

## **AGILENT SERVICE TERMS**

These Agilent Service Terms ("Terms") along with the applicable description of Service ("Service Exhibit") and the terms indicated on the quotation govern the Service of Products and the license of software updates by Agilent Technologies Österreich GmbH ("Agilent"). In the event of a conflict herewith, the Service Exhibit will prevail. Divergent or supplementary agreements – especially contradictory general terms and conditions of the Customer – only apply with the express, written approval of Agilent. This shall also apply in the event that Agilent being aware of conflicting or differing general terms and conditions performs under the agreement without reservation. "Product" means Agilent or third party hardware or consumable that is supported by Agilent as described, if applicable, in any Service Exhibits. "Service" means any standard service to support Products.

### **1. PARTIES RESPONSIBILITIES**

- a) Agilent will perform Service in a professional and workmanlike manner. Agilent will make reasonable efforts to deliver Service in accordance with the quotation or the applicable Service Exhibit and may select qualified and reputable subcontractors to perform Service.
- b) Product must be at current specified revision levels and may require Agilent's certification, at Customer's expense, that Product is in good operating condition.
- c) Product relocation may result in additional Service charges, modified service response times and if moved subject to availability.
- d) Customer must remove products not eligible for Service to enable Agilent to perform Service and may incur additional charges for any extra work caused.
- e) Service does not cover damage, defects or failures caused by: use of non-Agilent media, supplies and other products; site conditions that do not conform to Agilent's specifications; neglect, improper use, fire or water damage, electrical disturbances, transportation, work, or modification by non-Agilent employees or subcontractors, or causes beyond Agilent's control.
- f) Customer is responsible for maintaining a procedure external to the Product to reconstruct lost or altered Customer files, data or programs, and for having a representative present when Agilent provides Service at Customer's site. Customer will notify Agilent if Product is being used in an environment that poses a potential health hazard. Agilent may require Customer to maintain such Product under Agilent supervision.

### **2. ORDERS AND CANCELLATIONS**

- a) All orders are subject to acceptance by Agilent.
- b) Unless stated otherwise in the Service Exhibit, cancellation is subject to Agilent's prior consent and any applicable fees, details of which are available on request.
- c) Cancellation of a Service agreement that contains one or more type of Service is subject to Agilent approval.
- d) Upon sixty (60) days written notice, Agilent may delete Product no longer included in Agilent's Service offering or may cancel a Service Exhibit.

### **3. SHIPMENT, RISK OF LOSS AND ACCEPTANCE**

- a) Customer will pay all expenses for return of Product to the Agilent service center. Agilent will pay expenses for return of Product to Customer via Agilent's standard shipping methods.
- b) Risk of loss and damage for tangible deliverables will pass to Customer at the location specified in the quotation or order acknowledgment. Title to consumables and parts used in Service Products shall pass upon the later of full payment or delivery of such consumables or parts.
- c) Acceptance of Service will occur upon performance.

### **4. PRICE AND PAYMENT**

- a) Prices exclude any applicable sales, value added or similar tax payable by Customer.
- b) Payment terms are per the quotation or order acknowledgement and are subject to change if Customer's financial condition or payment records so warrants. Agilent may stop performance if Customer fails to pay any sum due, or fails to perform under this or any other Agilent agreement if, after ten (10) days written notice, the failure has not been cured.

### **5. WARRANTY**

- a) Unless otherwise agreed, a warranty period of three (3) months shall apply within the Republic of Austria. Repairs made at no charge or the replacement of products shall only represent the admission of a defect when expressly confirmed by Agilent in writing.
- b) Agilent warrants that software updates will not fail to execute programming instructions due to defects in materials and workmanship when properly installed and used on hardware designated by Agilent. Agilent warrants that Agilent owned standard software updates substantially conform to specifications. Agilent does not warrant that software updates will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.
- c) Agilent does not warrant that software updates will be uninterrupted or error free.
- d) Agilent Service may use remanufactured parts that are equivalent to new in performance.

## AGILENT SERVICE TERMS

- e) The above warranties do not cover defects resulting from improper or inadequate maintenance, installation, repair or calibration performed by Customer or an unauthorized third party; Customer or third party supplied hardware or software, interfacing or supplies; unauthorized modification; improper use or operation outside of the specifications for the Product; abuse, negligence, accident, loss or damage in transit; or improper site preparation.
- f) THE WARRANTIES IN THESE TERMS ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. AGILENT SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- c) Unless otherwise stated this in Section under a) or b), Agilent will only be liable in cases of culpable breach of essential contractual obligations. In these cases liability is limited to those damages that Agilent was reasonably able to foresee at the time of the conclusion of the agreement based on the circumstances known to Agilent at that date.
- d) The remedies in these Terms are Customer's sole and exclusive remedies.

## 6. LICENSES

Unless license terms are included with the software updates, software updates licensed under these Terms will be subject to the most current applicable underlying license.

