



## Acceptance of Terms & Conditions. Terms and Conditions of Sale. Covaris, LLC

Effective April 01, 2024

### 1 Terms of Agreement.

These Service Terms and Conditions ("**Agreement**") shall govern all orders for services ("**Services**") provided by Covaris to the customer ("**Customer**") and shall prevail over any pre-printed, standard or other terms set forth in (i) Customer's purchase order or any other document ordering Services, and/or (ii) any third party procurement platform, 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 Covaris' quotation shall be deemed acceptance of this Agreement to the exclusion of any other terms and conditions appearing in or referenced in such purchase order or other instrument, unless Customer and Covaris have entered into a valid, active, written agreement that expressly provides that its terms supersede and replace this Agreement. Notwithstanding the foregoing, Covaris may accept or reject at its discretion a purchase order for Services.

### 2 Service Offerings.

Covaris' Services offerings include without limitation: (a) repair, maintenance, relocation, recertification, training, qualification, technical and application support, and other services for Customer's instruments and devices provided on a time and materials basis (collectively, "**Billable Services**"); and (b) service plans that provide post-manufacturer warranty maintenance and repair Services for a fixed fee ("**Service Plan(s)**").

### 3 Service Plans.

Covaris may provide a document that describes its Service Plan offerings referred to as a "**Description of Services**," "**Service Repair Plan Options**" or "**DOS**". The DOS is a document which contains a description of the Services covered by a Service Plan. The DOS then-in-effect at the time of the applicable quotation, if any, is the DOS that shall be incorporated by reference into this Agreement and shall govern the delivery of such Services.

1. *Instrument Recertification.* Covaris may require instrument recertification on a time and materials basis as a condition to performing Services under a Service Plan, if an instrument has not been under warranty or a Service Plan immediately prior to the time of Services.
2. *Accessories & Consumables.* Service Plans cover only Covaris instruments and do not include any other items, such as accessories or other ancillary equipment even if Covaris supplied such items, unless stated otherwise in Covaris'



a PerkinElmer Company

- quotation. Covaris' Service Plans do not cover replacement of Consumables (as hereinafter defined).
3. *Training & Instrument Relocation.* Service Plans do not include Customer training or services related to the relocation of instruments unless otherwise specifically stated in writing by Covaris.
  4. *Exclusions.* Service Plans do not include software or firmware upgrades, except where specifically included in Covaris' quotation or the applicable DOS, if any. Further, Service Plans do not include replacement of parts, costs or repairs for defects or damages arising from or in connection with (a) abuse, misuse, mishandling, improper or inadequate maintenance, failure to operate equipment in accordance with applicable specifications or instructions, or using incompatible solvents or samples with the instrument; (b) causes beyond Covaris' reasonable control, including, without limitation, acts of God, power surges or failure, failure or interruption in communication lines, or corrosive Customer samples; (c) installation of software or interfacing, or use in combination with software or products, not supplied or authorized by Covaris; (d) electrical work, transportation, modification, relocation, deinstallation, reinstallation, repair or service, performed by Customer or by persons other than Covaris authorized personnel; (e) intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations; or (f) actions not performed by Covaris. Further, parts in contact with any liquid, including but not limited to, seals, filters, gaskets, valves, syringes, tubing, tips, etc., are considered wetted and shall be deemed user replaceable and not covered by any Service Plan, unless otherwise stated in Covaris' quotation.
  5. *Term.* Unless otherwise expressly stated on the quotation or under the DOS of the purchased Service Plan, the term of a Service Plan and this Agreement is one (1) year, commencing on the date designated by Covaris in its quotation or otherwise specified to Customer. If the quotation expressly states that a Service Plan is an "Evergreen Service Plan" or otherwise indicates that the Service Plan will automatically renew, then the term of such Service Plan and this Agreement is one (1) year, commencing on the date designated by Covaris in its quotation or otherwise specified to Customer, and shall automatically renew for successive one (1) year periods unless either party notifies the other party in written at least thirty (30) days prior to the end of the then-current term of its intent not to renew. Pricing for Evergreen Service Plans and automatically renewed Service Plans are subject to annual adjustment by Covaris. If Customer is past due with respect to any invoices related to any account with Covaris, Covaris may, upon written notice to Customer, suspend Services, demand payment for the balance due under this Agreement, and/or terminate this Agreement.
  6. *Termination.* A Service Plan may be terminated by either party upon at least thirty (30) days written notice to the other party; provided however, should Customer choose to terminate for its convenience prior to the end of the term of such

