

INNOVATUS IMAGING
DEPOT REPAIR TERMS AND CONDITIONS
VALID: 6/19/2020

1. Terms and Conditions for Ultrasound Probes and MRI Coil transactions

- a. **Entire Agreement.** The entire agreement (the “Agreement”) between Innovatus and [Customer] relating to ultrasound probe repair, MRI coil repair, sales, and services, including exchanges and loaner equipment is set forth, these Terms and Conditions, and Quotes issued and accepted as provided in these Terms and Conditions. As used in these Terms and Conditions, “Quotes” refers to, as applicable, Exchange Quotes, Sales Quotes, Preliminary Repair Quotes, and Updated Repair Quotes issued by Innovatus under these Terms and Conditions
- b. **Objection to Other Terms.** Innovatus’ probe and coil sales and services are sold and provided only in accordance with the terms and conditions set forth in the Agreement, including these Terms and Conditions. Acceptance and fulfillment of any [Customer] issued purchase order or other writing is expressly and exclusively made conditional on [Customer]’s acceptance of the terms and conditions of the Agreement. Any different or additional terms and conditions that may appear in [Customer]’s purchase order or other writing shall have no effect. Innovatus expressly objects to and rejects all inconsistent or additional terms, conditions, and limitations contained on any of [Customer]’s purchase orders or other writings. If [Customer] does not communicate [Customer]’s objection to any terms or conditions in the Agreement in writing within **five (5) business days** from the date [Customer] receives them, or if [Customer] accepts the repairs, sales, or services covered by the Agreement, [Customer] will be deemed to have accepted the terms and conditions of the Agreement and they will control in all instances. Delivery of probes and/or performance of repairs and services by Innovatus shall not constitute Innovatus’ consent to or acceptance of any terms not found in the Agreement.
- c. **Conflict.** In the event of a conflict between these Terms and Conditions and the terms contained in any Quote, the documents will take precedence in the order listed.
- d. **Amendment.** The terms of the Agreement may not be modified or amended except in writing executed by [Customer] and Innovatus. No course of dealing or delay or failure of Innovatus or [Customer] in exercising any right hereunder will affect any other or future exercise of any such right.

2. Exchanges and Purchases.

- a. **Exchange—Order, Quote, and Delivery.** If [Customer] desires to exchange a defective probe, or coil for a new or replacement, [Customer] will give notice to Innovatus of the proposed exchange. If Innovatus agrees to complete the exchange, Innovatus will send [Customer] an Exchange Quote which may include a contingent charge to be paid by [Customer] as described below. If the Exchange Quote is accepted by [Customer], Innovatus will deliver the new or replacement probe, or coil to [Customer] in accordance with the Exchange Quote, and after receipt of the new or replacement product [Customer] will deliver the defective product to Innovatus. If the defective probe, or coil is not delivered to Innovatus within **five (5) business days** of [Customer]’s receipt of the new or replacement probe, or coil, or if the defective equipment is not repairable, Customer will pay the contingent charge set forth in the Exchange Quote. If the Exchange Quote is not accepted by [Customer] within **five (5) business days** of its date, the Exchange Quote will be deemed rejected.
- b. **Purchase—Order, Quote, and Delivery.** If [Customer] desires to purchase a new or replacement probe, or coil without an exchange, [Customer] will give notice to Innovatus of the proposed purchase. If Innovatus agrees to sell the new or replacement probe or coil, Innovatus will send [Customer] a Sale Quote for the purchase. If the Sale Quote is accepted by [Customer], Innovatus will deliver the new or replacement product to [Customer] in accordance with the Sales Quote. If the Sales Quote is not accepted by [Customer] within **five (5) business days** of its date, the Sales Quote will be deemed rejected.
- c. **Return(s); Restocking Fee.** Products received by [Customer] by exchange or purchase may be delivered back to Innovatus within **five (5) business days** from the date received by [Customer]. If, upon inspection by Innovatus, a returned probe, or coil is fully functional and shows no signs of tampering, Innovatus will issue a refund or credit to [Customer] in the amount of the original purchase price for the returned probe less a 20% restocking fee. Such restocking fee shall be based upon the original purchase price of the product not including any applicable discounts, rebates, or other price reductions. The [Customer] will not be entitled to any refund or credit for any probe and coil not delivered within **five (5) business days** after the date received by [Customer].