## 7. INTELLECTUAL PROPERTY CLAIMS

- a) Agilent will defend or settle any claim against Customer that any deliverable provided under these Terms infringes an intellectual property right provided Customer promptly notifies Agilent in writing and provides control of the defense or settlement, and assistance to Agilent.
- b) In defending or settling an infringement claim under Section 7(a), Agilent will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely, Agilent may, at its option, modify or replace the affected deliverable, or procure any necessary license. If Agilent determines that none of these alternatives is reasonably available, Agilent will refund Customer's purchase price.
- c) Agilent has no obligation for any claim of infringement arising from: Agilent's compliance with, or use of, Customer's designs, specifications, instructions or technical information; modifications by Customer or a third party; software update use outside the scope of Agilent specifications or related application notes; or use of the deliverable with products not supplied by Agilent.

## 8. LIMITATION OF LIABILITY AND REMEDIES

- a) Agilent will be fully liable for damages caused by intent or gross negligence and also in case of compulsory liability, e.g. according to the law on product liability.
- b) Furthermore Agilent will be fully liable for infringement claims under Section 7, for personal injury caused by Agilent, its statutory representatives or its auxiliaries, as well as for written guarantees.

## 9. TERM AND TERMINATION

- a) An order or a Service agreement may be terminated immediately upon notice in writing (a) by either party, for cause, unless the other party cures the breach within thirty (30) days of written notice of such breach or (b) by Agilent if Customer fails to pay any sums due as specified in Section 4(b) above.
- b) Any order or Service agreement will terminate automatically if either party is subject to a voluntary or involuntary bankruptcy petition, becomes insolvent, is unable to pay its debts as they become due, ceases to do business as a going concern, makes an offer or assignment or compromise for the benefit of creditors, or there is a substantial cessation of its regular course of business, or a receiver or trustee is appointed for such party's assets.
- c) Upon termination in accordance with 9a) or b) Customer will pay Agilent for all Service performed and charges and expenses incurred by Agilent up to the date of termination. If the sum of such amounts is less than any advance payment received by Agilent, Agilent will refund the difference within thirty (30) days of receipt of an invoice from Customer. Customer will receive all work in progress for which Customer has paid.
- d) Provisions herein which by their nature extend beyond the termination of any Service will remain in effect until fulfilled.

## 10. GENERAL

- a) For purposes of Agilent's performance under these Terms, Agilent will process non-sensitive personal data that is about an identifiable individual or allows an individual to be identified directly or indirectly ("Personal Data") and that is relating to Customer and its employees, agents and subcontractors ("Customer Personal Data"), including but not limited to names, telephone numbers and email addresses. Agilent will store and use Customer Personal Data in accordance with Agilent's Privacy Statement available at [www.agilent.com/go/privacy](http://www.agilent.com/go/privacy). Customer shall ensure that Agilent's Privacy Statement is provided to its employees, agents and subcontractors. In the event that Agilent agrees to process personal data on behalf of Customer, both parties agree to comply with all applicable privacy

**AGILENT SERVICE TERMS**

and data protection laws, regulations and codes of practice, including but not limited to those applicable in the parties' country/ies.

- b) Where Agilent processes Personal Data on behalf of Customer, unless a separate Data Processing Agreement has been agreed and executed by the Parties, the Data Processing Agreement available here shall apply <https://www.agilent.com/en/contracting-with-agilent/data-processing-agreement>.
- c) For purposes of Customer's performance under these Terms, Customer will process non-sensitive personal data that is about an identifiable individual employee or allows an individual to be identified directly or indirectly ("Personal Data") and that is relating to Agilent and its employees ("Agilent Personal Data"), including but not limited to names, telephone numbers, email addresses and labor and EHS documentation required by law. Customer will process such personal data in accordance with applicable data protection and privacy laws.
- d) Customer may not assign or transfer a Service agreement without Agilent's prior written consent, which may be subject to applicable charges and terms. Agilent may assign or transfer any of its rights or obligations under these Terms and applicable Service Exhibits upon prior notice.
- e) The parties agree to comply with applicable laws and regulations. Agilent may suspend performance if Customer is in violation of applicable laws or regulations.
- f) Customer who exports, re-exports, or transfers products, technology or technical data purchased hereunder assumes all responsibility for complying with applicable U.S. and all other laws and regulations ("Applicable Laws"), and for obtaining required export authorizations. Customer expressly agrees not to sell or otherwise transfer products, technology or technical data to companies or persons on the Denied Parties List and Specially Designated Nationals and Blocked Persons List, or to any other prohibited parties or restricted destinations listed in Applicable Laws, unless properly authorized by the appropriate government(s). Agilent may suspend performance if Customer is in violation of Applicable Laws. Further information on restricted destinations can be obtained from <https://www.bis.gov>.
- g) Use, distribution or disclosure of Products by the U.S Government is subject to DFARS 227.7202-3 (Rights in Commercial Computer Software), DFARS 252.227-7015 (Technical Data – Commercial Items), and FAR 52.227-19 (Commercial Computer Software- Restricted Rights).
- h) Disputes arising in connection with these Terms will be governed by the laws of the Republic of Austria. Exclusive place of jurisdiction are the responsible courts of the District I of Vienna. Agilent is also entitled to pursue civil action at the court presiding over the temporary or permanent headquarters of the Customer.
- i) To the extent that any provision or a portion of any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.
- j) These Terms and any Service Exhibits attached hereto constitute the entire agreement between Agilent and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply.