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## EQUIPMENT MAINTENANCE TERMS AND CONDITIONS

1. **Structure of Agreement.** These Equipment Maintenance Terms and Conditions, together with one or more quotations for equipment maintenance services (each a “Quotation”), constitute this “Agreement.” Customer may accept a Quotation and these terms and conditions by signing and returning the Quotation or by any other reasonable expression of acceptance or by beginning performance. Where a Quotation states that the Quotation is firm for a period of time, Customer may accept the quotation during the stated time. Where Customer purports to accept a Quotation after the time during which the Quotation is stated as firm or where the Quotation states no time during which the Quotation is firm, (a) such purported acceptance is an offer by Customer to Lowry on the terms stated in the unaltered Quotation and these terms and conditions and (b) such offer is firm, and Lowry may accept it by communication, the beginning of performance, or otherwise, at any time during the 60 days following the purported acceptance by Customer.
2. **Defined Terms.** Without limiting any other term in this Agreement, the following terms have the following meanings for the purposes of this Agreement.
  - (a) “FOB” has the meaning given to that term by [Uniform Commercial Code Sec. 2-319](#).
  - (b) “Machine” means a device described in a Quotation
  - (c) “Services” or “Maintenance Services” means the services that Lowry is required by this Agreement to deliver to Customer.
3. **Term.** The initial term of this Agreement (a) begins on the date stated in the earliest accepted Quotation or, if no such date is stated in the earliest accepted Quotation, the date upon which Customer first accepts a Quotation and returns it to Lowry signed (in either case, the “Effective Date”) and (b) continues until the end of the longest service term stated in an accepted Quotation. Unless otherwise stated in a Quotation, the term will then renew for successive one-year periods unless terminated by either party, effective upon the end of the then-current term, upon at least 60 days’ notice. At Lowry’s option, maintenance service for equipment added hereunder subsequent to the commencement of the term will have the remaining term of the Agreement.
4. **Services Generally.**
  - (a) Lowry will provide Services for the Machines as described in the Quotation(s).
  - (b) Customer will provide a suitable environment for the Machines as specified by Lowry,

and to provide full, free, and safe access to the Machines to permit Lowry to provide On-Site Repair Services if covered by a Quotation. Lowry may, at its option, store maintenance equipment and/or parts on the Customer's premises in order to provide On-Site Repair Services if covered by a Quotation. Customer will promptly inform Lowry of any change in a Machine's location.

- (c) Customer must initially determine that the Machine or Machine element requires maintenance service. Before requesting Service, Customer will follow the problem determination, problem analysis and service request procedures provided by Lowry. The term "failing Machine" refers to a Machine, including its Lowry and selected non-Lowry features, a Machine element or a selected non-Machine requiring maintenance service as initially determined by Customer and, as applicable, verified by Lowry. The term "exchange Machine" refers to a Machine, including its Lowry and selected non-Lowry features or a Machine element or a selected non-Machine provided by Lowry to Customer under an Exchange Type of Service.
- (d) Repair types of Service to keep the Machines in, or restore them to, good working order will include remedial maintenance and may include preventative maintenance based on their specific needs as determined by Lowry. Repair types of Service may also include lubrication, adjustments and replacement of maintenance parts, all as deemed necessary by Lowry. Maintenance parts, which may be used parts, will be installed by Lowry on an exchange basis, and the replaced parts become the property of Lowry.
- (e) Under a Repair Type of Service, when Customer presents a failing Machine to Lowry, Lowry reserves the right to verify that maintenance service is required for such Machine. If so verified, Lowry will provide maintenance service for such Machine. Customer must remove, or implement other safeguards to protect, all programming, programs, data and removable storage media before a failing Machine is to be repaired.
- (f) Under an Exchange Type of Service, when Customer presents a failing Machine to Lowry, it becomes the property of Lowry at the time of exchange. An exchange Machine may not be new, but will be in good working order, and becomes Customer's property at the time of exchange. Lowry reserves the right to verify that maintenance service is required for the failing Machine and that it is otherwise acceptable for exchange, as provided for in this paragraph, prior to providing an exchange Machine. Customer must remove all programming, programs, data and removable storage media, and all non-Lowry parts, options, alterations and attachments agrees that all such items not removed will be deemed to have been discarded by Customer. Failing Machines become ineligible for exchange if defaced, altered, in need of repair not included in maintenance service, or damaged beyond repair. If, upon inspection, Lowry determines that it has received in exchange a failing Machine in such condition, the exchange will be nullified and each party will return to the other the Machine or Machine element in its possession. Customer represents and warrants that, at the time a failing Machine is presented to Lowry under an Exchange type of Service, the failing Machine will be free of any outstanding liens, security interests or other encumbrances held by any third party and that Customer transfers good and

marketable title thereto to Lowry.

