



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
7780056

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
MICHAEL AUSTIN
304-558-2402

PURCHASER

*709025751 01 608-276-6100
 THERMO ELECTRON SCIENT INST
 5225 VERONA ROAD
 MADISON WI 53711

SHIP TO

DIVISION OF HIGHWAYS
 TRAFFIC SERVICES COMPLEX
 190 DRY BRANCH ROAD
 CHARLESTON, WV
 25306 304-558-8984

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
02/07/2008				

BID OPENING DATE: **02/27/2008** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA		490-55	\$149,003	\$149,003
<p>X-RAY FLUORESCENCE SPECTROMETER</p> <p>PROVIDE X-RAY FLUORESCENCE SPECTROMETER FOR THE ANALYSIS OF CEMENT, FLY ASH, LIMESTONE AND BLAST FURNACE SLAG IN ACCORDANCE WITH ASTM C114, ASTM C311 AND AASHTO M3020 SPECIFICATIONS. THE COMPUTER SYSTEM THAT WILL COME WITH UNIT IS TO BE A STAND ALONE AND NOT NETWORKED WITH THE LAN.</p> <p>PER THE ATTACHED SPECIFICATIONS</p> <p>VENDOR PREFERENCE CERTIFICATE</p> <p>CERTIFICATION AND APPLICATION* IS HEREBY MADE FOR PREFERENCE IN ACCORDANCE WITH WEST VIRGINIA CODE, 5A-3-37 (DOES NOT APPLY TO CONSTRUCTION CONTRACTS).</p> <p>A. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>() BIDDER IS AN INDIVIDUAL RESIDENT VENDOR AND HAS RESIDED CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p>() BIDDER IS A PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDOR AND HAS MAINTAINED ITS HEAD-QUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR 80% OF THE OWNERSHIP INTEREST OF BIDDER IS HELD BY ANOTHER INDIVIDUAL,</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>K. Sella</i>	TELEPHONE 608 276 5670	DATE 2/20/08
TITLE Order Administrator	FEIN 43-1992201	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



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<p>PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDOR WHO HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p>() BIDDER IS A CORPORATION NONRESIDENT VENDOR WHICH HAS AN AFFILIATE OR SUBSIDIARY WHICH EMPLOYS A MINIMUM OF ONE HUNDRED STATE RESIDENTS AND WHICH HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA CONTINUOUSLY FOR THE FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION.</p> <p>B. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>() BIDDER IS A RESIDENT VENDOR WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES WORKING ON THE PROJECT BEING BID ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID;</p> <p>OR</p> <p>() BIDDER IS A NONRESIDENT VENDOR EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS OR IS A NONRESIDENT VENDOR WITH AN AFFILIATE OR SUBSIDIARY WHICH MAINTAINS ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES OR BIDDERS' AFFILIATE'S OR SUBSIDIARY'S EMPLOYEES ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID.</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>K. Scholt</i>	TELEPHONE 608 2765670	DATE 2/20/08
TITLE Order Administrator	FEIN 43-1992201	ADDRESS CHANGES TO BE NOTED ABOVE

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<p>BIDDER UNDERSTANDS IF THE SECRETARY OF TAX & REVENUE DETERMINES THAT A BIDDER RECEIVING PREFERENCE HAS FAILED TO CONTINUE TO MEET THE REQUIREMENTS FOR SUCH PREFERENCE, THE SECRETARY MAY ORDER THE DIRECTOR OF PURCHASING TO: (A) RESCIND THE CONTRACT OR PURCHASE ORDER ISSUED; OR (B) ASSESS A PENALTY AGAINST SUCH BIDDER IN AN AMOUNT NOT TO EXCEED 5% OF THE BID AMOUNT AND THAT SUCH PENALTY WILL BE PAID TO THE CONTRACTING AGENCY OR DEDUCTED FROM ANY UNPAID BALANCE ON THE CONTRACT OR PURCHASE ORDER.</p> <p>BY SUBMISSION OF THIS CERTIFICATE, BIDDER AGREES TO DISCLOSE ANY REASONABLY REQUESTED INFORMATION TO THE PURCHASING DIVISION AND AUTHORIZES THE DEPARTMENT OF TAX AND REVENUE TO DISCLOSE TO THE DIRECTOR OF PURCHASING APPROPRIATE INFORMATION VERIFYING THAT BIDDER HAS PAID THE REQUIRED BUSINESS TAXES, PROVIDED THAT SUCH INFORMATION DOES NOT CONTAIN THE AMOUNTS OF TAXES PAID NOR ANY OTHER INFORMATION DEEMED BY THE TAX COMMISSIONER TO BE CONFIDENTIAL.</p> <p>UNDER PENALTY OF LAW FOR FALSE SWEARING (WEST VIRGINIA CODE 61-5-3), BIDDER HEREBY CERTIFIES THAT THIS CERTIFICATE IS TRUE AND ACCURATE IN ALL RESPECTS; AND THAT IF A CONTRACT IS ISSUED TO BIDDER AND IF ANYTHING CONTAINED WITHIN THIS CERTIFICATE CHANGES DURING THE TERM OF THE CONTRACT, BIDDER WILL NOTIFY THE PURCHASING DIVISION IN WRITING IMMEDIATELY.</p> <p>BIDDER: -----</p> <p>DATE: -----</p>						

