

# State of Nebraska - INVITATION TO BID CONTRACT

Return to:  
State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, Nebraska 68508

Telephone: 402-471-6500  
Fax: 402-471-2089

Date	12/11/18	Page	1 of 2
Solicitation Number	5987 OF		
Opening Date and Time	01/10/19	2:00 pm	
Buyer	RENE BOTTS (AS)		

**DESTINATION OF GOODS**  
NDOT M&R  
1400 NE HWY 2-TEST  
PO BOX 94759  
LINCOLN NE 68509-4759

Per Nebraska's Transparency in Government Procurement Act, DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

\_\_\_\_ NEBRASKA CONTRACTOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this ITB.

\_\_\_\_ I hereby certify that I am a Resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. §73-107 and wish to have preference, if applicable, considered in the award of this contract.

Contract to supply and deliver SEQUENTIAL XRF SPECTROMETER EQUIPMENT WITH EXTERNAL WATER RECIRCULATING SYSTEM to the State of Nebraska as per the attached specifications for a five (5) year period from date of award. The contract may be renewed for five (5) additional one (1) year periods when mutually agreeable to the vendor and the State of Nebraska.

(vc 12/10/18)

## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	SEQUENTIAL XRF SPECTROMETER EQUIPMENT WITH EXTERNAL WATER RECIRCULATING SYSTEM	1.0000	EA	\$235,198	<u>\$201,971</u>
2	TRADE IN VALUE FOR BRUKER S4 PIONEER AND EXTERNAL WATER CIRCULATING SYSTEM. DEDUCTION AMOUNT	1.0000	EA	(\$0.0 )	<u>\$0.0</u>
3	ANNUAL FLAT RATE PREVENTATIVE MAINTENANCE PLAN	1.0000	EA	<u>\$3,729</u>	<u>\$3,618</u>

### BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS: \_\_\_\_\_% \_\_\_\_\_ DAYS

By signing this Invitation to Bid form, the bidder guarantees compliance with the provisions stated in this Invitation to Bid, agrees to the terms and conditions unless otherwise agreed to (see Section III) and certifies that bidder maintains a drug free work place environment. Vendor will furnish the items requested within \_\_\_\_\_ days after receipt of order. Failure to enter Delivery Date may cause quotation to be REJECTED.

Sign Here Therese Creighton  
(Authorized Signature MANDATORY - MUST BE SIGNED IN INK)

Enter Contact Information Below

VENDOR# \_\_\_\_\_  
VENDOR: Thermo Electron North America LLC  
Address: 5225 Verona Road, Madison, WI 53711

Contact Therese Creighton  
Telephone 608-273-6817  
Facsimile 412-200-6542  
Email Therese.Creighton@thermofisher.com

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## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
4	<b>HOURLY RATE FOR SERVICE CALL</b> REGULAR BUSINESS HOURS INCLUDE ALL EXPENSES (TRAVEL, MILEAGE, FOOD LODGING, PARKING, FUEL, LABOR, NEXT DAY SERVICE PARTS SHIPPING COSTS/DELIVERY FEES.)	50.0000	HR	<u>\$349</u>	<u>\$17,450</u>
5	<b>HOURLY RATE FOR SERVICE CALL</b> WEEKEND AND HOLIDAY HOURS INCLUDE ALL EXPENSES (TRAVEL, MILEAGE, FOOD LODGING, PARKING, FUEL, LABOR, NEXT DAY SERVICE PARTS SHIPPING COSTS/DELIVERY FEES.)	20.0000	HR	<u>\$699</u>	<u>\$13,980</u>
6	<b>MISC NON CORE XRF EQUIPMENT</b> PERCENT OF DISCOUNT OFF RETAIL PRICE LIST FOR PARTS, ACCESSORIES, WARRANTIES, SERVICE MAINTENANCE PLANS, SOFTWARE, HARDWARE, AND FIRMWARE (EXCLUDING CORE ITEMS)			<u>5%</u>	
OPTIONAL ITEMS					
7	<b>HOURLY RATE FOR REMOTE METHOD</b> DEVELOPMENT THAT EXCEEDS THE NO CHARGE 40 HOURS ASSISTANCE	20.0000	HR	<u>\$175</u> ( <u>\$3,500</u> )	
8	<b>HOURLY RATE FOR ON-SITE METHOD</b> DEVELOPMENT THAT EXCEEDS THE NO CHARGE 40 HOURS ASSISTANCE SHALL INCLUDE ALL EXPENSES (TRAVE, MILEAGE, FOOD, LODGING, PARKING, FUEL, LABOR) ASSOCIATED WITH THE METHOD DEVDPLOPMENT RATE.	20.0000	HR	<u>\$349</u> ( <u>\$6,980</u> )	

## INVITATION TO BID

Number 5987-OF

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this Invitation to Bid (ITB) for a commodity contract, ITB Number 5987 OF for the purpose of selecting a qualified Bidder to provide **Sequential XRF Spectrometer Equipment with External Water Recirculating System for Nebraska Department of Transportation (NDOT) Materials and Research Division**. Specifications can be found in **Section VI. Invitation to Bid Technical Specifications**. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar goods from other sources now or in the future.

The term of the contract will be five (5) years commencing upon execution of the contracts by the State and the Bidder. The Contract includes the option to renew for five (5) additional one (1) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

### INFORMATION PERTINENT TO THIS INVITATION TO BID CAN BE FOUND ON THE INTERNET AT:

<http://das.nebraska.gov/materiel/purchasing.html>

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the ITB, and the successful Bidder's bid or response will be posted to a public website managed by DAS, which can be found at:

<https://statecontracts.nebraska.gov/>

In addition and in furtherance of the State's public records statute (Neb. Rev. Stat. § 84-712 et seq.) all bids or responses received regarding this ITB will be posted to the SPB website.

These postings will include the entire bid or response. Bidders must request that proprietary information be excluded from the posting. The Bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously using an indelible method with the words "PROPRIETARY INFORMATION". The Bidder must submit a **detailed written document showing** that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) **THE BIDDER MAY NOT ASSERT THAT THE ENTIRE BID OR RESPONSE IS PROPRIETARY. COST WILL NOT BE CONSIDERED PROPRIETARY AND IS A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The Bidder will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

If the agency determines it is required to release proprietary information, the Bidder will be informed. It will be the Bidder's responsibility to defend the Bidder's asserted interest in non-disclosure.

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, bid, or response to this ITB for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a bid or response to this ITB, specifically waives any copyright or other protection the contract, bid, or response to the ITB may have; and, acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a bid or response to this ITB, and award of a contract. Failure to agree to the reservation and waiver will result in the bid or response to the ITB being found non-responsive and rejected.

**Any entity awarded a contract or submitting a bid or response to the ITB agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the bids and responses to the ITB, awards, and other documents.**

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## GLOSSARY OF TERMS

**AASHTO:** American Association of State Highway and Transportation Officials.

**Acceptance Test Procedure:** Benchmarks and other performance criteria, developed by the State or other sources of testing standards, for measuring the effectiveness of products or goods and the means used for testing such performance.

**Addendum:** Something to be added or deleted to an existing document; a supplement.

**After Receipt of Order (ARO):** After Receipt of Order

**Agency:** Any state agency, board, or commission other than the University of Nebraska, the Nebraska State colleges, the courts, the Legislature, or any other office or agency established by the Constitution of Nebraska.

**Agent/Representative:** A person authorized to act on behalf of another.

**Amend:** To alter or change by adding, subtracting, or substituting.

**Amendment:** A written correction or alteration to a document.

**Appropriation:** Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

**ASTM:** American Society for Testing and Materials

**Award:** All purchases, leases, or contracts which are based on competitive bids will be awarded according to the provisions in the ITB. The State reserves the right to reject any or all bids, wholly or in part, or to award to multiple Bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the bid, and do not improve the Bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State.

**Best and Final Offer (BAFO):** In a competitive bid, the final offer submitted which contains the bidder's (vendor's) most favorable terms for price.

**Bid/Proposal:** The offer submitted by a vendor in a response to written solicitation.

**Bid Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the vendor will not withdraw the bid.

**Bidder:** A vendor who submits an offer bid in response to a written solicitation.

**Business:** Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

**Business Day:** Any weekday, except State-recognized holidays.

**Calendar Day:** Every day shown on the calendar including Saturdays, Sundays, and State/Federal holidays.

**Cancellation:** To call off or revoke a purchase order without expectation of conducting or performing it at a later time.

**Central Processing Unit (CPU):** Any computer or computer system that is used by the State to store, process, or retrieve data or perform other functions using Operating Systems and applications software.

**Change Order:** Document that provides amendments to an executed purchase order.

**Collusion:** An agreement or cooperation between two or more persons or entities to accomplish a fraudulent, deceitful, or unlawful purpose.

**Commodities:** Any equipment, material, supply or goods; anything movable or tangible that is provided or sold.

**Commodities Description:** Detailed descriptions of the items to be purchased; may include information necessary to obtain the desired quality, type, color, size, shape, or special characteristics necessary to perform the work intended to produce the desired results.

**Competition:** The effort or action of two or more commercial interests to obtain the same business from third parties.

**Confidential Information:** Unless otherwise defined below, "Confidential Information" shall also mean proprietary trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Nebraska

Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

**Contract:** An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law; the writing that sets forth such an agreement.

**Contract Administration:** The management of the contract which includes and is not limited to contract signing, contract amendments and any necessary legal actions.

**Contract Management:** The management of day to day activities at the agency which includes and is not limited to ensuring deliverables are received, specifications are met, handling meetings and making payments to the Contractor.

**Contract Period:** The duration of the contract.

**Contractor:** Any individual or entity having a contract or awarded purchase order to furnish commodities or goods.

**Cooperative Purchasing:** The combining of requirements of two or more political entities to obtain advantages of volume purchases, reduction in administrative expenses or other public benefits.

**Copyright:** A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt and distribute the work.

**Core List:** Identifies the most commonly purchased items from contractor.

**Critical Program Error:** Any Program Error, whether or not known to the State, which prohibits or significantly impairs use of the Licensed Software as set forth in the documentation and intended in the contract.

**Customer Service:** The process of ensuring customer satisfaction by providing assistance and advice on those products or goods provided by a Contractor.

**Default:** The omission or failure to perform a contractual duty.

**Deviation:** Any proposed change(s) or alteration(s) to either the terms and conditions or deliverables within the scope of the written solicitation or contract.

**Evaluation:** The process of examining an offer after opening to determine the vendor's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award.

**Evaluation Committee:** Committee(s) appointed by the requesting agency that advises and assists the procuring office in the evaluation of bids/s (offers made in response to written solicitations).

**Extension:** Continuance of a contract for a specified duration upon the agreement of the parties beyond the original Contract Period. Not to be confused with "Renewal Period".

**Free on Board (F.O.B.) Destination:** The delivery charges are included in the quoted price and prepaid by the vendor. Vendor is responsible for all claims associated with damages during delivery of product.

**Free on Board (F.O.B.) Point of Origin:** The delivery charges are not included in the quoted price and are the responsibility of the agency. Agency is responsible for all claims associated with damages during delivery of product.

**Foreign Corporation:** A foreign corporation that was organized and chartered under the laws of another state, government, or country.

**Installation Date:** The date when the procedures described in "Installation by Contractor", and "Installation by State", as found in the ITB, ITB (written solicitation) or contract are completed.

**Invalid Bid:** i.e., a fax or email response for a term contract.

**Invitation to Bid (ITB):** A written solicitation utilized for obtaining competitive offers.

**Late Bid:** An offer received after the Opening Date and Time.

**Licensed Software Documentation:** The user manuals and any other materials in any form or medium customarily provided by the Contractor to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently.

**Mandatory/Must:** Required, compulsory, or obligatory.

**May:** Discretionary, permitted; used to express possibility.

**Module (see System):** A collection of routines and data structures that perform a specific function of software.

**Must:** See Shall/Will/Must.

**NA:** Not Applicable.

**National Institute for Governmental Purchasing (NIGP):** National Institute of Governmental Purchasing – Source used for assignment of universal commodity codes to goods and goods.

**NDOT:** Nebraska Department of Transportation.

**Non-Core List:** Identifies additional items available from contractor not listed as part of the Core-List.

**Open Market Purchase:** Authorization may be given to an agency to purchase items above direct purchase authority due to the unique nature, price, quantity, location of the using agency, or time limitations by the AS Materiel Division, State Purchasing Bureau.

**Opening Date and Time:** Specified date and time for the public opening of received, labeled, and sealed formal bids.

**Operating System:** The control program in a computer that provides the interface to the computer hardware and peripheral devices, and the usage and allocation of memory resources, processor resources, input/output resources, and security resources.

**Outsourcing:** The contracting out of a business process which an organization may have previously performed internally or has a new need for, to an independent organization from which the process is purchased back.

**Payroll & Financial Center (PFC):** Electronic procurement system of record.

**Performance Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Contractor fulfills any and all obligations under the contract.

**Platform:** A specific hardware and Operating System combination that is different from other hardware and Operating System combinations to the extent that a different version of the Licensed Software product is required to execute properly in the environment established by such hardware and Operating System combination.

**Point of Contact (POC):** The person designated to receive communications and to communicate

**Pre-Bid/Pre-Proposal Conference:** A meeting scheduled for the purpose of clarifying a written solicitation and related expectations.

**Product:** Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption.

**Program Error:** Code in Licensed Software which produces unintended results or actions, or which produces results or actions other than those described in the specifications. A program error includes, without limitation, any Critical Program Error.

**Program Set:** The group of programs and products, including the Licensed Software specified in the ITB, plus any additional programs and products licensed by the State under the contract for use by the State.

**Project:** The total scheme, program, or method worked out for the accomplishment of an objective, including all documentation, commodities, and goods to be provided under the contract.

**Proposal:** See Bid.

**Proprietary Information:** Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and service no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific named competitor(s) advantaged by release of the information and the demonstrated advantage the named competitor(s) would gain by the release of information.

**Protest/Grievance:** A complaint about a governmental action or decision related to an ITB or resultant contract, brought by a vendor who has timely submitted a bid response in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

**Public Bid Opening:** The process of opening correctly submitted offers at the time and place specified in the written solicitation and in the presence of anyone who wished to attend.

**Recommended Hardware Configuration:** The data processing hardware (including all terminals, auxiliary storage, communication, and other peripheral devices) to the extent utilized by the State as recommended by the Contractor.

**Release Date:** The date of public release of the written solicitation to seek offers

**Renewal Period:** Optional contract periods subsequent to the original Contract Period for a specified duration with previously agreed to terms and conditions. Not to be confused with Extension.

**Request for Information (RFI):** A general invitation to vendors requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

**Responsible Bidder:** A Bidder who has the capability in all respects to perform fully and lawfully all requirements with integrity and reliability to assure good faith performance.

**Responsive Bidder:** A Bidder who has submitted a bid which conforms to all requirements of the solicitation document.

**Shall/Will/Must:** An order/command; mandatory.

**Should:** Expected; suggested, but not necessarily mandatory.

**Software License:** Legal instrument with or without printed material that governs the use or redistribution of licensed software.

**Sole Source – Commodity:** When an item is available from only one source due to the unique nature of the requirement, its supplier, or market conditions.

**Sole Source – Service:** A service of such a unique nature that the vendor selected is clearly and justifiably the only practical source to provide the service. Determination that the vendor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required.

**Specifications:** The detailed statement, especially of the measurements, quality, materials, and functional characteristics, or other items to be provided under a contract.

**Statutory:** These clauses are controlled by state law and are not subject to negotiation.

**Subcontractor:** Individual or entity with whom the contractor enters a contract to perform a portion of the work awarded to the contractor.

**System (see Module):** Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the Contractor as functioning or being capable of functioning, as an entity.

**TBA:** To Be Announced

**Termination:** Occurs when the contract expires or either party, pursuant to a power created by agreement or law puts an end to the contract prior to the stated expiration date. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

**Third-Party:** Any person or entity, including but not limited to fiduciaries, shareholders, owners, officers, managers, employees, legally disinterested persons, and sub-contractors or agents, and their employees. It shall not include any entity or person who is an interested Party to the contract or agreement.

**Trade Secret:** Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. §87-502(4)).

**Trademark:** A word, phrase, logo, or other graphic symbol used by a manufacturer or vendor to distinguish its product from those of others, registered with the U.S. Patent and Trademark Office.

**Upgrade:** Any change that improves or alters the basic function of a product of service.

**Vendor:** An individual or entity lawfully conducting business in the State, or licensed to do so, who seeks to provide goods or goods under the terms of a written solicitation.

**Vendor Performance Report:** A report issued to the Contractor by SPB when products or goods delivered or performed fail to meet the terms of the purchase order, contract, and/or specifications, as reported to SPB by the agency. The SPB shall contact the Contractor regarding any such report. The vendor performance report will become a part of the permanent record for the Contractor. The State may require vendor to cure. Two such reports may be cause for immediate termination.

**Will:** See Shall/Will/Must.

**Work Day: See Business Day.**

**I. PROCUREMENT PROCEDURE**

**A. GENERAL INFORMATION**

The ITB is designed to solicit bids from qualified Bidders who will be responsible for providing **Sequential XRF Spectrometer Equipment with External Water Recirculating System for Nebraska Department of Transportation (NDOT) Materials and Research Division** at a competitive and reasonable cost. A detailed description can be found in Section VI. – Invitation to Bid Technical Specifications.

Bids shall conform to all instructions, conditions, and requirements included in the ITB. Prospective Bidders are expected to carefully examine all documents, schedules, and requirements in this ITB, and respond to each requirement in the format prescribed. Bids may be found non-responsive if they do not conform to the ITB.

**B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS**

Procurement responsibilities related to this ITB reside with the SPB. The point of contact (POC) for the procurement is as follows:

Name: René A. Botts  
 Agency: State Purchasing Bureau  
 Address: 1526 K Street, Suite 130  
 Lincoln, NE 68508  
 Telephone: 402-471-6500  
 E-Mail: [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)

**C. COMMUNICATION WITH STATE STAFF**

From the date the ITB is issued until the Intent to Award is issued communication from the Bidder is limited to communication with the State Purchasing Bureau (SPB). Only SPB is empowered to make binding statements regarding this ITB. SPB will issue any clarifications or opinions regarding this ITB in writing. Only SPB can modify the ITB, answer questions, render opinions, and only the SPB can award a contract. Bidders shall not have any communication with, or attempt to communicate or influence any evaluator involved in this ITB. After the intent to award is issued the Bidder may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State.

The following exceptions to these restrictions are permitted:

1. Contact made pursuant to pre-existing contracts or obligations;
2. Contact required by the schedule of events or an event scheduled later by the SPB; and
3. Contact required for negotiation and execution of the final contract.

Violation of these conditions may be cause to reject a Bidder's bid and/or withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.

**D. SCHEDULE OF EVENTS**

The State expects to adhere to the procurement schedule shown below, but all dates are approximate and subject to change.

ACTIVITY		DATE/TIME
1.	Release ITB	December 11, 2018
2.	Last day to submit written questions	December 19, 2018
3.	State responds to written questions through ITB "Addendum" and/or "Amendment" to be posted to the Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	December 21, 2018
4.	Bid opening Location: State Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508	January 10, 2019 2:00 PM Central Time
5.	Review for conformance of mandatory requirements	TBA
6.	Evaluation period	TBA
7.	Post "Letter of Intent to Award" to Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	TBA

ACTIVITY		DATE/TIME
8.	Contract finalization period	TBA
9.	Contract award	TBA
10.	Contractor start date	TBA

**E. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any ITB provision must be submitted in writing to the SPB and clearly marked "ITB Number 5987 OF; XRF Spectrometer Equipment with External Water Recirculating System for Nebraska Department of Transportation (NDOT) Materials and Research Division Questions". SPB is not obligated to respond to questions that are received late per the Schedule of Events.

Bidders should present, as questions, any assumptions upon which the Bidder's bid is or might be developed. Bids will be evaluated without consideration of any known or unknown assumptions of a Bidder. The contract will not incorporate any known or unknown assumptions of a Bidder.

It is preferred that questions be sent via e-mail to [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov), but may be delivered by hand or by U.S. Mail. It is recommended that Bidders submit questions using the following format.

ITB Section Reference	ITB Page Number	Question

Written answers will be posted at <http://das.nebraska.gov/materiel/purchasing.html> per the Schedule of Events.

**F. RECYCLING (§ 81-15,159(d)(2))**

Preference will be given to items which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use. Preference will also be given to purchases of corn-based biodegradable plastics and road deicers if available and suitable. No preference shall be given if such preference would result in the purchase of products, materials, or supplies that are of inadequate quality or of substantially higher cost.

**G. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)**

All Bidders must be authorized to transact business in the State and comply with all Nebraska Secretary of State Registration requirements. The Bidder who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and correct copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and the United States Citizenship Attestation Form, available on the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>. This must be accomplished prior to execution of the contract.

**H. ETHICS IN PUBLIC CONTRACTING**

The State reserves the right to reject bids, withdraw an intent to award or award, or terminate a contract if a Bidder commits or has committed ethical violations, which include, but are not limited to:

1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process;
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;
3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity;
4. Submitting a bid on behalf of another party or entity;
5. Collude with any person or entity to influence the bidding process, submit sham bids, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the bid, or prejudice the State,

The Bidder shall include this clause in any subcontract entered into for the exclusive purpose of performing this contract.

Bidder shall have an affirmative duty to report any violations of this clause by the Bidder throughout the bidding process, and throughout the term of this contract for the successful Bidder and their subcontractors.

**I. SPECIFICATIONS**

Any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are for reference and not intended to limit competition, but will be used as the standard by which equivalent material offered will be judged. The Materiel Administrator will be the sole judge of equivalency. The Bidder may offer any brands which meets or exceeds the specification. When a specific product is required, the ITB will so state. Any item bid is to be the latest current model under standard production at the time of order. No used or refurbished equipment will be accepted, unless otherwise stated.

**J. SAMPLES**

When requested, samples shall be furnished at the Bidder's expense prior to the opening of the bid, unless otherwise specified. Each sample must be labeled clearly and identify the Bidder's name, the ITB number and the item number. Samples submitted must be representative of the commodities or equipment which would be delivered if awarded the bid. The State reserves the right to request samples even though this may not have been set forth in the ITB. Samples not destroyed in testing will be returned at Bidder's expense, if requested, or will be donated to a public institution.

**K. BID PREPARATION COSTS**

The State shall not incur any liability for any costs incurred by Bidders in replying to this ITB, including any activity related to bidding on this ITB.

**L. DISCOUNTS**

Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than thirty (30) days will not be considered as part of the bid. Cash discount periods will be computed from the date of receipt of a properly executed claim voucher or the date of completion of delivery of all items in a satisfactory condition, whichever is later.

