ve věcech technických dle záhlaví této smlouvy nebo na e-mail Faktura bude vystavena Prodávajícím nejdříve po dodání Zboží, jeho řádné a úplné instalaci, dodání zákonných dokladů, provedení všech zkoušek ověřujících splnění technických parametrů daných touto Smlouvou, a provedení úvodního základního školení obsluhy v rozsahu dle čl. V. odst. 2 písm. a) této Smlouvy, což bude potvrzeno písemným datovaným protokolem o dodání a instalaci Zboží. Dokladem o řádném splnění závazků uvedených v předchozí větě Prodávajícím je písemný datovaný předávací protokol opatřený podpisy oprávněných osob obou smluvních stran jednat ve věcech technických.
- 2. Prodávajícím vystavená faktura musí obsahovat všechny náležitosti daňového dokladu v souladu se zákonem č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů a náležitosti obchodní listiny dle § 435 občanského zákoníku a současně identifikaci Smlouvy, na jejímž základě bylo plněno. Fakturu opatří Prodávající podpisem osoby oprávněné ji vystavit. Na vystavené faktuře bude vyznačeno číslo této Smlouvy a identifikace příslušného projektu dle záhlaví Smlouvy.
- 3. Nebude-li faktura vystavená Prodávajícím obsahovat některou povinnou náležitost nebo Prodávající chybně vyúčtuje cenu nebo DPH, je Kupující oprávněn před uplynutím lhůty splatnosti vrátit fakturu Prodávajícími k provedení opravy s vyznačením důvodu vrácení. Prodávající provede opravu vystavením nové faktury. Dnem odeslání vadné faktury Prodávajícímu přestává běžet původní lhůta splatnosti a nová lhůta splatnosti běží znovu ode dne doručení nové faktury Kupujícím.
- 4. Smluvní strany se dohodly na tom, že závazek zaplatit kupní cenu je splněn dnem odepsání příslušné částky z účtu Kupujícího ve prospěch účtu Prodávajícího uvedeného v záhlaví této Smlouvy.
- 5. Prodávající zajistí řádné a včasné plnění finančních závazků svým poddodavatelům, kdy za řádné a včasné plnění se považuje plné uhrazení poddodavatelem vystavených faktur za plnění poskytnutá Prodávajícímu k provedení závazků vyplývajících ze Smlouvy, a to vždy nejpozději do 15 kalendářních dnů od obdržení platby ze strany Kupujícího za konkrétní plnění (pokud již splatnost poddodavatelem vystavené faktury nenastala dříve). Prodávající se zavazuje přenést totožnou povinnost do dalších úrovní dodavatelského řetězce a zavázat své

poddodavatele k plnění a šíření této povinnosti též do nižších úrovní dodavatelského řetězce. Kupující je oprávněn požadovat předložení dokladů o provedených platbách poddodavatelům a smlouvy uzavřené mezi Prodávajícím a poddodavateli. Nesplnění povinností Prodávajícího dle tohoto ujednání Smlouvy se považuje za podstatné porušení Smlouvy s možností odstoupení Kupujícím od této Smlouvy. Odstoupení od této Smlouvy je v takovém případě účinné doručením písemného oznámení o odstoupení od Smlouvy druhé smluvní straně.

V. Instalace Zboží a zaškolení obsluhy

- 1. V rámci instalace zboží v místě dodání, je prodávající povinen prokázat zejména, nikoliv však výlučně, plnou funkčnost a splnění všech parametrů zboží v souladu s nabídkou prodávajícího, která tvoří nedílnou součást této smlouvy (příloha č. 1 této smlouvy).
- 2. Prodávající se zavazuje provést školení obsluhy zboží v rozsahu:
- a) Úvodní školení obsluhy dodávaného zboží v rozsahu min. 1 x 4 hodiny pro min. 2 osoby ze strany Kupujícího, které je podmínkou pro řádné předání a převzetí zboží. Odborně kvalifikovaní servisní technici, popř. aplikační specialisté provedou úvodní školení obsluhy, které bude zahrnovat:
- ovládání upgradovaného uživatelského rozhraní softwaru Titan;
- ovládání upgradovaného softwaru TIA;
- ovládání upgradovaného softwaru Digital Micrograph;
- používání Precession Diffraction.
- b) Rozšířené školení obsluhy zboží, které bude realizováno na základě výzvy dle potřeb kupujícího nejpozději do 12 kalendářních měsíců ode dne protokolárního převzetí zboží kupujícím. Školení bude probíhat v rozsahu 8 hodin pro min. 2 osoby ze strany Kupujícího. Rozšířené školení bude navazovat na úvodní školení a bude zaměřeno na ovládání technik pomocí nového softwaru.
- 3. Veškerá školení budou probíhat přes vzdálené připojení, pokud nebude dohodnuto písemně jinak osobami oprávněnými jednat ve věcech technických za smluvní strany. Veškeré náklady spojené s výše uvedenými školeními hradí Prodávající.

VI. Odpovědnost Prodávajícího za vady a záruka za jakost

- 1. Prodávající poskytuje na zboží záruku za jakost podle § 2113 a násl. občanského zákoníku v délce min. 12 měsíců ode dne podpisu předávacího protokolu dle čl. IV. odst. 1 této smlouvy.
- 2. Prodávající garantuje rychlost servisního zásahu, tj. dojezd do místa instalace zboží, detekce vady a projednání nutných servisních úkonů s osobou oprávněnou ve věcech technických za kupujícího, v záruční době nejpozději do 10 pracovních dnů ode dne nahlášení závady kupujícím, a to návštěvou servisního technika. Jednotlivé vady v záruční době musí být odstraněny nejpozději do 15 pracovních dnů od ode dne zahájení odstraňování vad, přičemž dnem zahájení odstraňování vad je den servisního zásahu, nedohodnou-li se osoby oprávněné ve věcech technických za smluvní strany písemně jinak. Prodávající je povinen odstraňovat jednotlivé vady v místě plnění, není-li to prokazatelně technicky možné, vadnou část zboží prodávající protokolárně převezme do opravy po písemném odsouhlasení navrženého postupu osobou oprávněnou ve věcech technických za kupujícího. Smluvní strany

si ujednaly, že § 2110 občanského zákoníku se nepoužije; kupující je tedy oprávněn pro vady odstoupit od smlouvy nebo požadovat dodání nového zboží bez ohledu na skutečnost, zda může zboží vrátit, popř. vrátit je ve stavu, v jakém je obdržel.