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SIGNATURE <i>K. Seidt</i>	TELEPHONE 608 276 5670	DATE 2/20/08
TITLE <i>Order Administrator</i>	FEIN 43-1992201	ADDRESS CHANGES TO BE NOTED ABOVE

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<p>SIGNED: -----</p> <p>TITLE: -----</p> <p>* CHECK ANY COMBINATION OF PREFERENCE CONSIDERATION(S) IN EITHER "A" OR "B", OR BOTH "A" AND "B" WHICH YOU ARE ENTITLED TO RECEIVE. YOU MAY REQUEST UP TO THE MAXIMUM 5% PREFERENCE FOR BOTH "A" AND "B". (REV. 12/00)</p> <p>NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p>DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: 33</p> <p>RFQ. NO.: 7780056</p> <p>BID OPENING DATE: 02/27/2008</p> <p>BID OPENING TIME: 1:30 PM</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>K-Schult</i>	TELEPHONE <i>6082765670</i>	DATE <i>2/20/08</i>
TITLE <i>Order Administrator</i>	FEIN <i>43-1992201</i>	ADDRESS CHANGES TO BE NOTED ABOVE

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PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID: ----- 608-273-6882 ----- CONTACT PERSON (PLEASE PRINT CLEARLY): ----- Ken Schuldt -----						
***** THIS IS THE END OF RFQ 7780056 ***** TOTAL: _____						

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SIGNATURE <i>K-Schuldt</i>	TELEPHONE 6082765670	DATE 2/20/08
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SPECIFICATIONS FOR X-RAY FLUORESCENCE SPECTROMETER

1. ARL Advant'X Intellipower 1200 WDXRF or equivalent
 Sequential spectrometer (element coverage F to U solids) including:
 4GN Rh target X-ray tube with 75 um window
 1200 W power supply for 60 kV max
 SmartGonio with:
 Fixed collimator
 Crystal changer with 3 crystals fitted: AX06, PET and LiF200
 Two detectors: flow proportional and scintillation
 Fixed internal mask opening 029mm
 Closed circuit water cooling system (water-air)
 Vacuum system with rotary pump
 Automatic sample changer for 12 position, including 12 standard cassettes for
 Samples max. 52mm max . height 30mm
 Sample rotation system, 30rev/minute
 Microprocessor control electronics
 Digital display of instrument status and current operation
 Capability for Techconnect Modem connection (remote diagnostic)
 One set of Quality Assurance monitor samples
 Personal computer system
 17" monitor
 Color inkjet printer
 OXAS X-Ray Analytical Software

2. Automatic sample changer for 12 samples Qty 1
 Includes 10 standard cassettes for samples max. 52mm, max height 30mm.
 Opening 29mm

3. Multi purpose center ring, dia. 30/40 Qty 10

4. High pressure reducer for P-10 gas Qty 1
 For FPC detector
 To use with type HBS 300/1 for P-10 (AR+ 10% CH4) gas bottles

5. Claisse M4 Automatic fusion unit Qty 1
 For the preparation of 1 to 3 glass disks
 Microprocessor control
 Automatic ignition and flame control
 Separate crucible and mould arms
 Including a safety cabinet and a stand for the remote control unit
 Complete but without crucibles and molds

6. Pt/Au crucible, 25ml, 26g Qty 3

7. Pt/Au mold, casting 35mm, 25g Qty 3

- 8. Isolation transformer, 240v-n Qty 1
- 9. ASTM C-114 cement standard Qty 1
- 10. Cement drift correction samples Qty 1
- 11. One day analytical support Qty 3

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

LICENSING: Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

CONFIDENTIALITY: The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendors should visit www.state.wv.us/admin/purchase/privacy for the Notice of Agency Confidentiality Policies.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), it is hereby certified that the vendor acknowledges the information in this said affidavit and are in compliance with the requirements as stated.

