



The following documentation is an electronically-submitted vendor response to an advertised solicitation from the *West Virginia Purchasing Bulletin* within the Vendor Self-Service portal at ***wvOASIS.gov***. As part of the State of West Virginia's procurement process, and to maintain the transparency of the bid-opening process, this documentation submitted online is publicly posted by the West Virginia Purchasing Division at ***WVPurchasing.gov*** with any other vendor responses to this solicitation submitted to the Purchasing Division in hard copy format.

Header @ 2

List View

General Information

Contact

Default Values

Discount

Document Information

Clarification Request

Procurement Folder: 1528582

Procurement Type: Central Purchase Order

Vendor ID: VS0000047430 

Legal Name: Koved Technical, LLC

Alias/DBA:

Total Bid: \$54,000.34

Response Date: 10/31/2024 

Response Time: 11:45

Responded By User ID: KovedTech 

First Name: Robert

Last Name: Harmison

Email: joe@kovedtech.com

Phone: (954) 825-9666

SO Doc Code: CRFQ

SO Dept: 0306

SO Doc ID: GEO2500000003

Published Date: 10/28/24

Close Date: 11/1/24

Close Time: 13:30

Status: Closed

Solicitation Description: Portable X Ray Fluorescence Spectrometer with Stand for WVGS 

Total of Header Attachments: 2

Total of All Attachments: 2



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

State of West Virginia  
Solicitation Response

**Proc Folder:** 1528582  
**Solicitation Description:** Portable X Ray Fluorescence Spectrometer with Stand for WVGS  
**Proc Type:** Central Purchase Order

Solicitation Closes	Solicitation Response	Version
2024-11-01 13:30	SR 0306 ESR10312400000003324	1

**VENDOR**  
VS0000047430  
Koved Technical, LLC

**Solicitation Number:** CRFQ 0306 GEO2500000003  
**Total Bid:** 54000.33999999999650754034519 **Response Date:** 2024-10-31 **Response Time:** 11:45:35  
**Comments:**

**FOR INFORMATION CONTACT THE BUYER**  
Larry D McDonnell  
304-558-2063  
larry.d.mcdonnell@wv.gov

<b>Vendor</b>		
<b>Signature X</b>	<b>FEIN#</b>	<b>DATE</b>

All offers subject to all terms and conditions contained in this solicitation

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
1	Laboratory and Measuring and Observing and Testing Equipment	1.00000	EA	54000.340000	54000.34

Comm Code	Manufacturer	Specification	Model #
41000000			

**Commodity Line Comments:**

**Extended Description:**

See attached documentation for further details

## Sales Quotation

Quote Number	Created Date	Exp. Delivery Terms	Page
00416978	04/23/2024	6 Weeks ARO	1 / 8
Contact:	Phone	Payment Term	Valid To
Joe Harmison	(404) 592-2797 Ext 4	TBD	12/31/2024
Inco Terms		Shipping Method	
FOB Origin - Tewksbury		Fed Ex 2nd Day	

## Thermo Scientific Portable Analytical Instruments Inc.

2 Radcliff Rd  
Tewksbury, Massachusetts 01876  
United States

### Submitted To:

Bethany Royce  
West Virginia Geological and Economic Survey  
1 Mont Chateau Road  
Morgantown, West Virginia 26508  
United States

Phone: (304) 594-2331  
Email: broyce@wvgs.wvnet.edu

THANK YOU FOR YOUR INTEREST IN THERMO SCIENTIFIC INSTRUMENTATION

### To Place an Order:

Contact:  
Phone:  
Fax:  
Email:  
Additional instructions, terms & conditions on last page