3. Prodávající se po celou dobu záruky zavazuje k provádění bezplatného plného servisu odevzdaného zboží. Náklady na provádění záručního plného servisu dodaného zboží tvoří součást kupní ceny dle této smlouvy.

VII. Licenční ujednání

- 1. Veškeré licence budou dodány spolu se Zbožím dle této Smlouvy. Instalace software a cena licencí je zahrnuta v celkové kupní ceně. Prodávající je povinen zajistit, aby na Kupujícího v rámci poskytnutí licence přešla veškerá nezbytná oprávnění k užívání dodaného software Prodávajícího i třetích osob na dobu neurčitou, aby mohl být naplněn účel této Smlouvy. Prodávající prohlašuje, že je oprávněn poskytnout Kupujícímu licence k dodanému software podle této Smlouvy a že jak poskytnutím licence podle této Smlouvy, tak výkonem licenčních práv Kupujícím v souladu s touto Smlouvou nebudou porušena žádná práva, zejména pak autorská práva třetí osoby. V případě uplatnění práv k duševnímu vlastnictví třetí osobou je Prodávající povinen ihned Kupujícího o takovém nároku nebo řízení informovat.
- 2. Ukončením této Smlouvy z jakéhokoli důvodu, kterýmkoli způsobem a kteroukoli ze smluvních stran, vyjma odstoupení od Smlouvy s účinností od počátku, nebude dotčena žádná Kupujícímu poskytnutá licence, která zůstává i nadále Kupujícímu zachována v plném rozsahu.
- 3. V případě, že Prodávající poruší některé z výše uvedených licenčních ujednání či vyjde najevo, že prohlášení Prodávajícího jsou nepravdivá, jedná se o podstatné porušení povinností dle této Smlouvy. Prodávající je na základě výzvy Kupujícího povinen, bez dalších nákladů účtovaných Kupujícímu, podle druhu porušení
 - napravit vzniklý stav, který je v rozporu s těmito licenčními ujednáními nebo s právními předpisy;
 - zajistit licence v potřebném rozsahu pro naplnění účelu této Smlouvy:
 - zajistit jinou nápravu tak, aby byl zajištěn účel této Smlouvy.

VIII. Utvrzení závazku

- 1. Smluvní strany si pro případ porušení smluvené povinnosti ujednávají smluvní pokuty v podobě, jak je upravují následující odstavce Smlouvy. Ani jedna ze smluvních stran ujednané smluvní pokuty nepovažuje za nepřiměřené s ohledem na hodnotu jednotlivých utvrzovaných smluvních povinností.
- 2. Prodávající se zavazuje uhradit Kupujícímu smluvní pokutu ve výši 0,2 % z celkové kupní ceny bez DPH za každý i započatý den prodlení se smluvně stanoveným termínem dodání ve smyslu čl. II. odst. 1 této Smlouvy.
- 3. Prodávající se zavazuje uhradit Kupujícímu smluvní pokutu ve výši 0,1 % z celkové kupní ceny bez DPH za každý i započatý den po marném uplynutí lhůty k nastoupení k opravě nebo lhůty k opravě Zboží v době záruky v souladu s čl. VI. této Smlouvy, a to za každý jednotlivý případ.

- 4. Prodávající se zavazuje uhradit kupujícímu smluvní pokutu ve výši 3.000,00 Kč za každý započatý den prodlení se stanoveným termínem pro rozšířené školení ve smyslu čl. V. odst. 2 písm. b) této smlouvy.
- 5. Smluvní strany se dohodly, že § 2050 občanského zákoníku se nepoužije, tj. že se smluvní pokuty se nezapočítávají na náhradu případně vzniklé škody, kterou lze vymáhat samostatně v plné výši vedle smluvní pokuty.
- 6. Splatnost vyúčtovaných smluvních pokut je 30 kalendářních dnů od data doručení písemného vyúčtování příslušné smluvní straně a za den zaplacení bude považován den odepsání částky smluvní pokuty z účtu příslušné smluvní strany ve prospěch účtu, který bude uveden ve vyúčtování smluvní pokuty.
- 7. Smluvní pokuty je Kupující oprávněn započíst ve smyslu ust. § 1982 a násl. občanského zákoníku proti i nesplatné pohledávce Prodávajícího na úhradu kupní ceny dle této Smlouvy.

