

General Terms for the Vitrolife Group's Incubator System Services (EmbryoScope and CulturePro systems)

1. Scope

- 1.1 All maintenance and repair (the “**Services**”) of EmbryoScope and CulturePro systems carried out by or on behalf of the contracting Vitrolife company (“**Vitrolife**”) shall be subject to these General Terms (the “**General Terms**”). Opposing or deviating conditions to these General Terms are only applicable if explicitly accepted by Vitrolife in writing.
- 1.2 Vitrolife’s obligation to provide the Services shall apply only to the instrument (the “**Instrument**”) for which the customer (“**You**”) has paid the periodic service fee (the “**Service Fee**”), and only for the period of time for which the Service Fee has been paid.

These Terms and Conditions supersede all prior representations, warranties, communications and agreements regarding the Incubator System Services between Vitrolife and You. Any conditions contrary to the content of these Terms and Conditions shall be excluded and of no force or effect. In the event of discrepancy between Vitrolife's order confirmation and these Terms and Conditions, the wording in the order confirmation shall take precedence. Vitrolife may at any time change these Terms and Conditions with effect for orders confirmed after such change.

2. Services

- 2.1 The Services shall consist of the following, subject always to Section 2.2:

- a. For **EmbryoScope** systems: *on-site scheduled maintenance* consisting of annual preventive maintenance service calls, according to the service manual, which will include calibration of the Instrument and replacement to the extent necessary of limited lifespan parts. Replaced parts shall be the property of Vitrolife. Vitrolife will replace the limited lifespan parts with parts that are identical or equivalent to the parts being replaced.
 - b. For **CulturePro** systems: *on-site scheduled maintenance* consisting of annual preventive maintenance service call according to the service manual which will include calibration of the Instrument, replacement to the extent necessary of limited lifespan parts, and supply of a filter package for replacement in the Instrument by Your own staff six months after last Vitrolife on-site visit. Replaced parts shall be the property of Vitrolife. Vitrolife will replace the limited lifespan parts with parts that are identical or equivalent to the parts being replaced.
 - c. *repair of defects* in the Instrument including replacement of defective parts. The typical on-site response time will be maximum 72 hours in Europe and 96 hours outside of Europe (not including weekends or local holidays).
 - d. *24 hours service hotline* supplied by English speaking staff on an international telephone number.
 - e. *email support* in English. Response time 48 hours (not including weekends or local holidays).
 - f. *software-upgrades*, i.e. improvements or changes to the basic functionality of the software originally supplied with the Instrument, where deemed necessary by Vitrolife. Software changes that introduce new functionalities to the original software shall not be part of the Services.
- 2.2 For EmbryoViewer workstation and ES server computer Instruments all Services shall cease after five (5) years from installation date of the first installation or from replacement, but never more than 10 years in total from installation of the first such Instrument. When ten (10) years have passed from the date of the first installation of an Instrument, all of the Services shall cease.
- 2.3 Vitrolife is committed to service and maintain the Instrument in accordance with the market’s needs and requirements. Consequently, Vitrolife may – without reducing the quality of the Services – amend the Services when deemed reasonably necessary by Vitrolife. You will receive notice of any such amendment.

2.4 If You want to require Services for an Instrument that has not been serviced and maintained by Vitrolife continuously since its first installation, Vitrolife reserves the right to carry out an inspection of the Instrument at Your expense. Based on the inspection Vitrolife will inform You to what extent prior repair and maintenance is required in order for Vitrolife to accept the performance of future Services for that Instrument.

3. **Work not included in the Services**

3.1 The following work is not included in the Services:

- a. repair of damage, defects or malfunctioning in the Instrument or its parts caused by (i) accident, abuse, misuse, or misapplication of the Instrument or its parts by You or any third party; (ii) service or maintenance performed by anyone other than Vitrolife certified personnel; (iii) use in conjunction with equipment, parts, software or systems not manufactured by or not approved in writing by Vitrolife; (iv) use and operation that does not comply with instructions provided in the operating manual; (v) changes made to the software or the configuration originally supplied with the Instrument; (vi) installation of other software programs than those originally supplied with the Instrument; (vii) force majeure incidents including without limitation lightning, flooding, war, terrorism, riots, or (viii) other causes outside of the Instrument such as power failure, hacking, malware, cyber-attacks, or defects in equipment connected with the Instrument even if Vitrolife has approved such connection.
- b. the loading or restoration of data lost. You are solely responsible for securing external back-up of all data stored in the Instrument.
- c. service relating to or necessitated by relocation of the Instrument even if Vitrolife has accepted such relocation.

