

## AB SCIEX SERVICES TERMS AND CONDITIONS

### I. General Terms (applicable to all Services Plans and all Services provided on a time and materials basis)

1. **Entire Agreement** – AB Sciex ("Provider") and customer agree these Terms and Conditions, together with Provider's Quotation, defined below, (collectively, "Terms"), represent the entire agreement between the parties with respect to the subject matter herein and supersedes and entirely replaces (i) any previous agreements between the parties with respect to the subject matter herein and (ii) any pre-printed, standard or other terms set forth in customer's purchase order (if accepted by Provider and except for the statement of services identified and, if accurate, price), or any other document not accepted and signed by an authorized representative of Provider, which are hereby rejected and shall be void. Customer's submission of a purchase order or other instrument regarding the purchase of services in response to Provider's quotation, estimate or any other Provider document ("Quotation") that includes or incorporates these Terms shall be deemed acceptance of these Terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order or other instrument. Except as otherwise provided in these Terms, in the event of an inconsistency between these Terms and the terms appearing on Provider's Quotation or other agreement signed by an authorized representative of Provider, the terms appearing on Provider's Quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these Terms, and all other provisions of these Terms shall remain in full force and effect. The quoted price in the Quotation is based on the effective tariff rates as of the date of this order/contract. The Provider reserves the right to adjust the price to reflect any tariff changes. In the case of tariff reductions, the customer will benefit accordingly; in the case of tariff increases, additional surcharges would apply.

2. **Acceptance** - Provider may accept or reject at its discretion a purchase order for service plans, time and materials maintenance and repair, installation, relocation, or software support, as applicable, ("Services").

3. **Payment Terms** - Payment terms are net 30 days from date of Provider's invoice to customer. If payment is not received by the due date, Provider may assess and customer agrees to pay, in addition to amounts owed, a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due calculated from the original due date to the date of payment. If Provider retains a collection agency and/or attorney to collect unpaid amounts, Provider may invoice customer for, and customer will pay, all costs of collection, including without limitation reasonable attorney's fees.

4. **Health and Safety** - Provider may require a completed Certificate of Decontamination, or transfer of an instrument to a suitable, safe and secure location reasonably determined by Provider, as a condition to servicing any instrument. Customer warrants that any instrument or component to be serviced will be fully decontaminated of radioactive, biological, toxic or other dangerous materials or substances prior to servicing so that the service technician will not be exposed to any such materials. Customer shall not assign Provider personnel to work in bio-safety level 3 or level 4 laboratories without prior written notice to Provider and Provider's written consent.

5. **Delivery** - Provider will use reasonable efforts under the circumstances to provide Services as quickly as possible from receipt of customer's call into Provider's local service center. Provider shall remotely resolve customer request for support Services whenever possible. As necessary, on-site support Services will be scheduled at a time mutually agreed upon by Provider and the customer. It is the customer's responsibility to provide access to the instrument so Provider may complete Services, within the scheduled or guaranteed time period, if applicable.

6. **Hours of Operation** - Unless otherwise specified in the Quotation, Services are generally provided during normal working hours, Monday through Friday, 9:00 AM to 5:00 PM, excluding holidays. Please see <https://sciex.com/about-us/contact-us> for regional variations.

7. **Guaranteed On-Site Response Time** - Services with an on-site response time guarantee are only guaranteed for Zones 1 and 2 as identified by Provider unless specific additional guaranteed response time upgrades have been purchased. For all other zones, on-site response time will be on a reasonable effort basis and prioritized over customers repair calls without a service plan. For Services eligible for guaranteed on-site response time, service calls must be received by Provider's service center before 2:00 PM local time. Calls received after this period will be considered received the next business day. Customer shall provide access to the instrument within the response time guaranteed.

(i) On-site remedy for all Services except Services plans - In the event Provider fails to be on-site within the purchased guaranteed response time, except where customer did not provide access to the instrument, customer shall receive full credit for the purchased response time.