Vendor's Name: Thermo Electron North America LLC

Authorized Signature: K. Schelt Date: 2/20/08

Quotation

Date: February 20, 2008

Page: 1 of 6

Michael Austin State of West Virginia 2019 Washington Street East Charleston WV 25305 Phone: (304) 558-2402 Fax:	Quote: 08-085 Sales Rep: Dave McAnallen Terms: Net 30 FOB: Destination Valid For: 60 days
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Quotation Summary: At the request of Dave McAnallen, Regional Sales Manager, Thermo Fisher Scientific is pleased to offer you this quotation for an ARL Advant'X Intellipower 1200 XRF. If you should have any questions, please don't hesitate to contact Dave at 304-453-4181.

Item	P/N	Description	Qty.	Unit Price	Ext. Price
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Section 1: ARL Advant'X Intellipower 1200 XRF

1.1 XR-ADX-01 ARL Advant'X Intellipower™ 1200 XRF Standard version with SmartGonio™ 1

- Sequential Spectrometer (Element coverage F to U in solids) including:
 - 4GN Rh target X-Ray tube with 75 µm window
 - 1200 W Power supply for 60 kV max. or 60 mA max. (KV-mA combinations to be less than 1200W)
 - SmartGonio with:
 - Fixed collimator
 - Crystal changer with 3 crystals fitted: AX06, PET and LiF200
 - Two detectors: flow proportional and scintillation
 - Fixed internal mask opening Ø29mm
 - Closed circuit water cooling system (water-air)
 - Vacuum system with rotary pump
 - Automatic sample changer for 12 position, including 12 standard cassettes for samples max. Ø 52mm. max. height 30 mm.
 - Plastic cover for dust protection
 - Sample rotation system, 30 rev./minute
 - Microprocessor control electronics
 - Digital display of instrument status and current operation
 - Capability for Techconnect Modem connection (remote diagnostic)
 - Modem on user site is not included
 - One set of Quality Assurance monitor samples
 - Instrument documentation on CD-ROM, user manual on paper
- Notes: - P-10 or Helium gas cylinder & pressure reducer are not included;

Item	P/N	Description	Qty.	Unit Price	Ext. Price
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Personal Computer system DELL OptiPlex (COMP-STD), with the following minimum specifications:
 Processor Intel Pentium 4 @2.80 GHz, 1 GB Memory
 160 GB hard disk drive, internal DVD/CDRW combo drive (DVD reader, CD-Writer). No floppy disk drive;
 Operating system Windows® XP Professional Service Pack 2;
 17" LCD TFT video screen, keyboard, mouse
 Integrated Ethernet 10/100/1000 LAN interface (RJ-45 connector);
 1 serial (reserved for instrument link), 1 parallel and 8 USB ports (2 front and 6 back). 2 USB ports are already used for the mouse and the keyboard;
 Inkjet color printer with USB cable
 Includes factory installation and configuration of operating system and instrument software.
 Notes: - Thermo Electron reserves the right to substitute the latest equivalent (or better) computer model & configuration;
 - ARL Advant'X Series instruments are designed as Total Protection Systems in term of radiation safety
 - ARL Advant'X Series instruments are built according to ISO 9001 certification

1.2 XR-OXSAS OXSAS X-RAY ANALYTICAL SOFTWARE

1

32 bits software that runs on Windows® XP Professional and includes the following main features:

- Modern, State-of-the-Art Graphic User Interface;
- Integrated Microsoft® SQL Server Desktop Engine 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;
- 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;
- 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;
- Element display with units. Precision: dynamic (proportional to the concentration range), fixed number of decimals or fixed number of significant digits;
- Result validation and edition, with history;
- Grade check (target and alternative), grade search and sort;
- Concentration result recalculation;

