

Mammotome Service Plan Terms and Conditions (US Customers)

These Mammotome Service Plan Terms and Conditions apply to the service plan coverage ("Service Plan" or "Agreement") between Mammotome and Customer. By submitting a purchase order for service plan coverage including support, repair or maintenance ("Services") as applicable, Customer agrees to the following terms and conditions:

1. **Acceptance.** The Service Plan may not be modified or amended except as approved in writing by Mammotome and may only be renewed after the expiration of the initial Coverage Period by written agreement of Mammotome. Mammotome shall have no obligation to renew the Service Plan.

2. **Pricing/Payment.** Customer agrees to pay Mammotome at the cost set forth in the quote or applicable agreement. Payment terms are net thirty (30) days after receipt of invoice. An interest charge of 1% per month (or the maximum rate permitted by law if less than 1% per month) will apply to payments received more than 30 days after the invoice date. If Customer believes that an invoice contains any errors, it must notify Mammotome's customer service department no later than 30 days after the date of the invoice if it wishes to have those errors rectified. The prices set for the Service Plan shall be held and remain strictly confidential. Mammotome shall not be obligated to perform any Service during any period when Customer payment is past due.

3. **Service and Coverage.** During the Coverage Period, as well as during any renewal Coverage Period, Mammotome will, at no additional charge, provide all parts and labor for repairing malfunction of equipment covered under the Service Plan, provide use of a replacement ("Loaner") while equipment is repaired (in the event Equipment cannot be repaired on-site), and pay freight charges to and from Customer associated with shipment of the Loaner. Loaners must be returned to Mammotome within one (1) week of receiving the repaired equipment to avoid additional charges. Replacement parts may be new or rebuilt to perform as new as solely determined by Mammotome. For Customer Service Support and shipping instructions, please call 1-877-926-2666, Option 3 between the hours of 8:30 AM – 5:30 PM EST.

4. **Mammotome Confirm and XPERT® 40.** In addition to the terms set forth herein, the following terms shall apply to Mammotome Confirm and XPERT 40 equipment: (i) coverage includes one (1) on-site preventative maintenance inspection visit per Agreement year, scheduled upon Customer's request; (ii) software updates, meaning a hotfix, patch or minor version update to maintain the original functionality of the software, will be provided at no additional charge; (iii) if an uptime guarantee is included in the purchased plan, it will be measured on an annual basis, based on a 40-hour workweek and system availability during standard operating hours; if the goal is not met, as calculated by the Customer and verified by Mammotome, the parties will discuss a mutually agreeable resolution; (iv) if remote diagnosis is included in the plan, Customer shall grant Mammotome, or its authorized subcontractor, as applicable, remote access to provide such support; (v) in the event the original manufacturer for the foregoing equipment discontinues or materially modifies any of its support terms, the parties will meet to discuss a mutually agreeable resolution and amendment to the coverage.

5. **Limitations.** The Service Plan does not cover: (a) preventative maintenance (unless otherwise stated); (b) circumstances beyond Mammotome's reasonable control (such as but not limited to overriding, bypassing or defeating interlock switches); (c) rebuilding or reconditioning of equipment; (d) misuse or abuse; (e) failure to follow Mammotome's operating instructions; (f) damage from fire, water, electrical surge, or other peril originating outside the equipment; (g) repairs by anyone other than an authorized Mammotome representative; or (h) supply items. THE SERVICE DESCRIBED IN THESE TERMS AND CONDITIONS ARE MAMMOTOME'S ONLY OBLIGATION UNDER THIS SERVICE PLAN AS IT RELATES TO MAMMOTOME'S REPAIR AND REPLACEMENT OBLIGATIONS. MAMMOTOME SHALL NOT BE RESPONSIBLE FOR ANY DELAY IN SHIPPING, OR ANY IMPROPER USE OF THE EQUIPMENT OR LOANER (OR IT'S SOFTWARE) BY CUSTOMER. MAMMOTOME SHALL NOT BE RESPONSIBLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM THIS SERVICE PLAN, INCLUDING PURCHASER'S USE OF THE EQUIPMENT OR ANY LOANER, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFIT, DOWNTIME COSTS, LOSS OF USE OF THE EQUIPMENT, OR COSTS OF SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES. ANY DISPUTE OR CLAIM BETWEEN THE PARTIES ARISING FROM OR RELATED TO THIS SERVICE PLAN SHALL BE HEARD IN THE COURTS OF HAMILTON COUNTY, OHIO. EACH PARTY WAIVES ANY RIGHT TO JURY TRIAL, AND EACH PARTY WAIVES ANY RIGHT TO PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