(ii) On-site remedy for Services plans - Provider may issue a credit to customer for delay in guaranteed response time or scheduled service, of one (1) business day or more except where delays are a result of non-performance subject to Force Majeure or reasonable access to the instrument was not provided pursuant delivery. Each late day's pro-rated credit is an amount equal to 1/365th of the annual fee for the Services plan covering the respective instrument for which the service call was made. If a Services plan covers more than one instrument, the pro-rata credit is determined by allocating a pro-rata portion of the plan's annual fee to the instrument with respect to which the service call was made. The credit may be used by customer when renewing its current Services plan covering that instrument for a consecutive period, as a credit against plan fees. To be eligible to use the credit, Provider's Services plan administrator must receive notice in writing (e-mail notification is satisfactory) of the customer's intention to use the credit for a renewal at the time of renewal, but in any event no later than fifteen (15) days after the expiration of the Services plan period in which the credit was earned. The credit described above is Provider's sole obligation and customer's sole remedy for failure of Provider to respond within the guaranteed on-site response time where provided for in the Services plan. Provider's Services plan Administrator contact details can be found at <https://sciex.com/about-us/contact-us>.

8. Warranty - Provider warrants that it will provide its Services, as stated in the Quotation relevant to the Services purchased in accordance with the relevant section(s) of the Limited Warranty which can be found at <https://sciex.com/warranty>. With respect to SW Support Services (as defined below), Provider will make provide such Services in a professional and workmanlike manner, however, Provider does not guarantee that each or any Software support incident is capable of being resolved through SW Support Services. PROVIDER MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY WITH RESPECT TO ITS SERVICES, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED. PROVIDER'S SOLE LIABILITY AND RESPONSIBILITY UNDER THIS AGREEMENT FOR BREACH OF WARRANTY IS RE-PERFORMANCE OF THE SERVICES WITHIN A REASONABLE TIME OR RETURN OF THE FEE PAID FOR THE DEFECTIVE SERVICES AT PROVIDER'S OPTION. THESE ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY.

9. Indemnification - Provider will indemnify and hold customer harmless from and against any and all claims for injury or death of persons, or damage to tangible property, occurring while Provider personnel are on customer's premises performing Services to the extent caused by the negligent acts or negligent omissions of Provider, where Provider is given prompt notice of any such claim and the opportunity to control the defense and settlement of same.

10. Limitation of Liability - TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL PROVIDER BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, FAILURE TO PERFORM SERVICES, OR OTHERWISE, EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; AND IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF INSTRUMENT OR PRODUCT ERROR OR THE FAILURE OF AN INSTRUMENT OR OTHER PRODUCT TO PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS. WITHOUT LIMITING THE FOREGOING, EXCEPT SOLELY FOR ANY PAYMENTS MADE UNDER PROVIDER'S INDEMNITY SET FORTH IN SECTION 9, PROVIDER'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THE SERVICES, INCLUDING WITHOUT LIMITATION SERVICES RENDERED THEREUNDER, OR BREACH THEREOF OR FAILURE TO PERFORM IN CONTRACT, TORT, WARRANTY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO PROVIDER FOR THE UNDERLYING SERVICES.

11. Force Majeure - In no event shall either party be held liable for any breach of contract (excluding breach of payment obligations) resulting from force majeure, including but not limited to extremely severe weather conditions or natural disasters, strikes or other labor shortages or unrest, blockades, fires, accidents, terrorist acts or terrorism, wars or war situations or civil disturbances, delays by carriers or other industrial or transportation disruptions, inability to supply from normal sources, epidemics, plagues, infectious diseases, requirements of laws and regulations or governmental actions (including but not limited to substantial increases in the Provider's costs of performing the contract due to changes in tariffs, export restrictions, quotas, regulatory measures, or other policy changes implemented by the relevant government), or any other causes beyond the reasonable control of the party. The party encountering a force majeure event shall immediately notify the other party of the occurrence of such event, provide detailed information about the force majeure event within 30 days, and furnish valid written evidence explaining the reasons for its inability to perform or the necessity for delay in performing the provisions of these Terms. If the purpose of the contract cannot be achieved or its continued performance would result in obvious unfairness to one party due to force majeure, either party may terminate the Terms in writing.