**M. PRICES**

All prices, costs, and terms and conditions outlined in the bid shall remain fixed and valid commencing on the opening date of the bid until award of the contract or the ITB is cancelled. Prices quoted on the ITB form or Cost Sheet shall remain fixed for one (1) year of the contract period. Any request for a price increase subsequent to the one (1) year must be submitted in writing to the SPB for approval, and be accompanied by documentation justifying the price increase. These documents include, but are not limited to: 1) invoices for physical components of contracted item(s) Further documentation may be required by the State to justify the increase. The State reserves the right to deny any requested price increase. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.

The State reserves the right to deny any requested price increase. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.

**N. DEVIATIONS FROM THE INVITATION TO BID**

The requirements contained in the ITB (Sections II. through VI.) become a part of the terms and conditions of the contract resulting from this ITB. Any deviations from the ITB in Section II. through VI. must be clearly defined by the Bidder in its bid and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the ITB, mandatory requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this ITB, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this ITB. The State discourages deviations and reserves the right to reject proposed deviations.

**O. ALTERNATE/EQUIVALENT BIDS**

Bidder may offer bids which are at variance from the express specifications of the ITB. The State reserves the right to consider and accept such bids if, in the judgment of the Materiel Administrator, the bid will result in goods and/or services equivalent to or better than those which would be supplied in the original bid specifications. Bidders must indicate on the ITB the manufacturer's name, number and shall submit with their bid, sketches, descriptive literature and/or complete specifications. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements are subject to rejection. In the absence of any stated deviation or exception, the bid will be accepted as in strict compliance with all terms, conditions and specification, and the Bidder shall be held liable therefore.

**P. LUMP SUM OR 'ALL OR NONE' BIDS**

The State reserves the right to purchase item-by-item, by groups or as a total when the State may benefit by so doing. Bidders may submit a bid on an "all or none" or "lump sum" basis, but should also submit a bid on an item-by-item basis. The term "all or none" means a conditional bid which requires the purchase of all items on which bids are offered and Bidder declines to accept award on individual items; a "lump sum" bid is one in which the

Bidder offers a lower price than the sum of the individual bids if all items are purchased, but agrees to deliver individual items at the prices quoted.

**Q. BID REQUIREMENTS**

The bids will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Bids not meeting the requirements may be rejected as non-responsive. The requirements are:

1. Original Commodity ITB form signed using an indelible method (electronic signatures are not acceptable);
2. Clarity and responsiveness of the bid;
3. Completed Sections II. through VI. ;
4. Completed ITB Form or State's Bid Sheet.

**R. FAILURE TO COMPLY WITH INVITATION TO BID**

Violation of the terms and conditions contained in this ITB or any resultant contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:

1. Rejection of a Bidder's bid;
2. Withdrawal of the Intent to Award;
3. Withdrawal of the Award;
4. Termination of the resulting contract;
5. Legal action; or,
6. Suspension of the Bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

**S. SUBMISSION OF BIDS**

**\*\*\*\*\*ALL BIDS MUST BE SUBMITTED IN A SEALED ENVELOPE OR CONTAINER!\*\*\*\*\***

Only one (1) original bid shall be submitted. Each bid should be in a separate envelope or container. Bid responses should include the completed Form A, "Bidder Contact Sheet". Bids must reference the ITB number and be sent to the specified address. Please note that the address label should appear as specified below, on the face of each container or Bidder's bid response packet. The ITB number must be included in all correspondence.

Name: René A. Botts  
Agency: State Purchasing Bureau  
Address: 1526 K Street, Suite 130  
Lincoln, NE 68508  
Telephone: 402-471-6500

E-Mail: [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)

If a recipient phone number is required for delivery purposes, 402-471-6500 should be used.

Emphasis should be concentrated on conformance to the ITB instructions, responsiveness to requirements, completeness, and clarity of content. If the Bidder's bid is presented in such a fashion that makes evaluation difficult or overly time consuming the State reserves the right to reject the bid as non-conforming.

Sealed bids must be received in the State Purchasing Bureau by the date and time of the bid opening per the Schedule of Events. No late bids will be accepted.

It is the responsibility of the bidder to check the website for all information relevant to this solicitation to include addenda and/or amendments issued prior to the opening date. Website address is as follows:  
<http://das.nebraska.gov/materiel/purchasing.html>

By signing the "ITB" form, the Bidder guarantees compliance with the provisions stated in this ITB.

**T. EMAIL SUBMISSIONS**

The SPB will not accept bids by email except for one-time purchases under \$50,000.00. .

**U. BID CORRECTIONS**

A bidder may correct a mistake in a bid prior to the time of opening by giving written notice to the State of intent to withdraw the bid for modification or to withdraw the bid completely. Changes in a bid after opening are acceptable

only if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

**V. LATE BIDS**

Bids received after the time and date of the bid opening will be considered late bids. Late bids will be returned unopened, if requested by the Bidder and at Bidder's expense. The State is not responsible for bids that are late or lost regardless of cause or fault.

**W. BID OPENING**

Anyone may attend the opening. It is considered a public opening. The Buyer will read the names of the respondents. Depending upon the complexity of the bid, the buyer may read the bids aloud or allow bids be available for viewing by the public during the bid opening. Once the bid opening has concluded, the bids will not be available for viewing until the Intent to Award has been posted. An initial bid tabulation will be posted to the website as soon as feasible. Information identified as proprietary by the submitting vendor, in accordance with the RFP/ITB and state statute, will not be posted. If the state determines submitted information should not be withheld, in accordance with the [Public Records Act](#), or if ordered to release any withheld information, said information may then be released. The submitting bidder will be notified of the release and it shall be the obligation of the submitting bidder to take further action, if it believes the information should not be released.

**X. BID TABULATIONS**

Bid tabulations are available on the website at: <http://www.das.state.ne.us/materiel/purchasing/bidtabs.htm>.

**Y. BEST AND FINAL OFFER**

The State reserves the right to request Best and Final Offers. However, a Bidder should provide its best offer in its original bid. Bidders should not expect that the State will request a best and final offer.

**Z. REFERENCE AND CREDIT CHECKS**

The State reserves the right to conduct and consider reference and credit checks. Reference or credit checks may be grounds to reject a bid, or withdraw an intent to award or award of a contract. The State reserves the right to use third parties to conduct reference and credit checks.

**AA. REJECTION OF BIDS**

The State reserves the right to reject any or all bids, wholly or in part, in the best interest of the State.

**BB. RESIDENT BIDDER**

Pursuant to Neb. Rev. Stat. §§ 73-101.01 through 73-101.02, a Resident Bidder shall be allowed a preference against a Non-resident Bidder from a state which gives or requires a preference to Bidders from that state. The preference shall be equal to the preference given or required by the state of the Nonresident Bidders. Where the lowest responsible bid from a resident Bidder is equal in all respects to one from a nonresident Bidder from a state which has no preference law, the resident Bidder shall be awarded the contract. The provision of this preference shall not apply to any contract for any project upon which federal funds would be withheld because of the provisions of this preference.

**CC. AWARD**

All purchases, leases, or contracts which are based on competitive bids will be awarded according to the provisions in the ITB. The State reserves the right to reject any or all bids, in whole or in part, or to award to multiple Bidders in whole or in part, and at its discretion, may withdraw or amend the ITB at any time. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the bid, and do not improve the Bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State. The ITB does not commit the State to award a contract. If, in the opinion of the State, revisions or amendments will require substantive changes in bids, the bid opening date may be extended.

By submitting a bid in response to this ITB, the Bidder grants to the State the right to contact or arrange a visit in person with any or all of the Bidder's clients.

Once the Intent to Award decision has been made, an Intent to Award will be posted to the Internet at:

<http://das.nebraska.gov/materiel/purchasing.html>

The protest procedure is available on the Internet at:

[http://das.nebraska.gov/materiel/purchase\\_bureau/docs/vendors/protest/ProtestGrievanceProcedureForVendors%20\(2\).pdf](http://das.nebraska.gov/materiel/purchase_bureau/docs/vendors/protest/ProtestGrievanceProcedureForVendors%20(2).pdf)

Any protests must be filed by a vendor within ten (10) business days after the Intent to Award is posted to the Internet.

The State reserves the right to award contracts in a manner, and utilizing methods, selected in the State's best interest and discretion. The State may waive informalities or irregularities in bids if the waiver is in the best interest of the State and such waiver does not prejudice other Bidders in the State's discretion. After evaluation of the bids, the State may take, in the State's discretion, one or more of the following actions:

- Accept or reject a portion of or all of a bid;
- Accept or reject all bids;
- Withdraw the ITB;
- Elect to rebid the ITB;
- Award single lines or multiple lines to one or more Bidders; or,
- Award one or more complete contracts.

The State reserves the right to make awards that are in the best interest of the State. The State may consider, but is not limited to, one (1) or more of the following award criteria:

- Price;
- Location;
- Quality;
- Delivery time; and,
- State contract management requirements and/or costs.

**II. TERMS AND CONDITIONS**

**Bidders should complete Section II. through VI. as part of their bid.** Bidder is expected to read the Terms and Conditions and must initial either accept, reject, or reject and provide alternative language for each clause. The Bidder should also provide an explanation of why the Bidder rejected the clause or rejected the clause and provided alternate language using 'Track Changes'. Upon request an electronic copy of the bid with 'Track Changes' must be submitted in an editable Word format. By signing the ITB Bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the bid. The State reserves the right to negotiate rejected or proposed alternative language. If the State and Bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the bid. The State is soliciting bids in response to the ITB. The State reserves the right to reject bids that attempt to substitute the Bidder's commercial contracts and/or documents for this ITB.

The Bidder should submit with their bid any license, user agreement, service level agreement, or similar documents that the Bidder wants incorporated in the Contract. Upon notice of Intent to Award, the Bidder must submit a copy of these documents in an editable Word format. The State will not consider incorporation of any document not submitted with the Bidder's bid. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the addendums have been negotiated and agreed to, the addendums shall be interpreted as follows:

1. If only one (1) Party's document has a particular clause then that clause shall control;
2. If both Party's documents have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Party's documents have a similar clause, but the clauses conflict, the State's clause shall control.

**A. GENERAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The contract resulting from this ITB shall incorporate the following documents:

1. Invitation to Bid and Addenda;
2. Amendments to the ITB;
3. Questions and Answers;
4. Contractor's bid (ITB);
5. Award;
6. The executed Contract and any Addenda; and,
7. Amendments to the Contract

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to ITB and any Questions and Answers, 4) the original ITB document and any Addenda, and 5) the Contractor's submitted Bid.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State.

**B. NOTIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

**C. NOTICE (POC)**

The State reserves the right to appoint a Buyer's Representative to manage [or assist the Buyer in managing] the contract on behalf of the State. The Buyer's Representative will be appointed in writing, and the appointment document will specify the extent of the Buyer's Representative authority and responsibilities. If a Buyer's Representative is appointed, the Contractor will be provided a copy of the appointment document, and is expected to cooperate accordingly with the Buyer's Representative. The Buyer's Representative has no authority to bind the State to a contract, amendment, addendum, or other change or addition to the contract.

**D. GOVERNING LAW**

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

**E. BEGINNING OF WORK**

The Contractor shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

**F. CHANGE ORDERS OR SUBSTITUTIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the ITB. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The State or Contractor may prepare a written description of the work required due to the change and the Contractor shall prepare an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Contractor's bid, were foreseeable, or result from difficulties with or failure of the Contractor's bid or performance.

No change shall be implemented by the Contractor until approved by the State, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that

immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

Vendor will not substitute any item that has been awarded without prior written approval of SPB.

**G. BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time.

In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies. (See Indemnity - Self-Insurance and Payment)

**H. NON-WAIVER OF BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

**I. SEVERABILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

J. INDEMNIFICATION

Accept (Initial)		Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
			TMC	<p><b><u>Thermo Electron North America LLC response: Contractor's Indemnification language shall apply:</u></b>  <u>Seller will indemnify, defend and save Buyer, its officers, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees) ("Indemnified Items") asserted by another party against Buyer for (i) bodily injury to or death of persons or damage to tangible property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of Services at Buyer's premises under this Agreement; and (ii) claims that a Product infringes any U.S. patent, copyright or trade secret; provided, however, Seller's liability under this Section does not extend to any such Indemnified Items caused by either (u) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (v) by any third party, (w) use of a Product in combination with equipment or software not supplied by Seller where the Product alone would not be infringing, (x) Seller's compliance with Buyer's designs, specifications or instructions, (y) use of the Product in an application or environment for which it was not designed, or (z) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer will promptly notify Seller in writing of any claim covered by Seller's indemnification obligations hereunder. Seller may assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.</u>  <u>Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR, AND BUYER'S SOLE AND EXCLUSIVE REMEDY IN RESPECT OF, THE CLAIMS DESCRIBED HEREIN.</u>  <u>THE TOTAL LIABILITY OF SELLER UNDER THIS AGREEMENT SHALL NOT EXCEED THE PURCHASE PRICE PAID BY BUYER TO SELLER FOR THE PRODUCTS OR SERVICES GIVING RISE TO SUCH LIABILITY. SELLER WILL NOT 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 WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.</u></p>

**1. GENERAL**

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. INTELLECTUAL PROPERTY**

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this ITB.

**3. PERSONNEL**

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor's and their employees, provided by the Contractor.

**4. SELF-INSURANCE (Statutory)**

The State is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §81-8,829 through 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

**K. ATTORNEY'S FEES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if order by the court, including attorney's fees and costs, if the other party prevails.

**L. ASSIGNMENT, SALE, OR MERGER**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

TMC			
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Either party may assign the contract upon mutual written agreement of the other party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**M. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. §81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause.

The Contractor may, but shall not be required to, allow other states, agencies or divisions of other states, or political subdivisions of other states to use this contract. The terms and conditions, including price, of this contract shall apply to any such contract, but may be amended upon mutual consent of the Parties. The State of Nebraska shall not be contractually or otherwise obligated or liable under any contract entered into pursuant to this clause. The State shall be notified if a contract is executed based upon this contract.

**N. FORCE MAJEURE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

Neither party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other party, and shall have the burden of proof to justify the request. The other Party may granted the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event.

**O. CONFIDENTIALITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**P. EARLY TERMINATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, at its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
  - g. Contractor intentionally discloses confidential information;
  - h. Contractor has or announces it will discontinue support of the deliverable; and,
  - i. In the event funding is no longer available.

**Q. CONTRACT CLOSEOUT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

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Upon termination of the contract for any reason the Contractor shall within thirty (30) days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the State;
2. Transfer ownership and title to all completed or partially completed deliverables to the State;
3. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;
4. Cooperate with any successor contractor, person or entity in the assumption of any or all of the obligations of this contract;
5. Cooperate with any successor contractor, person or entity with the transfer of information or data related to this contract;
6. Return or vacate any state owned real or personal property;

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or person property, or information or data owned by the Contractor for which the State has no legal claim.

**III. CONTRACTOR DUTIES**

**A. INDEPENDENT CONTRACTOR / OBLIGATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's bid shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The Contractor warrants that all persons assigned to the project shall be employees of the Contractor or a Subcontractor, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees).

If the Contractor intends to utilize any subcontractor, the Subcontractor's level of effort, tasks, and time allocation must be clearly defined in the Contractor's bid. The Contractor shall agree that it will not utilize any Subcontractors not specifically included in its bid in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or Subcontractor employee.

Contractor shall insure that the terms and conditions contained in any contract with a sub-contractor does not conflict with the terms and conditions of this contract.

The Contractor shall include a similar provision, for the protection of the State, in the contract with any Subcontractor engaged to perform work on this contract.

**B. EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing work within the State. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration

Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>

The completed United States Attestation Form should be submitted with the ITB response.

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

**C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)**

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §48-1101 through 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for goods or services to be covered by any contract resulting from this ITB.

**D. COOPERATION WITH OTHER CONTRACTORS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on the same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals, and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this contract.

**E. PERMITS, REGULATIONS, LAWS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the performance of the contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

**F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The State shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Contractor on behalf of the State pursuant to this contract.

**G. NOTICE OF POTENTIAL CONTRACTOR BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

If Contractor breaches the contract or anticipates breaching the contract the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, and may include a request for a waiver of the breach if so desired. The State may, at its discretion, temporarily or permanently waive the breach. By granting a temporary waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**H. ANTITRUST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**I. CONFLICT OF INTEREST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

By submitting a bid, Contractor certifies that there does not now exist a relationship between the Contractor and any person or entity which is or gives the appearance of a conflict of interest related to this ITB or project.

The Contractor certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the delivery of its goods hereunder or which creates an actual or an appearance of conflict of interest.

The Contractor certifies that it will not employ any individual known by Contractor to have a conflict of interest.

The Parties shall not knowingly, for a period of two years after execution of the contract, recruit or employ any employee or agent of the other Party who has worked on the ITB or project, or who had any influence on decisions affecting the ITB or project.

**J. STATE PROPERTY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

**K. SITE RULES AND REGULATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The Contractor shall use its best efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

**L. ADVERTISING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**M. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)**

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or goods provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

**N. DISASTER RECOVERY/BACK UP PLAN**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
	ER		<i>These are individually prepared and managed at the site level.</i>

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue delivery of goods as specified under the specifications in the contract in the event of a disaster.

**O. DRUG POLICY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
ER			

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

**IV. PAYMENT**

**A. PROHIBITION AGAINST ADVANCE PAYMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

**B. TAXES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

**C. INVOICES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			<u>Thermo Electron North America LLC standard payment terms are Net 30 days from date of invoice.</u>

Invoices for payments must be submitted by the Contractor to the NDOT Materials and Research Division requesting the services with sufficient detail to support payment. Invoices must reference the purchase order number. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**D. INSPECTION AND APPROVAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
TMC			

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or Subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the

work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

If a simple inspection of the goods would reveal nonconformity, notice of nonconformity should be provided to the vendor as soon as reasonably practical, but not to exceed thirty (30) days from receipt of goods. This includes visual inspection of product to ensure packaging is not damaged, dented or compromised.

**E. PAYMENT (Statutory)**

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section 73-506(1)). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

**F. LATE PAYMENT (Statutory)**

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408).

**G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)**

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

**H. RIGHT TO AUDIT (Statutory)**

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) day written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. §84-304 et seq.) The State may audit and the Contractor shall maintain the information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. In no circumstances will contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds three percent (3%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

## V. SCOPE OF WORK

The Bidder must provide the following information in response to this ITB.

### A. SCOPE

It is the intent of this bid invitation to establish a contract to supply **Sequential XRF Spectrometer Equipment with External Water Recirculating System** per the attached specifications from date of award for a period of five (5) years with the option to renew for an additional five (5) one (1) year periods when mutually agreeable to the vendor and the State. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the vendor and the State.

Complete specifications, manufacturer's current descriptive literature and/or advertising data sheets with cuts or photographs must be included with the bid for the IDENTICAL items proposed. Any information necessary to show compliance with these specifications not given on the manufacturer's descriptive literature and/or advertising data sheets must be supplied in writing on or attached to the bid document. If manufacturer's information necessary to show compliance with these specifications is not attached to the bid document, the Bidder may be required to submit requested information within three (3) business days of a written request. Failure to submit requested descriptive literature or advertising data sheets may be grounds to reject the bid.

### B. AMENDMENT

This Contract may be amended in writing, within scope, upon the agreement of both parties.

### C. REVISIONS

In the event any product is discontinued or replaced upon mutual consent during the contract period, the State reserves the right to amend this contract to include the alternate product at the same price.

**VI. INVITATION TO BID - TECHNICAL SPECIFICATIONS**

**A. BIDDER INSTRUCTIONS**

Bidder must respond to each of the following statements. Specifications listed are minimum conditions that must be met in order for a Bidder to qualify for the award.

“YES” response means the Bidder guarantees they can meet this condition.

“NO” response means the Bidder cannot meet this condition and will not be considered.

“NO & PROVIDE ALTERNATIVE” responses should be used only with a narrative response in the NOTES/COMMENTS section explaining in detail any deviation from the Bidder's ability to meet the condition, and an explanation of how this would be determined to be an acceptable alternative to meeting the condition. Alternatives must be detailed in such a way that allows such deviations to be fully evaluated. The State shall determine at its sole discretion whether or not the Bidder's alternative is an acceptable alternative.

**B. NON-COMPLIANCE STATEMENT**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to quotation request. Any noncompliance may void your quotation. Non-compliance to any single specification can void your quotation.
YES			2. It is the responsibility of Bidders to obtain information and clarifications as provided below. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this ITB by any Bidder.
YES			3. No interpretation related to the meaning of bid specifications or other pre-bid documents will be made orally to any Bidder by the State. Any ITB interpretation must be put in writing and faxed by the Bidder to: the State Purchasing Bureau, Fax (402) 471-2089 or e-mailed to AS Materiel Purchasing <a href="mailto:as.materielpurchasing@nebraska.gov">as.materielpurchasing@nebraska.gov</a> by the last day to submit written questions that is specified in the Schedule of Events. (Inquiries received after the last day to submit written questions may not be addressed).
<b>NOTES/COMMENTS:</b>			

**C. SEQUENTIAL XRF SPECTROMETER EQUIPMENT**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Equipment bid shall be new and the latest current models in production as of the date of the ITB and be of proven performance.
YES			2. Equipment shall be under standard design, complete as regularly advertised and marketed.
YES			3. Equipment shall be delivered fully operational, complete with all necessary parts, specified accessories, tools, and special features, whether or not they may be specifically mentioned below.
YES			4. Used, demonstrator, prototype, or discontinued equipment is not acceptable.

NOTES/COMMENTS:

**D. RADIATION SAFETY**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. The Spectrometer must conform to all applicable state and federal radiation regulations. Current regulations may be obtained from the links: <ul style="list-style-type: none"> <li>• <a href="http://dhhs.ne.gov/Pages/reg_t180.aspx">http://dhhs.ne.gov/Pages/reg_t180.aspx</a></li> <li>• <a href="https://www.nrc.gov/about-nrc/radiation.html">https://www.nrc.gov/about-nrc/radiation.html</a></li> </ul>
YES			2. The manufacturer must provide a lamp that will indicate when the x-ray tube is energized. It shall be of a "fail-safe" design in which the power to the x-ray tube will be shut down if the lamp fails to operate.
YES			3. The manufacturer must provide an emergency shut down system to protect the operator and the spectrometer in the event of a power failure or any unsafe condition.

NOTES/COMMENTS: A UPS system is recommended if frequent power outages are a common occurrence.