Pos.	Product Code	Product Name	List Price	Discount	Disc %	Sales Price	Quantity	Total Price
1.00	800-02171	<b>XL5 General Metals Calibration</b>	USD 4,430.00	USD 1,506.20	34.00%	USD 2,923.80	1.00	USD 2,923.80
		General Metals Calibration for Niton XL5 XRF Analyzer.						
		Element Suite: Y, Te, Sb Sn Cd Pd Ag Ru Mo Nb Zr Bi Pb Se Au W Zn Cu Re Ta Hf Ni Co Fe Mn Cr V Ti Al S P Si Mg (33)						
		Includes: Calibration Standard Alloy, IARM35, 1.25%Cr, 0.5%Mo and Check Sample, 6061 Al.						
2.00	800-02371	<b>XL5 Mining Calibration</b>	USD 4,410.00	USD 1,499.40	34.00%	USD 2,910.60	1.00	USD 2,910.60
		Mining Calibration for Niton XL5 XRF Analyzer.						
		Element Suite: M: Sb Sn Cd Pd Ag Mo Nb Zr Y Sr Rb U Th Bi As Se Hg Au Pb W Zn Cu Re Ta Hf Ni Co Fe Mn Cr V Ti Ca K Ba Al P Si Cl S Mg (41)						
3.00	800-02381	<b>XL5 Soils Calibration</b>	USD 4,470.00	USD 1,519.80	34.00%	USD 2,950.20	1.00	USD 2,950.20
		Soils Calibration for Niton XL5 XRF Analyzer.						

When applicable, commodities, technology, or software to be provided in furtherance of this order shall be exported from the United States in accordance with applicable U.S export laws or regulations. Diversion contrary to US law prohibited. Unless otherwise agreed to in writing, Thermo Scientific Portable Analytical Instruments Inc. terms and conditions shall apply and take precedence.

Element Suite: Ag Mo Zr Sr Rb U Th As Se Hg Au Pb W Zn Cu Ni  
Co Fe Mn Cr V Ti Sc Ca K S Ba Cs Te Sb Sn Cd Pd (33)

4.00	800-03731	<b>XL5 Rare Earth Elements calibration</b>	USD 3,990.00	USD 1,356.60	34.00%	USD 2,633.40	1.00	USD 2,633.40
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Rare Earth Elements Calibration for Niton XL5 XRF Analyzer.  
Element Suite: Nd Pr Ce La Ba Sb Sn Cd Ag Mo Nb Zr Y Sr Rb U  
Th Bi As Se Au Pb W Zn Cu Re Ta Hf Ni Co Fe Mn Cr V Ti Sc Ca  
K Al P Si Cl S Mg (45)  
Includes Standard Check Sample - 180-654 - Standard QC USZ 42  
REE Ore PP"

5.00	XL5 Plus	<b>Niton XL5 plus XRF Analyzer</b>	USD 52,400.00	USD 13,624.00	26.00%	USD 38,776.00	1.00	USD 38,776.00
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Niton XL5 plus Handheld XRF Analyzer with 50kV miniature x-ray tube excitation source and Geometrically Optimized Large area Drift Detector (GOLDD+). XL5 Analyzer is equipped with 2 cameras: macro camera and micro camera for documenting sample and small area of analysis, respectively. 2nd year warranty included

6.00	800-02221	<b>XL5 Portable Test Stand</b>	USD 4,870.00	USD 1,655.80	34.00%	USD 3,214.20	1.00	USD 3,214.20
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Allows hands-free measurement of samples. Fully shielded to protect operator from primary or scattered radiation. Legs are detachable and stored on under-side of test stand for improved portability. Use with included NitonConnect software for "remote" control, data display and download via PC connection cable.

7.00	400-06331	<b>XRF Sample Cups</b>	USD 147.00	USD 49.98	34.00%	USD 97.02	1.00	USD 97.02
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Single open end, Ring collar, 25mm ID x 32mm OD x 24mm, (100/bag).  
Recommended for use with liquid (oil) samples

8.00	187-461	<b>Polypropylene</b>	USD 432.00	USD 146.88	34.00%	USD 285.12	1.00	USD 285.12
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Polypropylene (500 / box) .