12. Miscellaneous - No amendment of these Terms or modification thereof shall be binding unless it is in writing and signed by a duly authorized representative of both Provider and customer. Provider's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these Terms for any other purpose. If any provision of these Terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect. Nothing in this agreement shall be deemed or construed as a license or grant of any intellectual property rights, whether express, implied, by estoppel or otherwise by Provider, or to limit Provider's rights to enforce its patent or other intellectual property rights. All underlying Services shall be governed by the laws of the Provider's local address shown on the Quotation, exclusive of its conflict of laws rules.

13. Assignment - Neither this agreement nor any Services plan is assignable or otherwise transferable by customer. Any assignment or transfer or attempt to assign or to transfer by customer shall be void.

## **II. Services Plan Terms (only applicable to purchase of a Services Plan)**

### **A. Instrument Services Plan Terms (only applicable to purchase of a Services Plan for instruments)**

1. Instrument Recertification - If an instrument has not been under warranty or a Services plan prior to commencement of a newly purchased Services plan, Provider may require instrument recertification on a time and materials basis not covered under the new Services Plan, prior to the effective date of the new Services Plan.

2. Hardware Telephone Support - All calls made to regional telephone support numbers during Provider's hours of operation where customer left a message for a return call including the caller's name and telephone number will be responded to within 4 business hours, unless other response time is specified in the Quotation.

3. Planned Maintenance - Customer and Provider will schedule PM Services within a 1 month period of the manufacturer's recommended PM timeframe. Customer shall provide access to the instrument for that visit. PM Services not completed because customer would not provide access at a time reasonable to Provider will be forfeited.

#### 4. Plan Restrictions –

- (i) The decision to repair or replace any parts of the instrument will be made by Provider in its sole and reasonable discretion. Parts and components replaced or otherwise utilized in the repair of the instrument may be either new or refurbished at the discretion of Provider. All parts which have been removed and replaced in performance of Services become the property of Provider.
- (ii) Services plans do not cover replacement of parts, costs, repairs or adjustments for defects resulting from or necessitated by acts of nature, damage not caused by Provider, accident, neglect, carelessness, misuse, including without limitation: operation with incompatible solvents or samples in the system; operation outside of the environmental or use specifications or not in conformance with the instructions for the instrument system, software, or accessories; improper or inadequate maintenance by the user; installation of software or interfacing, or use in combination with software or products, not supplied or authorized by Provider; or modification, repair, service transfer to another location of the instrument made by the customer, customer's employees, agents or an unauthorized contractor, or intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations. Services plans do not cover repair or replacement of parts that are radioactive or contaminated with biological, toxic or other dangerous materials or substances. Services plans do not cover parts for any instrument or other equipment other than the covered instrument or equipment as identified in the Service Plan by its specific serial number(s). Service plans do not cover consumables unless otherwise specified in the Quotation. The list of consumables can be found at <https://sciex.com/service-consumables>. Services plans do not cover costs, repairs, or adjustments made necessary by connection of the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, or by any interruption or surge in voltage (see Instruction Manual for specifications).
- (iii) Unless otherwise expressly stated by Provider in writing or under the Terms of the purchased Services plan, parts in contact with any liquid are considered wetted and may be deemed user replaceable and not covered by any Services plan, including, but not limited to seals, filters, gaskets, etc.
- (iv) Use of any non-Provider's parts or reagents that deposit or cause to be deposited residual matter in the instrument flow path or that otherwise interrupt the flow path that are reasonably determined by Provider to have caused instrument failure will require remedial repairs of the affected parts to be completed outside a Services plan at Provider's then prevailing rates for billable service. Provider does not warrant parts not purchased from Provider or Provider does not install. These parts are sold "as is".
- (v) Unless otherwise specified in the Quotation, Service plans do not include customer training or services related to the relocation of instruments.
- (vi) Ancillary equipment not manufactured by Provider, such as third party computers, may be excluded from any Services plan at Provider's discretion. Provider will pass on to customer any manufacturer's warranty of any such ancillary equipment, to the extent permitted by the manufacturer.