3. Depot Repairs.

- a. **Repair Order and Quote.** If [Customer] desires to have a defective Ultrasound probe or MRI coil repaired, [Customer] will give notice to Innovatus of the proposed repair. The notice will specify whether [Customer] requests the use of a loaner unit during transit, evaluation and repair of the defective equipment. Innovatus will respond to the notice and, if a loaner is requested and Innovatus has a loaner in stock, Innovatus will deliver the loaner to [Customer]. Following the response from Innovatus, [Customer] will deliver the defective product to Innovatus. If a loaner is requested, the loaner equipment will be subject to the terms of Section 4. If the Repair Quote is not accepted by [Customer] within **five (5) business days** of its date, the Repair Quote will be deemed rejected.
- b. **Preliminary Repair Quote and Repair.** Upon receipt of the defective equipment, Innovatus will evaluate the probe and send a Preliminary Repair Quote to [Customer] for the cost of the repairs. The Preliminary Repair Quote will be subject to Updated Repair Quote(s) as provided in Section 3(c). If the Preliminary Repair Quote is accepted by [Customer], Innovatus will commence the repairs. If the Preliminary Repair Quote is not accepted by [Customer], Innovatus will deliver the defective product to [Customer] and, if applicable, [Customer] will deliver the loaner back to Innovatus. If the Preliminary Repair Quote is not accepted by [Customer] within **five (5) business days** of its date, the Preliminary Repair Quote will be deemed rejected.
- c. **Updated Repair Quote and Repair.** If during the performance of the repairs, Innovatus determines repairs in addition to those included in the Preliminary Repair Quote are required, Innovatus will send an Updated Repair Quote to [Customer] describing the additional repairs and cost of the additional repairs. Such additional repairs and costs may be for any reason including, without limitation, the availability of parts, the need to purchase proprietary components, the need to produce components, or additional work and charges resulting from the defective product being altered or previously repaired (including products that no longer contain all original OEM parts). If the Updated Repair Quote is accepted by [Customer], Innovatus will continue with the repairs. If the Updated Repair Quote is not accepted by [Customer], Innovatus will deliver the defective product to [Customer] and, if applicable, [Customer] will deliver the loaner back to Innovatus within **five (5) business days**, or pay the loaner fee as described in Section 4(b). If the Updated Repair Quote is not accepted by [Customer] within **five (5) business days** of its date, the Updated Repair Quote will be deemed rejected.
- d. **Could Not Duplicate Issue.** For MRI coil repairs being evaluated for electrical defect that could not be duplicated by Innovatus Imaging during the Electrical Assessment there will be a charge equal to 40% of the base electrical rating assigned to that coil.

- e. **Right to Refuse Repair.** Innovatus reserves the absolute right to decline to repair any defective probe at any time.
- f. **Evaluation Fees.** [Customer] is subject to an evaluation fee of \$500 for any MRI coil evaluated for repair, and the repair is declined.