Item	P/N	Description	Qty.	Unit Price	Ext. Price
		<ul style="list-style-type: none"> •Result storage and post-treatment with powerful database query filters. Statistics. Export to other applications. Tracing of result modification with integrated display of modification history; •Instrument check with on-line integrated SPC-Basic. On-line evaluation by SPC of control samples with immediate feed-back. Automatic detection of out-of-control and other abnormal states (bias, trends, etc.) according to numerous normalization rules. Control samples analysis scheduling; •Instrument standardization, with 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; •On-line contextual help; •Accounts with password protection, database maintenance tools; •Text customization and translation into any language that have a character set supported by the Windows operating system. Notes: - OXSAS is supplied with a printed Manual available in English. - The Software user and configuration documentation is available in the form of an integrated, contextual Help file - The instrument computer must be dedicated to running the OXSAS software application and any afferent 3rd party software supplied or agreed by Thermo Electron. Installing and running other software applications can be done only at the customer's own risk, Thermo Electron does not assume the responsibility for any compatibility issue that could arise therewith. 			
1.3	*XR-ADX-C12	AUTOMATIC SAMPLE CHANGER FOR 12 SAMPLES	1		
		Upgrade for ARL Advant'X version only <ul style="list-style-type: none"> • Includes 10 standard cassettes for samples max. Ø 52 mm, max. height 30 mm. Opening Ø 29 mm 			
1.4	XR-CR3040	MULTI-PURPOSE CENTER RING, DIA 30/40	10		
1.5	XR-PR-FP	HIGH PRESSURE REDUCER FOR P-10 GAS	1		
		<ul style="list-style-type: none"> • For FPC detector To use with type HBS 300/1 for P-10 (Ar + 10% CH4) gas bottles 			
1.6	XR-CLSE-M4	CLAISSE M4 AUTOMATIC FUSION UNIT	1		
		<ul style="list-style-type: none"> • For the preparation of 1 to 3 glass disks. • Microprocessor control. • Automatic ignition and flame control. • Separate crucible and mould arms. • Including a safety cabinet and a stand for the remote 			

Item	P/N	Description	Qty.	Unit Price	Ext. Price
		control unit. • Complete but without crucibles and molds			
1.7	XR-CLSE- CRUC	Pt/Au CRUCIBLE Pt/Au crucible, 25ml, 26g (0325)	3		
1.8	XR-CLSE- MOLD	Pt/Au MOLD Pt/Au mold, casting 35mm, 25g	3		
1.9	XR-CLSE- Fusion	Claisse Li Tet / Li Met / LiBr fusion mixture, 1kg	3		
1.10	5MIUX- 5K6-4ANN	ISOLATION TRANSFORMER 5k VA	1		
1.11	US- CEMENT	ASTM C-114	1		
1.12	A0360057	CEMENT DRIFT CORRECTION SAMPLES Required for ASTM C114 calibration	1		
1.13	XRF/ANA/D BN	ONE DAY ANAYTICAL SUPPORT Living & Travel included	1		
1.14	ADV/AIR	COST FOR STANDARD AIRFREIGHT PACKING	1		
1.15	ADV/GEN	TRANSPORT TO GENEVA • Transport & Insurance from Ecublens to FCA Geneva Airport	1		
1.16	ADV/TRAN S	TRANSPORT TO USA • Transport & Insurance from Geneva to US	1		
1.17	FOB	PORT OF ENTRY Freight and insurance paid to customer site	1		

ARL Advant'X Intellipower 1200 XRF Section Total: \$ 149,003.00

Section 2: Optional items for Advant'X

2.1	XR-OX- ARLCOM	OXSAS/ARLCOM Optional software package for the transmission of results using network and serial communication. 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	1	\$ 1,810.00	\$ 1,810.00
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Item	P/N	Description	Qty.	Unit Price	Ext. Price
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protocol;
 •File storage: transmission of results to files on local or network disks over LAN;
 •IP Printer: transmission of results to network direct-connected printers equipped with a network connection;
 •Software destination switch: if a TCP/IP destination is unreachable, allows automatic rerouting of results to an alternate destination.

Serial communication: result transmission solutions to computers, printers or terminals over serial RS-232 lines. It supports the communication to computers using the Thermo Compac protocol and to ASCII printers or ASCII visual display terminals using formatted telegrams.

- Requires one serial RS-232 line per destination link (MUX-2P, 4P or 8P offers additional serial ports if necessary);
- Includes Software destination switch: 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: - Overall number of result destinations: max. 16;
 - 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 Windows® XP Professional software, 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.