#### J. Services Plan Terms (applicable to purchase of any Services Plan)

1. **Term and Termination** - Unless otherwise expressly stated in the Quotation, the initial term of a Services plan and this agreement is one year, commencing on the date designated by Provider in its Quotation. A Services plan may be terminated by either party upon at least thirty (30) days written notice to the other party. Termination will be effective thirty (30) days after the receipt of such notice, or at a later date if one is so specified in the notice ("Termination Date"). Termination cannot be made effective prior to thirty (30) days after notice is received, provided, however, that Provider may terminate a Services plan immediately in the event that the instrument covered by the Services plan is transferred to another location.
  - (i) **Termination by Customer** - Except where termination is in connection with the trade-in of a used Provider instrument as provided for in this section, in the event of termination of a Services plan by customer, Provider shall calculate at its sole discretion the total price of Services actually performed and expenses actually and reasonably incurred in servicing the covered product under the underlying Service Plan from its effective date until the Termination Date. Customer's total payment obligation to Provider under this agreement shall equal (1) the amount so calculated or (2) the prorated price of the current underlying Service Plan from its effective date until the Termination Date, whichever is greater, plus twenty percent (20%) of the total contract price for the underlying Service Plan period covered by the customer's purchase order that would have been paid if the contract had not been terminated. Notwithstanding the foregoing, in no event shall customer's total payment obligation exceed the total payment obligation for the underlying Service Plan if it had not been terminated by Customer. In the event that customer has made advance payments, any payments made by customer to Provider in excess of the amounts due on termination as described above shall be credited to customer's account within thirty (30) days after the Termination Date toward future purchases of Provider instruments, consumables or Services plans. Any unpaid portion of this amount shall be immediately due upon customer's receipt of an invoice from Provider. No cash refunds will be made due to the early termination by customer of any Services plan. If a Services plan is terminated early in connection with the trade-in of a used Provider instrument for a new Provider instrument, the unused portion of the Services plan will automatically be applied as an extension of the warranty on the new instrument.

Termination by Provider - In the event of termination of a Services plan by Provider for other than cause, Provider will calculate the remaining unused portion of the Services plan from Termination Date to the end of the Services plan. Any advance payments made by customer to Provider for that period shall be credited or refunded at Provider's sole discretion within thirty (30) days after the Termination Date. Any unpaid balances owed by customer shall be immediately due upon customer's receipt of an invoice from Provider.

## **B Software Support Terms**

### **9. Scope of Software Support Services.**

These software support terms apply to software support services purchased by customer from Provider, whether under a software support plan, another service plan or on time and materials basis. Customer may contract with Provider for software support by product type per lab location as specifically identified on a purchase order ("Covered Product"). In the event customer has multiple instruments of the same type in the same lab, customer must buy a multi-instrument support plan for that instrument type. Multiple plans must be purchased to cover different instrument types in the same lab.

"Software" means the SCIEX software programs that are Covered Products or, if the Covered Product is an instrument, are included with the Covered Product. Provider will respond to a request for troubleshooting and telephone assistance for Software via telephone or email ("SW Support Services"). SW Support Services also include releases of software that Provider makes generally available to customers during the plan term to correct errors, fix bugs, or create minor improvements, or enhancements of existing features (the "Update(s)") which Updates Provider will designate by a change in the number to the Update of the Software released during the term of this agreement. As used herein, a Software Update is designated by a change in the number to the right of the first or second decimal point. For greater clarity, Updates do not include those releases of the Software that provide substantial new features or additional functionality which Provider designates by a change in the number to the left of the first decimal point. Customer acknowledges that all reported errors may not be corrected. Software, including any Updates which will be deemed part of the Software, will be used in accordance with the requirements and obligations in the license agreement for the Software. If other services are made available by Provider under a SW Support Services plan, those services will be provided as shown on your quotation.

10. Exclusions from coverage. The following services are expressly excluded from SW Support Services: maintenance or repair services. Provider will not be obligated to provide SW Support Services if any malfunction arises from or relates to (a) error or malfunction of any third party software used by customer either separately or in conjunction with Provider's Software, or (b) customer has failed to incorporate the latest Update previously released to customer.

11. Customer Responsibilities. Customer is responsible for any and all restoration or reconstruction of lost or altered files, data, or programs. Customer will maintain and implement a complete data backup and disaster recovery plan appropriate for its business operations and is solely responsible for security of its confidential, proprietary or classified information. Customer will not disclose confidential, proprietary or any information that is subject to intellectual property rights.