IX. Závěrečná ujednání

- 1. Prodávající je osobou povinnou spolupůsobit při výkonu finanční kontroly ve smyslu ustanovení § 2 písm. e) zákona č. 320/2001 Sb., o finanční kontrole ve veřejné správě, ve znění pozdějších předpisů. Tyto závazky Prodávajícího se vztahují i na jeho smluvní partnery, podílející se na plnění této Smlouvy.
- 2. Prodávající se zavazuje zajistit v rámci plnění této Smlouvy legální zaměstnávání osob a zajistí pracovníkům podílejícím se na plnění Smlouvy férové a důstojné pracovní podmínky. Férovými a důstojnými pracovními podmínkami se rozumí takové pracovní podmínky, které splňují alespoň minimální standardy stanovené pracovněprávními a mzdovými předpisy. Prodávající je povinen zajistit splnění požadavků tohoto ustanovení Smlouvy i u svých poddodavatelů. Nesplnění povinností Prodávajícího dle tohoto ujednání Smlouvy se považuje za podstatné porušení Smlouvy s možností odstoupení Kupujícím od této Smlouvy. Odstoupení od této Smlouvy je v takovém případě účinné doručením písemného oznámení o odstoupení od Smlouvy druhé smluvní straně.
- 3. Kupující si vyhrazuje právo zveřejnit obsah uzavřené Smlouvy.
- 4. Tato Smlouva se v otázkách v ní výslovně neupravených řídí občanským zákoníkem a právním řádem České republiky.
- 5. Ujednání této Smlouvy jsou vzájemně oddělitelná. Pokud jakákoli část závazku podle této Smlouvy je nebo se stane neplatnou či nevymahatelnou, nebude to mít vliv na platnost a vymahatelnost ostatních závazků podle této Smlouvy a smluvní strany se zavazují nahradit takovouto neplatnou nebo nevymahatelnou část závazku novou, platnou a vymahatelnou částí závazku, jejíž předmět bude nejlépe odpovídat předmětu původního závazku. Pokud by Smlouva neobsahovala nějaké ujednání, jehož stanovení by bylo jinak pro vymezení práv a povinností odůvodněné, smluvní strany učiní vše pro to, aby takové ujednání bylo do Smlouvy doplněno.
- 6. Změnit nebo doplnit tuto Smlouvu mohou smluvní strany pouze formou písemných dodatků, které budou vzestupně číslovány, výslovně prohlášeny za dodatek této Smlouvy a podepsány oprávněnými osobami smluvních stran.

- 7. Kupující je oprávněn v souladu s ust. § 2001 občanského zákoníku odstoupit od této Smlouvy v případě:
 - prodlení Prodávajícího s dodáním Zboží delším než 10 kalendářních dnů,
 - nedodržení technické specifikace Zboží uvedené v nabídce Prodávajícího nebo v případě, že Prodávající v nabídce podané v zadávacím řízení, jenž předcházelo uzavření této Smlouvy, uvedl informace nebo předložil doklady, které neodpovídají skutečnosti a měly nebo mohly mít vliv na výběr Prodávajícího ke splnění veřejné zakázky,
- prodlení Prodávajícího se zahájením odstraňování vad o více než 10 kalendářních dnů. Odstoupení od Smlouvy musí být učiněno písemně a nabývá účinnosti dnem doručení písemného oznámení druhé smluvní straně.
- 8. Prodávající není oprávněn postoupit svá práva a povinnosti plynoucí z této smlouvy třetí osobě s výjimkou případů dle § 222 odst. 10 zákona č. 134/2016 Sb., o zadávání veřejných zakázek, v účinném znění.
- 9. Ohledně doručování zásilek týkajících se plnění této Smlouvy odesílaných Prodávajícím s využitím provozovatele poštovních služeb se § 573 občanského zákoníku nepoužije.
- 10. Prodávající bere na vědomí, že tato Smlouva včetně všech jejích příloh podléhá povinnému uveřejnění podle zákona č. 340/2015 Sb., o zvláštních podmínkách účinnosti některých smluv, uveřejňování těchto smluv a o registru smluv, v účinném znění.
- 11. Tato Smlouva nabývá platnosti dnem jejího podpisu posledním účastníkem této Smlouvy a účinnosti dnem uveřejnění této Smlouvy Kupujícím v registru smluv dle zákona č. 340/2015 Sb., o zvláštních podmínkách účinnosti některých smluv, uveřejňování těchto smluv a o registru smluv, v účinném znění.
- 12. Tato Smlouva je vyhotovena v elektronické podobě.
- 13. Prodávající bere na vědomí, že Kupující je povinen dodržet požadavky na publicitu v rámci Národního plánu obnovy, a to ve všech relevantních dokumentech, týkajících se daného předmětu Smlouvy, ve všech dodatcích ke Smlouvě a dalších dokumentech vztahujících se k dané veřejné zakázce a v této souvislosti se zavazuje poskytnout Kupujícímu případně veškerou součinnost, kterou lze po něm spravedlivě požadovat.
- 14. Prodávající se zavazuje, že umožní všem subjektům oprávněným k výkonu kontroly projektu, z jehož prostředků je plnění dle této Smlouvy hrazeno, provést kontrolu dokladů souvisejících s tímto plněním, a to po dobu danou právními předpisy ČR k jejich archivaci (zákon č. 563/1991 Sb., o účetnictví, v platném znění a zákon č. 235/2004 Sb., o dani z přidané hodnoty, v platném znění). Všechny výstupy smluvního vztahu, u kterých tak specifikuje Kupující, musí obsahovat prvky publicity, a to v rozsahu dle záhlaví této Smlouvy, nepožadujeli Kupující jinak. Kupující je povinen zajistit a případně poskytnout materiály obsahující správnou podobu jednotlivých log.
- 15. Prodávající je povinen informovat Kupujícího v případě, že zjistí, že se na něho či jeho poddodavatele či na plnění, které je předmětem této Smlouvy, vztahují mezinárodní sankce.
- 16. Smluvní strany sjednávají, že v případě nesrovnalostí či kontradikcí mají ustanovení této kmenové části smlouvy přednost před ustanoveními přílohy smlouvy.
- 17. Nedílnou součást této Smlouvy tvoří přílohy:

Příloha	č.	1 _	Nahídka	Prodávajícího z	ze dne	11 6 2025
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V Olomouci 1.9.2025	V Eindhovenu 1.9.2025
Za Kupujícího:	Za Prodávajícího:
doc. JUDr. Michael Kohajda, Ph.D. rektor Univerzity Palackého v Olomouci	



Accessory Quotation for

Palacky University Olomouc

Attn.