**E. X-RAY SYSTEM:**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. The bidder shall provide full and detailed specification(s), literature, and brochures describing the X-Ray Fluorescence Spectrometer as bid with the Invitation to Bid.
YES			2. The spectrometer shall be in a temperature controlled sealed cabinet.
YES			3. The spectrometer shall be equipped with castors to allow movement and access.
YES			4. The x-ray tube shall be an end-window design with a rhodium anode.
YES			5. The x-ray tube shall be positioned below the sample.
YES			6. The beryllium window thickness of the x-ray tube shall be 50 microns or less.
YES			7. The x-ray generator shall be of solid state high frequency design.
YES			8. The x-ray system power shall be at least 2 kW.
YES			9. The x-ray system shall require an external water cooling system.
YES			10. The output voltage shall be at least 60 kV and output current shall be at least 120 mA.
YES			11. The goniometer shall provide angular accuracy ( $\theta$ and $2\theta$ ) of at least $\pm 0.01^\circ$ on LiF crystals and angular reproducibility ( $\theta$ and $2\theta$ ) of at least $\pm 0.0002^\circ$ .
YES			12. The goniometer $\theta$ and $2\theta$ axes shall have independent control.

YES			13. The goniometer components shall be fully enclosed in a temperature controlled vacuum environment.
YES			14. The spectrometer shall be equipped with at least two collimators: one for high resolution and one for high sensitivity.
YES			15. The instrument shall be equipped with collimator masks with the ability to automatically switch to at least three different aperture openings appropriately selected to correspond with the applications stated in F.9.
YES			16. The spectrometer shall be equipped with at least four primary beam filters selected to optimize analyses as stated in F.9. One shall be a beryllium filter to protect the tube during analysis.
YES			17. An automatic crystal changer, with a minimum of 8 crystal positions, shall be included with the system.
YES			18. A pre-mounted LiF 200 crystal, optimized for analyzing elements from potassium to uranium, shall be provided.
YES			19. A pre-mounted PET crystal, optimized for analyzing elements from aluminum to chlorine, shall be provided.
YES			20. A pre-mounted synthetic multilayer crystal, optimized for analyzing elements from oxygen to magnesium, shall be provided.
YES			21. A pre-mounted, curved Ge crystal, optimized for analyzing elements phosphorous, sulfur, and chlorine, shall be provided.
YES			22. A pre-mounted LiF 220 crystal, optimized for analyzing elements for vanadium to uranium, shall be provided.
YES			23. A pre-mounted crystal, optimized for analyzing high concentrations of aluminum and silicon, shall be provided.
YES			24. A pre-mounted synthetic multilayer crystal or detector with greater sensitivity for analyzing potassium to uranium, shall be provided.
YES			25. The x-ray spectrometer shall be equipped with a flow proportional detector with linearity of at least 2000 kcps and a scintillation detector with linearity of at least 1500 kcps.
YES			26. The detectors shall have a combined angular range of at least 8 to 148 degrees.
YES			27. All detectors shall be in vacuum.
YES			28. The temperature of the spectrometer environment shall be controlled to at least $\pm 0.5^{\circ}\text{C}$ within the temperature setting.
YES			29. The instrument shall be able to operate under vacuum or helium. A helium flushing system for the analysis of liquids and loose powders shall be included.
YES			30. A vacuum pump compatible with the system shall be included.
YES			31. Accessories for connecting P-10 gas and helium gas to the spectrometer shall be provided.
YES			32. The spectrometer shall be equipped with a sample changer capable of holding at least 48 samples for automatic remote loading.
YES			33. A minimum of 30 sample holders shall be provided that are capable of holding 40 mm pressed pellets, 40 mm fused beads, and film cups for liquid and powder samples. Guides and spring loaded holders shall also be provided for each sample holder for stabilizing odd-shaped samples.
YES			34. Drift monitors and QC standards for ASTM C114 cement analysis shall be included.

NOTES/COMMENTS:

**F. COMPUTER SYSTEM AND SOFTWARE**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. The contractor shall provide within seven (7) business days of contract award the type of minimum computer requirements needed to successfully operate the Sequential XRF Spectrometer Equipment.
YES			2. The contractor shall provide within seven (7) business days of contract award the type of minimum computer requirements needed to access the State of Nebraska's network.
YES			3. The software shall have functionality to export data for replication purposes. It shall ideally connect to a standard or enterprise edition SQL server 2016 or above database.
YES			4. The software shall support spectrometer operation and data handling under Windows 10 x64.
YES			5. The contractor shall guarantee software updates throughout the functional life of the product in order to interface with Windows OS and/or Microsoft package upgrades.
YES			6. After equipment and computer installation, any software licensing, upgrades and update costs shall be included, at no additional cost to NDOT during the initial warranty period as defined in Section Z.3.
YES			7. The Contractor shall ensure any licenses, upgrades and updates of the Spectrometer Software will be made available as a Catalog/Non-Core item (see Section U.5) by the manufacturer throughout the functional life of the product. This includes new versions released that would correct any functionality problems and/or that would add or upgrade operational features.
YES			8. The software shall be able to manage analysis setup selection, parameter selection, simple routine measurement and procedures for reporting and printing results.
YES			9. The software shall have the capabilities for qualitative and quantitative analysis. It shall allow calibration, drift correction, and re-calibration. The calibration of the spectrometer must meet the ASTM C114 requirements for cement testing. It shall have the capability to accurately and precisely measure TiO2 in traffic paint according to ASTM D4764, phosphorus in binders according to ASTM D6443, heavy metals in glass beads according to AASHTO TP106, calcium carbonate according to ASTM C25, and distinguish SO3 from S2- in cement according to ASTM C114.
YES			10. The software shall have the capability to add Agency-defined fields to assist in interfacing with other Agency systems.
YES			11. The software shall allow for editing of sample identification information after analysis.
YES			12. The software shall have password protection so that unauthorized personnel will not have access to instrument operation.
YES			13. The spectrometer shall be calibrated for standard-less analysis by drift monitors included as part of the package software.
YES			14. The software shall provide automatic standard-less analysis for a wide variety of sample materials, including solids, liquids, loose powders, and thin films/foils. All samples shall be analyzed by a single calibrated measuring program.
YES			15. The equipment shall be capable of printing from a network printer or a direct-attached printer.
<b>NOTES/COMMENTS:</b>			

**G. INSTALLATION AND TRAINING**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Complete on-site installation and instrumentation start-up of the spectrometer by a contractor certified service engineer will be included in the bid.
YES			2. The contractor shall provide at no additional cost to NDOT, three (3) days of on-site training by a certified service engineer and an applications specialist at the time of installation to give a basic orientation of the instrument.
YES			3. During the training, the service engineer and/or the application specialist shall provide on-site calibration of the spectrometer to meet ASTM C114 certification requirements with fused bead and pressed pellet preparations as well as accuracy and precision verification of the standard-less analysis by drift monitors included in the standard-less XRF software package.
YES			4. Upon completion of installation, and at no additional cost to NDOT, the service engineer and/or the application specialist shall, within 30 days, also provide on-site or remote assistance for the calibration of the following: Limestone (CaCO3) and Hydrated Lime (ASTM C25), TiO2 in Traffic Paint (ASTM D4764), SO3 and S2- (ASTM C114), Phosphorus in Bituminous Binders (ASTM D6443), and aggregates high in Aluminum and Silicon.
YES			5. During the training, and at no additional cost to NDOT, the service engineer and/or application specialist shall set up the instrument for the primary application, including method set-up and validation, and demonstrate various features directly related to the primary applications.
<b>NOTES/COMMENTS:</b>			

**H. SYSTEM WARRANTY:**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. A minimum of one (1) year warranty after the date of installation is required. This shall cover all parts, labor, travel, and living expenses.
YES			2. The x-ray tube shall come with a minimum warranty of two (2) years without hours or proration limitations. This warranty must also apply to all purchased replacement tubes during the contract term.

**NOTES/COMMENTS:** Thermo Electron North America LLC response: Contractor's standard warranty language shall apply.

Seller's sole obligation with respect to the Services is to provide the quoted Services in a workmanlike manner and if Buyer provides notice of defect in Service within ninety (90) days of completion of such Services, Seller will, at its sole option, either reperform the Services without charge to Buyer or grant Buyer a credit for the amount paid by Buyer with respect to such Service. Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the Product documentation, published specifications or package inserts (the "Warranty Period"). If a Warranty Period is not specified in Seller's Product documentation, published specifications, or package inserts, the Warranty Period for new instruments is twelve (12) months from the date of shipment to Buyer; and for all other Products is ninety (90) days from the date of shipment. During the Warranty Period, Seller agrees to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with Seller's published specifications; provided that Buyer (a) promptly notifies Seller in writing upon the discovery of any covered defect in the Products, including the Product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with an RMA number and services data, which may include biohazard decontamination procedures and other Product-specific handling instructions. Then, if applicable, Buyer may return the

defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products will be made in accordance with the Delivery clause of this Agreement. Except for new consumable items manufactured and sold by Seller, this warranty expressly excludes all other consumable parts or components (e.g., bulbs, belts, cartridges, etc.) in the Products. If Seller elects to repair defective medical device instruments, Seller may, in its sole discretion, provide a replacement loaner instrument to Buyer as necessary for use while the instruments are being repaired.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller; but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

In no event shall Seller have any obligation to make repairs, replacements or corrections under the Warranty, in whole or in part, as the result of or with respect to: (a) use of the Products in a manner for which they were not designed; (b) improper storage and handling of the Products; (c) use of the Products in combination with equipment or software not supplied by Seller (d) shipping damage incurred en route to Buyer's site or because of moving equipment, in which case Seller will promptly provide a cost estimate for Technical Support to the consignee for filing claims to carriers for shipping damage; (e) flood, lightning, earthquake, tornado, hurricane or fire, bombing, armed conflict, malicious mischief, sabotage or other natural or man-made disasters; (f) normal wear and tear, physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation; (g) repairs, maintenance, or modifications made by anyone other than Seller trained personnel or without Seller's supervision and/or approval; (h) relocation and reinstallation of equipment; although upon request Seller will supervise the removing, crating, relocation and reinstallation of the Products at Seller's current Services rates; (i) maintenance or replacement of media (i.e., floppy disks, plotter supplies, etc.) whatever the reason for loss, failure or damage; (j) beta-site support; (k) operator training; or (l) repairing Product malfunctions if the fault is not with the equipment. If Seller determines that Products for which Buyer requested warranty services are not covered by this warranty, Buyer will pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides Services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates.

ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS AND/OR SERVICES. THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT FOR SELLER TO REPAIR OR REPLACE A DEFECTIVE PRODUCT OR TO REPERFORM OR CREDIT THE PRICE OF DEFECTIVE SERVICES SHALL BE THE SOLE REMEDY OF BUYER FOR SUCH DEFECTIVE PRODUCTS OR SERVICES UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NONINFRINGEMENT. SELLER DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

**I. TECHNICAL SUPPORT:**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Hardware and software for remote diagnostics shall be provided for service and support throughout the life of the contract.
YES			2. Operation and safety manuals for the spectrometer and software shall be included.
YES			3. Troubleshooting, diagnostics, performance checks, and application technical support by telephone or through remote access shall be provided during regular working hours at no additional charge to NDOT.
YES			4. Requests for technical support shall be answered within at least a twenty-four hour (24) period from placement of request.

**NOTES/COMMENTS:**

**J. PREVENTATIVE MAINTENANCE SERVICE PLAN:**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. The contractor shall provide as a Core item (see Section U.5.) an annual flat-rate preventative maintenance plan. This must include all expenses of travel, mileage, food, lodging, parking, fuel, labor, and next day preventative maintenance parts kit shipping costs/delivery fees.
YES			2. The preventative maintenance shall include cleaning, all work performed with a preventative maintenance parts kit, verification the equipment is in safe working order, minor repairs, if needed, and performing testing for the presence of radiation outside the spectrometer.
YES			3. Upon completion of a preventative maintenance service, the contractor shall provide, at no additional cost to NDOT, an inclusive service report and certification detailing all work/repairs conducted to document the equipment is in safe working order.
<b>NOTES/COMMENTS:</b>			

**K. SERVICE CALLS:**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. The contractor shall provide as a Core Item (see Section U.5.) an hourly rate for service calls during normal working hours (Monday through Friday, 8:00 AM to 5:00 pm) not covered by any purchased service plans. This rate shall include all expenses (travel, mileage, food, lodging, parking, fuel, labor, next day service parts shipping costs/delivery fees) associated with the service call.
YES			2. The contractor shall provide as a Core Item (see Section U.5.) an hourly rate for service calls during weekend and holiday hours not covered by any purchased service plans. This rate shall include all expenses (travel, mileage, food, lodging, parking, fuel, labor, next day service parts shipping costs/delivery fees) associated with the service call.
YES			3. For service calls worked greater than eight (8) hours in a work day, not covered by a purchased service plan, the awarded bid hourly rate for service calls will be applied. No overtime rates will be applied. See Section K.1. and K.2.
YES			4. Any contractor service calls completed in under four (4) hours, NDOT will apply the service call hourly rate of only four (4) hours.
YES			5. Upon completion of a service call, the contractor shall provide, at no additional cost to NDOT, an inclusive service report and certification detailing all work/repairs conducted to document the equipment is in safe working order.
YES			6. If it is determined a service call is required, the response time shall be three (3) business days or less.
<b>NOTES/COMMENTS:</b>			

**L. METHOD DEVELOPMENT:**

YES	NO	NO & PROVIDE ALTERNATIVE	
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YES			1. The contractor shall provide at least up to forty (40) hours of remote and/or on-site method development assistance at no additional cost to NDOT for each new analysis NDOT requires. Method development would include assistance in selecting standards, sample preparation recommendations, software parameters set-up, calibration, and/or any other services the contractor chooses to provide.
YES			2. The contractor may provide an hourly rate for remote method development assistance that exceeds forty (40) hours and is not covered by any purchased service plans.
YES			3. The contractor may provide an hourly rate for on-site method development assistance that exceeds forty (40) hours and is not covered by any purchased service plans. This rate shall include all expenses (travel, mileage, food, lodging, parking, fuel, labor) associated with the method development rate.
<b>NOTES/COMMENTS:</b>			

**M. TRADE-IN:**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES*			1. Is there a trade-in option available for Sequential XRF Spectrometer and External Water Recirculating System?
<b>NOTES/COMMENTS: *A trade-in option for the ARL PerformX is available toward the purchase of a new replacement system at the completion of this contract life.</b>			

**N. REMOVAL OF EXISTING XRF SPECTROMETER EQUIPMENT:**

YES	NO	NO & PROVIDE ALTERNATIVE	
	NO		1. The contractor shall de-commission and take possession of the existing spectrometer (Bruker S4 Pioneer) and the External Water Recirculating System within ten (10) business days.
	NO		2. If trade-in option is not available, Section N.1. will not apply to this Invitation to Bid.
<b>NOTES/COMMENTS:</b>			

**O. ANNUAL USAGE, ESTIMATED**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Annual usage figures provided are estimates and are not to be construed as either a minimum or maximum purchase quantity. The orders shall be for the actual quantities of each item ordered by or for any agency during the life of the contract. Vendor shall not impose minimum order requirements.
NOTES/COMMENTS:			

**P. DELIVERY ARO**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Delivery shall be within 120 days after receipt of order.  A successful Bidder will maintain sufficient inventory to process and deliver within twenty (20) calendar days ARO for Non-Core catalog items. There will be no minimum order requirements for all Core/ Non-Core items.
YES			2. At the time of delivery, a designated State employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage.
YES			3. The bid price shall include the delivery/shipping charges FOB destination of the X-Ray Fluorescence Spectrometer System.
YES*			4. All Deliveries are to be FOB destination to NDOT location specified on the purchase order or as directed by NDOT at the time of purchase in accordance with this Invitation to Bid.
YES			5. Contractor shall be responsible for the shipping cost of returning and replacing defective and/or damaged products received.
YES			6. Deliveries must be clearly marked with the purchase order number.
YES			7. Deliveries shall be made during normal working hours between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday (excluding State holidays and / or as otherwise directed).
YES			8. If an emergency exists, delivery may be made through prior arrangements with receiving personnel.
YES			9. If delays in delivery are anticipated, the Contractor will immediately notify the NDOT Materials and Research Division of the expected delivery date.  Nebraska Department of Roads Materials and Research Division Chemistry Laboratory 1400 Hwy. 2 Lincoln, NE 68502 Phone – 402-479-4874
YES			10. The order may be canceled if the delivery time is unsatisfactory, and the State may procure item(s) from other sources and the Contractor will be held responsible for any/all excess cost.

**NOTES/COMMENTS: \*We use the more modern term of “FCA” but the delivery and all fees associated with the delivery are covered by TENA, LLC**

**Q. PACKAGING**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Cartons are to be clearly marked with size, weight, color, quantity, and the purchase order number. Cartons must be of suitable size and of sufficient strength to protect the contents during shipping, handling and storage.
<b>NOTES/COMMENTS:</b>			

**R. ORDERS**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Orders will be placed either by, phone, fax, e-mail or Internet (if available and not to the exclusion of the other methods).
YES			2. All orders must reference a purchase order number and the purchase order number must be referenced on the packing slip, and invoice.
YES			3. Invoices are to be sent to the "Invoice to" address on the purchase order.
<b>NOTES/COMMENTS:</b>			

**S. QUALITY**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Product quality must meet specifications and be consistent for the term of the contract.
YES			2. A guarantee of satisfactory performance by the supplier and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this bid invitation.
YES			3. All materials must be of first quality, under standard production by the manufacturer and be of standard design, complete as regularly advertised and marketed and be of proven performance.
YES			4. Products are to be fully guaranteed and may be returned for full credit or replacement (at the State's option) for any reason during the initial warranty period with no additional charges for shipping or restocking.

**NOTES/COMMENTS: Thermo Electron North America LLC response: Contractor's standard warranty shall apply.**

Seller's sole obligation with respect to the Services is to provide the quoted Services in a workmanlike manner and if Buyer provides notice of defect in Service within ninety (90) days of completion of such Services, Seller will, at its sole option, either

reperform the Services without charge to Buyer or grant Buyer a credit for the amount paid by Buyer with respect to such Service. Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the Product documentation, published specifications or package inserts (the "Warranty Period"). If a Warranty Period is not specified in Seller's Product documentation, published specifications, or package inserts, the Warranty Period for new instruments is twelve (12) months from the date of shipment to Buyer; and for all other Products is ninety (90) days from the date of shipment. During the Warranty Period, Seller agrees to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with Seller's published specifications; provided that Buyer (a) promptly notifies Seller in writing upon the discovery of any covered defect in the Products, including the Product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with an RMA number and services data, which may include biohazard decontamination procedures and other Product-specific handling instructions. Then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products will be made in accordance with the Delivery clause of this Agreement. Except for new consumable items manufactured and sold by Seller, this warranty expressly excludes all other consumable parts or components (e.g., bulbs, belts, cartridges, etc.) in the Products. If Seller elects to repair defective medical device instruments, Seller may, in its sole discretion, provide a replacement loaner instrument to Buyer as necessary for use while the instruments are being repaired.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller; but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

In no event shall Seller have any obligation to make repairs, replacements or corrections under the Warranty, in whole or in part, as the result of or with respect to: (a) use of the Products in a manner for which they were not designed; (b) improper storage and handling of the Products; (c) use of the Products in combination with equipment or software not supplied by Seller (d) shipping damage incurred en route to Buyer's site or because of moving equipment, in which case Seller will promptly provide a cost estimate for Technical Support to the consignee for filing claims to carriers for shipping damage; (e) flood, lightning, earthquake, tornado, hurricane or fire, bombing, armed conflict, malicious mischief, sabotage or other natural or man-made disasters; (f) normal wear and tear, physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation; (g) repairs, maintenance, or modifications made by anyone other than Seller trained personnel or without Seller's supervision and/or approval; (h) relocation and reinstallation of equipment; although upon request Seller will supervise the removing, crating, relocation and reinstallation of the Products at Seller's current Services rates; (i) maintenance or replacement of media (i.e., floppy disks, plotter supplies, etc.) whatever the reason for loss, failure or damage; (j) beta-site support; (k) operator training; or (l) repairing Product malfunctions if the fault is not with the equipment. If Seller determines that Products for which Buyer requested warranty services are not covered by this warranty, Buyer will pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides Services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates.

ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS AND/OR SERVICES. THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT FOR SELLER TO REPAIR OR REPLACE A DEFECTIVE PRODUCT OR TO REPERFORM OR CREDIT THE PRICE OF DEFECTIVE SERVICES SHALL BE THE SOLE REMEDY OF BUYER FOR SUCH DEFECTIVE PRODUCTS OR SERVICES UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NONINFRINGEMENT. SELLER DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

**T. CORE LIST AND CATALOG/NON-CORE: PRICES**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES*			1. Core List prices quoted shall be net, including transportation and delivery charges fully prepaid by the vendor, FOB Destination to the ordering state facility/agency. Core List pricing is to remain firm for the initial one (1) year of the contract.