Service Plan, Customer's total payment obligation to Covaris under this Agreement shall equal the greater of (i) the total price of Services actually performed and expenses actually incurred in servicing the covered equipment under the Services Plan, calculated in Covaris' sole discretion or (ii) the prorated price of the Service Plan from its effective date to the date of termination, plus 15% of the total fee paid for the underlying Service Plan, not to exceed the total value of the underlying Service Plan. If any payment is made to Covaris in excess of this amount, then Covaris shall issue to Customer a credit that Customer may use toward future purchases from Covaris of instruments, consumables or Service Plans. Covaris does not provide cash refunds on account of the early cancellation of any Service Plan. If either party breaches its obligations under this Agreement, the non-breaching party shall give the breaching party written notice of such breach, and the opportunity to cure such breach for a period of fifteen (15) business days after delivery of the notice of breach. If the breaching party does not cure, then the Agreement shall automatically terminate.

## 4 Billable Services.

Billable Services shall be performed in accordance with Covaris' quotation, which shall specify the types of Services to be provided, including without limitation, all specific instruments and equipment requiring the Services.

1. *Services Generally.* Billable Services generally include without limitation any repair, incidental, relocation, calibration, training or other services that are charged on a time and materials basis at the rates specified in Covaris' quotation. Any travel and travel related expenses will be billed separately and estimates will be provided on the quotation. Instruments that are not covered by a Service Plan or warranty and Customer requests for service will be considered for Covaris' Billable Services.
2. *Services Not Performed.* Unless otherwise specified on Covaris' quotation, Billable Services shall not include: (a) installation of software or interfacing, or use in combination with software or products, not supplied or authorized by Covaris; (b) electrical work, transportation, modification, relocation, deinstallation, or reinstallation; or (c) software or firmware upgrades.
3. *Billing.* Covaris bills all hours rounded up to the nearest quarter hour. All parts and Consumables required for repair are billed at current list price, unless otherwise stated in Covaris' quotation.
4. *Term & Termination.* Acceptance of Customer's purchase order for Billable Services is subject to availability and Covaris may reject such order for any reason, including but not limited to, instrument obsolescence, availability of parts, or instrument condition. If Customer is past due with respect to any invoices related to any account with Covaris, Covaris may reject any purchase order submitted. Once accepted, either party may terminate the Billable Services

upon thirty (30) days written notice to the other Party; provided however, if terminated by Customer, Covaris will be entitled to recover payment for all Services rendered through the date of termination (including for work in progress), and any non-cancellable or refundable expenses actually incurred prior to the date of termination.

## **5 Reasonable Efforts.**

Covaris will use reasonable efforts under the circumstances to provide Services as promptly as possible. The Services will be scheduled at a time mutually agreed to by Covaris and Customer. Parts and components replaced or otherwise utilized in the repair of the instrument may be either new or refurbished at the discretion of Covaris. Acceptance of Service will occur upon performance. Covaris may attempt to diagnose and resolve Service issues over the telephone or electronically. Customer must follow the problem determination, resolution and procedure that Covaris specifies. If applicable, Covaris may require the return of a specific part to its depot for service or to assist in problem determination and Customer must follow Covaris' instructions on how to return. Failure to install and use available remote connectivity tools and equipment for direct problem reporting, remote problem determination, and resolution may result in increased response-time and additional costs to Customer.