3.2 Vitrolife will invoice You for work not included in the Services based on Vitrolife's actual expenses, including without limitation work and travel expenses. Vitrolife will charge its regular hourly fee for the employees, consultants or agents who provide the work. If possible, Vitrolife will provide You with an estimate prior to the performance of work not included in the Services.

4. **Preconditions for Service**

4.1 In order to enable Vitrolife to perform the Services You shall:

- a. continuously upload technical log-information from the Instrument to Vitrolife;
- b. grant remote and on-site access to the Instrument as required by Vitrolife. Vitrolife reserves the right to carry out preventive maintenance on the same day on all Instruments installed in the same clinic;
- c. immediately inform Vitrolife of problems or potential problems with the Instrument;
- d. allow Vitrolife to process data stored in the Instrument to the extent needed for remote and on-site evaluation, repair and maintenance of the Instrument, subject always to Section 9;
- e. provide complete information with regard to the circumstances surrounding Instrument failure;
- f. ensure that only persons fully trained in the operation of the Instrument use the Instrument; and
- g. appoint an English-speaking member of Your staff trained in the operation of the Instrument as the contact person for Vitrolife.

5. **Payment and Adjustment of Service Fee**

5.1 The Service Fee covers all costs for the performance of the Services including labor costs, all limited lifespan and spare parts, and travel expenses.

5.2 Vitrolife will invoice You for the Service Fee for a certain time period in advance (the "**Invoice Period**"). Payment terms are 30 days net. If the Service Fee for an Invoice Period has not been received in full by Vitrolife by the due date, then Vitrolife is under no obligation to perform any Services for that Invoice Period and Vitrolife may terminate the Services in accordance with Section 10.3. Any resumption of the Services shall be subject to payment of the due Service Fee and to the procedure described in Section 2.4.

5.3 The Service Fee is automatically adjusted on December 31 each year. Adjustment takes place in accordance with the annual increase (but not decrease) from October to October in the Danish net price index (nettoprisindeks) calculated by Statistics Denmark or an equivalent net price index generated by a public central authority in the country of the contracting Vitrolife company. In addition to the automatic adjustment, Vitrolife is entitled to increase the Service Fee each year for reasons of its own on the giving of three months' written notice, provided however, that if You do not accept such increase then You shall be entitled to terminate the Services with immediate effect.

6. Warranty

6.1 Vitrolife will complete or rectify free of charge any Services that have been performed defectively. Defects in the spare parts used in connection with the Services will be rectified or the spare parts will be exchanged at Vitrolife's costs except where the defect is a result of the conditions mentioned in Section 3.

6.2 The above warranty shall apply for 90 days after the performance of the Services that were defective or resulted in a defect.

7.1 Limitation of Liability

7.1 Under no circumstances shall Vitrolife be liable for any loss of profit, loss of production or any indirect, special, incidental, or consequential losses whatsoever, including without limitation loss of data, loss of goodwill, loss of contracts, or any additional treatments that You may offer to Your patients as a result of a delay in performance of the Services or a defect or alleged defect in the Instrument or in the performance of the Services.

7.2 In no event can Vitrolife's total liability exceed an amount corresponding to the annual Service Fee paid by You.

8. Subcontractors

8.1 Vitrolife may engage subcontractors in the provision of the Services. Vitrolife shall be responsible for the acts and omissions of its subcontractors to the same extent as had the Services been provided by Vitrolife itself.

9. Vitrolife's processing of data

9.1 In connection with the performance of the Services Vitrolife may get access to and process personal data (the "Data") stored in the Instrument for the purpose of evaluating the Instrument and performing repair and maintenance of the Instrument. The Data may include names, addresses, social security numbers and health information about Your patients and Your staff to the extent that such Data are stored in the Instrument.

Vitrolife's processing of the Data may include (i) access to Your Instrument through remote access tools upon Your express granting of access in each case, (ii) copying of software including copying of Data for off-line evaluation, repair, and maintenance of the software in the Instrument upon Your express consent in each case, and (iii) direct access to Your Instrument in connection with on-site visits.

In order for Vitrolife to comply with the rules of the EU Regulation 2016/679 of the European Parliament and the Council (the "GDPR") the following shall apply with regard to Vitrolife's processing of the Data:

A. You are the owner and data controller of the Data, and Vitrolife is the data processor processing the Data on Your behalf. As data controller You are responsible for ensuring compliance with the rules of the GDPR and/or corresponding rules applicable to You, including without limitation rules about the processing of data in the health care sector. Your responsibility includes, inter alia, ensuring that there is a valid legal basis for Your collection and processing of the Data and for Vitrolife's processing of the Data on Your behalf.