YES			<p>2. Any request for increased pricing must be submitted in writing to the SPB a minimum of thirty (30) days prior to proposed effective date of increase and be accompanied by any/all supporting documentation such as a notification letter from the manufacturer indicating the percentage of increase. The supporting information must clearly establish the increase is for all customers, not to the State alone. Further documentation may be required by the State, to authenticate the increase (such as manufacturer invoices).</p> <p style="text-align: center;"><b>Failure to supply any requested supporting documentation may be grounds to cancel the contract.</b></p>
YES			<p>3. Catalog/Non-Core item purchases shall be net, including transportation and delivery charges fully prepaid by the vendor, FOB Destination to the ordering state facility/agency.</p>
YES			<p>4. Discount bid off of manufacturer's suggested list price shall remain fixed for the duration of the contract.</p>
YES			<p>5. During the life of the contract, there may be new manufacturer's list price schedules published. In the event this occurs, it will be necessary for the Contractor to supply the SPB and any requesting agencies with one (1) copy of each as applicable.</p>
YES			<p>6. New catalog and/or price list(s) will be incorporated into the contract thirty (30) days after receipt by the SPB.</p>
YES			<p>7. Discounts for Catalog/Non-Core items shall be applied to products as presented as Catalog/Non-Core items in the ITB.</p>
YES			<p>8. Bidder shall include each manufacturer's list price schedule to coincide with manufacturers presented as Catalog/Non-Core items in the ITB.</p>
YES			<p>9. Prices quoted for products on the Core List and Catalog/Non-Core items shall be inclusive of all costs, to include but not limited to storage, processing and/or delivery throughout the State. Vendor cannot impose any additional service fees. Vendor shall inform the SPB in the event of any unanticipated or overlooked contingency affecting pricing or contract performance.</p>
YES			<p>10. NO price increases are to be billed to the State facilities without prior written approval by the SPB.</p> <p>The State further reserves the right to reject any proposed price increase(s), cancel the contract and re-bid if determined in the best interest of the State.</p>
YES			<p>11. It is understood and agreed that in the event of a reduction in the manufacturer's published standard price list for all or any portion of the proposed items, the State will be given full benefit of such decline in price immediately, including any promotional allowances offered to the balance of the trade during the contract period.</p>
<p><b>NOTES/COMMENTS: *We use the more modern term of "FCA" but the delivery and all fees associated with the delivery are covered by TENA, LLC</b></p>			

**U. CORE LIST and CATALOG/NON-CORE: CORE LIST PRICING**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			<p>1. Any quantities stated are estimated annual quantities and shall not be construed to be either a minimum or a maximum. The State will not accept substitutions.</p>

YES			2. A manufacturer's model/number has been provided for each item.
YES			3. All bid units should match exactly. NOTE: If contractor fails to provide a price on any items, those items for that contractor will be adjusted to the highest quoted price for those items.
YES			4. In those cases where items may have more than one brand name, the contractor may bid on either brand. Please indicate which brand was bid. Bidder must complete Core and Non-Core List. Please pay special attention to the unit of measure.
YES			5. Core Items have been identified as follows: a. Sequential XRF Spectrometer Equipment with External Water Recirculating System. b. Annual Flat Rate Preventative Maintenance Plan. c. Hourly Rate for Service Calls (Regular Working Hours). d. Hourly Rate for Service Calls (Weekend/Holiday Hours).
NOTES/COMMENTS:			

**V. CORE LIST AND CATALOG/NON-CORE: CATALOG/NON-CORE PRICING/PERCENTAGES**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Prices for Catalog/Non-Core items shall be determined by applying the quoted discount for the item to the manufacturer's current catalog or price list. The percentage discount for the items shall remain firm for the duration of the contract period. Bidder must clearly state the date of the catalog or price list used and provide a copy of the catalog to the SPB upon request.
YES			2. The pricing structure, consisting of all pricing formulas and pertinent information, for all non-core items must be clearly defined and documented for future auditing purposes.
YES			3. The percentage discount rate for Catalog/Non-Core items or categories will not decrease during the life of the contract.
YES			4. A firm percentage rate must be quoted--a range of percentages will not be considered.
YES			5. Catalog/ Non-Core Categories have been identified as follows (excluding core items): a) XRF Spectrometer Equipment parts & accessories. b) Service plans. c) Software, Hardware, and Firmware updates/upgrades. d) Method Development. e) Diagnostic, Repair, and Maintenance Training at Contractor Facility.
NOTES/COMMENTS:			

**W. CORE LIST and CATALOG/NON-CORE: ADDITIONAL PRICE LISTS AND CATALOGS**

YES	NO	NO & PROVIDE ALTERNATIVE	
-----	----	--------------------------	--

YES			1. After award of the contract(s), the contractor(s) shall supply additional copies of the current catalog or price list used for this ITB for distribution to any requesting state agency at no charge, within ten (10) business days of request.
YES			2. Additional catalogs and/or price lists may be required and shall be provided without charge.
YES			3. Any catalog or price list revisions which occur during the duration of the contract shall be provided upon request without charge.
NOTES/COMMENTS:			

**X. CORE LIST and CATALOG/NON-CORE: USAGE REPORTS**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Usage reports may be requested by the SPB. The reporting period may be determined based on need and may include the following: <ul style="list-style-type: none"> <li>a. Fill rate information for core and non-core items, statewide and by agency to include the number of orders received, orders processed, back orders, and partially filled orders.</li> <li>b. Usage reports by agency and statewide indicating the numbers of each core item and non-core item sold.</li> <li>c. Any additional report the SPB may deem necessary.</li> </ul>
NOTES/COMMENTS:			

**Y. GRAY MARKET PRODUCTS PROHIBITION**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. The State will not accept Gray Market Products for this solicitation. Gray Market is defined as the trade of a commodity through distribution channels which, while legal, are unofficial, unauthorized, or unintended by the original manufacturer. Gray Market items are not designed to be sold in a particular market and cannot be supported by the authorized importer because of various reasons.
NOTES/COMMENTS:			

**Z. AUTHORIZED DEALER & WARRANTY**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. To the extent required by the manufacturer, the Bidder shall be an authorized dealer.

YES			2. Bidder may be required to substantiate that he/she is an authorized dealer. Proof, if required, must be submitted to the SPB within three (3) days of the request and prior to the award of any contract.
YES			3. The terms of the original manufacturer's standard warranty shall apply to all equipment acquired from this solicitation for the entire warranty period.
NOTES/COMMENTS:			

**AA. WARRANTY**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Contractor must warrant the average life expectancy supplies hereunder to be not less than that stated in the manufacturer's price list and agree to replace, without cost, all supplies failing to meet this requirement, except where the reduced life is due to conditions beyond the control of the Contractor.
YES			2. Defective parts or those damaged in shipment must be replaced by the Contractor at no charge to the State.
YES			3. The manufacturer's standard warranty shall apply and be in effect for at least one (1) year from the date the equipment was placed in service.

**NOTES/COMMENTS:** Thermo Electron North America LLC response: Contractor's standard warranty shall apply. Seller's sole obligation with respect to the Services is to provide the quoted Services in a workmanlike manner and if Buyer provides notice of defect in Service within ninety (90) days of completion of such Services, Seller will, at its sole option, either reperform the Services without charge to Buyer or grant Buyer a credit for the amount paid by Buyer with respect to such Service. Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the Product documentation, published specifications or package inserts (the "Warranty Period"). If a Warranty Period is not specified in Seller's Product documentation, published specifications, or package inserts, the Warranty Period for new instruments is twelve (12) months from the date of shipment to Buyer; and for all other Products is ninety (90) days from the date of shipment. During the Warranty Period, Seller agrees to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with Seller's published specifications; provided that Buyer (a) promptly notifies Seller in writing upon the discovery of any covered defect in the Products, including the Product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with an RMA number and services data, which may include biohazard decontamination procedures and other Product-specific handling instructions. Then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products will be made in accordance with the Delivery clause of this Agreement. Except for new consumable items manufactured and sold by Seller, this warranty expressly excludes all other consumable parts or components (e.g., bulbs, belts, cartridges, etc.) in the Products. If Seller elects to repair defective medical device instruments, Seller may, in its sole discretion, provide a replacement loaner instrument to Buyer as necessary for use while the instruments are being repaired. Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller; but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier. In no event shall Seller have any obligation to make repairs, replacements or corrections under the Warranty, in whole or in part, as the result of or with respect to: (a) use of the Products in a manner for which they were not designed; (b) improper storage and handling of the Products; (c) use of the Products in combination with equipment or software not supplied by Seller (d) shipping damage incurred en route to Buyer's site or because of moving equipment, in which case Seller will promptly provide a cost estimate for Technical Support to the consignee for filing claims to carriers for shipping damage; (e) flood, lightning, earthquake, tornado, hurricane or fire, bombing, armed conflict, malicious mischief, sabotage or other natural or man-made disasters; (f) normal wear and tear, physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation; (g) repairs, maintenance, or modifications made by anyone other than Seller trained personnel or without Seller's supervision and/or approval; (h) relocation and reinstallation of equipment; although upon request Seller will supervise the removing, crating, relocation and reinstallation of the Products at Seller's current Services rates; (i)

maintenance or replacement of media (i.e., floppy disks, plotter supplies, etc.) whatever the reason for loss, failure or damage; (j) beta-site support; (k) operator training; or (l) repairing Product malfunctions if the fault is not with the equipment. If Seller determines that Products for which Buyer requested warranty services are not covered by this warranty, Buyer will pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides Services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates.

ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS AND/OR SERVICES. THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT FOR SELLER TO REPAIR OR REPLACE A DEFECTIVE PRODUCT OR TO REPERFORM OR CREDIT THE PRICE OF DEFECTIVE SERVICES SHALL BE THE SOLE REMEDY OF BUYER FOR SUCH DEFECTIVE PRODUCTS OR SERVICES UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NONINFRINGEMENT. SELLER DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

**BB. SUBSTITUTIONS**

YES	NO	NO & PROVIDE ALTERNATIVE	
YES			1. Vendor will not substitute any item that has been awarded without prior written approval of SPB.

**NOTES/COMMENTS:**

**CC. SECRETARY OF STATE REGISTRATION REQUIREMENTS**

\*\*\*CHOOSE "YES" TO BEST ANSWER ONLY, CHOOSE "NO" FOR REMAINING LINES\*\*\*

YES	NO	*Prior to contract award and/or upon request of SPB, potential award recipient(s) will be asked to certify compliance with Nebraska Secretary of State Registration by providing a true and exact copy of current (dated within 90 days) valid Certificate of Good Standing or Letter of Good Standing.
		<p>1. Bidder is a SOLE PROPRIETORSHIP (in which case, no Letter of Good Standing/Certificate of Good Standing is required)</p> <p>If the Bidder is an Individual or Sole Proprietorship, the following applies:</p> <p>a. The Bidder must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a></p> <p>The completed United States Attestation Form should be submitted with the Invitation to Bid response.</p> <p>b. If the Bidder indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.</p> <p>c. The Bidder understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.</p>
		<p>2. Bidder is a GENERAL PARTNERSHIP (in which case, no Letter of Good Standing/Certificate of Good Standing is required).</p>
YES		<p>3. Bidder is a FOREIGN or DOMESTIC CORPORATION or BUSINESS and a copy of current Letter of Good Standing/Certificate of Good Standing from the Nebraska Secretary of State is provided within bid submission documents.</p>
		<p>4. Bidder is a FOREIGN or DOMESTIC CORPORATION or BUSINESS and a copy of current Letter of Good Standing/Certificate of Good Standing from the Nebraska Secretary of State will be provided in a timely manner upon request prior to award.</p>

**Form A**  
**Bidder Contact Sheet**  
**Invitation To Bid Number 5987 OF**

Form A should be completed and submitted with each response to this ITB. This is intended to provide the State with information on the Bidder's name and address, and the specific person(s) who are responsible for preparation of the Bidder's response.

Preparation of ITB Contact Information	
Bidder Name:	Thermo Electron North America LLC
Bidder Address:	5225 Verona Road Madison, WI 53711
Contact Person & Title:	Therese Creighton Customer Service Rep
E-mail Address:	<a href="mailto:Therese.Creighton@thermofisher.com">Therese.Creighton@thermofisher.com</a>
Telephone Number (Office):	608/273/6817
Telephone Number (Cellular):	n/a
Fax Number:	412-200-6542

Each Bidder shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the Bidder's response should become necessary.

Communication with the State Contact Information	
Bidder Name:	Thermo Electron North America LLC
Bidder Address:	5225 Verona Road Madison, WI 53711
Contact Person & Title:	Bruce Beck
E-mail Address:	<a href="mailto:Bruce.Beck@thermofisher.com">Bruce.Beck@thermofisher.com</a>
Telephone Number (Office):	n/a
Telephone Number (Cellular):	219-670-1877
Fax Number:	412-200-6542

# STATE OF NEBRASKA

United States of America,     } ss.  
State of Nebraska                }

Secretary of State  
State Capitol  
Lincoln, Nebraska

I, John A. Gale, Secretary of State of the  
State of Nebraska, do hereby certify that

## **THERMO ELECTRON NORTH AMERICA LLC**

**a limited liability company is authorized to transact business in Nebraska;**

**all fees, taxes, and penalties due under the Nebraska Uniform Limited  
Liability Company Act or other law to the Secretary of State have been paid;**

**the Company's most recent biennial report required by section 21-125 has  
been filed by the Secretary of State;**

**the Secretary of State has not revoked the Company's Certificate of Authority  
and has not filed a notice of cancellation.**

*This certificate is not to be construed as an endorsement,  
recommendation, or notice of approval of the entity's financial  
condition or business activities and practices.*

In Testimony Whereof,

I have hereunto set my hand and  
affixed the Great Seal of the  
State of Nebraska on this date of

**January 8, 2019**



*John A. Gale*  
Secretary of State

**ThermoFisher**  
SCIENTIFIC

Thermo Fisher Scientific ARL  
1400 Northpoint Pkwy Suite 10  
West Palm Beach, FL 33407-1976

Sales Representative: Bruce Beck  
Tel. (219)988-7106  
E-mail: [bruce.beck@thermofisher.com](mailto:bruce.beck@thermofisher.com)

# ARL PERFORM'X Advanced WD XRF Spectrometer

Uni-Quantometer- 2500W



Quotation #:  
Valid January 10, 2019 until March 31, 2019

Solicitation No. 5987 OF

Rene A. Botts  
State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, NE 68508

Ph: (402)471-6500  
E: [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)

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**A. PRICING SUMMARY**

	Designation	Art. N°	Qty	Unit Price [USD]	Total Price [USD]
<b>1</b>	<b>ARL PERFORM'X SERIES WDXRF SPECTROMETER</b>				
1.1	<b>Perform'X 2500</b>				
1.1.1	ARL Perform'X 2500 XRF Uniquantometer	XR-PFX-02U	1	175,221	175,221
1.2	<b>OXSAS Software</b>				
1.2.1	OXSAS X-Ray Analytical Software	XR-OXSAS	1	10,289	10,289
1.3	<b>Computer</b>				
1.3.1	Desktop Personal Computer	XO-PC-COMPUTER	1	1,191	1,191
1.3.2	Color Inkjet printer	XO-INK-PRINTER	1	144	144
<b>2</b>	<b>OPTIONS FOR UNIVERSAL GONIOMETER</b>				
2.1	<b>Crystals</b>				
2.1.1	PET flat crystal – Al to Cl	XR-CR-PET	1	2,338	2,338
<b>3</b>	<b>GENERAL OPTIONS</b>				
3.1	<b>Liquid &amp; Loose Powder Analysis</b>				
3.1.1	Helium Flush for Liquids Analysis	XR-PX-HE	1	6,144	6,144
3.1.2	Cassette for loading liquid cells, internal diameter 41mm, opening diameter 29mm	XR-PX-LCAS	6	219	1,314
3.2	<b>Programmable Primary Beam Filters</b>				
3.2.1	Be anti-drip filter for PBF	XR-ANTI-DRIP-PX	1	1,349	1,349
3.3	<b>Trays for X-Y Sample Changer</b>				
3.3.1	Additional tray for 8 cassettes (up to 8)	XR-PX-TR8	4	327	1,308
3.3.2	Sample tray for direct loading of 27 samples of diam 35-41mm (up to 3)	XR-PX-TR3641	1	756	756
3.4	<b>Programmable Aperture Changers</b>				
3.4.1	Programmable Mask Changer with 29mm aperture + 3 available positions at choice	XR-PX-PAC	1	4,940	4,940
3.5	<b>Sample Cassettes &amp; Centering Rings</b>				
3.5.1	Lid-less cassette of 29 mm aperture for sample up to 52mm	XR-PX-LLCAS	31	219	6,789
3.5.2	Set of 10 centering rings, diam 51.8/41 x 2mm	XR-CR-10B	4	26	104
<b>4</b>	<b>CALIBRATIONS</b>				
4.1	<b>Calibration of Oxides, Ferro-Alloys &amp; Others</b>				
4.1.1	Calibration for Cement as pressed pellets	XR-CAL-CEM	1	3,975	3,975
4.1.2	Set of NIST pressed cement standards	XR-KIT-NIST	1	646	646
<b>5</b>	<b>INSTRUMENT ACCESSORIES</b>				
5.1.1	High Pressure Reducer for P-10 Gas	XR-PR-FP	1	1,215	1,215
5.1.2	High Pressure Reducer for Helium Gas	XR-PR-HE	1	1,226	1,226
<b>6</b>	<b>OXSAS SOFTWARE OPTIONS</b>				
6.1	<b>Data Communication</b>				
6.1.1	ARLcom	XO-OX-ARLCOM	1	2,306	2,306
<b>7</b>	<b>DOCUMENTATION</b>				
7.1.1	Calibration certificates	XO-CAL-DOC	1	257	257
<b>8</b>	<b>TRAINING</b>				
8.1.1	On-site analytical support	701-045301	24	349	8,376
<b>9</b>	<b>PACKING &amp; TRANSPORT</b>				

9.1.1	Standard Airfreight Packing	XR-PX-AIR	1	1,436	1,436
9.1.2	Transport & Insurance to FCA Geneva Airport	XR-PX-GEN	1	829	829
9.1.3	Transport & insurance CIP to airport of destination	XO-CIP	1	3,045	3,045
	<b>List price</b>				<b>\$235,198</b>
	<b>Discount</b>			<b>-15%</b>	<b>-\$33,227</b>
	<b>Total Price to State of Nebraska</b>				<b>\$201,971</b>

**B. SUPPLEMENTAL TO GENERAL TERMS**

Supplementary terms and conditions are added to the terms and conditions on the reverse of the cover page.

**Delivery Terms:**

Prices are for delivery FCA-Factory (Freight and insurance to destination included). Packing is included. Buyer is responsible for unloading the equipment from the delivery truck and bring it to its final local.

**DELIVERY:**

Five to six months from receipt of formal purchase order. Subject to prior orders and system configuration.

**TRANSPORT:**

Thermo Electron North America LLC US routinely ships via electronically-controlled air suspension van.

**PAYMENT TERMS (ON APPROVED CREDIT)**

**50% due upon order, 40% due upon shipment and 10% due upon installation.**  
*With approved credit. All payments are due net 30 days of invoice*

***Installation for the instrument will be scheduled after receipt of money due upon shipment.***

1-1/2% per month interest charged on past due accounts.

NOTE: Sales tax is not included in the price of the instrument.

**To place an order:**

Please note-all Purchase Orders must show the vendor name of Thermo Electron North America LLC:

Fax: 412-200-6542

e-mail: [usmadorderprocessing@thermofisher.com](mailto:usmadorderprocessing@thermofisher.com) or  
[uspal.orderprocessing@thermofisher.com](mailto:uspal.orderprocessing@thermofisher.com)

Thermo Electron North America LLC , 5225 Verona Road , Madison, WI 53711

1. Please reference quotation number from which the instrument has been purchased on purchase order to ensure accurate order placement.
2. If tax exempt, please include a copy of the exemption certificate with your purchase order. All applicable taxes will be invoiced if this certificate is not received.

**Validity:** Please note this quote is valid until December 20, 2018.

**Sales engineer: Bruce Beck**

**Phone: (219)-988-7106**

**Email: [bruce.beck@thermofisher.com](mailto:bruce.beck@thermofisher.com)**

**C. OFFER TEXT**

**1. ARL PERFORM'X SERIES WDXRF SPECTROMETER**

**1.1 Perform'X 2500W**

**1.1.1 ARL Perform'X 2500 XRF Uniquantometer (XR-PFX-02U)**

Advanced Sequential Spectrometer (element coverage F to U in solids) including:

- **5GN+** type Rh target X-Ray tube with 50 µm window
- **2500 W Power supply for 60 kV max. or 100 mA max.** (KV-mA combinations to be less than 2500W)
- Digitally mastered Goniometer with:
  - 4 position programmable collimator changer with 4 collimators fitted (0.15°, 0.4°, 1° and 2.5° angular admittance)
  - 9 position crystal changer with 4 crystals fitted: AX03, Ge, LiF200 and LiF220
  - 2 detectors: flow proportional and scintillation
- Fixed internal mask opening diameter 29 mm
- Closed circuit deionised water cooling system (water-air)
- Vacuum system with rotary pump
- Automatic sample changer for 9 samples, including 9 standard cassettes for samples of maximum diameter 52mm, maximum height 30 mm, Opening diameter 29 mm. One position can be dedicated for urgent samples
- Sample rotation system, 60 rev./minute
- 6 position Primary Beam Filter with Al20, Al200, Al500, Al750, Cu250 filters
- Programmable beam stop
- **No Helium flush system included :**  
**to be added in case of liquids or loose powders analysis (XR-PX-HE)**
- Microprocessor control electronics
- Display of instrument status and current operation on PC screen
- UNIQANT Software package fully installed at the factory
  - Standard-less analysis package for all types of bulk samples, liquid samples and small samples with irregular shapes. Concentration calculations for multi-element monolayer or thin sample. Fully installed at the factory. Coverage from Fluorine to Uranium (other elements upon special request).
  - Software tool to determine masses of layers in a multi-layer structure included. Thickness calculation when layer densities are known.
  - Includes:
    - 10 "pure" elements standards for setting-up and maintenance
    - 1 set of centering rings
    - 1 set of sectored inserts
    - 1 dongle (hardware lock)
- Capability for remote diagnostics  
Modem on user site is not included
- One set of Quality Assurance monitor samples for Instrument Performance and Operational Performance certification
- Auto-diagnostic support
- Instrument documentation in electronic form
- Packing for truck transport

Notes: - P-10 or Helium gas cylinder & pressure reducer are not included;  
 - Helium flush system (XR-PX-HE) should be added in case analysis of liquids is required  
 - Isolation transformer is already included in all ARL PERFORM'X instruments  
 - Computer is not included in this item

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## 1.2 OXSAS Software

### 1.2.1 OXSAS X-Ray Analytical Software (XR-OXSAS)

Software that runs on Windows® 10 and includes the following main features:

- Modern, State-of-the-Art Graphic User Interface;
- Integrated Microsoft® SQL Server Express Edition relational database which stores your set up data and analyses;
- Quantitative analysis with analysis parameter template;
- Unattended analysis with flexible batches for all types of samples and measurements, with support of priority samples and with scheduler; includes support for custom scripts execution
- Step scanning and digital continuous scanning. Investigation of scan spectra with graphical tools;
- Integrated Analytical Assistant to set up methods with measurement and corrections parameters;
- Shortcuts to start routine analyses, measurements of SCT samples and batches with user-defined analysis template. Sample identification can be predefined. Support of shortcut keys enabling users to operate analysis exclusively through the keyboard
- Comprehensive editor for setting up methods with measurement and corrections parameters;
- Manual inputs and status values. Pseudo values computed on intensities, concentrations or any calculation step;
- Calibration curve determination using multi-variable regression with a range of correction models and integrated theoretical alphas calculation;
- Powerful flexible sample identification;
- Manual and automatic result processing;
- Multi-purpose analysis result display and printing;
- Measurement uncertainty combining in a single value the uncertainty of analysis due to counting statistics and the uncertainty from the calibration;
- Element display with possibilities to show units and grade limits. Precision: dynamic (proportional to the concentration range), fixed number of decimals or fixed number of significant digits. ASTM rounding is supported;
- Result validation and edition, with history;
- Grade check (target and alternative), grade search and sort;
- Grade conformity probability indication based on grade limits and measurement uncertainties;
- Automatic method choice based on element(s) concentration(s) or sample identification
- Results recalculation (unknown samples, calibration samples, Setting-Up, Control and Type Standards samples). With possibility to recalculate multiple samples in one operation;
- Result storage and post-treatment with powerful database query filters. Statistics. Export to files in Excel or CSV formats. Tracing of result modification with integrated display of modification history;
- Type standardization, with history;
- Management of SCT samples: supervision of the status and maintenance of Setting-Up, Control and Type Standards samples. One click creation of a batch with all samples requiring analysis;
- Monitoring: instrument alarm monitoring, system event logging, peripheral device monitoring;
- Integrated contextual help;
- Accounts with password protection with definable access and operational rights, database maintenance tools;
- Text customization and translation into any language that have a character set supported by the Windows operating system. Standard language delivery: English. Following other complimentary languages are included: Chinese, Japanese, Russian, French, German, Spanish, Portuguese and Turkish.

