

TA Instruments -TERMS AND CONDITIONS OF SALE Service Plans / Quotations

TA Instruments ("TA") offers various service plans (the "Plans") for the support of TA instruments and component parts (the "Equipment"). The following terms and conditions govern TA's service under the Plans. You will also receive additional information concerning the particular Plan you have selected -you should read and retain these documents.

1. **Acceptance.** Customer's acceptance of the offer contained in this quotation shall create a contract subject to and expressly limited by the terms and conditions contained on this form. ACCEPTANCE OF THIS OFFER MAY ONLY BE MADE ON THE EXACT TERMS AND CONDITIONS SET FORTH ON THIS QUOTATION: IF ADDITIONAL OR DIFFERENT TERMS ARE PROPOSED BY CUSTOMER, SUCH ADDITIONAL OR DIFFERENT TERMS SHALL NOT BECOME A PART OF THE CONTRACT FORMED BY CUSTOMER'S ACCEPTANCE OF THIS QUOTATION UNLESS AGREED UPON BY BOTH PARTIES IN WRITING.
2. **Prices and Quotations.** Prices are firm for the period of this quotation. Written quotations are valid for thirty (30) calendar days from the date issued unless an extended period for acceptance is specifically set forth in the quotation. Prices for renewal quotations are valid up to the previous contracts expiration date. Quotations are subject to termination by written notice from TA to the customer within the validity period. All orders based on this quotation are subject to acceptance by TA Instruments at its offices in New Castle, Delaware.
3. **Shipping Charges.** TA will pay charges to ship replacement or repaired Equipment to the customer. TA will also pay shipping charges for the return of Equipment to TA, provided the customer has complied with the provisions of Paragraph 8 below ("Return of Equipment").
4. **Terms of Payment.** Net ten (10) days from date of invoice. Delay in making payment by the customer will not operate to extend the term specified in the Plans. TA may, at its option, suspend service during any period in which the customer has failed to make payments in a timely manner. Such suspension of service shall not limit any other legal remedies to which TA may be entitled.
5. **Term of Service.** The term of service provided under the Plans shall commence as of the Plan Effective date provided on the Acknowledgement copy of the Plan and shall continue as provided in the applicable service Plan.
6. **Inspection and Certification.** Prior to accepting Equipment for coverage under the Plans, TA may, at its option, inspect and certify that the Equipment is functioning properly. Equipment and software must meet current performance standards and must be operated in an environment and system configuration acceptable to TA. Service including parts, labor or travel required to bring the Equipment to performance standards acceptable to TA is not covered by the Plans. This service must be authorized by the customer, completed and paid for prior to initiating Plan coverage. The cost for such service provided to the customer will be invoiced at the rates in effect at the time the service is provided. Equipment covered by the product warranty issued at the time of purchase by the customer may be converted to Plan coverage without a pre-plan inspection by TA.
7. **Service and Repair.** Service and repair of the Equipment will be provided by an authorized TA Service Representative. TA may use one or more of the following service options to replace or repair Equipment:
 - (a) dispatch a TA service representative to the customer's facility; or
 - (b) provide for repair or replacement of the Equipment at a TA repair facility; or
 - (c) provide delivery of replacement components to the customer, with instructions for installation of the components by the customer. In providing service under the Plans, TA may, at its option, use components that are "reconditioned," i.e., assemblies and parts which have been re-manufactured by TA to meet current hardware and firmware revisions as well as the product quality and performance testing requirements for new products. TA may, while performing service on the Equipment, replace outdated hardware, firmware and software with current revisions. TA cannot guarantee the continued availability of outdated assemblies.
8. **Return of Equipment.** TA will accept the return of Equipment (or component parts of such Equipment) only when accompanied by a Return Authorization Number ("RAI") issued by a TA Customer Service representative prior to shipment of the Equipment by the customer.
9. **Limited Service and Product Warranty.** TA warrants that the service performed and the products and parts supplied to repair or replace the Equipment conform to average standards of workmanship and materials then prevailing in the trade. TA's obligations for software consulting, training and documentation services shall be limited to providing the selected services on a best efforts basis. TA Instruments MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The sole obligation of TA shall be to repair or replace any TA Instruments non-conforming product or part during the term specified in the Plans. This warranty shall not be deemed to have failed of its essential purpose as long as TA is willing and able to repair or replace any TA Instruments non-conforming product or part covered by the plan selected by the customer. In the event that an instrument covered by a service plan cannot be repaired, TA reserves the right to provide to the customer: (a) Prorated refund or credit of the purchase price, or (b) Prorated credit towards the purchase of a replacement instrument.
10. **Delays.** TA will use reasonable best efforts to provide prompt service, but will not be liable for any damage resulting from (i) delays in rendering service; (ii) delays in performing repairs; or (iii) delays in delivery or shipment of the Equipment. IN NO EVENT SHALL TA Instruments BE LIABLE FOR SPECIAL, CONSEQUENTIAL, ECONOMIC OR INCIDENTAL DAMAGES (SUCH AS INSTRUMENT DOWN TIME, LOST PROFITS, LOST DATA, ETC.).
11. **Exclusions.** The Plans cover Equipment repairs and maintenance, which results from normal use and operation of the Equipment. TA will not be obligated to perform service on Equipment which, in its sole reasonable judgment:
 - (a) has been improperly installed, altered or damaged;
 - (b) has been repaired by other than an authorized TA Service Representative;
 - (c) has been altered or damaged as a result of additions or changes made to the Equipment by the customer or others;
 - (d) has been damaged due to decomposition resulting from chemical action, environmental or operating conditions;
 - (e) has been damaged due to operator failure to perform standard operating procedures and routine maintenance, including the replacement of common replacement parts (using TA-approved parts and supplies), as set forth in TA's published literature and manuals;