B. Vitrolife shall:

(i) only process Data in accordance with Your documented instructions and only for the purpose of evaluating the Instrument and performing repair and maintenance of the Instrument;

- (ii) take the measures required pursuant to Article 32 of the GDPR for implementation of appropriate technical and organizational measures to ensure a level of security appropriate to the risk, when taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons;
- (iii) ensure that the Vitrolife employees who are authorized to process the Data have undertaken to observe confidentiality or are subject to suitable statutory obligations of confidentiality;
- (iv) taking into account the nature of the processing, assist You, insofar as this is possible, by appropriate technical and organizational measures for the fulfilment of any obligation You may have to respond to requests for the exercise of the data subjects' rights pursuant to Chapter 3 of the GDPR;
- (v) assist You in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to Vitrolife;
- (vi) within reasonable time upon Your request make available to You all information necessary to demonstrate Vitrolife's compliance with its obligations under Article 28 of the GDPR including without limitation a description of Vitrolife's technical and organizational security measures implemented pursuant to Article 32; and
- (vii) allow for and contribute to audits, including inspections, conducted by You or another auditor mandated by You.

9.2 Vitrolife may choose to engage a third party as sub-processor of the Data, and You hereby give Vitrolife a general authorization to engage such sub-processor. Vitrolife shall enter into a written contract with such sub-processor imposing the same obligations upon the sub-processor as are imposed upon Vitrolife so that the sub-processor's processing will meet the requirements of the GDPR. Vitrolife remains fully liable to You for the performance of the sub-processor's data protection obligations in accordance with these General Terms. Vitrolife shall inform You of any intended changes concerning the addition or replacement of sub-processors, thereby giving You the opportunity to object to such changes. If You object to Vitrolife's addition or replacement of a sub-processor, Vitrolife may through written notice to You terminate the Services with effect from the end of the Invoice Period for which the Service Fee has been paid.

9.3 Vitrolife shall not be entitled to transfer Data to international organisations and third countries outside of the EU or the European Economic Area except to the extent permitted by the GDPR and applicable EU member state law, provided however that Vitrolife shall always be entitled to return processed Data to You.

9.4 Vitrolife will delete the Data when the purpose of the Data processing, cf. Section 9.1, is accomplished. Under no circumstances shall Vitrolife process any Data after the termination of the Services by You or by Vitrolife.

10. Term, Termination and Suspension

10.1 You may terminate the Services for any Instrument without cause on the giving of three (3) months' written notice till the last day of an Invoice Period. If You do not terminate the Services, Vitrolife will automatically invoice You for a new Invoice Period.

10.2 You may terminate the Services with immediate effect (a) in accordance with Section 5.3; or (b) in case of Vitrolife's substantial or repeated breach of its obligations under these General Terms provided that Vitrolife does not remedy such breach within two (2) weeks after having received a written notice from You requesting such remedy. If the termination under this Section 10.2 is effected during an Invoice Period, a proportionate amount of the Service Fee paid for that Invoice Period shall be repaid to You.

10.3 Vitrolife may terminate the Services with immediate effect if You do not pay the Service Fee on time, cf. Section 5.2, provided that Vitrolife have sent You a prior written notice indicating that the Services will be terminated if You do not pay the Service Fee within a time period of minimum two (2) weeks.

If Vitrolife deems that the safety for its personnel can not be guaranteed during on-site maintenance, Vitrolife may, at its own discretion, suspend the services until the safety of its personnel can be guaranteed. Should the duration of such circumstances leading an unsafe situation last for more than six (6) months, Vitrolife may terminate the Services with three (3) months written notice.

10.4 All Services for an Instrument shall be automatically terminated when ten (10) years have passed from the date of the first installation of an Instrument.

11. **FORCE MAJEURE**

Neither Party shall be responsible to the other for any failure or delay in performing any of its obligations under this Agreement or for other non-performance hereof, except payment of Services ordered, if such delay or non-performance is caused by strike, stoppage of labour, lockout or other labour trouble, fire, flood, riot, civil commotion, accident, act of any governmental or local authority, pandemic or terrorism or of the public enemy, or by any other cause beyond the reasonable control of that Party.

The Party that is prevented to perform under due to force majeure shall immediately inform the other Party.

Should hindrance due to a force majeure situation continue for more than ninety (90) days, the other Party as its sole remedy shall have the right to terminate the Services with immediate effect.

12. **Governing law and Jurisdiction**

12.1 These General Terms shall be governed and constructed in accordance with the laws applicable at the contracting Vitrolife company's domicile. All disputes arising from or in connections with contracts to which these General Terms apply shall be finally settled in the courts having jurisdiction at the contracting Vitrolife company's domicile. Vitrolife may also bring proceedings before any competent court having jurisdiction over You.

Vitrolife Group
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