

## Terms and Conditions of Service

### I. General

Sartorius is the "Contractor" for all transactions contemplated herein. Any person or entity purchasing or offering to purchase Services (as hereinafter defined) from Contractor is referred to herein as the "Customer." The services provided by Contractor hereunder, including, but not limited to repairs, preventative maintenance, relocations, retrofits, upgrades, installations, calibrations and validation services, together with any spare parts utilized in connection with the foregoing by Contractor, are referred to herein as the "Services." Any object on which the Services are to be performed is referred to herein as the "Object to Be Serviced."

### II. Acceptance

These Terms and Conditions of Service, together with Contractor's Service Plan Quotation and Statement of Work (if applicable), constitute the sole and exclusive agreement (collectively, the "Contract") between Contractor and Customer. The Contract may not be amended except by a writing signed by authorized representatives of both Contractor and Customer. Contractor expressly disclaims acceptance of any terms or conditions on any order form, purchase order or other document of Customer that are different from or additional to the Contract, and such different or additional terms and/or conditions are hereby expressly rejected and are void. The Contract is not subject to cancellation by Customer, other than in accordance with the terms of Section 14.6 hereof.

### III. Object to Be Serviced

3.1 Customer shall inform Contractor of any existing intellectual property rights concerning the Object to Be Serviced prior to performance of the Services, and Customer shall indemnify Contractor from any third-party claims concerning such intellectual property rights.

3.2 Customer shall assure that any Objects to Be Serviced within the scope of any Service hereunder does not pose any health hazard to Contractor's agents or employees.

3.3 Unless otherwise set forth in the Contractor's Service Plan Quotation or Statement of Work, the standard service hours under the Contract shall be Monday to Friday, 08:00 to 17:00 EST, excluding public holidays.

### IV. Prices; Payment

4.1 Customer shall pay to Contractor the invoiced amount, in full and without any deduction or set-off of any kind whatsoever, within 30 days after the invoice date, in the currency specified by Contractor, unless otherwise agreed by the parties in writing. If the amounts owing are in the U.S. dollars, interest will be charged daily on past due amounts at a varying rate of the lesser of (i) two percentage points per annum above the prime (sometimes called base) rate of interest announced by Citibank, N.A., from time to time and (ii) the maximum rate of interest allowed by law. If the amounts owing are in a currency other than U.S. dollars, interest on past due accounts will be charged at the rate of interest customarily charged by Contractor on credit sales to its customers in the currency specified.

4.2 The price set forth in the Contract includes the cost of labor, travel and parts, provided, that the Service is performed during the hours covered in the Contract. Sales, use, value added or similar taxes are not included in the price, unless otherwise agreed in writing by the parties. Charges for services not covered by the Contract will be invoiced separately at the time of occurrence and at the prevailing rates for travel, expenses, parts, and labor.

4.3 If Contractor shall conclude in its sole discretion that the financial condition of Customer at any time jeopardizes its ability to perform its obligations hereunder, Contractor may require cash payments or additional security satisfactory to Contractor before further performance by Contractor. Customer's failure to timely pay any invoice shall operate to make all other invoices of Contractor immediately due and payable and, at the discretion of Contractor, shall be grounds for cancellation of any further performance by Contractor. The receipt by Contractor of part payment shall not constitute a waiver of any of Contractor rights set forth herein or provided by law.

### V. Delivery

Any times indicated as delivery dates for particular Services to be performed hereunder are estimates only and, for this reason, shall not be binding unless expressly stated otherwise in writing by Contractor. If any Service to be performed hereunder is delayed for any reason, including due to an event of Force Majeure (as hereinafter defined), the delivery date for performing said Service shall be reasonably extended.

### VI. Services Performed at Contractor's Facilities

The following shall be applicable with respect to all Objects to Be Serviced at Contractor's facilities:

6.1 Objects to Be Serviced shall be packed and shipped to Contractor's facilities by Customer at Customer's sole expense, and Customer shall bear the risk of loss in regard to such shipment to and from Contractor's facilities. At Customer's request, transportation to and, if necessary, from Contractor's facilities will be insured against insurable transport risks, e.g., theft, breakage, fire, at Customer's expense. During the time that Service is performed at Contractor's facilities, no insurance protection is provided by Contractor. Customer shall ensure that existing insurance coverage is maintained for the Object to Be Serviced, and only upon Customer's express request and at Customer's expense will Contractor obtain insurance to cover such risks.

6.2 Services hereunder shall be considered performed and completed if the Object to Be Serviced has been tested as provided by the Contract.

6.3 In the event that Contractor is delayed in the performance of any Services as a result of the acts or omissions of Customer and/or its employees, agents or contractors (e.g., if Customer fails to provide Contractor with a purchase order for Services if such Services are not covered under an existing Contractor warranty, or if Customer fails to provide Contractor with approval to complete Services once Contractor has identified Services to be performed as set forth in Contractor's Service Plan Quotation), or if Customer delays the return of the Object to be Serviced following performance and completion of the Services, Contractor may charge Customer warehouse rent for storage at Contractor's facilities, or, at

Contractor's discretion, the Object to Be Serviced may be stored elsewhere, and Customer shall bear the costs and the risk of storage at such other location.