- Notes:
- All operations using SPC and control samples requires either SPC-Basic or SPC-Full option
  - A beginner manual is available as a PDF file (First Steps with OXSAS, standard language delivery is English)
  - The Software user and configuration documentation is available in the form of an integrated, contextual Help file. Standard language delivery is English.

- The instrument computer must be dedicated to running the OXSAS software application and any afferent 3<sup>rd</sup> party software supplied or agreed by Thermo Fisher. Installing and running other software applications can be done only at the customer's own risk, Thermo Fisher does not assume the responsibility for any compatibility issue that could arise therewith.
- Computer operating system requirements if the computer is not supplied by Thermo Fisher Scientific (Ecublens) SARL: refer to XO-PC-COMPUTER.



### 1.3 Computer

#### 1.3.1 Desktop Personal Computer (XO-PC-COMPUTER)

- **Personal Computer system DELL OptiPlex XE2 Small Form Factor** with the following minimum specifications:
  - 4Intel Core I5-4570S Processor, 4 GB Memory;
  - One hard disk drive (500 GB);
  - Operating system Windows® 10 IoT Enterprise 2016 LSTB Embedded;
  - 22" Widescreen Flat Panel Display, USB keyboard and mouse;
  - 1 x VGA and 2 x Display Port;
  - 2 x Ethernet 10/100/1000 LAN interface (RJ-45 connector);
  - 1 serial;
  - 4 External USB 3.0 ports (2 front, 2 rear) and 6 External USB 2.0 ports (2 front, 4 rear) and 2 Internal USB 2.0;
  - Includes factory installation and configuration of operating system and instrument software.

*Note: Thermo Fisher Scientific reserves the right to substitute the latest equivalent (or better) computer model & configuration;*

*In the case the instrument computer is not supplied from Thermo Fisher Scientific (Ecublens) SARL, the PC hardware and the operating system configuration must strictly conform to the following minimal requirements:*

- *Personal Computer with Windows® 10 IoT Enterprise 2016 LSTB Embedded, 64 bits only;*
- *The following minimum specifications: 2.0 GHz processor, 4 GB memory and 20 GB free disk space. 2 network interfaces, 1 free serial RS-232 port and 1 free USB port.:*



#### 1.3.2 Color Inkjet printer (XO-INK-PRINTER)

*Note: Thermo Fisher Scientific reserves the right to substitute the latest equivalent (or better) computer model & configuration;*



## 2. OPTIONS FOR UNIVERSAL GONIOMETER

### 2.1 Crystals

#### 2.1.1 PET crystal – Al to Cl (XR-CR-PET)

Elements Al to Cl



## 3. GENERAL OPTIONS

### 3.1 Liquid & Loose Powder Analysis

#### 3.1.1 Helium Flush for Liquids Analysis (XR-PX-HE)

Includes one Liquids analysis kit including

- 2 cassettes for loading liquid cells (XR-PX-LCAS)
- 100 disposable liquid holders for ARL Perform'X Ø 41 mm
- 500 pre-cut sheets of Polypropylene 6 µm film
  - Unique LoadSafe design includes a series of features that prevent any trouble during sample pumping and loading. Liquid cassette recognition prevents any liquid sample to be exposed to vacuum by mistake. Over exposure safety automatically ejects a liquid sample if X-ray exposure time is too long. The Secutainer protects the primary chamber by vacuum collecting during flushing any liquid drops in a specially designed container, easily removed and cleaned by any operator

*Note: Customer should provide Helium gas cylinders and pressure reducer*

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**3.1.2 Cassette for loading liquid cells, internal diameter 41mm, opening diameter 29mm (XR-PX-LCAS)**



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**3.2 Programmable Primary Beam Filters**

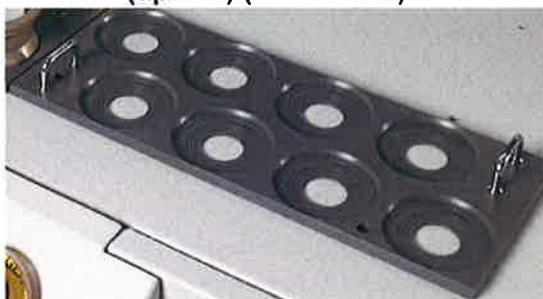
**3.2.1 Be anti-drip filter for PBF (XR-ANTI-DRIP-PX)**

Extra thin/high transmission Be filter. Added on Programmable Primary Beam Filter. Protects X-ray tube window during sample loading/unloading or throughout analysis (at choice).

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**3.3 Trays for X-Y Sample Changer**

**3.3.1 Additional tray for 8 cassettes (up to 8) (XR-PX-TR8)**



Tray for 8 cassettes. Cassettes to be added separately. Choose cassettes for solids or cassettes for liquid cells depending on customer application. Up to 8 such trays for cassettes can be fitted on the XY sample changer.

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**3.3.2 Sample tray for direct loading of 27 samples of diam 35-41mm (up to 3) (XR-PX-TR3641)**



Each sample tray uses space of 2 cassette trays. Up to three sample trays can be fitted.

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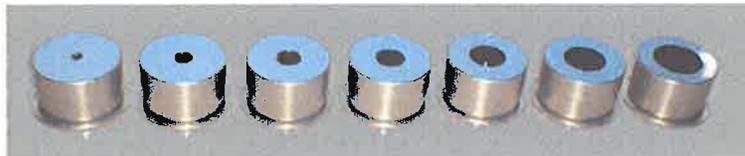
**3.4 Programmable Aperture Changers**

**3.4.1 Programmable Mask Changer with 29mm aperture + 3 available positions at choice (XR-PX-PAC)**

It is sometimes necessary to analyse various size of samples. A programmable mechanism is available to increase or reduce the standard aperture of 29 mm. Three apertures can be chosen to be used with cassettes of 35, 25, 20, 15, 10 or 5 mm opening

- specify selection of up to 3 apertures
- specify number of cassettes of each aperture

*Note: When small spot or mapping option is included only two additional apertures can be selected*



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**3.5 Sample Cassettes & Centering Rings**

**3.5.1 Lid-less cassette of 29 mm aperture for sample up to 52mm (XR-PX-LLCAS)**

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**3.5.2 Set of 10 centering rings, diam 51.8/41 x 2mm (XR-CR-10B)**

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**4. CALIBRATIONS**

**4.1 Calibration of Oxides, Ferro-Alloys & Others**

**4.1.1 Calibration for Cement as pressed pellets (XR-CAL-CEM)**

A series of cement certified reference materials are used to derive the calibration curves for pressed pellets. **Samples are pressed with 10% wax binder.** Check separate calibration specifications for more details especially on sample preparation and calibration ranges.

- Notes:*
- Prerequisite to be included on universal goniometers are LiF200, PET, Ge111 and AX06 (or AX03) crystals; FPC and scintillation detectors; fine, medium and coarse collimators
  - This calibration includes a set of stable and polished setting-up samples for maintenance of the calibration curves over the lifetime of the instrument
  - No certified reference material are delivered with this calibration

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**4.1.2 Set of NIST pressed cement standards (XR-KIT-NIST)**

Set of 7 NIST pressed cement standards for calibration and validation purposes. Standard samples are pressed with 10% wax binder. Kit includes: NIST 1880, 1881, 1884, 1885, 1886, 1888 and 1889. One bottle of wax binder is included (250g).

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**5. INSTRUMENT ACCESSORIES**

**5.1.1 High Pressure Reducer for P-10 Gas (XR-PR-FP)**

Bottle of P-10 gas (Ar + 10%CH4) for FPC detector to be supplied locally – see gas specifications in Pre-installation manual

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**5.1.2 High Pressure Reducer for Helium Gas (XR-PR-HE)**

Helium gas bottle to be supplied locally – see gas specifications in Pre-installation manual

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**6. OXSAS SOFTWARE OPTIONS**

**6.1 Data Communication**

**6.1.1 ARLcom (XO-OX-ARLCOM)**

Optional software package for the transmission of results using network and serial communication. A maximum of 16 various destinations can be defined,

- Notes:
- *The first destination is by default used for the local Windows printer. If local printing is required, only 15 destinations remain available*
  - *The result format(s) used in transmissions can be configured using editors provided with the software*
  - *ARLCom can be used to define extra result destinations in easyOXSAS mode, however its configuration can be done only while easyOXSAS mode is disabled;*

**Network communication:** result transmission solutions to computer applications or to files via LAN Local Area Network, with following features:

- TCP/IP: computer task-to-computer task transmission of results via a LAN Local Area Network using the TCP/IP protocol;
- Netfile: transmission of results to files on local disk or on network disks over LAN;
- Alternate Destination: if a TCP/IP destination is unreachable, allows automatic rerouting of results to an alternate destination.
- Network Printers: Result transmission through LAN to printers with network connection or shared printers/terminals attached to computers accessible through the network;

Note: *Those printers, like local ones must also be supported by the instrument computer operating system. Network printers configured with IP addresses can receive results using the TCP/IP transmission.*

**Serial communication:** transmission of results to remote computers using the Thermo Compac communication protocol and/or to serial RS-232 remote ASCII printers or ASCII visual display terminals;

- Requires one serial RS-232 line per destination link (MUX-2P, 4P or 8P offers additional serial ports if necessary);
- Includes Alternate Destination: in case a computer destination that uses Compac mechanism is unreachable, allows the automatic rerouting of results to an alternative destination.
- ASCII printer(s) or visual display terminal (s) are not included.

Notes: - *The customer is responsible for the supply and installation of the network protocol layer for the instrument computer just like for any other computer of his Network. However, the*

*protocol layer can be part of by the instrument computer operating system, or any other compatible one;*

- *Cables, connectors and adaptation units supply and installation are not included (have to be supplied locally).*
- *For serial line communication, add mini-modem set if the serial link distance > 15 m.*

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## **7. DOCUMENTATION**

### **7.1.1 Calibration certificates (XO-CAL-DOC)**

Includes the certificates of all Reference Material utilized in the calibrations.

*Note: Does not apply for Fire Assay analysis calibration.*

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## **8. TRAINING**

### **8.1.1 On-site analytical support (701-045301)**

## **9. PACKING & TRANSPORT**

### **9.1.1 Standard Airfreight Packing (XR-PX-AIR)**

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### **9.1.2 Transport & Insurance to FCA Geneva Airport (XR-PX-GEN)**

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### **9.1.3 Transport & insurance CIP to airport of destination (XO-CIP)**

Price on request

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**D. TERMS AND CONDITIONS OF SALE**

**ThermoFisher**  
SCIENTIFIC **TERMS AND CONDITIONS OF SALE FOR PRODUCTS AND SERVICES**

1. **GENERAL.** Thermo Electron North America LLC ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products ("Products") and/or annual support plans ("Support Plan(s)") and billable services ("Technical Support") [Support Plans and Technical Support may be referred to collectively as "Services"] as listed on the face hereof on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein ("Agreement"). Any new or different provisions contained in any document issued by Buyer in response to this offer are expressly rejected; and if Buyer's response is deemed to be an offer, this document is a rejection of Buyer's offer and a counter offer by Seller and shall not constitute acceptance of any proposal by Buyer. Buyer's receipt of Products or Seller's commencement of Services hereunder will constitute Buyer's acceptance of this Agreement. This is the final, complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of Products and Services specified herein, which terms may not be altered in any way by Buyer's purchase order terms. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding upon Seller unless agreed in writing and signed by Seller. Seller's failure to object to additional or different terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein and all such proposals contained in Buyer's order are subject to acceptance in writing by an authorized representative of Seller.

2. **PRICE.** All prices published by Seller or Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products or Services will be as specified by Seller or, if no price has been specified or quoted, will be Seller's standard prices in effect at the time of shipment of Products or delivery of Services. All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions that are not part of Seller's original quotation. Unless otherwise stated in the quotation, the quoted rate for Technical Support includes Work Time, Travel Time and Standby Time in accordance with the following schedule and conditions; except that Technical Support requested without at least seven (7) days advanced notification shall be subject to airfare charges in addition to the Standard Rate.

- (a) **Work Time** – shall include all hours that Seller's service personnel are on the Buyer's job site, either working or ready for work and shall be payable at the applicable specified rates.
- (b) **Travel Time** – shall include the time spent by Seller's service personnel in traveling between their customary headquarters and the Buyer's job site and in returning (including travel occurring on Saturdays, Sundays and holidays). Except as otherwise stated in the Services quotation, Travel Time will be invoiced per diem at the applicable Travel Zone rates in Seller's standard service list prices. Air travel and car hire related expenses will be charged in addition to the daily rate at cost plus a 10% administration fee.
- (c) **Standby Time** – shall include the time that Seller agrees in writing, at its sole discretion, to reserve its service personnel to be ready to perform work for the Buyer, whether on the job site or not, up to a maximum of 8 hours a day, between the hours of 8:00 a.m. and 5:00 p.m., local standard time on Saturdays, Sundays and holidays. Standby Time shall be paid for at the special rates quoted by Seller at the time of Buyer's request or, if none, at the current Double Time Rate; and Standby Time preceded and/or followed by Work Time is cumulative in determining Overtime.
- (d) **Standard Rate** – the Service rate quoted by Seller that shall be paid for time worked on a regular schedule of eight (8) hours per day, Monday through Friday (excluding Seller's holidays), between 8:00 a.m. and 5:00 p.m. local standard time.
- (e) **Overtime Rate** – if applicable for the quoted Services, the rate of one and a half times the Standard Rate shall be paid for any time worked in excess of eight (8) hours or between the hours of 5:00 p.m. and 8:00 a.m. local standard time; but not exceeding sixteen (16) hours per day,

Monday through Friday, and for any time on Saturdays, not to exceed sixteen (16) hours. Overtime shall be billed in 30 minute blocks; or longer time blocks, if quoted by the Supplier.

- (f) **Double Time Rate** – the rate of twice the Standard Rate shall be paid for time worked in excess of sixteen (16) hours per day, without a six (6) hour break, Monday through Friday, and for all time on Saturdays, Sundays and holidays. Holidays shall be those observed by Seller.

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

4. **TERMS OF PAYMENT.** Seller may invoice Buyer immediately for the single lump sum amount equal to the total charges for the initial Term of a Support Plan, upon shipment of Products or upon completion of Technical Support for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. International Technical Support may require payment in advance. Buyer will grant a security interest in the Products sold under this Agreement until payment of the full purchase price to Seller in accordance with Article 9-103 of Uniform Commercial Code-Secured Transactions. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at the greater of a periodic rate of one and one-half percent (1.5%) per month or the highest rate stipulated by applicable law, together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars unless otherwise specified in Seller's invoice.

5.A. **PRODUCT DELIVERY.** All Products will be shipped to the destination specified by Buyer, FCA (INCOTERMS 2010) at OEM shipping point or Seller's distribution facility, as applicable, which will vary depending on Product type and availability and may include points outside the United States (U.S.) (inquire for specific shipping point information). Notwithstanding specified INCOTERMS, Seller shall select carrier on Buyer's behalf and Seller agrees to arrange transportation of Products to Buyer's destination, and to act as the importer of record on behalf of Buyer to clear the Products through U.S. customs. All freight, taxes, duties and insurance, if any, charges shall be prepaid and added to Buyer's invoice. Seller may, at its election, make partial shipments of the Products and invoice each shipment separately. Seller reserves the right to withhold shipments in whole or in part and/or terminate any Services, if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. Seller's termination of Services will not relieve Buyer's obligation to pay all amounts due for Services provided by Seller prior to the termination date. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay.

5. B. **CANCELLATION OR CHANGES BY BUYER.** If Buyer requests that Seller delay delivery of Products for any reason, Seller may place Products in storage at Buyer's risk and expense and for Buyer's account. Orders in process may be cancelled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without the prior written

consent of Seller. Before returning any item, contact Seller's Order Administration Department for a Return Material Authorization (RMA) number at (800) 532-4752. Buyer may need to complete an RMA Form which includes a Hazard Free Form and/or Instrument Contamination Data Form. If authorized by Seller, Buyer must return items to Seller in their original or equivalent packaging, prepay shipping charges, and insure the shipment or accept the risk if the item is lost or damaged in shipment. In addition, Seller reserves the right to charge the Buyer the list price for missing components or subassemblies when incomplete items are returned to Seller. Authorized returns of any unused items which are free from material defects to Seller, in its sole discretion, may be subject to a twenty percent (20%) restocking charge.

Requests by Buyer to delay, postpone or suspend on-site Services, due to no fault of Seller, shall be subject to Seller's ability to recall its service representatives and to cancel and/or reschedule of any of their travel arrangements; and provided that, Buyer pays any and all additional costs (including, Travel Time and expenses) incurred by Seller as a result of the Services being postponed or suspended by Buyer. Cancellation of scheduled Services may be subject to a cancellation fee of twenty percent (20%) if Seller is notified less than 7 business days prior to the scheduled date of service.

**6. DELIVERY OF SERVICES.** Except as otherwise stated on the face hereof, all Services will be provided by Seller or its agent between the hours of 8:00 a.m. and 5:00 p.m. local standard time, Monday through Friday, excluding Seller's holidays, either at Seller's principal offices or, at Seller's option, at Buyer's installation address. If Seller advises Buyer that Services should be performed at Seller's facility, Buyer will properly package the Products to prevent damage, clearly mark the RMA number on the outer packaging, and ship it, via postage/freight prepaid, to the address set forth on the face hereof or such different address as Seller may from time to time provide to Buyer. After Seller completes the Services, or has made a determination that the products are beyond repair, Seller may, at its option, either advise Buyer to scrap the Products or to have the Products shipped, postage/freight prepaid, back to Buyer's installation address stated on the quotation, or to such other address as Buyer requests. In the event Buyer requires expedited delivery, such delivery will be made at Buyer's expense. If Seller advises Buyer that Services should be performed at Buyer's site, Buyer will use its best efforts to provide Seller with all requested diagnostic information for any products requiring Services; and subject to compliance with Buyer's reasonable security requirements, will allow Seller free access to all relevant equipment, documentation and records. In addition, Buyer will cooperate with Seller's efforts to perform the Services and will provide such additional assistance as Seller may reasonably request. At the completion of the Services, Seller's representatives will provide Buyer with a field service report on which will be indicated the number of hours spent and the materials used in completing the work. Buyer's signature on the field service report will signify approval of the information in the report and Seller's satisfactory completion of the Services. If Buyer does not sign the report or provide written objection within five (5) business days after receipt, then the report will be deemed unequivocally approved and accepted by Buyer.

**7. TITLE AND RISK OF LOSS.** Notwithstanding the transport terms indicated above, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier at the time and place of shipment; provided, however, that title to any software incorporated within or forming a part of the Products will at all times remain with Seller or the licensor(s) thereof, as the case may be. All risk of loss or damage to Buyer's products being transported for Services shall remain with Buyer during shipment to and from the Buyer's site and during Seller's performance of Services hereunder.

**8. WARRANTIES.** Seller's sole obligation with respect to the Services is to provide the quoted Services in a workmanlike manner and if Buyer provides notice of defect in Service within ninety (90) days of completion of such Services, Seller will, at its sole option, either reperform the Services without charge to Buyer or grant Buyer a credit for the amount

paid by Buyer with respect to such Service. Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the Product documentation, published specifications or package inserts (the "Warranty Period"). If a Warranty Period is not specified in Seller's Product documentation, published specifications, or package inserts, the Warranty Period for new instruments is twelve (12) months from the date of shipment to Buyer; and for all other Products is ninety (90) days from the date of shipment. During the Warranty Period, Seller agrees to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with Seller's published specifications; provided that Buyer (a) promptly notifies Seller in writing upon the discovery of any covered defect in the Products, including the Product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with an RMA number and services data, which may include biohazard decontamination procedures and other Product-specific handling instructions. Then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products will be made in accordance with the Delivery clause of this Agreement. Except for new consumable items manufactured and sold by Seller, this warranty expressly excludes all other consumable parts or components (e.g., bulbs, belts, cartridges, etc.) in the Products. If Seller elects to repair defective medical device instruments, Seller may, in its sole discretion, provide a replacement loaner instrument to Buyer as necessary for use while the instruments are being repaired.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller; but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

In no event shall Seller have any obligation to make repairs, replacements or corrections under the Warranty, in whole or in part, as the result of or with respect to: (a) use of the Products in a manner for which they were not designed; (b) improper storage and handling of the Products; (c) use of the Products in combination with equipment or software not supplied by Seller (d) shipping damage incurred en route to Buyer's site or because of moving equipment, in which case Seller will promptly provide a cost estimate for Technical Support to the consignee for filing claims to carriers for shipping damage; (e) flood, lightning, earthquake, tornado, hurricane or fire, bombing, armed conflict, malicious mischief, sabotage or other natural or man-made disasters; (f) normal wear and tear, physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation; (g) repairs, maintenance, or modifications made by anyone other than Seller trained personnel or without Seller's supervision and/or approval; (h) relocation and reinstallation of equipment; although upon request Seller will supervise the removing, crating, relocation and reinstallation of the Products at Seller's current Services rates; (i) maintenance or replacement of media (i.e., floppy disks, plotter supplies, etc.) whatever the reason for loss, failure or damage; (j) beta-site support; (k) operator training; or (l) repairing Product malfunctions if the fault is not with the equipment. If Seller determines that Products for which Buyer requested warranty services are not covered by this warranty, Buyer will pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides Services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates.

**ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY**

**ThermoFisher**  
SCIENTIFIC TERMS AND CONDITIONS OF SALE FOR PRODUCTS AND SERVICES

PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS AND/OR SERVICES. THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT FOR SELLER TO REPAIR OR REPLACE A DEFECTIVE PRODUCT OR TO REPERFORM OR CREDIT THE PRICE OF DEFECTIVE SERVICES SHALL BE THE SOLE REMEDY OF BUYER FOR SUCH DEFECTIVE PRODUCTS OR SERVICES UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NONINFRINGEMENT. SELLER DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

**9. INDEMNIFICATION.**

**9.1 By Seller.** Seller will indemnify, defend and save Buyer, its officers, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees) ("Indemnified Items") asserted by another party against Buyer for (i) bodily injury to or death of persons or damage to tangible property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of Services at Buyer's premises under this Agreement; and (ii) claims that a Product infringes any U.S. patent, copyright or trade secret; provided, however, Seller's liability under this Section does not extend to any such Indemnified Items caused by either (u) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (v) by any third party, (w) use of a Product in combination with equipment or software not supplied by Seller where the Product alone would not be infringing, (x) Seller's compliance with Buyer's designs, specifications or instructions, (y) use of the Product in an application or environment for which it was not designed, or (z) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer will promptly notify Seller in writing of any claim covered by Seller's indemnification obligations hereunder. Seller may assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

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

**9.2 By Buyer.** Buyer will indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product alone would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Seller without Seller's prior written approval.