4. **Loaner Equipment**

- a. **Delivery and Return of a Loaner.** If [Customer] requests a loaner probe and/or coil for temporary use during repair of defective equipment, Innovatus will deliver the loaner probe, or coil if Innovatus has an appropriate loaner probe in stock. [Customer] will deliver the loaner back to Innovatus within **five (5) business days** after, as applicable:
 - i. The repaired defective probe or coil is delivered to [Customer] or
 - ii. [Customer] does not authorize Innovatus to complete the repairs on the defective probe or coil in accordance with the Preliminary Repair Quote or an Updated Repair Quote. If the repair is not authorized by [Customer] an evaluation fee will apply.
- b. **Charges for Loaner Probe or Coil.** Repairs Authorized. If [Customer] authorizes Innovatus to complete the repairs on the defective product, there will be no charge to [Customer] for the use of the loaner. Unless [Customer] fails to deliver the loaner back to Innovatus within **five (5) business days** following receipt by [Customer] of the repaired defective equipment. If [Customer] fails to so deliver the probe or coil loaner within such **five (5) business days**, Customer will be charged as follows:
 - i. **Probes.** \$150.00 per calendar day (commencing on the **fifth (5th) business day** after [Customer]'s receipt of the repaired defective probe), if the loaner probe is delivered back to Innovatus within thirty (30) calendar days after receipt of the repaired defective probe, or
 - ii. The full value of the loaner probe as determined by Innovatus if the loaner probe is not delivered to Innovatus within such thirty (30) days (and upon payment of the full value the loaner probe will become the property of [Customer]).
 - iii. **MRI coils.** \$500.00 flat fee plus \$150.00 per calendar day if the loaner coil is not delivered back to Innovatus within **five (5) business days** upon receipt of the repaired defective coil, or
 - iv. The full value of the loaner coil as determined by Innovatus. If the loaner coil is not delivered back to Innovatus within thirty (30) calendar days (and upon payment of the loaner coil will become the property of [Customer]).
- c. **Charges for Loaner.** Repairs not Authorized. If [Customer] does not authorize Innovatus to complete the repairs on the defective probe or coil in accordance with the Preliminary Repair Quote or an Updated Repair Quote, [Customer] will be charged the applicable loaner fee for the use of the loaner. In addition to the loaner fee, if [Customer] fails to deliver the loaner back to Innovatus within **five (5) business days** following [Customer]'s failure to authorize the repairs, Customer will be charged as follows:
 - i. **Probes.** \$150 per calendar day (commencing on the **fifth (5th) business day** after failure to authorize the repairs) if the loaner probe is not delivered to Innovatus within thirty (30) calendar days after failure to authorize the repairs, or
 - ii. The full value of the loaner probe if the loaner probe is not delivered to Innovatus within such thirty (30) calendar days (and upon payment of the full value the loaner probe will become the property of [Customer]).
 - iii. **MRI Coils.** \$500.00 flat fee, plus \$150 per calendar day if the loaner coils is not delivered back to Innovatus within **five (5) business days** upon receipt of the repaired defective coil, or
 - iv. The full value of the loaner coil as determined by Innovatus. If the loaner coil is not delivered back to Innovatus within thirty (30) calendar days (and upon payment of the loaner coil will become the property of [Customer]).
- d. **Damage to Loaner.** In addition to the charges in Sections 4(b) or (c), if upon inspection by Innovatus, a loaner delivered back to Innovatus is determined to be damaged or in need of repair or replacement, Innovatus will invoice [Customer] in an amount equal to the amount (not less than zero) by which [1] the lower of (i) the Innovatus repair List price for the probe or coil, if repairable, or (ii) the full value of the loaner as determined by Innovatus exceeds [2] the amount already paid in accordance with Sections 4(b) or (c).

5. **Delivery.**

- a. **Deliveries to [Customer].** Unless otherwise set forth in a Quote, all deliveries to [Customer] will be F.O.B. Origin addressed to [Customer]'s ship to address specified in the Agreement.
- b. **Deliveries to Innovatus.** Prior to delivery of a probe or coil (exchange, loaner, and warranty claim) to Innovatus, [Customer] will obtain an RMA# from Innovatus for the delivery of the probe or coil. Unless otherwise set forth in RMA, all deliveries to Innovatus will be F.O.B. Destination (except deliveries of probes subject to warranty claims will be F.O.B. Origin) addressed to Innovatus' ship to address specified in the Agreement. The RMA # will be clearly visible on the box.
- c. **Shipping fees for cancelled order.** If an order is cancelled and a loaner was shipped Innovatus Imaging requires a P.O. to bill for the loaner fee, the shipping costs of the loaner and the return of the damaged product.

6. **Pricing, Invoices, and Payment.**

- a. **Pricing.** Pricing for repairs, sales, and services will be set forth in the applicable Quote. All pricing is subject to change based on availability. The pricing for repairs, sales, and services provided under the Quote may reflect or be subject to discounts, rebates, or other price reduction programs.
- b. **Invoices and Payment.** All invoices are due net 30 calendar days on the total invoiced amount. No other payment terms will be permitted unless approved in writing by Innovatus.

- 7. **Orders, Quotes, and other Notices.** All orders, Quotes, and other notices or communications contemplated in the Agreement shall be in writing and shall be deemed effective when delivered to the address provided in the Agreement. [Customer] and Innovatus each may specify a different address by giving notice to the other.

8. Warranty; Exclusions; Limitation of Liability.

a. **Warranty.** Unless otherwise specified by Innovatus in writing, Innovatus warrants that the specific repair performed by Innovatus and/or any new or replacement probe and coil sold to or exchanged with [Customer], will be free from defects in workmanship or material under proper, normal use for the following periods from the date Innovatus delivers either the probe, or coil that is repaired by Innovatus back to [Customer] or delivers [Customer] the new or replacement probe, or coil. During the warranty period, there shall be no charge to [Customer] for any action deemed necessary by Innovatus, including parts, travel, or labor to fulfill the terms of the warranty, during normal business hours (8:00 a.m. to 6:00 p.m. EST/EDT, Monday through Friday, except holidays). If it is determined the defect or problem is not directly related to a specific repair performed and warranted hereunder, or if the defect or problem is a result of misuse or abuse, Innovatus shall at [Customer]'s option: (i) repair the probe, or coil and charge [Customer] Innovatus' agreed upon price for the repair, (ii) deliver the probe or coil to [Customer] unrepaired, or (iii) source a replacement product at current market price.

- i. 180 calendar days for TEE, 3D/4D mechanical, and 3D/4D or Matrix solid state probes
- ii. 365 calendar days Standard probes
- iii. 180 calendar days MRI Coils

b. **Exclusions.** EXCEPT AS PROVIDED IN SECTION 8(a), INNOVATUS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED.

c. **Limitation of Liability.** IN NO EVENT SHALL INNOVATUS BE LIABLE FOR ANY LOST PROFITS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR OPERATION OF INNOVATUS' PROBES OR COILS OR FOR ANY REPAIRS OR OTHER SERVICES. IN NO EVENT IS INNOVATUS RESPONSIBLE FOR DAMAGES THAT EXCEED THE PAYMENT, IF ANY, RECEIVED BY INNOVATUS FOR THE PROBE OR SERVICE FURNISHED, OR TO BE FURNISHED, PURSUANT TO THE AGREEMENT. Some states do not allow the exclusions on limitation of incidental or consequential damages, so the above limitations may not apply. [CUSTOMER] AGREES THAT INNOVATUS' LIABILITY HEREUNDER FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY [CUSTOMER] TO INNOVATUS FOR THE PROBE AND SERVICE UNDER THE APPLICABLE QUOTE. [Customer] and Innovatus agree that amounts stated herein are fair under the circumstances and that the prices charged by Innovatus to [Customer] reflect such limitation of liability.

9. **Indemnity.** On demand, [Customer] agrees to defend, indemnify, and hold Innovatus harmless from all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities, and expenses (including reasonable legal fees and expenses) asserted by Innovatus or its employees (former and current employees) or any third-party arising out of, resulting from, or caused by [Customer], its suppliers, subcontractors, agents, or any of its former and current employees resulting from [Customer]'s (i) acts or omissions, and (ii) breaches of this Agreement or (iii) violation of applicable laws.

10. Miscellaneous.

- a. **Subcontracting.** Innovatus may subcontract any of the services it is obligated to perform pursuant to the Agreement without the prior consent of [Customer].
- b. **Force Majeure.** Innovatus will not be responsible for delays or non-performance directly or indirectly caused by any acts of God, fire, explosion, war, accident, action by governmental authority, inability to procure supplies and raw materials, delays in transportation, work stoppage, court order, and other causes beyond Innovatus' reasonable control.
- c. **Governing Law and Jurisdiction.** The Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, United States of America, not including its principles of conflicts of laws. Innovatus and [Customer] each hereby: (a) agrees that any suit or proceeding may be brought in any state or federal court of competent jurisdiction sitting in Pittsburgh, Pennsylvania, and submit to the jurisdiction of such courts, and (b) waives any objection to the laying of venue, any claim that such litigation has been brought in an inconvenient forum, and any objection that such court does not have jurisdiction over either party.
- d. **HIPAA.** Innovatus represents that it is not a Business Associate as defined in the Health Insurance Portability and Accountability Act ("HIPAA") implementing regulations, found at 45 CFR § 160.103. The functions Innovatus is required to perform hereunder do not involve the creation, receipt, maintenance, transmission, use, or disclosure of Protected Health Information ("PHI"). To the extent any creation, receipt, maintenance, transmission, use, or disclosure of PHI does occur, it is covered under the incidental disclosure rule found in 45 CFR 164.502(a)(1). In addition, to the extent any incidental disclosure occurs, Innovatus agrees to keep all such information confidential.