5. **Serial Numbers**. The parties generally expect that the Machines will be identified in a Quotation by serial number. Nevertheless, where a Quotation contains a notation saying, or to the effect that, serial numbers are required for final contract, and the parties proceed with execution and delivery of the Quotation or Lowry commences performance under this Agreement with respect to Machines of the make and model identified in the Quotation:
  - (a) The absence of serial numbers will not prevent the formation of a contract with respect to Services; and
  - (b) The parties will, with commercially reasonable diligence and in good faith, identify, by serial number or other identifier, the particular Machines that are covered by the Quotation and this Agreement and memorialize the same in writing or, in the absence of such memorialization, Lowry may, in good faith, designate the particular Machines.
  
6. **Installation**. If Customer elects to purchase Lowry's installation service, Lowry will supervise unpacking and placement of the equipment in an arrangement specified by Customer and perform the manufacturer's standard test routines and programs on the equipment during the applicable periods stated in Section 10. Customer, at its expense, shall prepare the installation site in accordance with the equipment manufacturer's specifications or instructions. Customer will pay to Lowry Installation charges in accordance with Lowry's then-current price schedule.
  
7. **Changes to Type of Service**. Customer may change the type of service applicable to a Machine by giving at least 15 days' notice to Lowry. Changes will be effective upon processing by Lowry. Lowry's then-current pricing will apply to the new type of service. Changes to types of service with lower costs will result in a credit that Customer may apply to a different Machine or to a future period.
  - (a) **On-Site Service (OSS) Response Times**. Lowry will respond to calls with respect to failing Machines according to the description on the applicable Quotation. Calls received after 2:00 pm ET may be delayed by one business day
  
8. **Carry-In Exchange (CIX)**.
  - (a) In the case of carry-in exchanges, Customer will (1) deliver the failing Machine to a Lowry Service/Exchange Center or other Lowry designated location, (2) pick up the exchange Machine and take it to Customer's location, (3) connect it, and (4) verify its operation.
  - (b) In lieu of such delivery and pickup, Customer may ship the failing Machine, in the original shipping container or equivalent, to Lowry FOB (UCC 2-319) Lowry Service/Exchange Center designated to receive such a shipment. Following receipt of the failing Machine, Lowry will ship the exchange Machine to Customer's location, FOB Customer's location.
  
9. **Carry-In Repair (CIR)**.
  - (a) In the case of carry-in repairs Customer will (1) deliver the failing Machine to Lowry

Service/ Exchange Center or other Lowry designated location, (2) following any necessary repairs, pick up the Machine or Machine element and take it to Customer's location, (3) connect it, and (4) verify its operation.

- (b) In lieu of such delivery and pickup, Customer may ship the failing Machine, in the original shipping container or equivalent, to Lowry FOB a Lowry service/Exchange Center designated to receive such a shipment. Following any necessary repairs, Lowry will ship the Machine or Machine element to Customer's location, FOB Customer's location.

**10. Response Service Levels.** Service levels stated in each Quotation have the following meanings.

- (a) Next Business Day (NBD) Response Service. Lowry will respond to Customer's request for services not later than the end of the next business day after receipt of receipt of the request if the Machine is within 100 road miles of a Lowry service office;
- (b) Four Hour Response Service. Lowry will respond to Customer's request for remedial maintenance within hour business hours of receipt of the request if the equipment is within 100 miles of a Service Office, or within four business hours plus travel time if the Machine is more than 50 road miles of a Lowry service office.
- (c) 24-Hour/, Five, Six, and Seven Day Service (available subject to Lowry's prior approval for any installation location). Lowry shall respond to Customer's request for remedial maintenance within four hours of receipt of notice if the Machine is located within 30 road miles of Lowry service office. Twenty-four hour service is at the applicable percent adders to the Basic Charges (including Extended Service Adders, if applicable, stated in the applicable Quotation.

**11. Periods of Maintenance.**

- (a) The "Base Period" of Maintenance Service for Lowry On-Site Repair and Lowry Exchange Service is from 8 a.m. to 6 p.m., at the applicable Lowry facility, Monday through Friday other than holidays, unless otherwise designated by Lowry. For certain Machine types designated by Lowry, Customer may select "Optional Periods" for services. The Optional Period of Maintenance Service for Monday through Friday is the Base Period and must be the same consecutive hours each day. The Optional Period on Saturday or Sunday must be the same consecutive hours on all Saturdays and/or Sundays. Subsequent to the date the Machine becomes subject to this Agreement, Customer may select or change Optional Periods of Maintenance Service to be effective upon fifteen (15) days' notice to Lowry.
- (b) Carry-In Exchange and Carry-In Repair types of Service hours are the normal business hours of the applicable Lowry service/exchange center.