- (f) has been damaged due to transfer of the Equipment by the customer from the location specified in the Plans without supervision by TA Instruments;
- (g) has been damaged due to the use of operating supplies and maintenance parts which do not conform to TAs' specifications. Repair of damage(s) caused by the use of such supplies or parts is not covered under the terms of the Plan. Service (parts, labor and travel) required to repair such damage(s) will be invoiced at the rates in effect at the time the service is rendered.

12. Additional Equipment. The customer may, subject to acceptance by TA Instruments, request an addendum to the selected Plan to add Equipment. Prices in effect at the time of any addition shall apply to the Equipment being added, and the term of such addendum shall be coterminous with that of the original Plan.

13. Relocation of Products.

- (a) The Customer shall give TA thirty (30) days written notice prior to any relocation of products covered by on-site support services being provided under this Agreement.
- (b) Products moved to a location within the contiguous United States shall continue to be serviced under this Agreement. The response time and charges will be adjusted to reflect the new location.
- (c) Products moved outside the contiguous United States may continue to be serviced under this Agreement, at the option of TA. The services to be provided and charges for such services shall be subject to mutual agreement.
- (d) For installed products, which will continue to be serviced, TA, at its option, may supervise the dismantling and packing of the products and may inspect and reinstall products at the new location. These services, if provided, shall be at additional charge based on TA standard service rates in effect at the time. The Customer shall furnish full labor and materials for the dismantling, packing and placement of the products in the new location.
- (e) The Customer shall be responsible for any loss or damage to the products during relocation.

14. Cancellation. The Plans may be canceled upon thirty (30) days written notice by either party. Cancellation by the customer shall be subject to a 15% cancellation charge which shall be used as an offset against the amount refunded. All refunds shall be made on a pro-rata basis. The refunded amount will be prorated by first subtracting the list price of the parts and service delivered against the contract, from the purchase price of the contract. If the canceled Plan was a multiple year agreement, the additional discount savings for the year canceled and any previous years of the agreement will also be deducted from the refund. TA Instruments will prorate the remaining amount based on the length of the contract remaining.

15. Merger and Modification. Documents relating to service provided under the Plans, including any attachments, represent the entire understanding between TA and the customer and are not transferable by the customer without the prior written consent of TA. Terms and conditions of any other documents, such as a customer purchase order, are expressly superseded and shall not be accepted by TA.

16. Agents, etc. No agent, employee or other representative has the right to modify or expand TA's standard warranty applicable to the Plans or to make any representations other than those set forth in TA Instruments' literature and any such affirmation, representation or warranty, if made, should not be relied upon by Customer and shall not form a part of this quotation / Plan.

17. Fair Labor Standards. TA represents that the Products or services provided hereunder were produced and/or performed in compliance with the requirements of all sections of the Fair Labor Standard Act of 1938, as amended.

18. Equal Employment Opportunity. TA is an Equal Opportunity Employer. It does not discriminate in any phase of the employment process against any person because of race, color, creed, religion, national origin, sex, age, veteran or handicapped status. The TA Equal Opportunity Certificate, which is mailed annually to all vendors and vendees, is incorporated into this quotation by reference.

19. Modifications, Waiver. The contract formed by Customer's acceptance of this quotation may be modified by a writing signed by both parties, and any breach there under may be waived only by a writing signed by the party against whom enforcement thereof is sought.

20. Governing Law. The contract formed by Customer's acceptance of this quotation shall be governed by and construed in accordance with the laws of the Commonwealth of Delaware, U.S.A.

21. Additional Terms and Conditions. This quotation is also subject to any Plan documentation and any TA Special Terms and Conditions applicable to the Products or Services offered by this quotation and such documents are incorporated into this quotation by reference.

22. Arbitration. Any and all disputes or controversies arising under, out of or in connection with the contract formed by Customer's acceptance of this quotation or the sale or performance of the Products or services shall be resolved by final and binding arbitration in New Castle, Delaware, under the rules of the American Arbitration Association then obtaining. The arbitrators shall have no power to add to, subtract from or modify any of the terms or conditions of this contract. Any award rendered in such arbitration may be enforced by either party in either the courts of the Commonwealth of Delaware or in the United States District Court of Delaware, to whose jurisdiction for such purposes TA and Customer each hereby irrevocably consents and submits.

23. Force Majeure. TA shall have no liability for failure to perform, or delay in performance, in the delivery of any and all equipment manufactured or sold by TA including instruments, supplies, components, systems, chemistry, accessories, replacement spare parts, or any and all services provided by TA, caused by circumstances beyond its reasonable control including, but not limited to, acts of God, acts of nature, floods, fire, explosions, war or military mobilization, United States governmental action or inaction, request of governmental authority, delays of any kind in transportation or inability to obtain material or equipment, acts of other governments, strikes, or labor disturbances.