



SERVICE TERMS & CONDITIONS

V 9.2020

1. Agreement

This Terms and conditions shall govern all orders placed for Services by Customer for Services and during the Contract Period set forth thereon and shall supersede and replace all prior agreements between the parties ("Agreement"). Butler Animal Health Supply, LLC, d/b/a Covetrus North America, 400 Metro Place N, Dublin, OH 43017 ("Covetrus") reserves the right to change or modify these terms at any time, which changes can be found at <https://northamerica.covetrus.com/docs/default-source/landing-pages/equipment-support/terms-and-conditions>. These Terms and Conditions shall not be amended, modified, varied or supplemented except in writing and signed by duly authorized representatives of Covetrus. All Services contemplated hereunder are for post-warranty maintenance and support of authorized instruments only.

2. Definitions

As used herein and as applicable to all service orders placed under this Agreement ("Order(s)"): "**Contract Period**" shall mean the time period of coverage for the applicable Services as set forth for each Instrument (s) on the Order summary and/or service contract. "**Customer**" shall mean the customer receiving the Services as identified on the Order Summary and/or Service Contract. "**Order Summary or Service Contract**" shall mean the proposal for Products and/or Services issued by Covetrus to Customer, which sets forth pricing, Service selections and applicable Contract Periods for each Instrument which incorporates these Sales & Service Terms and Conditions. "**On-Site Services**" means remedial services, provided upon request by Customer, to inspect, evaluate and repair Instrument malfunctions whether completed at a Covetrus authorized service center or at the Customer's site. "**Preventative Maintenance Services**" shall mean the set number of scheduled standard maintenance inspections to be provided on an Instrument, as referenced on the applicable Order summary and/or service contract for Services. "**Products**" shall collectively refer to and include the following: "**Consumables**" which include disposable materials and other products which may be used in conjunction with Instruments; "**Instruments**" means the equipment, system, or other instruments serviced by Covetrus pursuant to an Order and all operating systems or other software which may be embedded therein; "**Reagents**" means liquid materials, strips or plates in its application state which may be used in conjunction with Instruments. "**Services**" shall mean collectively any installation, mechanical support, On-Site, Remote Session or Preventative Maintenance Services provided to Customer under this Agreement. Services may be subject to change or customization, in Covetrus' sole discretion. "**User Maintenance**" shall mean and include all standard and routine operator maintenance required to be performed by Customer as set forth in the applicable instruction manual provided with or made available for each Instrument.

3. Maintenance Support

Covetrus agrees to provide the Services for authorized Instruments, including scheduled Preventative Maintenance Services inspections, remote sessions and On-Site Service requests, during normal workdays, Monday through Friday, excluding Covetrus observed holidays, and during normal working hours of 8:00am to 5:00pm CT. Subject to the availability of personnel, after-hours service is available upon request at an additional charge. Customer acknowledges that the Instruments may not be available for use during scheduled maintenance, remote sessions and service visits and that Covetrus shall not be liable for such Instrument downtime. Preventative Maintenance Services must be requested and scheduled directly by Customer. The place of performance for Services shall be either the Customer's facility or the nearest Covetrus authorized service center or such other place as determined by Covetrus in its sole discretion. While every effort will be made to render Services promptly, Covetrus does not make any guaranty regarding specific response times to Service requests, or Instrument up time minimums. Services are not offered or provided on Consumables, Reagents or other products.

4. Additional Services

As mutually agreed upon between the parties, or subject to Customer's written request, additional Services may be provided by Covetrus upon Customer request, and shall be subject to Covetrus's then current and generally available time and materials rates and pricing for: labor, travel and waiting time, travel expenses, parts and materials, shipping and packaging, installation for additional Instruments, modifications and improvements, requested de-installation and re-installation of an Instrument, optional Instrument specific services, and other items as applicable. Additional Services may also be subject to additional terms and conditions which may be separately agreed upon in writing.

5. Software Upgrades/Updates

Software Upgrades offer increased user functionality and are available upon Customer request for an additional charge as an Additional Service. Software Updates are patches to existing software and are included in warranty coverage and service contracts. Updates will be performed on an as needed

basis, at the next scheduled maintenance, remote session or repair visit, but may not be scheduled independently.

6. Preexisting Conditions

Any Instruments which have not been maintained under a Covetrus warranty or previous Agreement by Covetrus immediately prior to the date of this Agreement, must be subject to inspection, certification and acceptance by Covetrus, and if necessary, repaired or reconditioned as an additional Service such that the Instrument meets Covetrus's standards for continued maintenance and support.