Quote Date: June 11, 2025

Quote Number: QUO-168368-V8D3 R2

Expires: July 30, 2025

Prepared By

Thermo Fisher Scientific a Total Solution Provider

ThermoFisher 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 ThermoFisher can offer. Below is an overview of the most important services that make us a true total solution provider:

Service

ThermoFisher 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

ThermoFisher 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 ThermoFisher 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 ThermoFisher 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

ThermoFisher 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
1	1001394	Precession Diffraction		1	
2	1403155	Remote Applications Training - EMEA (1 day) - Expires 1 year after acceptance		1	
3	1111017	Titan W7 upgr p	pack#4	1	
4	000 0000 000	gatan 64 bit GMS Upgrade		1	
5	4022 400 01001	Installation Charges for Upgrades Europe		1	
6	4022 400 42751	DDP Eindhoven / Named place of destination; receiving dock in Europe Zone 1 (Upgrade T-15)		1	
			List Price Total		Kč 2,750,460

Pricing Summary (in CZK)	
List Price	Kč 2,750,460
Total Discount	- Kč 330,460
Sub-total including discount	Kč 2,420,000
Taxes	Not Included
VAT / Estimated Duty	Not Included
Grand Total	Kč 2,420,000

Key Term Summary	
Billing Terms	0% / 0% / 100%
Payment Terms	N30
Payment Method	
INCOTERMS 2020	DDP Šlechtitelů 241/27, 779 00 Olomouc
Indicative Delivery Period	
This proposal is valid until	July 30, 2025

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



Solution Description

1001394 Precession Diffraction

Precession electron diffraction is a technique which allows for collection of high-quality electron diffraction patterns in TEM mode in a Transmission Electron Microscope. During the experiment, the beam is tilted dynamically along the surface of an inverted cone. This changes the incidence angle of the beam relative to the crystal. The "average" diffraction pattern obtained in this way is much more kinematic than a diffraction pattern recorded on a zone axis with a static beam. Under normal circumstances the dynamic tilting of the beam (dynamic conical dark field or hollow-cone illumination) would result in a moving diffraction pattern following a circle in the diffraction plane, with each circle from a single diffraction spot. In precession a counteracting tilt is applied below the specimen (descan) which brings the circles back into spots again. This functionality allows for the acquisition of a static diffraction pattern, while tilting the beam circular on the specimen.

The Precession Diffraction Package for Titan and Themis enables the acquisition of such diffraction patterns. Within the package both tilt angle and spin time can be adjusted. The minimum spin time is 0.1 sec. and the maximum useable tilt angle is 3°.

By using the precession acquisition the intensities in the diffraction pattern of the crystal are always symmetrical to the central beam. This allows for easier and more rapid identification of crystal structures without orienting the crystal exactly in the zone axis. By tilting the beam using precession diffraction in the zone axis of a crystal more HOLZ reflections are excited, which are providing additional information about the 3-dimensional Bravais lattice of unknown crystal structures.

Precession diffraction acquisition allows minimizing the dynamic scattering in thin crystals due to the fact that all diffraction reflections are acquired with variation of the excitation errors. With the right choice of the tilt angle kinematic conditions can be achieved. In kinematic scattering the diffraction intensities are a simple reflection of the crystal structure and the intensities can be used to determine the crystal structure (very thin specimens and typically not along a major zone axis). When the scattering becomes dynamic the intensities change and the structure can no longer be derived. For structure determination from diffraction patterns it is therefore essential to work under kinematic-scattering conditions. In practice this means using thin crystals and precession.

The Precession Diffraction Package is available for all Titan and Themis on which a STEM unit is present.

1403155 Remote Applications Training - EMEA (1 day)

Remote Applications Training provides a fully customizable, remote training solution for Thermo Scientific SEM, DualBeam, microCT, and TEM systems. Training is delivered on the customer microscope, which is accessed remotely by the NanoPort specialist via a secure connection, and by using the most advanced technology available. Training sessions are delivered in blocks of one (1) day and are tailored to the individual needs and experience level of the customer.

Remote Applications Training facilitates the online participation of multiple attendees, with no limit on the number of those joining the training.

This Remote Applications Training (1403155) must be scheduled within one (1) year of microscope installation completion (or within one (1) year of purchase, in case the training is not ordered as part of a microscope purchase).



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1111017 Titan W7 upgr pack#4

This special offering is for upgrading the current Titan microscope operating system from Windows XP to Windows 7. Also included is an upgrade to the latest Titan software version R2.3.

Please note that when upgrading to Windows 7 some functionality requires an upgrade (not included in this line item) and some will not be supported:

Functionality that requires an upgrade:

- * Gatan optional packages that run on the microscope PC
- * TEM Tomo Data Acquisition Software
- * STEM Tomo Data Acquisition Software

Not supported SW functionality:

- * FP 5454/00 Smart Tilt
- * FP 5455/00 Compucentricity
- * FP 5457/00 Grid Scanning
- * FP 5453/00 k-Space Control
- * FP 5480/01 Dual-Axis Tomography Data Acquisition Software

Not supported HW functionality:

- * FP 6230/20 Plate Camera System
- * FEI Eagle 2k/4k camera
- * Gatan camera generation US1000/US4000 and earlier (e.g. models 794, 795)
- * Gatan energy filter generation Tridiem and earlier (e.g. GIF2001 / GIF2002)
- * Embedded EDS detector not supported
- * Oxford 7773,
- * Oxford X-MAX 80,
- * Edax Si(Li) type TEM Detecting Unit with Super Ultra Thin Window
- * Special FEI BF/DF combination with Gatan digiscan where dark field detector is connected

If any of these not supported HW/SW options are installed on the microscope, this functionality will be lost when upgrading to Windows 7.