6. **Assignment.** Neither party may assign this Agreement or any right or obligation arising out of this Agreement without the express written consent of the other party, and such consent shall not be unreasonably withheld.

7. **Cancellation by Mammotome.** The Service Plan may be cancelled by Mammotome with thirty (30) days prior written notice for any reason, at any time. Mammotome will provide written notice of such cancellation, which notification shall be effective when transmitted by mail, email, or fax. Should Mammotome wish to cancel, Mammotome will refund Customer a pro-rated amount refund of the price paid for the Service Plan.

8. **Cancellation by Customer** – This Service Plan can be cancelled by Customer at any time, for any reason, by mailing or delivering to Mammotome's Customer Service Center a written notice of cancellation. If Customer cancels within the first ninety (90) days of the initial Coverage Period Service Start Date, Customer will be charged a handling fee of \$50 and will receive a prorated amount refund of the price paid for the Service Plan, provided there has been no service performed on the equipment covered by this Service Agreement. No refunds are provided for cancellations more than ninety (90) days after the initial Coverage Period Service Start Date.

9. **Product Modifications.** Mammotome reserves the right to make changes to equipment built and/or sold by us at any time. Mammotome shall have no obligation to make the same or similar changes on equipment previously built and/or sold, including without limitation equipment repaired under this Service Plan.

10. **Representations and Warranties.** Mammotome represents and warrants that the services performed by Mammotome or a Mammotome subcontractor shall be performed in a professional manner, with due care, consistent with industry practices and in a diligent, workmanlike, and reasonably expeditious manner and in accordance with all applicable laws. Any parts, products or equipment replaced by Mammotome or a Mammotome subcontractor under this Agreement shall become the property of Mammotome. Mammotome and its affiliates: (i) are not "sanctioned persons" under any federal or state program or law; (ii) have not been listed in the current Cumulative Sanction List of the Office of Inspector General for the United States Department of Health and Human Services for currently sanctioned or excluded individuals or entities; (iii) have not been listed on the General Services Administration's list of parties Excluded from Federal Programs; or (iv) have not been convicted of a criminal offense related to healthcare (collectively referred to herein as being "Debarred"). Mammotome represents and warrants that it and its affiliates shall not knowingly employ, contract with, or retain any person or entity directly or indirectly to perform or provide the Services hereunder if such a person or entity is Debarred or is, to Mammotome's knowledge, under investigation for debarment. Furthermore, Mammotome represents and warrants that, to the best of its knowledge, it has not engaged in any conduct or activity which could lead to debarment actions.

11. **Subcontractors.** Nothing in this Agreement shall prevent Mammotome from utilizing the services of any subcontractor as it deems appropriate to perform its obligations; provided, however, that Mammotome shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services.

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12. **Force Majeure.** Mammotome will not be liable for its failure to perform, or any delay in performance, due to strikes, fire, explosion, flood, riot, lock out, injunction, interruption of transportation, unavoidable accidents, acts of government or a public enemy, terrorism, or any other causes beyond its control.

13. **Notices.** Any notice or communication required or permitted hereunder, will be in writing and sent by first class mail, postage prepaid, to the Customer at the address provided in the quote, and to Mammotome at the following address: Devicor Medical Products, Inc. Attn: Service Department, 300 E-Business Way, 5th Floor, Cincinnati, Ohio 45241. Either Party may modify its notice address by providing written notice to the other Party.