7. Customer Responsibilities

At all times while the Instruments are covered by an applicable Service Contract that the Customer must adhere to the following: (a) Ensure that the Instrument is operated at all times by trained personnel in accordance with its applicable instruction manual; (b) Perform all required User Maintenance and schedule periodic Preventative Maintenance Service visits or with Covetrus; (c) Notify Covetrus immediately through Covetrus's designated telephone support contact numbers of any malfunction or inoperability of an Instrument and promptly provide a full description of the fault or problem; and (d) Customer must provide Covetrus with thirty (30) days written notice of intent to move any Instrument.

8. Service Visit Requirements

Prior to any service visit by Covetrus personnel, Customer must: (a) Ensure that Covetrus has complete, accompanied access to the Instrument at the times mutually agreed and scheduled for the service. Any delay or waiting time may be subject to additional fees; (b) Provide required working conditions and facilities (including heat, light, ventilation, and electrical supplies, telephone, and network communication access) for use by Covetrus personnel; (c) Customer shall ensure that any third-party auxiliary equipment which is affixed to or positioned near the Instrument is removed or adequately protected. Customer shall also implement other safeguards to protect all programming, programs, data and other removable storage media before an Instrument is to be repaired. In the event of the failure of Customer to remove or protect such auxiliary equipment, Covetrus shall not be responsible for any accidental damage thereto; and (d) At the time of service visit, notify Covetrus's personnel of any hazardous or dangerous environments within the vicinity of the instruments and instruct and assist Covetrus's personnel to prevent exposure to same.

9. Pricing

All Service Fees, as set forth on the Order Summary and/or Service Contract, shall remain firm for the duration of the Contract Period. Additional fees may be invoiced for Additional Services as required. All pricing for any applicable extension of the Contract Term may be subject to change.

10. Service Contracts

Service contracts are on a per-device basis and warranty coverage may vary by serialized component as stated on the order summary sales agreement. To receive support, the customer's account balance must be current (paid in full) on support contracts for the device(s). Support is provided on a twelve (12) month basis. Service contracts for X-Ray products shall automatically renew each year when either the original warranty period or subsequent renewal period expires, unless the customer provides written notice to discontinue to Covetrus thirty (30) days prior to the end of the original warranty period or any subsequent renewal. Automatic renewals will terminate after five (5) years from the date of equipment installation. If Covetrus allows the buyer to pay in installments it is as an accommodation to the customer, and the customer agrees to pay Covetrus the entire fee. The fee for any extension of the support period will be as indicated on an invoice provided by Covetrus. Covetrus may invoice the buyer before the current support period expires. To continue receiving support, the customer must pay the fee before the beginning of any extension. If for any period of time the customer allows support coverage to lapse in order to start or resume such coverage, Covetrus may require inspection, certification and acceptance by Covetrus, and if necessary, repair or recondition the instrument(s) as an Additional Service such that the instrument meets Covetrus's standards for continued maintenance and support. Customer shall be charged support fee(s) for any period in which there was a lapse in coverage. Either party may terminate support on thirty (30) days' written notice to the other. If Covetrus terminates, other than due to breach by the customer, Covetrus will refund the buyer a prorated portion of the fee. If the customer terminates, other than due to a breach by Covetrus then the customer is not entitled to a refund. If at any time the customer has not paid all amounts due, other than amounts disputed in good faith, then without prejudice to any other rights Covetrus may suspend support.

11. Adjustments/Modifications

Pricing maybe subject to change without notice as outlined in this agreement. Order Summary and/or Service Contracts are valid for thirty (30) days from the date shown on the Order Summary and/or Service Contract.



12. Payment

Unless otherwise set forth on the applicable Order Summary and/or Service Contract, Payment terms are due in advance of services rendered. Credit Card, direct payment through ACH debit and cashiers/bank check are all acceptable methods of payment. All Products remain the property of the Covetrus until paid for in full. Monies that remain outstanding by the due date will incur late payment levied on past due invoice balances at the rate of 18% per annum or at the maximum allowed by law until such time as the balance is paid in full. We reserve the right to seek recovery of any monies remaining unpaid sixty days from the date of invoice via collection agencies and/or through the Small Claims Court. In such circumstances, you shall be liable for any and all additional administrative and/or court costs. Returned checks will incur a \$25.00 charge to cover banking fees and administrative costs. In the instance of a second returned check, we reserve the right to terminate the arrangement and, if agreed to, we shall insist on payment in advance or credit card for future transactions only. All transactions and agreements, including our warranty service entered into will cease with immediate effect until such time as any and all outstanding monies are recovered in full. Customer shall notify Covetrus of any inconsistent and / or disputed amounts within thirty (30) days from date of invoice. Customer waives its right to dispute charges after this time frame.