Note: This Windows 7 upgrade is an upgrade to a newer operating system and does not affect system performance, specifications or alignments.

000 0000 000 gatan 64 bit GMS Upgrade

gatan 64 bit GMS Upgrade

4022 400 01001 Installation Charges for Upgrades Europe (per hour)

Standard Installation charges for upgrades (price per hour) - See Terms and Conditions.

4022 400 42751 DDP Eindhoven / Named place of destination; receiving dock in Europe Zone 1 (Upgrade T-15)

Delivered Duty Paid to named place of destination in Europe Zone 1 Incoterms 2020. 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.



Terms & Conditions

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

- 1. <u>GENERAL</u>. FEI Company or its affiliate listed on the face hereof ("Company") hereby offers for sale to the buyer named on the face hereof ("Customer") the products listed on the face hereof (the "Equipment") on the express conditions that (i) Customer agrees to accept and be bound by the terms and conditions set forth herein, and (ii) Company has in its good faith determination deemed Customer in satisfactory financial condition. Unless otherwise agreed, Company's quotation ("Quote") is valid for 30 days from the date of issuance. Any provisions contained in any document issued by Customer are expressly rejected and if these Terms and Conditions of Sale (this "Agreement") differ from the terms of Customer's offer, this document shall be construed as a counteroffer and shall not be effective as an acceptance of Customer's document. Customer's issuance of a purchase order in response to Quote or receipt of Equipment or Company's commencement of the services provided hereunder will constitute Customer's acceptance of this Agreement. All orders are subject to formal written acceptance by an authorized representative of Company, and in no event shall commencement of manufacture of the Equipment be deemed acceptance by Company of any order. This is the complete and exclusive statement of the contract between Company and Customer with respect to Customer's purchase of the Equipment. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Company and Customer. Company's failure to object to terms contained in any subsequent communication from Customer will not be a waiver or modification of the terms set forth herein.
- 2. <u>PRICE</u>. All prices published by Company or Company's representatives may be changed at any time without notice, provided that Company shall, in respect of an order accepted by Company, honor prices for the specific Equipment made the subject of such order. Prices for the Equipment do not include freight, shipping, or insurance unless specifically noted. All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of Company's original price quotation.
- 3. <u>TAXES AND OTHER CHARGES</u>. Prices quoted to Customer exclude all taxes, duties, levies, tariffs, fees or other similar charges imposed by any governmental authority on the Equipment (or any component thereof) or services supplied by Company or its affiliates. Customer is responsible, and Company may invoice Customer, for all such charges. If Customer claims any exemption to such charges, Customer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.
- 4. TERMS OF PAYMENT. Unless otherwise agreed in writing by Company, Company will issue invoices as follows:
 - (i) 0% of the purchase price invoiced upon receipt of order document from Customer;
 - (ii) 100% of the purchase price invoiced upon shipment or deemed shipment; and
 - (iii) 0% of the purchase price invoiced upon Acceptance (defined below) ("Acceptance Payment").

If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. Unless otherwise stated on the face hereof, Company will invoice service contracts sold pursuant to this Quote as part of the overall purchase price for the Equipment. 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. If Customer fails to pay any amounts when due, Customer shall pay Company interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or the highest rate permitted by law), together with all costs and expenses (including without limitation collection charges, reasonable attorneys' fees and disbursements and court costs) incurred by Company in collecting such overdue amounts or otherwise enforcing Company's rights hereunder. Company reserves the right to (i) require full or partial payment in advance, or other security that is satisfactory to Company, (ii) suspend performance, or (iii) terminate this Agreement, in each case at any time that Company believes in good faith that Customer's financial condition does not justify the original terms of payment specified or that Customer is in breach with respect to this Agreement or any other agreement with Company or any of its affiliates. In the event that Customer requires Company to utilize a third-party application or processing service for submission of invoices, any fees incurred by Company as a result of such mandatory use will be added to the invoice as a pass-through cost.

5. <u>DELIVERY; CANCELLATION OR CHANGES BY CUSTOMER</u>. The Equipment will be shipped to the destination specified by Customer in accordance with the Incoterm specified in the Quote. Company will have the right, at its election, to make partial shipments of the Equipment and to invoice each shipment separately. Company reserves the right to stop delivery of Equipment in transit and to withhold shipments in whole or in part if Customer fails to make any payment to Company when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Company 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 Company's reasonable control. In the event of a delay due to any cause beyond Company's reasonable control, Company reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Customer will not be entitled to refuse



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delivery or otherwise be relieved of any obligations as the result of such delay. Equipment as to which delivery is delayed due to any cause within Customer's control may be delivered to Customer and the Customer shall be responsible for appropriate storage at Customer's risk and expense or, if not possible, either (at Company's option) (i) placed in storage by Company at Customer's risk and expense and for Customer's account (at which point shipment is deemed to have occurred and title shall pass to Customer) or (ii) held by Company and Customer shall be required to pay delivery delay charges in the amount of 0.5% of total purchase price per day for each day Customer delays delivery up to a maximum of 20%. Orders in process may be canceled only with Company's written consent and upon payment of Company's cancellation charges calculated as follows: (a) for standard Equipment: if written cancellation notice is given 61-180 days prior to the original scheduled shipment date, 30% of total purchase price; 0-60 days prior to the original scheduled shipment date, 50% of total purchase price; (b) for non-standard Equipment: if written cancellation notice is given 61-180 days prior to the original scheduled shipment date, 50% of total purchase price; 0-60 days prior to the original scheduled shipment date, 75% of total purchase price. Because of the difficulty of determining Company's actual damages upon cancellation by Customer, Company and Customer agree that the above amounts, subject to adjustment if required under applicable law, are reasonable estimates of actual damages and constitute liquidated damages and not penalties. Orders in process may not be changed except with Company'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 Equipment returned without the prior written consent of Company.