**12. Charges.**

- (a) The charges stated in the Quotation are subject to change without notice prior to Service start date for each Machine and Customer shall pay charges in effect on such date.
- (b) Lowry may invoice, in advance or otherwise, as of the service start date and charges

are due and payable upon receipt of invoice. The initial invoice may include a prorated charge based on a 30-day month for any days remaining in the calendar month in which the Effective Date falls. All other charges are invoiced as incurred and are due and payable upon receipt of invoice. Upon 60 days' notice to Customer, Lowry may increase the charges under this Agreement, except that such increase shall not be implemented until the next billing period following said notice.

- (c) Customer will pay Lowry's then-current Remote Equipment Maintenance Surcharges for service calls for equipment located more than 100 miles from the nearest Lowry Customer Services Office or other authorized service location. Remote Equipment Maintenance Surcharges consist of charges for round trip travel time, mileage, and meals and lodging if necessary at Lowry's then-current rates for distances beyond 100 miles.
- (d) Customer shall pay or reimburse Lowry for all taxes imposed on Customer or Lowry upon this Agreement or any service or products hereunder.
- (e) There will be no additional charge for travel expense associated with maintenance service during the Base Period and/or the selected Optional Period(s) of Maintenance Service except when the site at which the Machine is located is inaccessible to the Lowry service representative by both private automobile and scheduled public transportation. In such case, Customer will be charged for all travel expenses and, in addition, for any travel and waiting time which occur outside such period(s) of Maintenance Service.
- (f) If Customer requests, and Lowry provides, a Lowry On-Site Repair for a failing Machine (1) outside its Base Period and/or the selected Optional Period(s) of Maintenance Service and/or (2) in lieu of the Type of Service then in effect, Customer will pay additional charges for the service provided. Such charges shall be based on Lowry's (a) then generally available hourly service rates and minimum charges for service time, including travel and waiting time, and (b) charges for travel and shipping expense, all as applicable; however, there will be no additional charge for maintenance parts.
- (g) A change in a Machine's specifications may result in an adjustment to the maintenance charges.
- (h) Lowry may increase maintenance charges by providing Customer sixty (60) days written notice. The increased charges will become effective on the first day of the first invoice period that commences on or after the effective date specified in the notice unless Customer withdraws the affected Machine from this Agreement as provided in Section 15.
- (i) Hourly service rates, minimum charges for service time and all other charges are subject to change by Lowry without notice.

**13. Advanced Exchange Support and Spares Management.** To the extent provided for in the applicable Quotation, Lowry will provide the following exchange support services.

- (a) Lowry will take delivery and possession of the number and kind of goods identified in the Quotation (each a "Spare"). Lowry will use e commercially reasonable efforts to update and maintain each Spare so that it is substantially the same as each such unit in production with Customer. Each Spare is, and will remain, property of Customer.

- (b) Lowry will stage and maintain the Spare(s) in the location(s) specified in the Quotation.
- (c) Customer may contact Lowry's managed Services Center and request one or more Spares. Upon such a request, Lowry will send such Spare(s) by overnight delivery service to the Customer location designated by Customer in the support call. If Lowry receives the call at or prior to 3:00 pm US ET on a business day, Lowry will ship the Spare for delivery by the next business day or (if requested) Saturday.
- (d) Customer must promptly (but in no case later than 15 days after ordering the corresponding Spare) ship the unit replaced by the Spare (the "Replaced Unit") to Lowry FOB (UCC 2-319) Lowry's designated address. Lowry will use commercially reasonable efforts to repair the Replaced Unit. If Lowry is successful in repairing the Replaced Unit, Lowry will place the Replaced Unit in holding as a Spare.
- (e) If, during any 12-month period, more than 15% of Replaced Units are not actually defective, Lowry may charge, and Customer will pay, \$100 per device over the 15%.
- (f) Customer must maintain with third parties sufficient licenses for the firmware and software installed on the Spares.