9.00	FREIGHT	<b>FREIGHT</b>	USD 0.00	USD 0.00	0.00%	USD 210.00	1.00	USD 210.00
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Freight & Insurance Charges

<b>Subtotal:</b>	<b>USD 75,149.00</b>
<b>Discount:</b>	<b>USD 21,358.66</b>
<b>Total:</b>	<b>USD 54,000.34</b>

**Additional Comments:**

Includes: Wi-Fi connectivity, Integrated Micro and Macro cameras, 2 rechargeable lithium-ion battery packs, 110/220V VAC battery charger/ AC adapter, Tilting, color, touch-screen display, Intuitive menus for easy access to analytical features, User-defined profiles for user's specific applications, Password-protected set-up and operation with several other radiation safety features, USB Drive with NitonConnect© software suite for easy data downloading and viewing, remote control and grade library modification, PC connection cable, Bluetooth Wireless Connectivity for accessories, Global Positioning with GPS data stored with sample

When applicable, commodities, technology, or software to be provided in furtherance of this order shall be exported from the United States in accordance with applicable U.S export laws or regulations. Diversion contrary to US law prohibited. Unless otherwise agreed to in writing, Thermo Scientific Portable Analytical Instruments Inc. terms and conditions shall apply and take precedence.

information, locked, shielded carrying case, 12 Month Warranty on all parts, labor and accessories and One Free Safety & Operational Training Class. Class can either be on site or virtual, depending on schedules and timing availability.

**Excludes Taxes and Import Fees**

***Fully Insured 2nd Day Federal Express delivery in U.S., Canada, and Puerto Rico***

**Important Note: Please issue POs to Thermo Scientific Portable Analytical Instruments Inc**

Federal Tax ID No.: 01-0650031

CAGE CODE: 392A9

DUNS #: 11-289-3131

Bank of America ABA# for Wire Payments: 026 009 593

Bank of America ABA# for ACH Payments: 111 000 012

Beneficiary Account Number: 4426843850

When applicable, commodities, technology, or software to be provided in furtherance of this order shall be exported from the United States in accordance with applicable U.S export laws or regulations. Diversion contrary to US law prohibited. Unless otherwise agreed to in writing, Thermo Scientific Portable Analytical Instruments Inc. terms and conditions shall apply and take precedence.

By signing below, you (i) warrant that you are an authorized representative of your company, (ii) agree that the Thermo Scientific Portable Analytical Instruments Inc. Terms and Conditions of Sale attached hereto (the "Terms and Conditions") shall supersede any preprinted terms and conditions, in their entirety, contained in any purchase order that your company issues and (iii) the Terms and Conditions shall exclusively govern the transaction(s) contemplated hereby

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Signature of authorized company representative

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Date

---

Phone#

---

Print Name

---

Title

---

Email

---

Model #

---

Amount + S&H

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Purchase Order Number

E-mail to:

[PAglobalcustomerservice@thermofisher.com](mailto:PAglobalcustomerservice@thermofisher.com)

Fax to: 1-877-680-2568

**Order Processing Address:**

Thermo Scientific Portable Analytical Instruments Inc  
2 Radcliff Road  
Tewksbury, MA 01876

**Remit check Payment To:**

Thermo Scientific Portable Analytical Instruments Inc  
PO Box 415918  
Boston, MA 02241-415918

**Payment Details**

## Method of Payment

- ☐ Net 30 (Attach Credit Application & Credit References)
- ☐ Credit Card
- ☐ Check
- ☐ Wire Transfer

## Sales Tax Application

- ☐ Yes Apply Sales Tax
- ☐ No

- If no, you must provide a copy of your tax exemption certificate along with your purchase order.

**\*\*Please contact your customer service representative with your credit card information. (Do not send any credit card info via email or fax.)\*\***

**Address Verification**

Please make corrections if necessary below:

**Bill to:**

West Virginia Geological and Economic Survey  
1 Mont Chateau Road  
Morgantown, West Virginia 26508  
United States

**Ship to:**

West Virginia Geological and Economic Survey  
,  
United States

**Additional Options / Accessories**

Please use the space below to note any additional options and/or accessories you wish to add from the attached sheets that are not included in the above quotation.