13. Taxes

Covetrus shall supply the Products and Services during the Term subject to the pricing set forth above. All prices, inclusive of monthly Minimum Purchase Commitments are calculated excluding shipping costs, transportation, sales tax, goods and service taxes, value added tax, or any similar taxes or other charges (if applicable). Covetrus is required to comply with the sales and use tax laws where it operates. There exists an obligation to assess, collect, and remit sales and use taxes unless the product or customer is exempt by law or the product is being purchased for resale. Covetrus is required to obtain a duly completed exemption certificate from any customer to document an exemption prior to exempting the transaction from tax. All sales and use taxes are remitted to the appropriate state and/or local taxing jurisdiction according to the laws of that jurisdiction.

14. Termination

- (a) **For Convenience.** Either party may terminate this Agreement upon sixty (60) days' written notice. If, prior to the expiration of the first twelve (12) month period of the Term, Customer terminates this Agreement other than for a Material Breach, Customer shall not be entitled to a refund for Services Fees paid, unless otherwise agreed to at Covetrus's sole discretion; (b) **For Material Breach.** Termination of this Agreement by either party will be permitted in the event of a Material Breach (as defined below) that if possible to cure, remains uncured ninety (90) days after written notice specifying the breach is given, by the non-breaching party, to the breaching party. A "Material Breach" is defined as any of the following: (a) the failure of a party to fully comply with its obligations under this Agreement; (b) the making of assignment for the benefit of creditors by a party; (c) the institution of bankruptcy, reorganization, liquidation or receivership proceedings by or against a party; (d) insolvency of a party; or (e) transfer of title of ownership of instrument to another party.
- (b) **Beyond Repair.** In the event that Covetrus determined that the cost to repair an instrument exceeds its fair market value, Covetrus has the right to terminate the Agreement and Covetrus will refund to Customer the remaining pro-rated amount of the fees already paid during the applicable Contract Period.

15. Standard of Service

Covetrus represents and warrants that the Services provided under this Agreement will be performed in a workmanlike and professional manner with reasonable skill, care and diligence, all in accordance with prudent industry practices and standards and otherwise in accordance with this Agreement and in compliance with all applicable laws. All Services shall be provided by an authorized Covetrus representative subject to the fees set forth under the applicable Order Summary and/or Service Contract for the affected Instrument(s). Services, including repair parts, shall be warranted for the period as set forth on the Service Agreement. Customer's sole remedy for breach of said warranty shall be a re-performance of the Services. Covetrus does not warrant that the Services will render an Instrument to be error free, or that continued use and operation of the Instrument will be uninterrupted. Covetrus telephone support or remote monitoring support shall be provided "as is" without warranty of any kind. The foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, express, implied, or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY

16. Exclusions

Service support shall not apply to any defect or performance deficiency on a Product (including failure to conform to Product descriptions or specifications) which results, in whole or in part, from (a) negligent storage or handling of the Product by Customer, its employees, agents, or contractors; (b) failure of Customer to prepare or maintain the site, provide power requirements or operating environmental conditions in compliance

with any applicable instructions or recommendations of Covetrus; (c) adverse power conditions or environmental conditions such as erratic power, voltage spikes, RF or magnetic interference, HVAC failure or other causes beyond the reasonable control of the Covetrus; (d) absence of any Product, component, or accessory recommended by Covetrus but omitted or removed at Customer's direction; (e) any misuse, alteration or damage to the Product by persons other than Covetrus; (f) combining Covetrus's Product with any product furnished by others, or with incompatible Products, where such combination causes failure of or degradation to performance of Covetrus's Product (including Software and the substitution of any reagent not authorized by Covetrus; (g) improper or extraordinary use of the Product, improper maintenance of the Product, failure to maintain the Product or comply with any applicable instructions or user manuals provided by Covetrus; or (h) if any service, repair or relocation of an Instrument was performed or attempted by personnel not authorized by Covetrus.

17. Replacement Parts

Replacement parts will be provided only as required or on an exchange or new part basis. Covetrus reserves the right to use refurbished material or parts for all repairs for Instruments covered by a Service Plan. Warranty of refurbished items is not limited compared to new items. Labor to install any replacement parts is included as part of the Services. All parts which become subject to removal and replacement shall become the property of Covetrus. Consumables and Reagents are not eligible for replacement under this Agreement.