## **6 Customer Responsibilities.**

Instrument relocation may result in additional service charges, modified service response times, and if moved, will be subject to availability. Customer must remove products not eligible for Service to enable Covaris to perform Services and may incur additional charges for any extra work created due to failure to remove such products. Customer is responsible for maintaining a procedure external to the instrument to reconstruct lost or altered Customer files, data or programs. Customer will notify Covaris if the instrument is being used in an environment that poses a potential health hazard. Customer is responsible for fully decontaminating Customer's instrument or its components of radioactive, biological, toxic or other dangerous materials or substances before Covaris performs any Services. Covaris may request Customer to submit an accurate and completed certificate of decontamination.

## **7 Price & Payment.**

Prices exclude any applicable sales, value added or similar tax payable by Customer. Payment is due by Customer upon receipt of invoice. Unless installment payment terms are agreed in writing by Covaris and Customer, Customer shall deliver payment in full to the address set forth in Covaris' invoice. Invoices not paid timely are subject to the lesser of fifteen percent (15%) per annum or the maximum prevailing legal interest rate, calculated from date of delinquency through the date payment is made in full. If Covaris retains a collection agency and/or attorney to collect unpaid amounts, Covaris may invoice Customer for, and Customer shall pay, all costs of collection including, without limitation, reasonable attorneys' fees.

## **8 Warranty.**

Covaris warrants that it will provide Services at least in accordance with generally accepted standards prevailing in the instrument repair industry, at the time and place performed. Warranty claims must be made within ninety (90) days after Services are performed. COVARIS 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. COVARIS' 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 COVARIS' OPTION. THESE ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY.

## **9 Limitation of Liability.**

TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL COVARIS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, THE LOSS OF OPPORTUNITY, LOSS OF DATA, LOSS OF USE, OR LOSS OF REVENUE OR PROFIT) IN CONNECTION WITH THIS AGREEMENT, THE SERVICES PROVIDED OR OTHERWISE, EVEN IF COVARIS IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, COVARIS' LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SERVICES PROVIDED OR OTHERWISE SHALL NOT EXCEED, AND CUSTOMER'S EXCLUSIVE REMEDY IN ANY EVENT SHALL BE LIMITED TO, THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SERVICES.

## **10 Consumables.**

The cost of Consumables supplied by Covaris in performing the Services are the responsibility of Customer unless otherwise stated in Covaris' quotation or DOS, if any. "Consumables" include without limitation Covaris' usual and customary parts, supplies and other items which are expendable by their nature or intended use, and those which are listed in the applicable instrument user's manual.

## **11 Compliance with Law.**

Covaris makes no representation that the Services it provides will meet or satisfy standards of any governmental body, including the U.S. Food and Drug Administration. Customer agrees that it is Customer's responsibility to ensure that such Services are adequate to meet its regulatory or certification requirements and that all requirements of any governmental body or other organization, including, but not limited to, any requirement of the U.S. Food and Drug Administration, are Customer's responsibility.



## **12 Uncontrollable Circumstances.**

Covaris will not be responsible or liable for failing to perform its obligations under this Agreement to the extent caused by circumstances beyond its reasonable control, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures.

## **13 Assignment; Governing Law.**

Neither this Agreement nor any Service Plan is assignable or otherwise transferable by Customer. This Agreement and any underlying Service Plans shall be governed by the laws of the Commonwealth of Massachusetts, exclusive of its conflicts of laws rules, and all disputes shall be subject to the exclusive jurisdiction of the courts therein.

## **14 Amendment; Entire Agreement.**

No amendment or modification of this Agreement shall be binding unless in writing and signed by an authorized representative of both Covaris and Customer. This Agreement, together with Covaris' quotation regarding the Services and Covaris' DOS, if any, represents the entire agreement between the parties with respect to the subject matter herein. To the extent that any provision of this Agreement is determined to be illegal or unenforceable, the remainder of this Agreement will remain in full force and effect.

## **Contacting us.**

- Please send any questions, concerns or comments you have about this Agreement or the Website to:
  - [info@covaris.com](mailto:info@covaris.com)
  - 14 Gill Street, Woburn, MA 01801 US
  - [+1 781 932 3959](tel:+17819323959)