**10. SOFTWARE.** With respect to any software products incorporated in or forming a part of the Products hereunder (i.e., firmware), Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder. Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software licensed hereunder solely for Buyer's own internal business purposes on its hardware Products and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware Products provided hereunder ceases, unless earlier terminated as provided herein. Buyer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, to immediately stop using all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller or may be stand-alone software products, which Buyer hereby agrees are subject to a separate browse-wrap, shrink-wrap or click-thru end user license agreement (EULA). Accordingly, the warranty and indemnification provisions herein do not apply to such software, which are exclusively provided in the applicable EULA.

**11. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH IS PROVIDED UNDER THE PRODUCT AND SERVICES WARRANTIES HEREIN)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THEREFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS

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BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

12. EXPORT RESTRICTIONS. Buyer acknowledges that each Product and any related services, software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), may be subject to export controls of the U.S. government and/or other governments. Such export controls may include, but are not limited to, the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the U.S. and their re-export from other countries and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not export, re-export, distribute or supply any Item, directly or indirectly, to (i) any country, person or entity, in each case, without first obtaining from the U.S. government and/or other appropriate government agency any license required to do so lawfully; (ii) any person or organization in Cuba, Iran, North Korea, Sudan, Syria, or other country then the subject of a U.S. embargo, or any person or entity considered a part of the government of any such country; or (iii) any person or entity who is involved in improper development or use of nuclear weapons, or of chemical/biological weapons (CBW) or missiles, or in terrorist activities. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, agents and/or representatives.

13. SUPPORT PLAN TERMS AND CONDITIONS.

A. General. In the event Buyer purchases a Support Plan from Seller under this Agreement, Seller agrees to maintain and/or repair those Products or instruments identified on the face hereof as covered under a Support Plan ("Covered Equipment") in a manner consistent with the specifications and entitlements included in the purchased Support Plan as specified by Seller on the face hereof, which may include various levels of service at the Buyer's site(s) and/or Seller's Depot Repair locations and are purchased separate from the original Product Warranty above (the "Support Service(s)"). The Support Services will only be valid for Covered Equipment within the Region covered by the Plan (e.g. 48 contiguous U.S.), Monday through Friday (excluding Seller's holidays) during the hours of 8:00 a.m. to 5:00 p.m. local standard time ("Normal Hours") during the term of the Agreement. The Covered Equipment must be operated according to the manufacturer's supplied instructions, including without limitation the Operator's Manual(s) and any malfunction must be promptly reported to Seller. Support Service calls requested outside of Normal Hours or for any non-Covered Equipment or for services not included in the Support Plan will be billed at Seller's standard rates for Technical Support in effect at the time of Buyer's request. Seller reserves the exclusive right to determine the assignment of its employees in the performance of Support Services.

B. Term. (a) The Support Plan will begin and remain effective for the period of time stated on the face hereof ("Term"). To renew the Support Plan, Buyer must sign a Renewal Service Agreement accompanied by a purchase order prior to the expiration of the current Term ("Renewal"), which shall also be subject to the terms and conditions of this Agreement. Either party may terminate a Support Plan for any/no reason by providing at least thirty (30) days written notice to the other party. Seller will use commercially reasonable efforts to stop work and to incur no additional expenses. Regardless, if a Support Plan is cancelled, Seller will charge Buyer for the total price of Services actually performed and expenses actually and reasonably incurred in servicing the covered equipment under the underlying Support Plan from its effective date until the cancellation date or the prorated price of the underlying Support Plan from its effective date until the cancellation date, whichever is greater, plus fifteen percent (15%) of the total fee paid for the underlying Support Plan. In the event Buyer prepaid the Support Plan fees in full and a credit balance exists for the underlying Support Plan, Seller will provide a credit or refund the amount remaining to Buyer.

C. Pricing and Pricing Assumptions. Except as otherwise agreed in writing, the annual charge for each Renewal will be Thermo Fisher's standard support plan rates in effect at the start of the Renewal. All Support Plan pricing is based on the assumption that the Covered Equipment operates in accordance with product specifications as of the coverage start date; therefore, prior to the start of each Term and Renewal, Seller reserves the right to verify and correct the condition of the Covered Equipment and invoice Buyer at Seller's current billable rates for any Support Services deemed reasonably necessary to bring the Covered Equipment into good operating condition. Notwithstanding the above, Seller agrees to waive its right to bill the Buyer for bringing the Covered Equipment into good operating condition if there is no lapse between the end date of the current Support Plan Term and the beginning of any Renewal.

D. Parts and Consumables. The Support Plan level defines when and if the cost of parts is included under the Support Plan. Notwithstanding the foregoing, the cost for parts that are consumed in the normal and usual operation of the Covered Equipment including, but not limited to, sample preparation and analysis, consumables, paper, ink cartridges, ribbons, pens, lamps and/or data media are not covered under any Support Plan.

E. Key Operator. Buyer will designate a key operator of Covered Equipment who can describe instrument malfunctions to Seller's service representatives by telephone and who is qualified to perform simple adjustments and corrections to the Covered Equipment as requested by Seller's service representatives. Buyer's failure to designate a key operator or to perform or to have an authorized representative perform the routine maintenance specified in the Covered Equipment's instructions or Owner's Manual may result, at Seller's option, in Buyer being invoiced at Seller's standard Technical Support rates to provide such non-covered services.

F. Equipment Modification. Seller reserves the right to make any changes in the design or construction of Seller's Products without incurring any obligation to make any updates or changes whatsoever in the Covered Equipment under the Support Plan. Buyer agrees to allow Seller, at its expense and option, to make retrofits or design changes which improve product reliability, but do not change its performance characteristics. Any Buyer requests to modify or add devices or accessories to Covered Equipment that are not manufactured by Seller are outside the scope of the Support Plans and covered Support Services.

G. Support Services Warranty. Seller's sole obligation under any Support Plan is to provide the Support Services in a workmanlike manner in accordance with the entitlements of the Support Plan purchased by Buyer hereunder. SELLER MAKES NO OTHER WARRANTIES FOR SUPPORT SERVICES PROVIDED UNDER A SUPPORT PLAN, EXPRESS OR IMPLIED, AND DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER OBLIGATIONS OR LIABILITIES WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE OR OTHERWISE.

I. Support Plan Exclusions. The following occurrences are not covered by any Support Plan purchased by Buyer from Seller under this Agreement:

- (a) Covered Equipment malfunctions caused by any of the following abnormal conditions; and if Seller performs Support Services as a result thereof, Seller will invoice Buyer at Seller's standard billable rates for service, travel or move, labor and parts: (i) Shipping damage incurred en route to Buyer's site or any subsequent transport thereafter; (ii) Force Majeure events, including for example, floods, lightning, earthquake, tornado, hurricane or fire, bombing, terrorism, armed conflict, malicious mischief, sabotage or other such natural or manmade disasters; (iii) Physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation; (iv) Repairs, maintenance, or modifications made by anyone other than Seller's trained personnel or without Seller's supervision and/or approval; and (v) Relocation and reinstallation of Covered Equipment are not

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covered under the Support Plan; however, upon request Seller, will supervise the removing, crating, relocation and reinstallation of its products at Seller's standard billable rates for service, travel or move, labor and parts.

- (b) Maintenance or replacement of media (i.e., floppy disks, printer supplies, etc.) whatever the reason for loss, failure or damage;
- (c) Servicing of material or instruments manufactured by anyone other than Seller, including third-party material or instruments purchased for engineering specials;
- (d) Beta-site support;
- (e) Service calls made to train operators; and/or
- (f) Service calls made as a result of Buyer-identified areas of responsibility, i.e. malfunctions related to Buyer's site conditions, utilities and/or facilities (power, water, temperature, humidity, vibration, dust, etc.) or site computer/data network problems or integrity.

J. Buyer Responsibilities: Buyer will give Seller's personnel reasonable access to the Covered Equipment whenever Support Service is required. Buyer will cooperate with Seller's personnel so that Support Services can be performed efficiently and without interruption. Buyer will permit Seller to use of Buyer's equipment, including Covered Equipment, that Seller's personnel deem necessary to perform the Support Services. Buyer is solely responsible for the procurement, installation, maintenance and fees associated with all third party communication equipment and media as needed for the performance of Support Service under the Support Plan including, but not limited to, telephone and equipment for remote transmission of data.

14. INSURANCE. For the Term of a Support Plan and/or for the provision of on-site Services purchased hereunder, as applicable, Seller agrees to maintain and carry liability insurance in amounts set forth below with insurance companies rated B+ or better by "BEST" rating services. Insurance includes (a) commercial general liability insurance for a limit of US\$2,000,000 (two million) for each occurrence and US\$4,000,000 (four million) in the aggregate, (b) Statutory workers' compensation and employer's liability insurance for a limit of US\$1,000,000 (one million), (c) Automobile liability of US\$2,000,000 (two million) and (d) Umbrella coverage of US\$5,000,000 (five million). No policy will include a waiver of subrogation. Upon request from Buyer related to applicable Services, Seller will provide to Buyer a certificate of insurance using the standard ACORD form to evidence the insurance coverage required herein.

15. MEDICARE/MEDICAID REPORTING REQUIREMENTS. If Buyer is a recipient of Medicare/Medicaid funds, Buyer acknowledges that it has been informed of and agrees to fully and accurately account for, and report on its applicable cost report, the total value of any discount, rebate or other compensation paid hereunder in a way that complies with all applicable federal, state and local laws and regulations which establish "Safe Harbor" for discounts. Buyer may make written request for additional information from Seller as needed to satisfy Buyer's reporting requirements. Buyer acknowledges that agreement to such reporting requirement was a condition precedent to Seller's agreement to provide Products and that Seller would not have entered into this Agreement had Buyer not agreed to comply with such obligations.

16. MISCELLANEOUS. (a) Buyer may not delegate any duties or assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void. (b) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, U.S.A. without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in the County of Suffolk, Massachusetts U.S.A. for any action arising out of or relating to this Agreement. Each party hereby waives any other venue to which it may be entitled by domicile or otherwise. (c) In the event of any legal proceeding between the Seller and Buyer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a

trial by jury. Any action arising under this Agreement must be brought within one (1) year from the date that the cause of action arose. (d) 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. (e) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. (f) Unless otherwise expressly stated on the Product or in the documentation accompanying the Product, software and/or Services, they are not approved medical devices and are intended by Seller to be for "Research Use Only" as defined by the U.S. Food and Drug Administration regulations and is not to be used for any illegal or unapproved regulatory purposes, including without limitation, *in vitro* diagnostic uses, *ex vivo* or *in vivo* therapeutic uses, or any type of consumption by or application to humans or animals. (g) Seller agrees not to knowingly disclose any confidential information or data obtained by it during the performance of Services when such information or data is clearly identified in writing by Buyer as confidential. Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller. The parties agree to keep such information confidential and not disclose each other's confidential information to any third party for one (1) year hereafter, and to use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public. (h) Any notice or communication required or permitted hereunder must be in writing and shall be deemed received when personally delivered, upon delivery by any internationally recognized carrier such as Federal Express or similar overnight delivery service, 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) Seller may, in its sole discretion, provide (I) applicable Product training to Buyer or its employees, or (II) samples of Products to Buyer for distribution to patients of Buyer. Buyer agrees to distribute any such samples to patients for patient use or, if not so distributed, to return them to Seller. Buyer may not use the samples to provide care to patients and must not bill any patients or third party payers when Buyer dispenses the samples. (j) Seller hereby rejects and disclaims any rights of Buyer contained, or obligations imposed upon Seller, in any document provided, referenced or otherwise submitted by Buyer, in each case, that Seller has not expressly included in this Agreement or a writing manually executed by Seller (including, without limitation, any rights of Buyer in respect of design, specifications, source code or intellectual property, owned, or licensed, by Seller; any rights to items or services not specifically identified in Seller's quotation; 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) or the requirements, as amended, of the Customs-Trade Partnership Against Terrorism; any obligation that Seller comply with any law that, under law, would not otherwise apply to Seller 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 reperform, any Products or Services provided hereunder at Seller's cost or expense; any obligation of Seller to waive, or require its insurers to waive, any rights of subrogation; any obligation of Seller that would impair, restrict or prohibit Seller's ability to freely conduct any business with any person or in any geography or market; and/or any waiver by Seller of any right to enforce any of the terms hereof).



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SCIENTIFIC TERMS AND CONDITIONS OF SALE FOR PRODUCTS AND SERVICES

**BUYER**  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SELLER**  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_ Initial here to indicate Buyer's agreement to **automatically apply the TERMS AND CONDITIONS OF SALE FOR PRODUCTS AND SERVICE** to all future orders of Products and Services from Seller, whether or not the Agreement is referenced on Seller's quote or Buyer's Purchase Orders, for \_\_\_\_\_ (write # of years) from later date of the parties' signature, or until either party provides written notice that this Agreement is terminated.

## **E. X-RAY FLUORESCENCE - GENERAL TERMS AND CONDITIONS**

### **PRE-INSTALLATION**

Laboratory preparation is the buyer's responsibility, and must be completed prior to the scheduled installation visit by the Thermo Electron North America's field service engineer. Thermo Electron North America LLC will charge for the service call if laboratory preparation has not been properly completed prior to the scheduled installation visit. Thermo Electron North America LLC will provide the buyer with pre-installation instructions describing required environmental conditions, service connections and supplies. The instructions will be mailed upon receipt of the buyer's purchase order. Please read the instructions carefully, and if additional information is needed, contact the Thermo Electron North America LLC field service manager listed in the pre-installation instructions.

Laboratory preparation includes but is not limited to:

1. Providing an adequate environment for an analytical instrument (i.e. dust protection, temperature and air humidity control to within specified limits, etc.).
2. Providing service connections and supplies (i.e. power, water, gas, proper calibration standards, etc.).
3. Providing personnel for assisting the Field Service Engineer during instrument installation.

### **INSTALLATION**

The Thermo Electron North America LLC field service engineer will provide the following services free of labor and travel and living charges:

1. Unpack, inventory, and check instrument for damage.
2. Connect instrument to utilities and peripherals.
3. Verify power and initiate start-up.
4. Demonstrate to the user that the following functions are operable:
  - a. Vacuum system
  - b. X-Ray tube
  - c. Sample introduction system
  - d. Computer system and peripherals
  - e. Readout system
  - f. Optical system alignment
5. Demonstrate analytical performance. The tests performed will duplicate a portion of those run in the factory prior to instrument shipment. The tests include the following:
  - a. Detection Limits (DLs) - determined using International Standards (BAS-England and NBS-USA). DLs will be determined for the goniometer on standard crystals/detectors and/or on a frequently used monochromator.
  - b. Short Term Precision - determined on a fused NBS cement sample by taking 21 consecutive measurements of 40 seconds each with the sample remaining in the spectrometer. Relative Standard Deviation (R.S.D.) values shall meet or exceed Thermo Electron North America LLC guaranteed specifications.
  - c. Long Term Precision - determined on a fused NBS cement sample by taking the average of 11 consecutive measurements every hour for a test period of 12 hours.

The drift factor calculated from these 12 averages shall meet or exceed Thermo Electron North America LLC guaranteed specifications.

**d. Crystal/Collimator Resolution** - determined by measuring the Full Width at Half Maximum (FWHM) of a two-theta versus intensity scan over a peak appropriate to the crystal being checked. The measured FWHM resolution shall not exceed the guaranteed resolution using the recommended instrumental conditions.

**e. Detector Resolution** - determined by measuring the Full Width at Half Maximum (FWHM) of a detector voltage versus intensity scan (energy profile). The FWHM resolution shall not exceed the guaranteed resolution using the recommended instrumental conditions.

**f. Calibration Accuracy** - this calibration will only be provided if the user purchases a Thermo Electron North America LLC calibration such as the ASTM C-114 Cement Calibration/Qualification of the Thermo Electron North America LLC Iron Base Correction Program, and is not considered to part of the normal installation. Calibration will be performed on-site or at our factory as determined by Thermo Electron North America LLC and the user at the time of purchase. A Thermo Electron North America LLC application specialist will give proof of performance at installation according to Thermo Electron North America LLC specifications. The installation will be considered complete when all of the above tasks are successfully performed. The field service engineer will then complete an installation report for the user's signature, acknowledging the completion of the installation.

Acceptance of the instrument shall not be delayed due to any missing items that do not relate to the instrument's ability to perform the above analytical tasks. Additional services related to specific analytical needs or customer requirements shall not be considered as part of the installation unless specifically contracted. Installation service will be provided Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. Service provided beyond this time frame would be charged prevailing overtime rates.

## **TRAINING**

During instrument installation, the Thermo Electron North America LLC engineer will provide basic training in the operation of the instrument. So it is imperative that the buyer has a representative available to work full time with the Thermo Electron North America LLC engineer. Immediately following installation completion, the service engineer will provide up to one (1) additional day of on-site instruction on instrument operation. Unless otherwise specified on our quotation, we will provide a 4 day training course for one buyer representative at a Thermo Electron North America LLC facility within 12 months of instrument shipment. Travel and living expenses for the trainee will be assumed by the buyer. We recommend the training course be taken after 2 to 3 months of actual experience using the purchased instrument to gain full benefit from the course curriculum.

**F. THERMO ELECTRON NORTH AMERICA LLC**

**Please address Purchase Orders to:**

**Thermo Electron North America LLC  
5225 Verona Road  
Madison, WI 53711  
608.276.5670 ☐ Phone  
608.273.6882 - Fax  
Fed. ID number (EIN): 43-1992201  
DUNS number: 13-838-8090  
Date of incorporation: 12/5/2002  
State of incorporation: Delaware**

**Remit address:**

**Thermo Electron North America LLC  
P.O. Box 712102  
Cincinnati, OH 45271-2102**

**ACH:**

**Bank of America  
100 Federal Street  
Boston, MA 02110  
Account number: 4426395065  
ABA #111000025**

**WIRE:**

**Thermo Electron North America, LLC  
Account #4426395065  
Bank of America  
100 West 33<sup>rd</sup> Street  
New York, NY 10001 USA  
ABA #026009593  
Swift CodeL BOFAUS3N  
PARENT COMPANY  
Thermo Fisher Scientific  
81 Wyman Street  
Waltham, MA 02451-1223  
781-622-1000  
Fed. ID number (EIN): 042209186  
DUNS number: 001408673**



**Thermo Scientific ARL PERFORM'X**  
Wavelength-dispersive X-ray fluorescence  
spectrometer



## **Where performance** meets versatility

Geology • Environment • Petroleum industry •  
Materials science • Metals and alloys • Glass •  
Raw materials Mining • Cement

**Thermo**  
SCIENTIFIC

# Where performance meets versatility

## Sequential X-ray fluorescence spectrometer

### A new evolutionary platform

The Thermo Scientific ARL PERFORM'X X-ray fluorescence (XRF) sequential spectrometer presents an advanced platform for rapid and precise analysis of up to 90 elements in nearly any solid or liquid sample. Advantages over other analytical techniques are:

- Easy and fast sample preparation
- Analysis of the whole surface of a sample, a segment of it or specific spots on the surface
- Speed of analysis
- High stability and excellent precision
- Wide dynamic range (from ppm levels to 100%)
- Simple and rapid analysis of totally unknown samples through advanced standard-less analysis packages

The ARL PERFORM'X spectrometer new compact design provides superior benefits of XRF analysis including sensitivity, reproducibility and ease of use while establishing new standards of speed, reliability and flexibility on the widest range of sample types. It will solve composition problems in demanding industrial processes and quality applications in industries as diverse as metallurgy, petroleum, polymers, mining, glass, cement, refractories and others. Academic or research labs dealing with geochemistry, automotive engineering, materials science, environmental research and forensics will also benefit from its performance and versatility.

### Speed of analysis

- Fastest goniometer in industry
- Dual sample loading system for high sample throughput
- Up to 60 samples per hour, unmanned
- Dedicated loading position for urgent samples

### Flexibility

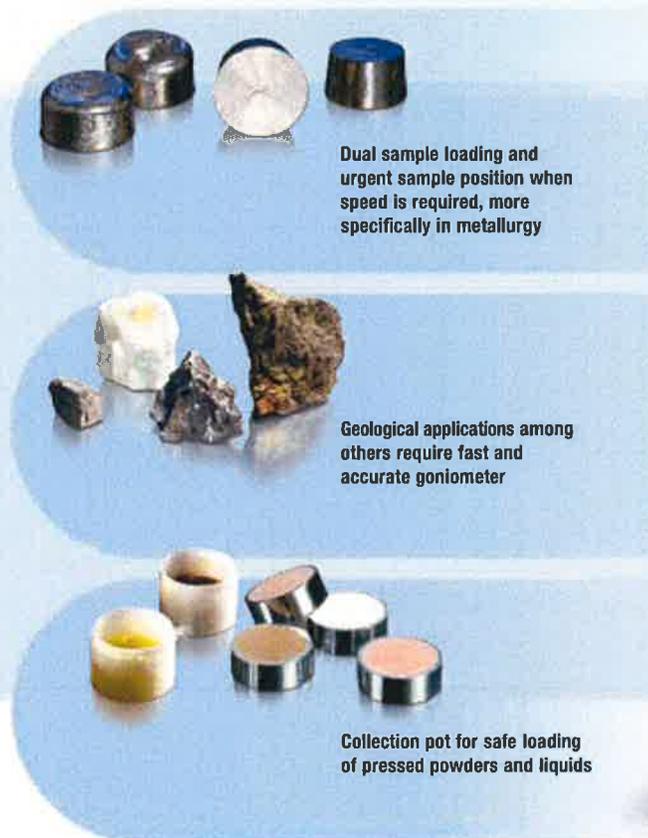
- Choice of power levels up to 4200W
- Mid power systems without external water chiller
- Multiple position automated X-Y sample changer frees technicians for other work
- New goniometer design offers many crystal and collimator options achieving the widest possible analysis range
- Selection of viewed diameter in multiple increments from large 35 mm area to small 0.5 mm spot
- Several beam filters mean optimal analysis parameters can be chosen for every element

### Sensitivity and precision

- Ultra-thin X-ray tube window improves sensitivity for light elements
- Unique UCCO™ technology (Ultra Closely Coupled Optics)
- Excellent peak to background ratio
- Unrivalled long-term stability and short-term repeatability

### Highest standards of reliability

- Design for reliability concepts for maximum uptime and ease of maintenance
- Fully digital, frictionless goniometer ensures excellent lifetime angular accuracy
- Security device for dust/liquid collection in case of accidental breakage of a pressed pellet/liquid cell during loading



Dual sample loading and urgent sample position when speed is required, more specifically in metallurgy

Geological applications among others require fast and accurate goniometer

Collection pot for safe loading of pressed powders and liquids



# ARL PERFORM'X

## Powerful add-ons for problem solving and R&D

The ARL PERFORM'X spectrometer brings added value to your laboratory with new features for challenging non-routine analyses.