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# **THERMO SCIENTIFIC PORTABLE ANALYTICAL INSTRUMENTS INC – TERMS AND CONDITIONS OF SALE**

Last revised November 2019

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

1. **GENERAL.** Thermo Scientific Portable Analytical Instruments Inc ("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 (the "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. Buyer shall be solely responsible for obtaining any and all necessary licenses, registrations, certificates, permits, approvals or other authorizations required by federal, state or local statute, law or regulation pertaining to the use or possession of the products contemplated herein that include radioactive isotopes, or x-ray tubes if any.

Buyer shall pay Seller such surcharges, or other fees, in respect of the sale of Products hereunder as Seller deems necessary and appropriate (in Seller's sole, good-faith, reasonable discretion) to account for changes in the cost to product, develop, market, or sell the Products to Buyer hereunder (whether as the result of the imposition of tariffs or otherwise). All such surcharges must be paid by Buyer in accordance with the payment terms set forth herein. Buyer agrees that such surcharges, or other fees, or any termination thereof, shall take effect immediately upon written notice thereof by Seller to Buyer. In the event that Seller's quote and/or order acknowledgement set forth surcharges, those documents shall be considered adequate written notice to Buyer that said surcharges are Buyer's responsibility. Any such surcharges shall not constitute an increase in the Price(s) of any Products or Services sold under this Agreement

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. 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 an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without prior written consent of seller.

6. **RETURN OF PRODUCTS/RESTOCKING CHARGE.** Buyer must obtain permission from Seller prior to returning Products. The request must be received within ten (10) days of receipt of the Products. Older items, service parts, and discontinued items cannot be returned for credit. In order to obtain a RMA number, Buyer must contact Seller's customer support. Seller, in its discretion, may impose a twenty (20%) percent restocking charge of the price paid for any item authorized for return for credit

7. **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 irrespective of which Party's carrier is used for the transport or the manner of payment ascribed to the transport; 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.

8. **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"). During the Warranty Period, Seller agrees, in its sole discretion, to repair or replace, Products and/or provide additional parts or services as reasonably necessary to cause the same to perform 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. If Seller elects to repair defective 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 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 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.

## 9. INDEMNIFICATION

9.1. 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.

9.2. 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

10. 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 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 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 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, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof

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 SHALL BE AS PROVIDED UNDER SECTION 8 ABOVE)) 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) 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 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, if requested by Seller, provide information on the end user and end use of any Item exported by the Buyer or to be exported by the Buyer. 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, or agents

13. **HAZARDOUS MATERIALS.** Some Products may require special packaging, labeling, marking and handling. Carriers may add additional freight charges for the handling or transporting of these materials. The consolidating of such material with other Products may be prohibited. Additional freight charges will be billed per Seller's shipping terms. Be sure to advise Seller of shipping instructions for these hazardous materials to reduce your freight costs

14. **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. (c) 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 non-clinical, non-diagnostic, non-therapeutic use 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 (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 these [terms and conditions] or a writing manually executed by Seller (including, without limitation, any rights of Buyer in respect of designs, specifications, source code or intellectual property, owned, created, developed or licensed, by Seller; any rights to items or services not specifically identified in 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), the requirements, as amended, of the Customs-Trade Partnership Against Terrorism or any code of conduct, quality program, information security program, background or drug screening program or other guidelines, programs or policies, in each case, promulgated or required by Buyer; 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 re-perform, 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; any early-payment, or other, discount; any obligation of Seller to maintain a supply of spares, or otherwise make any services available, for any particular period of time; any representation, warranty or other obligation of Seller to provide pricing comparable to, or more favorable than, the pricing that Seller provides to others; any restriction of, or prohibition on, Seller's ability to modify, change or discontinue any of its products, processes or services; or any waiver by Seller of any right to enforce any of the terms hereof).