## **VII. Services Performed at Customer's Facilities**

The following shall be applicable with respect to all Objects to Be Serviced at Customer's facilities, or such other non-Contractor facilities as Customer may indicate:

7.1 Customer, at its own expense, shall support Contractor's service personnel in performing the Services hereunder, including ensuring that the Objects to Be Serviced are available for servicing at the time of each scheduled preventive maintenance or emergency service call. Contractor's service personnel will contact Customer to set a mutually agreeable date and time for each such service visit.

7.2 Customer shall take all required measures to protect people and objects on the site where the Services are to be performed, and shall also inform Contractor's service personnel of any special safety rules and regulations. Contractor may charge Customer, at its customary rates, for time incurred by Contractor's service personnel related to any facilities, policies, safety or training required by Customer, unless the foregoing is expressly included in the price set forth in the Contract.

7.3 Customer undertakes, at its own expense, to: (i) provide the necessary auxiliary staff in the number and for the time required to perform the Services hereunder, if necessary, and Contractor shall not assume any liability for said auxiliary staff; (ii) perform all construction, foundation and all scaffolding work, including procurement of the building materials required therefor; (iii) provide the required devices and heavy machinery and/or tools as well as the required materials and items for said equipment; (iv) provide heating, lighting, utilities, water, including the required connections and outlets; (v) provide the necessary dry and lockable rooms for storing the service personnel's tools; (vi) protect the site at which the Services are to be performed and the materials located there from damaging effects of any type, and clean the site at which the Services are to be performed; (vii) provide Contractor's service personnel with suitable and secure lounge and work areas (with heating, lighting, wash facilities, sanitary facilities) and first aid; and (viii) provide materials and take all action that is necessary to adjust the Object to Be Serviced and to perform contractually agreed testing.

7.4 Customer shall ensure that the Services can be started without undue delay upon arrival of Contractor's service personnel and performed without delay. Insofar as special diagrams or instruction manuals are required for the Object to Be Serviced, Customer shall provide these in due time to Contractor.

7.5 For Services to be performed within the scope of commissioning, Customer shall ensure, in particular, that electrical and mechanical installation of the Object to Be Serviced has been completed as a prerequisite to Contractor's beginning the Services hereunder, with Customer providing the support set forth hereinabove.

7.6 Services hereunder shall be considered performed and completed if the Services to be performed hereunder have been completed and/or the desired objective of said Services has been achieved.

7.7 If Customer fails to fulfill any of its obligations in this Article VII, and as a result of such failure, completion of the Services is delayed or Contractor otherwise is prohibited from performing the Services, then Contractor shall be entitled to charge Customer, at its customary rates, the costs incurred by Contractor related to such failure.

## **VIII. Warranties**

8.1 Contractor warrants that the Services shall be conducted in a good and workmanlike manner in conformity with industry standards, and any parts supplied as part of the Services shall be in accordance with Contractor's specifications. If any failure to conform to the warranty is reported to Contractor in writing within ninety (90) days after the performance of such Services (or such longer period as may be specified by Contractor to Customer in writing), Contractor, upon being satisfied of the existence of such non-conformity, will correct the same by re-performing the Services. If Contractor is unable to correct such non-conformity by re-performing the Services, Contractor may return the price thereof, or, where appropriate, the portion of the price of the non-conforming Services that Contractor is unable to correct. The foregoing shall be Customer's sole and exclusive remedies, and the liability of Contractor hereunder is expressly limited to re-performance of nonconforming Services or the return of the price thereof, as the case may be. The warranty set forth in this paragraph shall apply also to parts and to any replacement parts.

8.2 THIS WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.

8.3 This warranty shall also exclude used goods, used spare parts, damage incurred as a consequence of natural wear and tear, inadequate maintenance by anyone other than Contractor, failure to follow equipment operating instructions, excessive or unsuitable use and improper construction and/or assembly work performed by third parties, and any other external effects and causes over which Contractor had no control or for which Contractor was not responsible.

8.4 This warranty shall become null and void if Customer or a third party makes changes or repairs to the Object to Be Serviced hereunder, without obtaining the prior written consent to do so from Contractor.

## **IX. Security Interest**

To secure the payment of all amounts due and owing by Customer to Contractor pursuant to the Contract, Customer hereby grants to Contractor a first priority security interest in: (i) all parts and components provided to Contractor in performing the Services, to the extent identifiable; (ii) in Customer's Objects to Be Serviced, which come into Contractor's possession as a result of the Contract; and (iii) all proceeds of the foregoing. Customer hereby grants to Contractor an irrevocable power of attorney to execute and file any and all appropriate financing and continuation statements to perfect such security interest.