#### **14. Exclusions and Additional Services.**

- (a) Exclusions from Maintenance Services. Maintenance Services do not include repair of damage, replacement of parts, or increase in service time caused by:
  - (i) Failure to continually provide a suitable environment prescribed by Lowry, including adequate space, electrical power, air conditioning and humidity control;
  - (ii) Neglect; misuse, including use of the Machines for purposes other than for which they were designed;
  - (iii) Accident, disaster (including water, wind, and lightning), transportation, vandalism, or burglary;
  - (iv) Alterations, including, but not limited to, any deviation from Lowry's Machine design;
  - (v) Attachments, including, but not limited to, any interconnection to the Lowry Machine of non-Lowry products or devices not under a Lowry maintenance agreement;
  - (vi) Model conversions, including, but not limited to, upgrades and downgrades between models and Machine types, or installation or removal of a Lowry feature whenever any of these activities was performed by other than Lowry, except that this Section 13(a)(vi) will apply only during the first three-month period subsequent to such Machine modification that the Machine covered by this Agreement;
  - (vii) Maintenance or repair of the Machine performed by a third party who is not an agent or contractor of Lowry; or
  - (viii) Damage or repetitive service calls caused by the use of, inadequate use of, or failure to use, supplies.

- (b) Services Available for an Additional Charge. The following services are not included

in the Services, but Lowry will make such services available for additional charges.

- (i) Service for accessories;
  - (ii) Inspection of Machines, including, but not limited to, inspection of altered Machines or damaged Machines;
  - (iii) Replacement or addition of maintenance parts, or any increase in service time, associated with the installation by Lowry of an engineering change, required due to model conversions, including, but not limited to, upgrades and downgrades between models and Machine types or installation or removal of a Lowry feature whenever any of these activities was performed by third parties.
  - (iv) Rearrangement or relocation of Machines or provision of necessary materials necessary for rearrangement or relocation;
  - (v) Replacement of a part not furnished for the Machine by Lowry with a directly interchangeable Lowry maintenance part, and any increase in service time associated with such activity, except that Lowry will not replace any part that is included in an alteration;
  - (vi) Furnishing consumable supplies, including, but not limited to, ribbons, toner, printheads, developer, and fusers.
- (c) Unavailable Services. Lowry does not provide the following services except under a separate written agreement covering them.
- (i) Painting or refinishing the Machines or furnishing materials associated therewith;
  - (ii) Electrical work external to the Machines;
  - (iii) Installation, maintenance, or removal of alterations or attachments to the Machines;
  - (iv) Any service that is impractical for Lowry to render because of alterations in, or attachments to, the Machines; or
  - (v) Any service that the applicable Quotation excludes.

## 15. Invoicing and Payment

- (a) Except as otherwise stated in this Agreement and except in the case of services other than maintenance (such as those contemplated by Section 13(b)), which are payable upon receipt of invoice, all invoices are payable within 30 days after invoice date.
- (b) Provided that Customer is then in compliance with this Agreement, Lowry will provide to Customer a credit for maintenance charges paid prior to withdrawal of Machines or termination of this Agreement, as described in Section 15.
- (c) Monthly charges, when prorated, will be prorated on the basis of a 30-day month.
- (d) Customer will pay all amounts due under the Agreement without setoff.

## 16. Withdrawal; Termination

- (a) Customer may withdraw a Machine from Services under this Agreement upon 60 days' notice to Lowry:
  - (i) After the Machine has been under this Agreement for at least six months;

- (ii) After the Machine has been under this Agreement for at least one month and it has been removed from Customer's location; or
  - (iii) On the effective date of the notice of an increase in maintenance charges for the Machine.
- (b) Lowry may withdraw a Machine from this Agreement:
  - (i) Upon 60 days' notice to Customer for any reason or no reason; or
  - (ii) Upon the date upon which the manufacturer or OEM with respect to such Machine ceases to offer maintenance support for such Machine, or at any time after manufacturer or OEM support ceases when parts or support are no longer available using reasonable effort or means.
- (c) Either party may withdraw Machines or terminate this Agreement at any time, by written notice to the other party, if the other party materially breaches this Agreement and fails to cure such breach within 30 days (10 days in the case of payment defaults) after the aggrieved party gives notice to the breaching party of the breach.
- (d) Either party may terminate this Agreement, upon notice to the other party, during any time at which no Machine is covered by this Agreement.