- 6. TITLE AND RISK OF LOSS. Subject to Company's right to stop delivery of Equipment in transit, risk of loss of the Equipment will pass to Customer in accordance with the Incoterm applicable to the order and title to the Equipment shall pass at the same point as risk of loss; provided, however, that title to any software incorporated within or forming a part of the Equipment shall at all times remain with Company or the licensor(s) thereof, as the case may be. Customer grants to Company a security interest in the items sold hereunder to secure the payment when due by Customer of the purchase price and the performance by Customer of its other obligations hereunder. Customer authorizes Company to file any financing statement deemed necessary or desirable by Company to perfect its security interest in the items sold. Failure by Customer to pay the purchase price when due, or otherwise to perform under this Agreement, shall give Company the unlimited right, without liability, to take possession of the Equipment, with or without notice, and to have all of the remedies of a secured party under applicable law in addition to and not exclusive of other rights and remedies available to Company under applicable law. The security interest shall remain with Company, at Customer's risk, until the purchase price and all other amounts payable by Customer hereunder have been paid to Company. If the Quote includes any trade in items ("Trade in Goods"), unless otherwise agreed in writing by the parties, title to the Trade in Goods shall pass to Company upon delivery of the Equipment and risk of loss to the Trade in Goods shall pass to Company upon deinstallation by Company of the Trade in Goods. Trade in Goods shall be subject to the terms and conditions of Company's trade in agreement. Should Customer cancel its order, Company has no obligation to purchase the Trade in Goods or provide a cash payment, discount, or credit to Customer in the amount of the trade in value.
- 7. <u>SITE PREPARATION AND INSTALLATION</u>. If installation is included in the Quote, Company or its representative or subcontractor will install Equipment without charge, and at time of installation will provide basic system testing in accordance with the acceptance procedures set forth below. Company will provide Customer with the pre-installation site requirements for the Equipment, if any. Customer will furnish a safe and suitable place for installation of the Equipment in accordance with Company's standard procedures and any pre-installation guide. If Customer's site is not ready by the planned delivery date, or if the site does not meet Company's published requirements, Company is entitled to invoice Customer for the Acceptance Payment and any applicable storage, insurance and any additional accrued freight costs. If Customer causes the condition of the site to change such that the Equipment no longer meets the requirements, Company shall have no obligation to meet the specifications previously attained.
- 8. ACCEPTANCE. Equipment will be deemed accepted on the earlier of (i) completion by Company (or Company's representative) of Company's applicable published acceptance tests and such other acceptance test that is expressly set forth in the Quote or mutually agreed in writing by the parties, or (ii) the date that is sixty (60) days from delivery if acceptance is delayed through no fault of Company (in each case, "Acceptance"). 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 Customer, its employees, contractors, or agents prior to Acceptance will constitute Customer's acceptance of the Equipment. Upon successful completion of the acceptance tests, Customer shall execute and deliver to Company a written notice of acceptance. Customer shall not unreasonably withhold, condition, or delay acceptance of the Equipment.
- 9. <u>WARRANTY</u>. Company warrants that the Equipment will operate or perform substantially in conformance with Company's standard published specifications (if any) and be free from material 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 Quote, product documentation, published specifications or package inserts. If a period of time is not specified in the Quote, product documentation, published specifications or package inserts, the warranty period shall be: (i) for Equipment that constitutes a new system, one (1) year from the date of Acceptance or, if Acceptance is delayed due to any cause outside Company's control, fourteen (14) months from the date the Equipment was made available for shipment, or (ii) for Equipment that is a used system or an accessory or upgrade for an existing system, ninety (90) days from the date of installation (as applicable, the "Warranty Period"). Company agrees during the Warranty Period, to repair or replace, at Company's option, defective Equipment so as to cause the same to operate in substantial conformance with said published specifications; provided that Customer shall

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promptly notify Company's customer service department 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. Any Equipment repaired or replaced under this warranty is warranted only for the unexpired part of the original Warranty Period applicable to that Equipment. In the event of a return, Company will provide Customer with service data and/or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions. Equipment, including repair and replacement parts, may be new or refurbished, at the election of Company. All replaced parts shall become the property of Company unless otherwise agreed in writing by the parties, and Customer shall return all such parts to Company within ninety (90) days of the date of delivery of the repaired or replacement parts to Customer. Company reserves the right to invoice Customer for replaced parts if Customer fails to return them within such period. Shipment to Customer of repaired or replacement Equipment shall be made in accordance with the Delivery provisions of the Company's Terms and Conditions of Sale. Consumables will only be replaced under this warranty if they have failed prior to the end of their published ordinary useful life and are otherwise expressly excluded from this warranty. Notwithstanding the foregoing, Equipment supplied by Company that is obtained by Company from an original manufacturer or third party supplier is not warranted by Company, but Company agrees to assign to Customer any warranty rights in such product that Company 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 Company have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of: (a) wrongful acts, misuse, fault or negligence of or by, or on behalf of Customer or any third party, including operation outside Company's recommended specifications and operator error; (b) Customer's failure to comply with this Agreement; (c) use of the Equipment in a manner or environment for which they were not designed; (d) causes external to the Equipment such as, but not limited to, power failure, power surges or improper use of power supply, computer viruses and malicious code, facility failure; (e) improper storage and handling of the Equipment; (f) use of the Equipment in combination with consumables, equipment or software not supplied or approved by Company; (g) Company's compliance with designs, specifications or instructions supplied to Company by Customer; (h) Customer's failure to comply with Company's designs, specifications or instructions including site installation guidelines; (i) installation, repairs, modifications, updates, upgrades or maintenance of Equipment without Company's written approval; (j) contamination introduced by Customer or third parties or the use of materials not expressly approved for use with the Equipment by Company; (k) use of used parts, or parts or consumables modified or refurbished by parties other than Company, in each case, without the Company's prior written consent; or (I) accident (to the extent not caused by the negligent act or omission of Company, its agents or employees), disaster or event of force majeure. If Company determines that Equipment, replacement parts, and/or repair services for which Customer has made a warranty claim are not covered by the warranty hereunder, Customer shall pay Company for all time and costs of investigating and responding to such warranty claim at Company's then-prevailing time and materials rates.