### Complete characterization of unknown samples without calibration standards

- Semi-quantitative analysis of unknown samples in 3 minutes using scans from fluorine to uranium with Thermo Scientific QuantAS software
- Industry-leading Thermo Scientific UniQuant software provides best limits of detection and accuracy in standard-less analysis

### Small spot analysis & mapping

- Pinpoint focus on specimen sections with selectable X-ray diameter of 0.5 or 1.5 mm
- Construct maps of element distributions with cartography down to 0.1 mm steps
- Study of sample homogeneity for process improvement and problem solving

### Safe and stable liquids analysis

- The helium shutter provides maximum goniometer stability and protection for liquid analysis
- Optional tube shield protects the X-ray tube window from liquid spills and loose powders
- Sample recognition sensor ensures easy and safe exchanges between solids and liquids



Helium shutter for easy and stable liquid analysis



Mapping of inhomogeneous sample portion or inclusion analysis through small spot analysis



Large sample collections run automatically overnight



Cassettes of various apertures for small and large samples

# State-of-the-art components for highest analytical flexibility

Based on years of experience, the ARL PERFORM'X spectrometer benefits now from the 6<sup>th</sup> generation goniometer, fully digitally mastered, working at highest speed with best accuracy and precision.

The goniometer can be programmed to analyze specific elements (quantitative analysis) or to scan the X-ray spectrum to detect elements present in a given sample (qualitative analysis). This state-of-the-art compact goniometer features up to 9 analytical crystals and 4 collimators providing analysts for a wider range of applications. Elemental signal count rates are augmented by up to 25% through the uniquely compact goniometer technology. Improved detector linearity provides better counting statistics at high count rates.

Analytical range is also widened by the inclusion of 7 primary X-ray beam filters, thereby reducing interference on select elements from X-ray tube emission lines and greatly improving peak to background ratios for most elements.

Additional optional features increase the number of sample types that can be analyzed such as the 4-position programmable aperture changer. It always includes a 29 mm aperture and 3 additional apertures can be chosen among the following diameters: 0.5, 1.5, 5, 10, 15, 20, 25, 35 mm to help analysis of large or small samples.

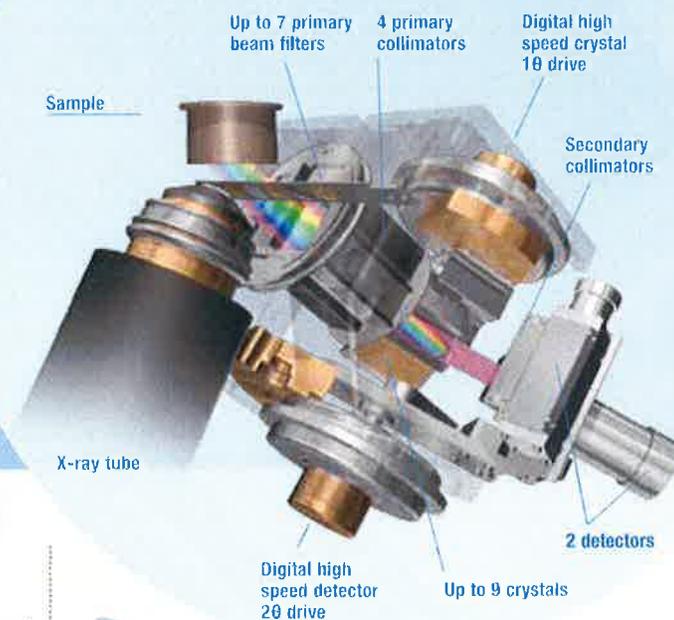
The new 4GN+ or 5GN+ X-ray tubes come standard on every instrument to provide unmatched long term stability through LoVap filament technology working at lower temperature thus eliminating drift due to slow tungsten vapor plating on the beryllium tube window. When ultimate performance is required for your applications, the ARL PERFORM'X can be optionally equipped with the latest UCCO-30 X-ray tube. With its 30 micron Be window and tight coupling, this unique tube provides nearly 60% increase in sensitivity on light elements and 25% increase on all other elements of the periodic table.

## Gearless digital goniometer advantages

- Quantitative analysis of any element from Be to U providing adequate crystals are fitted
- Angular positioning is achieved through Moiré fringe optical encoders:
  - > No friction – No wear!
  - > Ensures accurate  $\theta/2\theta$  relationship between crystal and detector
  - > Excellent angular positioning and high precision
  - > Fastest positioning with a slewing speed of 4800°/min
  - > Fast scanning up to 327° per minute
- Temperature regulation of crystals for best analytical stability
- Best standard-less analysis when coupled to QuantAS™ and UniQuant™ software packages
- Unique polarization effect for reduced background

## UCCO™ technology

Ultra Closely Coupled Optics between X-ray tube and sample



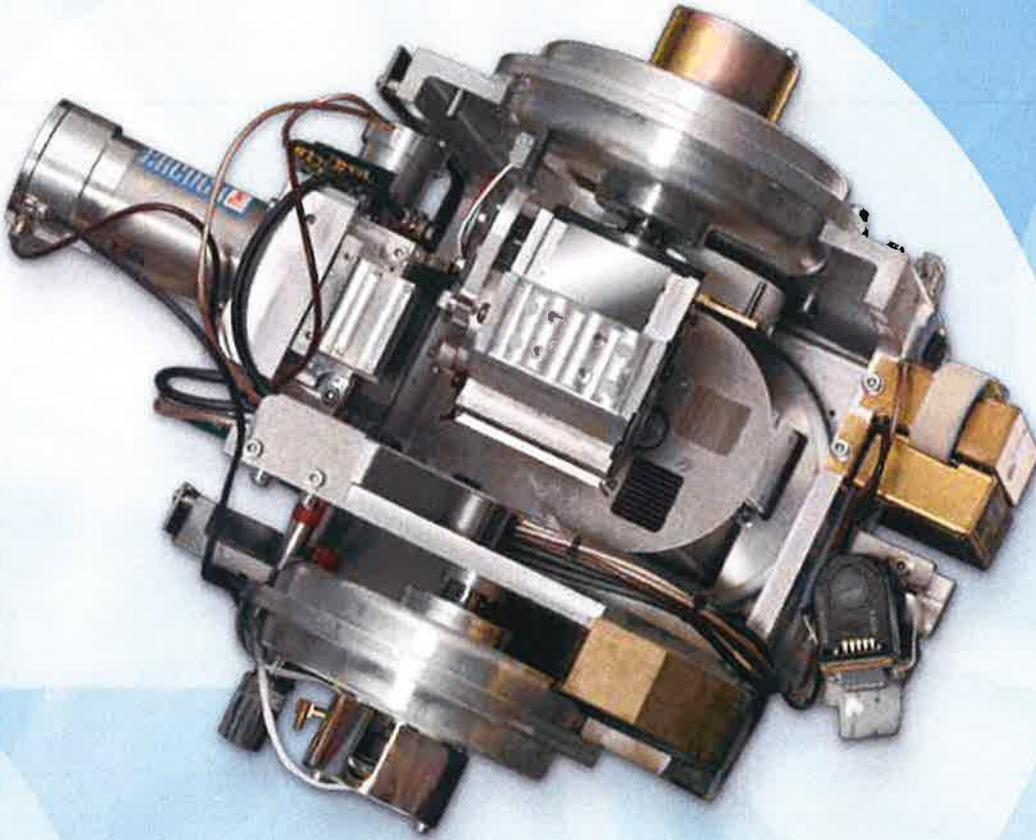
## Ultra-thin X-ray tube window

Evolution of the X-ray tubes over the years:

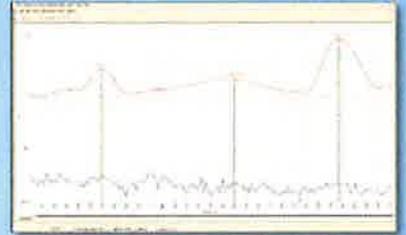
- > Closer coupling between anode and sample
- > Thinner Be windows

1990's	2000's	ARL ADVANT'X	ARL PERFORM'X	ARL PERFORM'X
125 microns Be window	75 microns Be window	75 microns Be window	50 microns Be window LoVap technology	30 microns Be window LoVap technology

# PRECISION SPEED



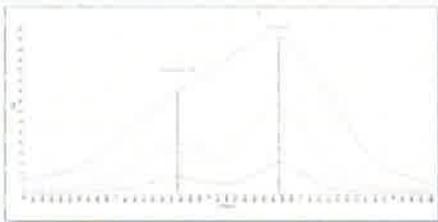
6th generation universal gearless goniometer



Removal of Rh tube lines with primary beam filter



Four collimator changer as standard



Effect of collimator on resolution and intensity



# Choice of analyzed area size

Right on the spot!

## Small sample analysis

The optional programmable aperture changer is available for routine analysis of small samples. It is used in conjunction with cassettes of matching apertures from 35 mm to 5 mm diameter (29 mm standard, other diameters at choice: 5, 10, 15, 20, 25, 35 mm).

## Small spot analysis

- Narrow spot analysis of specimens selectable with on-board camera
- Pinpoint focus with X-ray beam diameters of 1.5 mm or 0.5 mm
- Allows full quantification when combined with UniQuant standard-less analysis software
- Ideal for samples in jewellery, forensics, automotive and other R&D applications

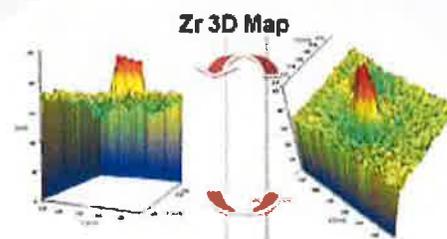
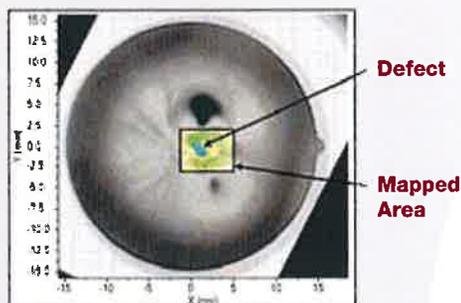
## Mapping

The precisely-tuned X-ray mapping capability of the ARL PERFORM'X spectrometer provides complete elemental visualization of complex non-homogenous surfaces. Analysts can identify and characterize elemental impurities, inclusions and gradients that are unidentifiable by other analysis methods.

- Cartography control and overlay with 0.5 mm or 1.5 mm spots
- Construct detailed composite maps of element distribution within samples
- Fine resolution down to 0.1 mm steps for process improvement and problem solving applications
- Can be combined with UniQuant standard-less analysis software for full quantification
- Ideal for materials engineering applications in various industries



## Results of a mapping on an inhomogeneous glass sample



# Automatic sample loading creates productivity

# ANALYSIS

The sample changer fits directly atop the ARL PERFORM'X spectrometer. It accommodates multiple sample dimensions to a top capacity configuration of 112 samples for unattended and overnight analysis. Series of samples of uniform size and shape (e.g. fusion beads, pressed pellets, polymer discs, etc.) can be placed directly on trays without need for cassettes. Any urgent sample can at any time be placed on the specific "urgent" position to be run as first priority.

Specific cassettes are used for liquid analysis in order to make sure liquids will never be loaded under vacuum.

Continuous on-line analyses in unattended mode can be achieved through connection with an automatic sample preparation machine. A simple transport belt will link the ARL PERFORM'X spectrometer and the automatic press, mill or fusion machine. The OXSAS/OEM software option allows communication between the preparation machine and the spectrometer.



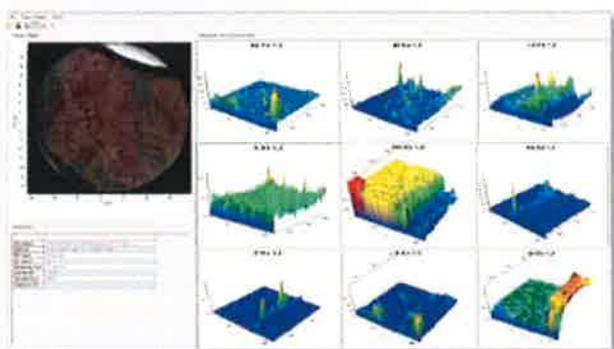
Special cassettes for liquid cell loading



# OXSAS software

## Easy and comprehensive XRF analysis

Operating the ARL PERFORM'X spectrometer and rapidly delivering highly accurate analytical reports are easily achieved through the state-of-the-art Thermo Scientific OXSAS software. Using Windows® 7 operating system, OXSAS software is designed to evolve to meet customer's needs with up-to-date solutions throughout the lifetime of the instrument. All features and details can be found in the OXSAS software product specification sheet.



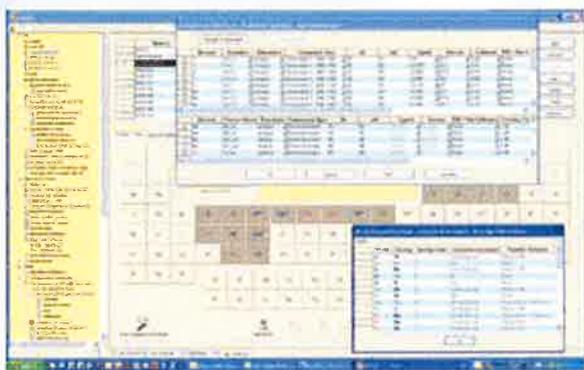
Typical screen of a mapping study



Selection of sample positions from a graphical view of the magazine



## Fast and accurate analysis



The Analytical Assistant helps definition of analytical programs, calibrations and instrument use

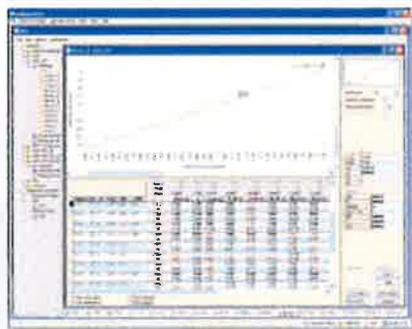
### Fast qualitative analysis

Step scanning provides precise definition of peaks with a resolution of  $0.001^\circ$ . For rapid qualitative analysis, continuous digital scanning allows fast acquisition of spectra at speeds up to  $327^\circ$  per minute. Peaks identification representing the elements present is automatic.

### Accuracy made easy

The on-line Analytical Assistant helps quick and correct definition of analytical programs and calibrations. The multi-variable regression (MVR) program is used to build the various calibration curves. The influence of interfering elements in multi-component matrices is minimized thanks to correction models leading to better accuracy of analysis. These models are:

- Line overlap correction
- Additive correction on intensities
- Additive correction on concentrations
- Multiplicative correction on intensities
- Multiplicative correction on concentrations
- Multiplicative and additive corrections on concentrations
- COmprehensive Lachance (COLA) with 3 term alphas is used with NBSGSC fundamental parameters program, which simulates analytical calibrations for homogeneous materials. Inter-element correction factors (theoretical alphas, now with matrix and LOI/GOI elimination) are calculated and used as known coefficients in the MVR. This minimizes the number of standards necessary to produce calibrations and improves the accuracy of analysis.



MVR Calibration curve showing real concentrations vs. intensities

### Turnkey calibrations

Ex-works calibrations can be delivered for various materials such as:

- Oil industry products using PetroilQuant™ program or ASTM/ISO methods
- Iron, steel and slags
- Copper, bronze and brass
- Aluminum and alloys
- Various oxides through the General Oxide calibration
- Cement and clinker, limestone and dolomite, glasses, polymers
- Traces in soils and sediments
- Ferro-alloys and others for which analytical specifications are available on request



Current operations and status can be checked with the on-line synoptic screen

# Total elemental analysis

## A unique advantage

XRF provides a unique advantage over other elemental analysis techniques: quantifying elemental concentrations without calibration standards.

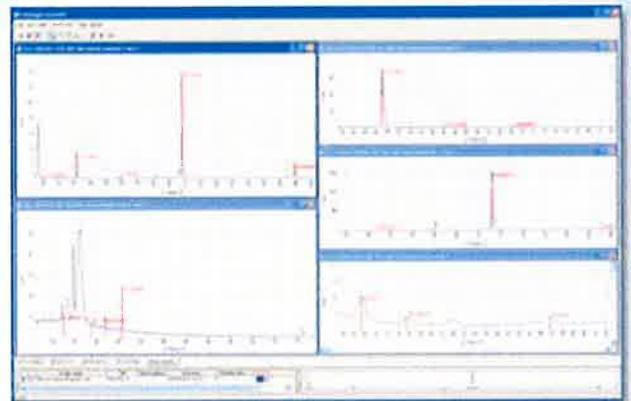
QuantAS

### QuantAS™ – scan-based standard-less software

The user friendly Thermo Scientific QuantAS software quickly determines concentration levels in unknown liquid or solid samples. The scans covering 70 elements from fluorine to uranium can be done in only 3 minutes. Smoothing, background subtraction, peak identification, overlap and matrix corrections, calculation of semi-quantitative concentrations and normalization are all done automatically for a fast and easy quantification of unknown

samples. Type standardization is available for ultimate accuracy. Four multi-element samples are provided for setting-up and maintenance over time.

The optional QuantAS software is fully calibrated and installed from the factory. Hence the ARL PERFORM'X spectrometer is ready to perform meaningful analysis of unknown samples directly after installation at the customer's site.



QuantAS software calculates concentrations of elements from F to U in a sample from these five scans

### Typical QuantAS results

#### Typical Oxide Compound

Element	Time Factor Duration of Scan		
	0.2 (2 min 40 sec)	0.5 (6 min 16 sec)	1 (12 min 12 sec)
CaO (%)	42.8	43.1	42.8
SiO2 (%)	31.3	31.7	32.1
Al2O3 (%)	10.2	9.55	9.49
MgO (%)	5.12	5.06	5.10
MnO (%)	2.37	2.39	2.39
SO3 (%)	2.10	2.06	2.11
K2O (%)	1.80	1.63	1.71
Na2O (%)	1.42	1.22	1.26
TiO2 (%)	1.04	0.93	0.88
Fe2O3 (%)	0.96	0.95	0.93
P2O5 (%)	0.62	0.66	0.60
V2O5 (%)	0.21	0.21	0.21
SrO (%)	0.038	0.033	0.044
ZrO2 (%)	0.030	0.022	0.022
La2O3 (%)	—	0.073	0.051
Y2O3 (%)	—	0.025	0.025
Cr2O3 (%)	—	—	0.014
F (%)	—	—	0.092

Longer counting time provides better limits of detection and determination of lighter elements, here fluorine

## UniQuant® – industry leading standard-less analyses

As the original and most powerful standard-less XRF program, the optional Thermo Scientific UniQuant software works with the most advanced and powerful Fundamental Parameters algorithms. It is ideal for analysis of up to 79 elements in solids and liquids when standard samples are not available or when samples can only be obtained in small quantities, irregular shapes or coatings. UniQuant program uses 122 carefully selected line positions in order to determine peak and background intensities. It also calculates the balance of unanalyzed elements present in the sample, e.g. organic

and ultra-light elements. Elements and their counting time can be selected hence deriving concentrations in a few minutes with best limits of detection.

UniQuant software is fully calibrated and installed from the factory. Hence the ARL PERFORM'X spectrometer is ready to perform meaningful analysis of unknown samples directly after installation at the customer's site. Stable samples are provided for setting-up and maintenance over time.

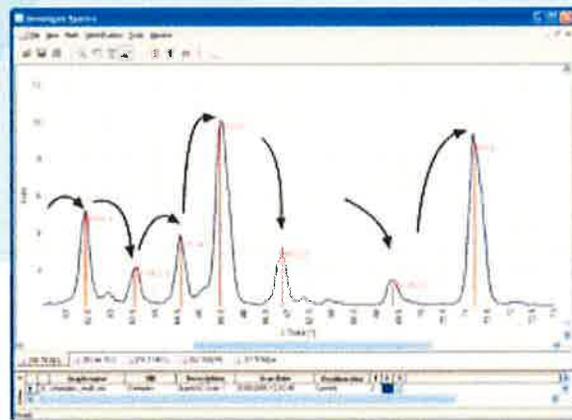
### Typical UniQuant standard-less results

#### Traces in a geological sample

Element	Chem (ppm)	UniQuant (ppm)
Mn	1310	1340
Sr	1100	1080
F	700	650
Zr	277	280
V	165	167
Zn	150	135
Ni	140	128
Cr	134	116
Cl	114	98
S	100	158
Nb	68	75
Cu	49	56
Rb	37	33
Ga	25	23
Y	22	18
Sc	15	10

#### Coatings on steel

Element	Sample A		Sample B	
	Given	UniQuant	Given	UniQuant
Cr (mg/m <sup>2</sup> )	1.9	2.1	8	8.4
Sn (g/m <sup>2</sup> )	11.5	10.9	4.97	4.92



UniQuant software uses up to 122 carefully selected line positions to determine peak and background intensities



UniQuant, the world most renowned standard-less analysis package

Since X-rays are used in these instruments, please check all local laws and regulations in advance of the installation to avoid any regulatory problems.