2.2	XR-AD-OQ	OptiQUANT Software Package	1	\$ 12,661.00	\$ 12,661.00
		Standardless analysis package for all types of bulk samples, liquid and small samples with irregular shapes. OptiQuant is a version of UniQuant for the SmartGonio. Fully installed at the factory. •Includes: 11 "pure" elements standards for setting-up and maintenance 1 user's manua 1 set of centering ring 1 set of sectored insert 1 dongle (hardware lock) •Following pre-requisites hardware options for OptiQuant must be included: SmartGonio, F to U type XG-Smart-0			

2.3	XR-KXMADX	MAINTENANCE KIT FOR ADVANT'X+	1	\$ 4,186.00	\$ 4,186.00
		A027981 FILTER,CARTRIDGE,DEIONIZATION 1 P CE A037260 OIL,VACUUM PUMP,CMPELITE Z 1 L			

Item	P/N	Description	Qty.	Unit Price	Ext. Price
		A030984 FILTER,W/GASKET,OIL MIST 1 PCE			
		A038462 KIT,MAINT.,ALCATEL,2015ARL- E/L 1 PCE			
		S700117 FILTER,SULPHURE,3360/3460/8400 1 PCE			
		S702319 DUCT,VACUUM,PRIM.CHAMBER,9400 1 PCE			
		S425275 DUCT,VACUUM,LIFT,84101 PCE			
		S703390 KIT,SEALS,94/ADVANTX/XP 1 PC			
		S426779 VALVE,ELM,24VDC,VAC1 PCE			
		A036861 VALVE,ELM,2/2VS,R3/4,24VDC,11W 1 PCE			
		A036862 VALVE,ELM,R1/4,2/2VS,24VDC,10W 1 PCE			
		A038659 VALVE,2/2VS,PROP.D1.6,M5,24VDC 2 PCE			
		A035135 FAN,24VDC,176M3/H 3 PCE			
		A033977T FAN,CROSS FLOW,24VDC,SP 2 PC			
		S428382 FILTRE,425X520,ALIM-X,ADVX 1 PCE			
		A037323 WASHER,SILICONE,X-TUBE 2 PCE			
		A037324 OIL,SILICONE,10GR,X-TUBE 2 PCE			
		A037155 BELT,TIMING,T2,5X6,Z58 1 PCE			
		S421314 SPRING,TRACTION,40X4X3 1 PCE			
		S427499 SPRING,COMPR,30X8.5X0.95 3 PCE			
		S427480 SPRING,COMPRESSION,14X4X0.4,IN 1 PC E			
		A037042 LAMP,36V/1.2W 1 PCE			
		AA21425 FUSE,0.2A,250V,5X20,T 10 PCE			
		AA21430 FUSE,3.15A,250V,5X20,T 10 PCE			
		S702143 WINDOW,KIT,FPC,PEA9,GONIO 1 PCE			
		AA20410 FAN,220V,50HZ 1 PCE			
		S428393 FILTRE,FOUR,ADVX 1 PCE			
		AA26419 FAN,220V,50/60HZ,33W 94L/S 3 PCE			
		S317693 COVER,LEFT-RIGHT,MAG.X- Y,ADVX 1 PCE			
		AA22511 COLLAR,D9-16,PM 4 PCE			
		A038566 LAMP,24V/10W,BA15D,10000H 2 PCE			
		A036556 GASKET,FLAT,CABLE HV,75KV,COME 2 PCE			

All prices quoted in US Dollars



SUPPLEMENTAL TO GENERAL TERMS

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

FOB:

Prices are for delivery FOB: Destination (Freight and insurance to destination included). Packing is included.

DELIVERY:

Four to five 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)

Net 30

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.

WHEN PLACING AN ORDER:

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.
3. To expedite your order, please fax purchase order (and tax exemption certificate) to (608) 273-6882.

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 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 three additional days 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.



The course curriculum will be:

- 70% Theoretical and practical aspects of spectrochemical work and data interpretation
- 25% Preventative maintenance, general trouble shooting procedures, system description and basic electronics
- 5% Question and answer

Additional training is available upon request at a nominal charge.

DOCUMENTATION

One set of paper documentation will be supplied in standard Thermo Electron North America LLC format unless otherwise contracted or specified on the quotation. It will cover:

1. Electrical schematics and wiring prints
2. Thermo Electron North America LLC published instruction manuals
3. Quality control instrument performance evaluation.

One set of vendor documentation is supplied with vendor supplied components.

Documentation may be incomplete upon instrument delivery. This may be due to the special equipment ordered. The documentation will be forwarded within a reasonable time frame.

INSTRUMENT WARRANTY

Thermo Electron North America LLC provides a warranty against defects in workmanship and materials for 13 months from date of shipment. Labor, travel, and living expenses are included. The XRay tube is warranted for two (2) years. The Goniometer has an additional ten (10) year limited warranty.