18. Indemnification

Customer will indemnify, defend and hold Covetrus harmless from all claims, costs (including reasonable attorneys' fees), damages and liabilities ("Claims") arising from Customer's use or misuse of the Products, including any Claims (whether for personal injury, death, property damage or otherwise) arising from Customers' fault, negligence, willful misconduct, omissions or breach of this Agreement. Covetrus will indemnify, defend and hold harmless Customer from all Claims arising from any of the following: (a) any alleged defects in the Products and (b) based on alleged infringement of third party intellectual property rights. However such indemnification shall not apply where the defect or infringement is caused in whole or in part by (a) any alteration of the Product by persons other than Covetrus; (b) combining Covetrus's Product with any Product furnished by others where such combination causes failure of or degradation to performance of Covetrus's Product; (c) combining incompatible Products of Covetrus; (d) improper or extraordinary use of the Product, improper maintenance of the Product, or failure to comply with any applicable instructions or recommendations of Covetrus, Covetrus does not warrant Products of others which are not included in Covetrus's published Product catalog.

19. Limitation of Liability

To the fullest extent permitted by law, in no event shall either party be liable for any lost revenues, lost profits, special, indirect, incidental or consequential damages, economic loss, or property damage incurred by the other party. Either party's total liability under this Agreement shall not exceed the total price paid for all Products hereunder on an annual basis. The aforementioned limitation shall not apply to damages resulting from the gross negligence, bad faith or willful misconduct of a party or its personnel. Covetrus does not support liability claims of third party service installation contractors, contracted by the customer. By using this service you thereby indemnify Covetrus, its employees, agents and affiliates against any loss or damage.

20. Remedies

Without limiting its remedies under existing law, Covetrus may, in the event of a Material Breach by Customer, and in its sole discretion, pursue any or all of the following remedies: (a) suspend or cancel its performance hereunder, including any pending Services; (b) declare all unpaid balances, payments and expenses due or to become due hereunder immediately due and owing; (c) terminate this Agreement without additional liability or obligation to Customer; (d) seek any other cumulative remedies at law or in equity; or (e) exercise any all rights and remedies available to a secured creditor under the Uniform Commercial Code. The foregoing remedies are cumulative, and may be exercised by Covetrus, in whole or in part, at Covetrus's sole discretion. The substantially prevailing party shall be entitled to its attorneys' fees, costs, and expenses (including expert expenses) in connection with any claims, causes of action or litigation.

21. Compliance

Neither party to this Agreement nor shall engage in any activity prohibited by any federal, state or local law or regulation which relate to the performance of services under this Agreement, as those regulations now exist or as subsequently amended, renumbered or revised.

22. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, excluding choice of law provisions. No actions arising out of the sale of the items sold hereunder or this agreement may be brought by either party more than (2) years after the cause of action accrues.



23. Force Majeure

Except as expressly stated in this Agreement, neither party shall be liable for any failure to perform hereunder (other than the payment of sums due and owing) due to labor strikes, lockouts, fires, floods, water damage, riots, government acts or orders, interruption of transportation, inability to obtain material upon reasonable prices or terms, or any other causes beyond its control.

24. Severability Waiver

In the event that any one or more provisions contained herein (other than the provisions obligating Customer to pay Covetrus for the Products and Services) 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 not in any way be affected or impaired thereby. A party's failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

25. Notices

Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received three days after being sent via registered mail with return receipt requested, by courier, by first-class mail, postage prepaid, or via email (with evidence of receipt required) at the addresses specified herein for the respective parties or at such other address as either party may from time to time designate to the other in writing.

26. Assignment

This Agreement may not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding any provision of this Agreement to the contrary, either party shall have the right to assign or otherwise transfer its interest under this Agreement, without consent of the other party, to any of its affiliated entities or to any entity to which a party may sell, transfer, convey, assign or lease substantially all of the assets or properties used in connection with its performance under the Agreement. Any other assignment of the Agreement without the express written consent of the other party will be invalid.

27. Independent Contractor

Covetrus is performing the Services as an independent contractor and not as an employee of Customer and none of Covetrus's personnel shall be entitled to receive any compensation, benefits or other incidents of employment from Customer. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, or agency relationship between Customer and Covetrus. Neither Covetrus nor Customer shall be or become liable or bound by any representation, act or omission whatsoever of the other.

28. Confidentiality

These terms and conditions and any Order Summary, Service Contract, and any material transmitted herewith may contain information confidential or proprietary to either party, its subsidiaries or affiliates ("Confidential Information") and such information is not to be used by the receiving party other than the purpose for which it was transmitted by the disclosing party. Each party shall (a) hold such information in strictest confidence and not disclose such information to third parties without prior, written consent of the disclosing party; and (b) not collect, access, retain use or share the Confidential Information other than for performance of the Services.