# Thermo Scientific ARL PERFORM'X

## Wavelength-dispersive X-ray fluorescence spectrometer

### Worldwide customer support

Excelling in X-ray spectrometry since 1953, we provide you the support of a major international corporation:

- A comprehensive worldwide after-sales service network assists with resolution of day to day queries and ensures that the ARL PERFORM'X spectrometer achieves the very high standards of reliability and durability it is designed for
- Operational performance validation and possible support through web with on-line diagnostic help
- Application product teams can advise on analytical tasks from sample preparation to delivering the correct accurate result
- Dedicated training allows you to exploit to the full the capabilities of your ARL PERFORM'X spectrometer



**Since X-rays are used in these instruments, please check all local laws and regulations in advance of the installation to avoid any regulatory problems.**



[www.thermoscientific.com/performx](http://www.thermoscientific.com/performx)

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**China** +86 10 8419 3588  
**Denmark** +45 70 23 62 60  
**Europe-Other** +43 1 333 50 34 0

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**Germany** +49 6103 408 1014  
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# Sales Quotation

Thermo Electron North America LLC

1400 Northpoint Pkwy Ste 10,  
West Palm Beach, FL 33407-1976

Quote No.	Create Date	Exp. Delivery Time	Page
21157816	01/03/2019		1 / 7
Contact Info	Phone No.	Payment Terms	Valid To
BRUCE BECK	(219)988-7106	NET 30 DAYS UPON INVOICE DATE	04/03/2019
Inco 1	Inco 2	Shipping Method	
Origin - Prepay And Add	PREPAY AND ADD	Exped Consol Def5Day	

Submitted To: 1037474

NEBRASKA STATE PURCHASING BUREAU  
Rene A. Botts 402)471-6500  
as.materielpurchasing@nebraska.gov  
Solicitation No. 5987 OF  
1526 K STREET SUITE 130  
LINCOLN NE 68508

Customer reference number: BID 5987 OF

To place an order

Contact Info Therese Creighton  
Call: 800-532-4752  
Fax: 561-688-8731  
eMail: therese.creighton@thermofisher.com

This order is subject to instructions and Thermo Fisher's terms & conditions on the last page

Item	Material No.	Description	Qty	Unit Price	Total Price	
10	XR-PFX-02U	ARL PERFORM X 2500 XRF UNIQUANTOMETE	1 EA	175,221.00	175,221.00	USD
20	XR-OXSAS	ANALYTICAL SOFTWARE	1 EA	10,289.00	10,289.00	USD
30	XO-PC-COMPUTER	Desktop Personal Computer Desktop Personal Computer	1 EA	1,191.00	1,191.00	USD
40	XO-INK-PRINTER	Color Inkjet printer Color Inkjet printer	1 EA	144.00	144.00	USD
50	XR-CR-PET	PET flat crystal # Al to K	1 EA	2,338.00	2,338.00	USD
60	XR-PX-HE	Helium Flush for Liquid Analysis	1 EA	6,144.00	6,144.00	USD
70	XR-PX-LCAS	Cassette for loading liquid cells, 41 m	6 EA	219.00	1,314.00	USD
80	XR-ANTI-DRIP-PX	Be anti-drip filter for PBF	1 EA	1,349.00	1,349.00	USD
90	XR-PX-TR8	ADDITIONAL TRAY FOR 8 CASSETTES	4 EA	327.00	1,308.00	USD
100	XR-PX-TR3641	Sample tray for 27 samples of d 35-41mm	1 EA	756.00	756.00	USD

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21157816	01/03/2019		2 / 7
<b>Contact Info</b>	<b>Phone No.</b>	<b>Payment Terms</b>	<b>Valid To</b>
BRUCE BECK	(219)988-7106	NET 30 DAYS UPON INVOICE DATE	04/03/2019
<b>Inco 1</b>	<b>Inco 2</b>	<b>Shipping Method</b>	
Origin - Prepay And Add	PREPAY AND ADD	Exped Consol Def5Day	

1400 Northpoint Pkwy Ste 10,  
West Palm Beach, FL 33407-1976

To place an order

Contact Info      Therese Creighton  
Call:                 800-532-4752  
Fax:                 561-688-8731  
eMail:              therese.creighton@thermofisher.com

Item	Material No.	Description	Qty	Unit Price	Total Price	
110	XR-PX-PAC	PROGRAMMABLE MASK CHANGER	1 EA	4,940.00	4,940.00	USD
120	XR-PX-LLCAS	LID LESS CASSETTE OF 29 MM APERTURE	31 EA	219.00	6,789.00	USD
130	XR-CR-10B	CR-10B Set of 10 centering rings diam	4 EA	26.00	104.00	USD
140	869-999900	XR-CAL-CEM	1 EA	3,975.00	3,975.00	USD
150	XR-KIT-NIST	Set of 8 NIST pressed cement standards	1 EA	646.00	646.00	USD
160	XR-PR-FP	High Pressure Reducer for P-10 Gas	1 EA	1,215.00	1,215.00	USD
170	XR-PR-HE	High Pressure Reducer for Helium Gas	1 EA	1,226.00	1,226.00	USD
180	XO-OX-ARLCOM	OXAS/ARLcom	1 EA	2,306.00	2,306.00	USD
190	XO-CAL-DOC	CALIBRATION CERTIFICATES	1 EA	257.00	257.00	USD
200	701-045301	STD LABOR HOURLY RATE BULK Standard Labor Hourly Rate Bulk	24 EA	349.00	8,376.00	USD
210	XR-PX-AIR	Standard Airfreight Packing	1 EA	1,436.00	1,436.00	USD
220	XR-PX-GEN	Transport & Insurance to FCA GVA Airport	1 EA	829.00	829.00	USD

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<b>Quote No.</b>	<b>Create Date</b>	<b>Exp. Delivery Time</b>	<b>Page</b>
21157816	01/03/2019		3 / 7
<b>Contact Info</b>	<b>Phone No.</b>	<b>Payment Terms</b>	<b>Valid To</b>
BRUCE BECK	(219)988-7106	NET 30 DAYS UPON INVOICE DATE	04/03/2019
<b>Inco 1</b>	<b>Inco 2</b>	<b>Shipping Method</b>	
Origin - Prepay And Add	PREPAY AND ADD	Exped Consol Def5Day	

1400 Northpoint Pkwy Ste 10,  
West Palm Beach, FL 33407-1976

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 Contact Info      Therese Creighton  
 Call:                800-532-4752  
 Fax:                 561-688-8731  
 eMail:              therese.creighton@thermofisher.com

Item	Material No.	Description	Qty	Unit Price	Total Price
230	SHIP.HANDLING-BEA	xo-cip	1 EA	3,045.00	3,045.00 USD

**Quotation Sub-total:**      235,198.00    USD  
**Discount:**                    33,226.80    - USD  
**Quotation Total:**         201,971.20    USD

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1. **GENERAL.** Thermo Electron North America LLC ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products ("Products") and/or annual support plans ("Support Plan(s)") and billable services ("Technical Support") [Support Plans and Technical Support may be referred to collectively as "Services"] as listed on the face hereof on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein ("Agreement"). Any new or different provisions contained in any document issued by Buyer in response to this offer are expressly rejected; and if Buyer's response is deemed to be an offer, this document is a rejection of Buyer's offer and a counter offer by Seller and shall not constitute acceptance of any proposal by Buyer. Buyer's receipt of Products or Seller's commencement of Services hereunder will constitute Buyer's acceptance of this Agreement. This is the final, complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of Products and Services specified herein, which terms may not be altered in any way by Buyer's purchase order terms. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding upon Seller unless agreed in writing and signed by Seller. Seller's failure to object to additional or different terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein and all such proposals contained in Buyer's order are subject to acceptance in writing by an authorized representative of Seller.

2. **PRICE.** All prices published by Seller or Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products or Services will be as specified by Seller or, if no price has been specified or quoted, will be Seller's standard prices in effect at the time of shipment of Products or delivery of Services. All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions that are not part of Seller's original quotation. Unless otherwise stated in the quotation, the quoted rate for Technical Support includes Work Time, Travel Time and Standby Time in accordance with the following schedule and conditions; except that Technical Support requested without at least seven (7) days advanced notification shall be subject to airfare charges in addition to the Standard Rate.

- (a) **Work Time** - shall include all hours that Seller's service personnel are on the Buyer's job site, either working or ready for work and shall be payable at the applicable specified rates.
- (b) **Travel Time** - shall include the time spent by Seller's service personnel in traveling between their customary headquarters and the Buyer's job site and in returning (including travel occurring on Saturdays, Sundays and holidays). Except as otherwise stated in the Services quotation, Travel Time will be invoiced per diem at the applicable Travel Zone rates in Seller's standard service list prices. Air travel and car hire related expenses will be charged in addition to the daily rate at cost plus a 10% administration fee.
- (c) **Standby Time** - shall include the time that Seller agrees in writing, at its sole discretion, to reserve its service personnel to be ready to perform work for the Buyer, whether on the job site or not, up to a maximum of 8 hours a day, between the hours of 8:00 a.m. and 5:00 p.m., local standard time on Saturdays, Sundays and holidays. Standby Time shall be paid for at the special rates quoted by Seller at the time of Buyer's request or, if none, at the current Double Time Rate; and Standby Time preceded and/or followed by Work Time is cumulative in determining Overtime.
- (d) **Standard Rate** - the Service rate quoted by Seller that shall be paid for time worked on a regular schedule of eight (8) hours per day, Monday through Friday (excluding Seller's holidays), between 8:00 a.m. and 5:00 p.m. local standard time.
- (e) **Overtime Rate** - if applicable for the quoted Services, the rate of one and a half times the Standard Rate shall be paid for any time worked in excess of eight (8) hours or between the hours of 5:00 p.m. and 8:00 a.m. local standard time; but not exceeding sixteen (16) hours per day, Monday through Friday, and for any time on Saturdays, not to exceed sixteen (16) hours. Overtime shall be billed in 30 minute blocks; or longer time blocks, if quoted by the Supplier.
- (f) **Double Time Rate** - the rate of twice the Standard Rate shall be paid for time worked in excess of sixteen (16) hours per day, without a six (6) hour break, Monday through Friday, and for all time on Saturdays, Sundays and holidays. Holidays shall be those observed by Seller.

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

4. **TERMS OF PAYMENT.** Seller may invoice Buyer immediately for the single lump sum amount equal to the total charges for the initial Term of a Support Plan, upon shipment of Products or upon completion of Technical Support for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. International Technical Support may require payment in advance. Buyer will grant a security interest in the Products sold under this Agreement until payment of the full purchase price to Seller in accordance with Article 9-103 of Uniform Commercial Code-Secured Transactions. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at the greater of a periodic rate of one and one-half percent (1.5%) per month or the highest rate stipulated by applicable law, together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars unless otherwise specified in Seller's invoice.

5.A. **PRODUCT DELIVERY.** All Products will be shipped to the destination specified by Buyer, FCA (INCOTERMS 2010) at OEM shipping point or Seller's distribution facility, as applicable, which will vary depending on Product type and availability and may include points outside the United States (U.S.) (inquire for specific shipping point information). Notwithstanding specified INCOTERMS, Seller shall select carrier on Buyer's behalf and Seller agrees to arrange transportation of Products to Buyer's destination, and to act as the importer of record on behalf of Buyer to clear the Products through U.S. customs. All freight, taxes, duties and insurance, if any, charges shall be prepaid and added to Buyer's invoice. Seller may, at its election, make partial shipments of the Products and invoice each shipment separately. Seller reserves the right to withhold shipments in whole or in part and/or terminate any Services,

if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. Seller's termination of Services will not relieve Buyer's obligation to pay all amounts due for Services provided by Seller prior to the termination date. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay.

5. B. **CANCELLATION OR CHANGES BY BUYER** If Buyer requests that Seller delay delivery of Products for any reason, Seller may place Products in storage at Buyer's risk and expense and for Buyer's account. Orders in process may be cancelled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without the prior written consent of Seller. Before returning any item, contact Seller's Order Administration Department for a Return Material Authorization (RMA) number at (800) 532-4752. Buyer may need to complete an RMA Form which includes a Hazard Free Form and/or Instrument Contamination Data Form. If authorized by Seller, Buyer must return items to Seller in their original or equivalent packaging, prepay shipping charges, and insure the shipment or accept the risk if the item is lost or damaged in shipment. In addition, Seller reserves the right to charge the Buyer the list price for missing components or subassemblies when incomplete items are returned to Seller. Authorized returns of any unused items which are free from material defects to Seller, in its sole discretion, may be subject to a twenty percent (20%) restocking charge.

Requests by Buyer to delay, postpone or suspend on-site Services, due to no fault of Seller, shall be subject to Seller's ability to recall its service representatives and to cancel and/or reschedule of any of their travel arrangements; and provided that, Buyer pays any and all additional costs (including, Travel Time and expenses) incurred by Seller as a result of the Services being postponed or suspended by Buyer. Cancellation of scheduled Services may be subject to a cancellation fee of twenty percent (20%) if Seller is notified less than 7 business days prior to the scheduled date of service.

6. **DELIVERY OF SERVICES.** Except as otherwise stated on the face hereof, all Services will be provided by Seller or its agent between the hours of 8:00 a.m. and 5:00 p.m. local standard time, Monday through Friday, excluding Seller's holidays, either at Seller's principal offices or, at Seller's option, at Buyer's installation address. If Seller advises Buyer that Services should be performed at Seller's facility, Buyer will properly package the Products to prevent damage, clearly mark the RMA number on the outer packaging, and ship it, via postage/freight prepaid, to the address set forth on the face hereof or such different address as Seller may from time to time provide to Buyer. After Seller completes the Services, or has made a determination that the products are beyond repair, Seller may, at its option, either advise Buyer to scrap the Products or to have the Products shipped, postage/freight prepaid, back to Buyer's installation address stated on the quotation, or to such other address as Buyer requests. In the event Buyer requires expedited delivery, such delivery will be made at Buyer's expense. If Seller advises Buyer that Services should be performed at Buyer's site, Buyer will use its best efforts to provide Seller with all requested diagnostic information for any products requiring Services; and subject to compliance with Buyer's reasonable security requirements, will allow Seller free access to all relevant equipment, documentation and records. In addition, Buyer will cooperate with Seller's efforts to perform the Services and will provide such additional assistance as Seller may reasonably request. At the completion of the Services, Seller's representatives will provide Buyer with a field service report on which will be indicated the number of hours spent and the materials used in completing the work. Buyer's signature on the field service report will signify approval of the information in the report and Seller's satisfactory completion of the Services. If Buyer does not sign the report or provide written objection within five (5) business days after receipt, then the report will be deemed unequivocally approved and accepted by Buyer.

7. **TITLE AND RISK OF LOSS.** Notwithstanding the transport terms indicated above, title to and risk of loss of the Products will pass to Buyer upon delivery or possession of the Products by Seller to the carrier at the time and place of shipment; provided, however, that title to any software incorporated within or forming a part of the Products will at all times remain with Seller or the licensor (s) thereof, as the case may be. All risk of loss or damage to Buyer's products being transported for Services shall remain with Buyer during shipment to and from the Buyer's site and during Seller's performance of Services hereunder.

8. **WARRANTIES.** Seller's sole obligation with respect to the Services is to provide the quoted Services in a workmanlike manner and if Buyer provides notice of defect in Service within ninety (90) days of completion of such Services, Seller will, at its sole option, either reperform the Services without charge to Buyer or grant Buyer a credit for the amount paid by Buyer with respect to such Service. Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the Product documentation, published specifications or package inserts (the "Warranty Period"). If a Warranty Period is not specified in Seller's Product documentation, published specifications, or package inserts, the Warranty Period for new instruments is twelve (12) months from the date of shipment to Buyer; and for all other Products is ninety (90) days from the date of shipment. During the Warranty Period, Seller agrees to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with Seller's published specifications; provided that Buyer (a) promptly notifies Seller in writing upon the discovery of any covered defect in the Products, including the Product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with an RMA number and services data, which may include biohazard decontamination procedures and other Product-specific handling instructions. Then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products will be made in accordance with the Delivery clause of this Agreement. Except for new consumable items manufactured and sold by Seller, this warranty expressly excludes all other consumable parts or components (e.g., bulbs, bells, cartridges, etc.) in the Products. If Seller elects to repair defective medical device instruments, Seller may, in its sole discretion, provide a replacement loaner instrument to Buyer as necessary for use while the instruments are being repaired.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller; but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

**TERMS AND CONDITIONS OF SALE FOR PRODUCTS AND SERVICES**

In no event shall Seller have any obligation to make repairs, replacements or corrections under the Warranty, in whole or in part, as the result of or with respect to: (a) use of the Products in a manner for which they were not designed; (b) improper storage and handling of the Products; (c) use of the Products in combination with equipment or software not supplied by Seller (d) shipping damage incurred en route to Buyer's site or because of moving equipment, in which case Seller will promptly provide a cost estimate for Technical Support to the consignee for filing claims to carriers for shipping damage; (e) flood, lightning, earthquake, tornado, hurricane or fire, bombing, armed conflict, malicious mischief, sabotage or other natural or man-made disasters; (f) normal wear and tear, physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation; (g) repairs, maintenance, or modifications made by anyone other than Seller trained personnel or without Seller's supervision and/or approval; (h) relocation and reinstallation of equipment; although upon request Seller will supervise the removing, crating, relocation and reinstallation of the Products at Seller's current Services rates; (i) maintenance or replacement of media (i.e., floppy disks, plotter supplies, etc.) whatever the reason for loss, failure or damage; (j) beta-site support; (k) operator training; or (l) repairing Product malfunctions if the fault is not with the equipment. If Seller determines that Products for which Buyer requested warranty services are not covered by this warranty, Buyer will pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides Services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates.

ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS AND/OR SERVICES. THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT FOR SELLER TO REPAIR OR REPLACE A DEFECTIVE PRODUCT OR TO REPERFORM OR CREDIT THE PRICE OF DEFECTIVE SERVICES SHALL BE THE SOLE REMEDY OF BUYER FOR SUCH DEFECTIVE PRODUCTS OR SERVICES UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT. SELLER DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

**9. INDEMNIFICATION.**

9.1 **By Seller.** Seller will indemnify, defend and save Buyer, its officers, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees) ("**Indemnified Items**") asserted by another party against Buyer for (i) bodily injury to or death of persons or damage to tangible property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of Services at Buyer's premises under this Agreement; and (ii) claims that a Product infringes any U.S. patent, copyright or trade secret; provided, however, Seller's liability under this Section does not extend to any such Indemnified Items caused by either (u) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (v) by any third party, (w) use of a Product in combination with equipment or software not supplied by Seller where the Product alone would not be infringing, (x) Seller's compliance with Buyer's designs, specifications or instructions, (y) use of the Product in an application or environment for which it was not designed, or (z) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer will promptly notify Seller in writing of any claim covered by Seller's indemnification obligations hereunder. Seller may assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

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

9.2 **By Buyer.** Buyer will indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product alone would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Seller without Seller's prior written approval.

10. **SOFTWARE.** With respect to any software products incorporated in or forming a part of the Products hereunder (i.e., firmware), Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder. Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software licensed hereunder solely for Buyer's own internal business purposes on its hardware Products and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware Products provided hereunder ceases, unless earlier terminated as provided herein. Buyer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder.

Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, to immediately stop using all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller or may be stand-alone software products, which Buyer hereby agrees are subject to a separate browse-wrap, shrink-wrap or click-thru end user license agreement (EULA). Accordingly, the warranty and indemnification provisions herein do not apply to such software, which are exclusively provided in the applicable EULA.

11. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH IS PROVIDED UNDER THE PRODUCT AND SERVICES WARRANTIES HEREIN) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THEREOF PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

12. **EXPORT RESTRICTIONS.** Buyer acknowledges that each Product and any related services, software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), may be subject to export controls of the U.S. government and/or other governments. Such export controls may include, but are not limited to, the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the U.S. and their re-export from other countries and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not export, re-export, distribute or supply any Item, directly or indirectly, to (i) any country, person or entity, in each case, without first obtaining from the U.S. government and/or other appropriate government agency any license required to do so lawfully; (ii) any person or organization in Cuba, Iran, North Korea, Sudan, Syria, or other country then the subject of a U.S. embargo, or any person or entity considered a part of the government of any such country; or (iii) any person or entity who is involved in improper development or use of nuclear weapons, or of chemical/biological weapons (CBW) or missiles, or in terrorist activities. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, agents and/or representatives.

**13. Support Plan Terms and Conditions.**

A. **General.** In the event Buyer purchases a Support Plan from Seller under this Agreement, Seller agrees to maintain and/or repair those Products or instruments identified on the face hereof as covered under a Support Plan ("**Covered Equipment**") in a manner consistent with the specifications and entitlements included in the purchased Support Plan as specified by Seller on the face hereof, which may include various levels of service at the Buyer's site(s) and/or Seller's Depot Repair locations and are purchased separate from the original Product Warranty above (the "**Support Service(s)**"). The Support Services will only be valid for Covered Equipment within the Region covered by the Plan (e.g. 48 contiguous U.S.), Monday through Friday (excluding Seller's holidays) during the hours of 8:00 a.m. to 5:00 p.m. local standard time ("**Normal Hours**") during the term of the Agreement. The Covered Equipment must be operated according to the manufacturer's supplied instructions, including without limitation the Operator's Manual(s) and any malfunction must be promptly reported to Seller. Support Service calls requested outside of Normal Hours or for any non-Covered Equipment or for services not included in the Support Plan will be billed at Seller's standard rates for Technical Support in effect at the time of Buyer's request. Seller reserves the exclusive right to determine the assignment of its employees in the performance of Support Services.

B. **Term.** (a) The Support Plan will begin and remain effective for the period of time stated on the face hereof ("**Term**"). To renew the Support Plan, Buyer must sign a Renewal Service Agreement accompanied by a purchase order prior to the expiration of the current Term ("**Renewal**"), which shall also be subject to the terms and conditions of this Agreement. Either party may terminate a Support Plan for any/no reason by providing at least thirty (30) days written notice to the other party. Seller will use commercially reasonable efforts to stop work and to incur no additional expenses. Regardless, if a Support Plan is cancelled, Seller will charge Buyer for the total price of Services actually performed and expenses actually and reasonably incurred in servicing the covered equipment under the underlying Support Plan from its effective date until the cancellation date or the prorated price of the underlying Support Plan from its effective date until the cancellation date, whichever is greater, plus fifteen percent (15%) of the total fee paid for the underlying Support Plan. In the event Buyer prepaid the Support Plan fees in full and a credit balance exists for the underlying Support Plan, Seller will provide a credit or refund the amount remaining to Buyer.

C. **Pricing and Pricing Assumptions.** Except as otherwise agreed in writing, the annual charge for each Renewal will be Thermo Fisher's standard support plan rates in effect at the start of the Renewal. All Support Plan pricing is based on the assumption that the Covered Equipment operates in accordance with product specifications as of the coverage start date; therefore, prior to the start of each Term and Renewal, Seller reserves the right to verify and correct the condition of the Covered Equipment and invoice Buyer at Seller's current billable rates for any Support Services deemed reasonably necessary to bring the Covered Equipment into good operating condition. Notwithstanding the above, Seller agrees to waive its right to bill the Buyer for bringing the Covered Equipment into good operating condition if there is no lapse between the end date of the current Support Plan Term and the beginning of any Renewal.

D. **Parts and Consumables:** The Support Plan level defines when and if the cost of parts is included under the Support Plan. Notwithstanding the foregoing, the cost for parts that are consumed in the normal and usual operation of the Covered Equipment including, but not limited to, sample preparation and analysis, consumables, paper, ink cartridges, ribbons, pens, lamps and/or data media are not covered under any Support Plan.