During the warranty period, defective components will be repaired or replaced at Thermo Electron North America LLC discretion.

Warranty 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.

To obtain warranty service, call 1-800-642-6538.

Exclusions:

1. Realignment, readjustment, re-cleaning or re-calibration if not related to a proven defect in material or workmanship after installation.
2. Floppy disks and streaming tape cartridges will be warranted against defects in material and workmanship for 90 days. They are replaced at no charge if returned to Thermo Electron North America LLC.
3. Preventative maintenance is not included under warranty coverage.



4. Components defective through misuse or cleaning
5. Vendor supplied components such as computer equipment, sample preparation equipment, etc., may be covered under the manufacturer's warranty in lieu of the Thermo Electron North America LLC warranty.
6. Defects caused by: operation outside environmental specifications for this product unauthorized modifications; improper maintenance; improper site preparation; and use of an input voltage line which has not been regulated to specifications for this product.

Material returned to Thermo Electron North America LLC under warranty must be sent prepaid. Thermo Electron North America LLC will return the repaired or replaced component prepaid.

The warranty set forth above and on the reverse of this page is exclusive and no other warranty, whether expressed or implied, is valid unless otherwise contracted or specified on the quotation.

THERMO ELECTRON NORTH AMERICA LLC

TERMS AND CONDITIONS OF SALE

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

1. **GENERAL.** Thermo Electron North America LLC ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any document issued by Buyer are expressly rejected and if the terms and conditions in this Agreement differ from the terms of Buyer's offer, this document shall be construed as a counter offer and shall not be effective as an acceptance of Buyer's document. Buyer's receipt of Products or Seller's commencement of the services provided hereunder will constitute Buyer's acceptance of this Agreement. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.

2. **PRICE.** All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment. All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation.

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

4. **TERMS OF PAYMENT.** Seller may invoice Buyer upon shipment for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars.

5. **DELIVERY, CANCELLATION OR CHANGES BY BUYER.** The Products will be shipped to the destination specified by Buyer, F.O.B. Seller's shipping point. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver 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. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without the prior written consent of Seller.

6. **TITLE AND RISK OF LOSS.** Notwithstanding the trade terms indicated above and subject to Seller's right to stop delivery of Products in transit, 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; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.

7. **WARRANTY.** 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. If a period of time is not specified in Seller's product documentation, published specifications or package inserts, the warranty period shall be one (1) year from the date of shipment to Buyer for equipment and ninety (90) days for all other products (the "Warranty Period"). Seller agrees during the Warranty Period, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that Buyer shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with service data and/or a Return Material Authorization ("RMA"), 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 shall be made in accordance with the Delivery provisions of the Seller's Terms and Conditions of Sale. Consumables are expressly excluded from this warranty.

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 required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall 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 repair 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.**

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. 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 OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

8. **INDEMNIFICATION.**

8.1 **By Seller.** Seller agrees to indemnify, defend and save Buyer, its officer, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) ("Indemnified Items") for (i) injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of services at Buyer's premises under this Agreement and (ii) claims that a Product infringes any valid United States patent,

copyright or trade secret; provided, however, Seller shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (iv) compliance with Buyer's designs, specifications or instructions, (v) use of the Product in an application or environment for which it was not designed or (vi) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer shall provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

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 THE CLAIMS DESCRIBED HEREIN.**

8.2 **By Buyer.** Buyer shall indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself 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.

9. **SOFTWARE.** With respect to any software products incorporated in or forming a part of the Products hereunder, 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 hereunder, 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 provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder 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 hereunder. 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 hereunder. Buyer agrees, upon termination of this license, immediately to return to Seller 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. Accordingly, Seller and Buyer agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

10. **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 SHALL BE AS PROVIDED UNDER SECTION 7 ABOVE)) 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) 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.

11. **EXPORT RESTRICTIONS.** Buyer acknowledges that each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Buyer 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, or customers.

12. **MISCELLANEOUS.** (a) Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment 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 State of Seller's manufacturing location, 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 and state of Seller's manufacturing location, in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise. (c) In the event of any legal proceeding between the 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) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (e) In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain. (f) 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. (g) Unless otherwise expressly stated on the Product or in the documentation accompanying the Product, the Product is intended for research only and is not to be used for any other purpose, including without limitation, unauthorized commercial uses, *in vitro* diagnostic uses, *ex vivo* or *in vivo* therapeutic uses, or any type of consumption by or application to humans or animals. (h) Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller. Buyer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) 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. (i) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other.