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF CUSTOMER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, COMPANY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE EQUIPMENT, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NONINFRINGEMENT. NO WARRANTIES ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. COMPANY DOES NOT WARRANT THAT THE EQUIPMENT ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

10. Training/Applications Support/User Guide. Training and applications support credits, if any, specified in the Quote are valid for twelve (12) months from Acceptance of the Equipment. Costs of travel and related expenses for Customer's employees to and from the training location are Customer's responsibility. Training and application support shall be deemed performed by Company if Customer cancels, reschedules (without reasonable advance notice of not less than 30 days; provided that Customer may not request to reschedule more than once), or fails to attend. Intellectual property or developments arising out of applications support 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 Customer) in connection with the applications support services shall vest with Company. Customer shall execute all documents reasonably required by Company to evidence Company's ownership in such Intellectual Property. Customer is hereby granted free of charge a worldwide, irrevocable, nontransferable, perpetual license to such developed Intellectual Property for its internal use only 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, except as otherwise required by law, and may be provided in electronic form. Upon Customer's request, Company provides the user's guide in local languages or in a non-electronic format.

11. INDEMNIFICATION.

11.1 <u>By Company</u>. Company agrees to indemnify, defend and save Customer, 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) ("Indemnified Items") arising out of third party claims (x) for bodily injury to, or death of, persons or damage to tangible property to the extent caused by the negligence or willful misconduct of Company, its employees, agents or representatives or contractors in connection with the performance of services at Customer's premises under this Agreement and (y) that the Equipment infringes any valid United States patent, copyright or trade secret; provided,

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however, Company 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 Customer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of the Equipment in combination with equipment or software not supplied by Company where the Equipment would not itself be infringing, (iv) compliance with Customer's designs, specifications or instructions, (v) use of the Equipment in an application or environment for which it was not designed or (vi) modifications of the Equipment by anyone other than Company without Company's prior written approval. Customer shall provide Company prompt written notice of any third party claim covered by Company's indemnification obligations hereunder. Company shall have the right to assume exclusive control of the defense of such claim or, at the option of the Company, to settle the same. Customer agrees to cooperate reasonably with Company in connection with the performance by Company of its obligations in this Section.

Notwithstanding the above, Company's infringement related indemnification obligations shall be extinguished and relieved if Company, at its discretion and at its own expense (a) procures for Customer the right, at no additional expense to Customer, to continue using the Equipment; (b) replaces or modifies the Equipment so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Equipment; or (c) in the event (a) and (b) are not practical, refund to Customer the amortized amounts paid by Customer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES COMPANY'S ENTIRE LIABILITY TO CUSTOMER FOR, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN RESPECT OF, THE CLAIMS DESCRIBED HEREIN.

- 11.2 <u>By Customer.</u> Customer shall indemnify, defend with competent and experienced counsel and hold harmless Company, 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 Customer, its agents, employees, representatives or contractors; (ii) use of the Equipment in combination with equipment or software not supplied by Company where the Equipment itself would not be infringing; (iii) Company's compliance with designs, specifications or instructions supplied to Company by Customer; (iv) use of the Equipment in an application or environment for which it was not designed; or (v) modifications of the Equipment by anyone other than Company without Company's prior written approval.
- 12. <u>SOFTWARE</u>. With respect to any software incorporated in or forming a part of the Equipment hereunder, Company and Customer intend and agree that such software is 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 "Customer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Company or its licensor, as the case may be, retains all rights and interest in any software provided hereunder. Software is licensed in accordance with the end user license agreement applicable to the specific software product. Licenses for Company manufactured software can be found at https://www.thermofisher.com/us/en/home/electron-microscopy/services/software-licenses.html. Certain software provided by Company as part of the Equipment may be owned by one or more third parties and licensed to Company or may be stand-alone software products, which Customer hereby agrees are subject to a separate browse-wrap, shrink-wrap or click-thru end user license agreement (EULA). Accordingly, Company and Customer agree that such third parties retain ownership of and title to such software. The warranty and indemnification provisions set forth herein shall not apply to software owned by third parties and provided hereunder.

13. <u>LIMITATIONS OF LIABILITY</u>.

- 13.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, THE LIABILITY OF COMPANY UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF COMPANY FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 9 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THERETOFORE PAID BY CUSTOMER TO COMPANY WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000).
- 13.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL COMPANY OR ITS SUPPLIERS 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 COMPANY (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.
- 13.3 CUSTOMER ACKNOWLEDGES THAT THE PRICING OF THE EQUIPMENT AND THE OTHER TERMS AND CONDITIONS OF THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT COMPANY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF ITS LIABILITY.
- 14. <u>EXPORT RESTRICTIONS</u>. Customer acknowledges that the provision by Company of products (including components and spare parts), software, services (including warranty services), technology or intellectual property, including technical