**17. Limitation of Liability.** LOWRY'S TOTAL LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR ANY COST, LOSS, DAMAGE OR OTHER POTENTIAL OR ACTUAL EXPENSE THAT IS IN ANY WAY RELATED, DIRECTLY OR INDIRECTLY, TO THE EXECUTION, PERFORMANCE OR SUBJECT MATTER OF THIS AGREEMENT SHALL BE REIMBURSEMENT FOR, AND NOT EXCEED, THE AMOUNT OF THE SUPPORT FEE PAID BY CUSTOMER TO LOWRY HEREUNDER FOR THE SERVICE CAUSING THE COST, LOSS OR DAMAGE, REGARDLESS OF THE FORM OF ACTION EMPLOYED, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. LOWRY SHALL NOT BE LIABLE IN ANY WAY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES. The limitations in this Section 16 apply notwithstanding that Lowry knew, or should have known, of the possibility of any particular kind of damages and notwithstanding that any such limitation causes any remedy to fail of its essential purpose.

**18. Disclaimer of Warranties.** EXCEPT FOR WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT, LOWRY MAKES NO WARRANTIES WHATSOEVER AND LOWRY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR PURPOSE, OR NON-INFRINGEMENT.

**19. Miscellaneous.**

- (a) Customer Identification. Lowry may use the name of, and identify, Customer as a Lowry client in advertising, publicity, or similar materials distributed or displayed to prospective clients. Customer may also develop and distribute a case study based on the Services and the Work Product.
- (b) Force Majeure. If the performance of any part of this Agreement (other than payment of amounts due from Customer) by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, unusually severe weather, riot, fire, judicial or governmental action, labor dispute, act of God, act of



terrorism, or any other cause beyond the control of either Party, that Party shall be excused from performance to the extent that it is prevented, hindered or delayed by such causes.

(c) Choice of Law; Jurisdiction; Venue.

(i) This Agreement shall be governed in all respects by the laws of the State of Michigan without regard for its conflict of laws provisions, and the sole venue and jurisdiction for disputes arising out of, or related to, this Agreement shall be the Michigan state courts sitting in Livingston County, Michigan or the United States District Court for the Eastern District of Michigan - Southern Division, and each Party hereby submits to the jurisdiction of, and consents to venue in, such courts.

(ii) Notwithstanding anything in Section 19(c)(i) to the contrary, at Lowry's option, the Parties will resolve any dispute or portion thereof by arbitration under the rules of the International Chamber of Commerce. In such a case:

- A. The language of the arbitration will be English;
- B. The place of the arbitration will be London, England;
- C. The Parties will cause the arbitrator(s) to, to the maximum extent permitted by the applicable rules, permit participation in the arbitration by remote means, including, but not limited to, videoconference and teleconference;
- D. The judgment and award of the arbitrator(s) may be entered in, and enforced by, any court of competent jurisdiction; and
- E. Nothing in this Section 19(c)(ii) will prevent either Party from seeking in any court any relief not reasonably available from an arbitrator.

(d) Assignment. Customer may not assign any right or obligation under this Agreement.

(e) Notice. Any notice required or permitted to be given under this Agreement must be in writing and will be deemed effective (a) if given by personal delivery, upon such personal delivery, (b) if given by nationally-recognized courier or mail service (in either case that has realtime or near-realtime tracking), at the time that the notice is delivered (or an attempt is made to deliver the notice, regardless of whether refused) to the receiver's premises according to the tracking records of the courier or mail service, or (c) if given by fax, at the beginning of the next business day at the receiver's location, provided that the sender's fax device generates a confirmation that the fax arrived at the receiver's device and that there is no indication in the course of the transmission that the notice did not arrive at the receiver's fax device. The addresses for notice for each Party are those in Quotation or Master Cover Sheet. Either Party may change its address for notice by notice to the other Party.

(f) Waiver. The waiver of, or failure of either party to exercise, any right in any respect provided for herein shall not be deemed a waiver of any further right under this Agreement or a waiver of the ability to exercise the same right on a different

occasion.

- (g) Severability. If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.
- (h) Counterparts. This Agreement, any SOW, or any other document that forms a part of this Agreement, may be executed in one or more counterparts.
- (i) Drafting Party. No rule of law that requires that any part of the Agreement be construed against the party drafting the language will be used in interpreting this Agreement.
- (j) Approvals and Similar Actions. Where agreement, approval, acceptance, consent, or similar action by either Party hereto is required by any provision of this Agreement, such action shall not be unreasonably withheld, delayed, or conditioned.
- (k) Cross-Default. Any breach by Customer of any other agreement with Lowry will be a breach by Customer of these terms and conditions and the agreement of which these terms and conditions form a part.
- (l) Entire Agreement. This Agreement constitutes the entire agreement between Customer and Lowry with respect to the subject matter hereof and there are no representations, understandings or agreements about the subject matter hereof that are not fully expressed in this Agreement. No amendment, change, waiver, or discharge of this Agreement shall be valid unless in a record signed by the party against whom enforcement is sought.