15. **SOFTWARE-AS-A-SERVICE TRANSACTIONS.** IF YOU ARE PURCHASING ANY PRODUCTS PROVIDED BY SELLER HEREUNDER AND DESCRIBED IN THE RELEVANT QUOTATION OR PURCHASE ORDER AS A SUBSCRIPTION TO ANY THERMO FISHER SOFTWARE-AS-A-SERVICE OFFERING (ANY SUCH PRODUCT, HEREINAFTER, A "SUBSCRIPTION"), THEN IN RESPECT OF SUCH SUBSCRIPTION(S) ONLY

(a) The following terms and conditions of this Agreement shall not apply: Sections 6-7, 9.1, and 13.

(b) The following terms and conditions of this Agreement shall be modified as set forth below:

(i) Section 5 shall be replaced in its entirety with the following:

5. **CANCELLATION OR CHANGES BY BUYER.** Seller reserves the right to suspend or terminate the Buyer's Subscription(s), in whole or in part, if Buyer fails to make any payment to Seller when due, otherwise fails to perform its obligations hereunder, or fails to comply with the Seller's Terms of Use agreement agreed to by Buyer and governing Buyer's use of the Subscription(s), as in effect from time to time (the "Terms of Use"). Seller will not be liable for any loss or damage resulting from any delay in activation of the Subscription(s) or failure to activate the Subscription(s) 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 activation of the Subscription(s) within a reasonable period of time, and Buyer will not be entitled to refuse payment or otherwise be relieved of any obligations as the result of such delay. 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 an appropriate adjustment in the purchase price therefor.

(ii) Section 8 shall be replaced in its entirety with the following:

8. WARRANTY. BUYER AGREES AND ACKNOWLEDGES THAT THE SUBSCRIPTIONS ARE SOLD "AS-IS", WITH NO WARRANTIES EXPRESSED OR IMPLIED. SELLER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, ORAL OR WRITTEN, WITH RESPECT TO THE SUBSCRIPTIONS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

(iii) Section 10 shall be replaced in its entirety with the following:

10. SOFTWARE. This Agreement shall not be construed to grant to Buyer any patent license, know-how license or any other rights except as specifically provided herein. Buyer agrees and acknowledges that, by virtue of its purchase of the Subscriptions hereunder, it does not acquire any intellectual property rights (whether by license, assignment, or otherwise) of Seller, including without limitation any rights to the Subscriptions or related software or hardware systems (except for the limited right to use the Subscription subject to the terms and conditions set forth herein). Buyer shall not reverse engineer or copy the design, algorithms, or code, or any components thereof, of any information related to the Subscriptions for any purpose.

(iv) In Section 11, the language "ONE MILLION DOLLARS (\$1,000,000)" shall be replaced with "TEN THOUSAND DOLLARS (\$10,000)".

(c) The following additional terms and conditions shall apply

**TERMS OF USE.** Buyer hereby acknowledges and agrees that it shall comply with all terms and conditions of the Terms of Use, and that Buyer's use of the Subscription in violation of any such terms and/or conditions shall entitle Seller, without prejudice to any other remedies that may be available to Seller at law or in equity, to terminate Buyer's use of the Subscription(s) effective immediately. Buyer further agrees and acknowledges that it shall not be entitled to any refund of any portion of the purchase price paid in respect of Subscription(s) cancelled by Seller pursuant to Seller's rights under this Section and/or the Terms of Use. Buyer's rights to use these Subscription will begin upon Seller's transmission to Buyer of Subscription link and end 12 months from this date unless otherwise terminated by Seller. In the event of any conflict between this Agreement and the Terms of Use, the Terms of Use shall control.

**DESIGNATED CONTACT:** Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name and Title) ROBERT HARMISON SALES PERSON

(Address) 7154 N UNIVERSITY DRIVE #129

(Phone Number) / (Fax Number) 404-592-2797 EXT 4

(email address) DOE@KOVEDTECH.COM

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

THERMO WILL REVIEW THE TERMS AND CONDITIONS BEFORE FINALIZING THE ORDER

KOVED TECHNICAL

(Company)

(Signature of Authorized Representative)

ROBERT A HARMISON

(Printed Name and Title of Authorized Representative) (Date)

954-825-9606

(Phone Number) (Fax Number)

DOE@KOVEDTECH.COM

(Email Address)