**X. Indemnification; Insurance**

10.1 Customer agrees to defend and indemnify Contractor and hold Contractor harmless from and against any and all costs, losses, expenses, damages, claims, liabilities or fines, including, but not limited to, attorneys' fees and court costs, resulting from or arising in connection with: (i) any and all actual or alleged injuries to, or deaths of, persons and any and all damage to, or destruction of, property arising directly or indirectly from or relating to the products, items or equipment serviced under the Contract, except for such costs, losses, expenses, damages, claims, liabilities or fines which directly are caused by or result from Contractor's willful misconduct or gross negligence; and (ii) the negligence and/or willful misconduct of Customer, its employees or agents hereunder. Contractor agrees to defend and indemnify Customer and hold Customer harmless from and against any and all costs, losses, expenses, damages, claims, liabilities or fines, including, but not limited to, attorneys' fees and court costs, resulting from or arising in connection with the negligence and/or willful misconduct of Contractor, its employees or agents hereunder.

10.2 Each party shall maintain, at its own cost and expense, comprehensive general liability insurance, including product liability insurance, property damage insurance, public liability insurance, completed operations insurance and contractual liability insurance, designating the other party as an additional insured, and maintain such coverage and limits in commercially reasonable amounts. The parties shall further maintain, at their own cost and expense, workmen's compensation insurance and any other insurance required by law, in commercially reasonable amounts.

**XI. Confidentiality**

Each party (as used in this Article XI, the "Receiving Party") agrees that all specifications, data and other technical information disclosed by the other party (as used in this Article XI, "Disclosing Party") constitute the property of Disclosing Party, are furnished solely for the purpose of performing the Contract, and may not be copied or made accessible to third parties without Disclosing Party's prior written consent. Receiving Party shall promptly return such specifications, data and other technical information and all copies thereof to Disclosing Party upon Disclosing Party's request. Such request may be made at any time prior to or after delivery of the Services. The obligations of Receiving Party set forth herein shall survive cancellation, expiration, or completion of the Contract.

**XII. No Consequential Damages**

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON, WHETHER BY WAY OF INDEMNIFICATION, CONTRIBUTION OR OTHERWISE, FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST DATA, OR LOSS OF USE, WHETHER ARISING FROM DEFECTIVE WORKMANSHIP OR MATERIALS, BREACH OF WARRANTY, DELAYS IN DELIVERY OR OTHER BREACH OF CONTRACT, PRODUCT LIABILITY, STRICT LIABILITY IN TORT OR ANY OTHER TORT OR FROM ANY OTHER CAUSE WHATSOEVER, INCLUDING THE NEGLIGENCE OR MISCONDUCT OF CONTRACTOR OR ITS AGENTS OR EMPLOYEES.

**XIII. Limitation of Liability**

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR'S OVERALL LIABILITY UNDER THE CONTRACT SHALL BE LIMITED IN TOTAL TO THE PRICE OF THE RELEVANT SERVICES PERFORMED HEREUNDER.

**XIV. Miscellaneous**

14.1 Governing Law. The Contract shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws provision. The prevailing party in any litigation shall be entitled to reimbursement of reasonable attorneys' fees and disbursements and court costs from the losing party.

14.2 Severability. The invalidity or unenforceability of any of these terms shall not affect the validity and enforceability of the remaining terms.

14.3 Waiver. The failure of either party to insist upon strict performance by the other party of any term of the Contract or to exercise any right hereunder shall not be deemed to be a modification of any term hereof or a waiver of the future performance of any such term.

14.4 Assignment. Customer may not assign, transfer or otherwise convey its rights, duties or obligations hereunder without Contractor's prior written consent.

14.5 Subcontracting. Contractor shall be entitled to subcontract any or all of its obligations hereunder to third parties, provided that Contractor remains liable to Customer for such subcontractors.

14.6 Force Majeure. The term "Force Majeure" means any cause not within the reasonable control of the party affected, but no payment of monies can be excused by Force Majeure. Events of Force Majeure include, without limitation, acts of God, acts of terrorism, lockouts or other labor disturbances, wars, blockades, quarantine embargoes, riots, fires, explosions, failures of production facilities, shortages of fuel, transportation, utilities, or raw materials, and governmental laws and regulations. Force Majeure shall not excuse either party from the performance of its obligations under the Contract, but shall merely suspend such performance during the Force Majeure. The party prevented from performing its obligations shall promptly notify the other party and shall provide the other party from time to time with its best estimate of the duration of such Force Majeure and with notice of the termination thereof. Upon termination of the Force Majeure the performance of any suspended obligation shall recommence. If, however, the Force Majeure prevents performance by either party for a period in excess of ninety (90) days, then so long as such Force Majeure continues, either party may terminate the Contract at once by delivering notice of termination to the other party.

14.7 Independent Contractors. Neither party shall, for any purpose, be deemed to be an agent of the other party, and the relationship between the parties shall only be that of independent contractors. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.