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information supplied by Company or contained in documents (collectively "Items"), is subject to applicable export controls of the U.S. government and other jurisdictions, including but not limited to the European Union. These controls may require Company or Customer to first obtain a license (or similar requirement) from the relevant authority, or regulatory body. Company shall not be liable to Customer for any delay or failure to obtain the licenses or approvals that Company reasonably believes are necessary. Customer shall comply with all applicable export laws and regulations. Customer shall not, without first obtaining from the relevant authority or regulatory body any license required to do so lawfully, export or re-export any Item (either directly or indirectly), to: (i) any restricted or embargoed country or any person or organization whose privilege to participate in exports has been denied or restricted by the applicable authority; or (ii) any person or organization who is involved in improper development or use of nuclear weapons, or of chemical/biological weapons (CBW) or missiles, or in terrorist activities. Customer agrees not to use any supplied Item in restricted or prohibited activities such as nuclear explosives. unsafeguarded nuclear activities, chemical or biological weapons development, restricted rocket or missile systems, or restricted military purposes. Customer will, on request (i) promptly provide written information correctly identifying the end user and end use of any Items (including any information as it may relate to a subsequent transfer of such Items by Customer): and (ii) cooperate fully with Company in any official or unofficial audit or inspection arising in respect of the Items under applicable export or import control laws or regulations. Customer will ensure that the customers and end users to whom Customer resells or transfers the Items agree in writing to the provisions of this Section and Customer covenants to use its best efforts to enforce such provisions against customers and end users. Customer shall indemnify and hold Company harmless from, or in connection with, any violation of this Section by Customer or its employees, consultants, agents and/or representatives. In addition, failure of Customer to comply with this Section shall be a material breach of this Agreement and shall entitle Company to immediately terminate this Agreement. Company shall be entitled to terminate this Agreement without prior notice if such termination is necessary in order to comply with applicable export laws and regulations.

15. MISCELLANEOUS. (a) Customer may not delegate any duties nor assign any rights or claims hereunder without Company'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 laws of England and Wales, without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the courts located in England and Wales, in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise. (c) In the event of any legal proceeding between the Company and Customer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. Any judicial action or court proceeding brought by Customer or anyone acting on its behalf 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. No rights shall be conferred on any person who is not a party to this Agreement whether by virtue of the Contracts (Rights of Third Parties) Act (Chapter 53B) of Singapore or otherwise. For purposes of EU Directive 2011/7/EU in the event of non-payment, collection charges of €40 minimum may be applicable. (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) Company's failure to enforce, or Company'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 Equipment or in the documentation accompanying the Equipment, the Equipment 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, any type of consumption by or application to humans or animals, or for the performance of a test protocol or test method used to obtain test results for submission to the US Food and Drug Administration or analogous regulatory authority. (h) Customer agrees that all pricing, discounts, and technical information that Company provides to Customer are the confidential and proprietary information of Company. Customer agrees to (1) keep such information confidential and not disclose such information to any third party, (2) use such information solely for Customer's internal purposes and in connection with the Equipment supplied hereunder, and (3) protect such information using the same degree of care it uses to protect its own confidential information, but no less than a reasonable degree of care. Nothing herein shall restrict the use of information available to the general public. Customer's obligation under this Section 15(h) shall survive the termination or expiration of this Agreement. (i) 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, 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. (i) 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, pandemic, labor disturbance, strike, war, fire, accident, adverse weather, inability to secure transportation, lockdown, governmental act or regulation, or the inability of Company to obtain raw materials. (k) Company and Customer will each carry and maintain, at their own expense, insurance to cover their obligations under this Agreement, which at a minimum shall include (1) commercial general liability (public liability) insurance including contractual liability coverage covering bodily injury and property damage with limits of not less than the equivalent of USD 1,000,000 per occurrence and USD 2,000,000 in the aggregate; and (2) any other insurance required by law or regulation. Company's commercial general liability policy shall include Customer as an additional insured (to the extent such status is commercially available) only with respect to and to the extent of the insurable liabilities and obligations assumed by Company under this Agreement. (I) Company hereby rejects and disclaims any rights of Customer contained, or obligations imposed upon Company, in any document provided, referenced or otherwise submitted by Customer, in each case, that Company has not expressly included in these terms and conditions or a writing manually executed by Company (including, without limitation,

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any rights of Customer in respect of designs, specifications, source code or intellectual property, owned, created, developed or licensed, by Company; any confidentiality obligations imposed on Company; any rights to items or services not specifically identified in the Quote; any obligation that Company's products or services conform to any requirement other than Company's published specifications therefor; any audit rights, inspection (whether of products, documentation or otherwise) rights or financial offset rights of Customer; any penalties or liquidated damages imposed upon Company; any obligation by Company 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, cybersecurity or other information security program (including without limitation any notice requirements), background or drug screening program or other guidelines, programs or policies, in each case, promulgated or required by Customer; 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; including without limitation any obligation of Company to comply with any Federal Acquisition Regulation. Defense Federal Acquisition Regulation, or any other rule, regulation, or policy of any government entity that would only be binding upon Company by virtue of Company's assent thereto, in each case regardless of whether identified as such; any obligation that Company contract with any third party on any particular terms; any requirement that Company inspect, audit, or otherwise oversee any third party; any right of Customer to withhold all, or any portion, of the purchase price of any Equipment or services provided hereunder for any period of time; any right of Customer to return, or condition acceptance of, any products or services on any basis other than compliance with Seller's acceptance criteria; any right of Customer, itself or through any third party, to remediate any defects in, replace or re-perform, any Equipment or services provided hereunder at Company's cost or expense; any obligation that Company procure or maintain insurance coverage on any specific terms (including without limitation as to type, quality, amount, waiver of subrogation, or additional insureds); any requirement that Company personnel bind themselves in their personal capacities; any requirement that Company or its personnel execute any additional instrument as a condition to Company's performance hereunder; 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 Company 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 Equipment, processes or services; or any waiver by Company of any right to enforce any of the terms hereof).

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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:

Name of Purchasing Entity	
Authorized Signature	
Signed by Name	
-	
Date	