



bioMérieux Service Terms & Conditions

Interpretation

1. In these conditions:

"bioMérieux" means bioMérieux Australia Pty Limited, ABN 18 007 122 527;

"Business Hours" means 9am to 5pm Monday to Friday excluding scheduled public holidays;

"Contract" means these terms and conditions together with any quotation, tender, invoice or mutually agreed document amending or further defining the terms which refer to the *services* or goods;

"Buyer" means the owner or renter of the Instruments;

"Instrument(s)" means diagnostic instruments purchased or rented from bioMérieux;

"Operator's Manual" means the official bioMérieux printed operator instructions or equivalent manual on CD;

"Preventative Maintenance" means the provision of technical advice, support and where appropriate, supply of Spare Parts and servicing including testing, cleaning, lubricating, repairs and adjustments as shall be necessary to keep the Instrument in good working order;

"Remedial Maintenance" means the provision of technical advice, support, parts replacement and repair when the Instrument is malfunctioning or inoperable as a result of ordinary use and shall include the cost of all Spare Parts, labour and expenses (depending on Service Agreement Level);

"Service" means Remedial Maintenance and/or Preventative Maintenance as appropriate;

"Spare Parts" means all parts and materials supplied by bioMérieux in the course of carrying out Service.

General

2. These terms and conditions (which may be amended only in writing signed by bioMérieux) apply to any quotation or tender issued by bioMérieux for maintenance and any order placed by the Buyer for maintenance of the Instrument(s) and shall at all times prevail over any and all other conditions of a Buyer's order to the extent of any inconsistency.

Duration of quotations

3. Unless previously withdrawn, bioMérieux's quotation is open for acceptance within the period stated in it or, when no period is stated, within thirty (30) days only after its date.

Term

4. This Contract is effective from the commencement date and for the period indicated.

Eligibility

5. The Instrument(s) to be maintained under this Contract must have been supplied by bioMérieux.

Place of contract

6.1 This Contract is made in the state in Australia in which the order is accepted but which in any case of doubt shall be New South Wales.

6.2 This Contract will be governed by and construed according to the law of the state where the contract is made and where applicable the law of the Commonwealth.

7. In respect of a:

7.1 Level 2 Service Contract

7.1.1 Service includes all Spare Parts, labour and expenses associated with Preventative Maintenance visit(s), and any Remedial Maintenance visits.

7.1.2 bioMérieux shall provide telephone assistance 24 hours a day, 7 days a week, at no additional charge. Remedial Maintenance support will be provided on weekdays (Monday to Friday), with weekend support limited to critical breakdowns only. bioMérieux shall make every reasonable effort to respond to a request for Remedial Maintenance as soon as possible from the time of request.

7.1.3 Normally, bioMérieux authorised personnel will respond to calls in person. However, where the laboratory is situated greater than 100 kilometres from a bioMérieux office, bioMérieux may request that the Buyer carry out minor adjustments or minor part replacement under guidance.

7.1.4 All Spare Parts will be furnished on an exchange basis and will be new standard, equivalent refurbished parts, or parts of equivalent quality. All parts removed from the Instrument(s) become the property of bioMérieux.

7.1.5 bioMérieux will install, at its option, appropriate engineering changes to the Instrument(s) if in the opinion of bioMérieux an engineering change is necessary to maintain the Instrument(s) in good operating condition.

7.2 Level 1 Service Contract

7.2.1 bioMérieux will provide Preventative Maintenance service to include labour, travel, expenses, and Spare Parts deemed necessary by bioMérieux during Business Hours.

7.2.2. bioMérieux shall install, at its option, appropriate engineering changes to the Instrument(s). If bioMérieux is denied access during normal Business Hours and if in the opinion of bioMérieux an engineering change is necessary to maintain the Instrument(s) in good operating condition, access during non-business hours shall be charged at the then prevailing bioMérieux out of Business Hours service rate including travel and labour rates.

7.2.3 If the Customer chooses not to subscribe to the company's remote support tool, ViLink, or does not provide access to any alternative form of remote support, a surcharge may apply.

Access To Instrument(s)

8 The Buyer shall provide bioMérieux full and free access to the Instrument(s) at any time for the purpose of providing Service.



bioMérieux Service Terms & Conditions

Buyer's Duties

9. The Buyer shall:

- 9.1.1 be responsible for procurement of supplies at its expense necessary for the proper operation of the Instrument(s);
- 9.1.2 not perform or attempt to perform maintenance or repairs to the Instrument(s) other than that outlined in the Operator's Manual (during the Term) unless in accordance with the strict guidance of a bioMérieux field service engineer; and
- 9.1.3 be responsible for all charges at the prevailing bioMérieux per-call rates for responses to a call for Remedial Maintenance. (Unless a Level 2 Service Agreement is in effect)

Exclusions

- 10.1 bioMérieux shall not be obliged to provide Service under this Contract if the Instrument(s) has (have) been modified without bioMérieux's written approval, or used without following the procedures outlined in the Operation's Manual, or subjected to unusual stress.
- 10.2 bioMérieux shall be under no obligation to provide Service if:
 - 10.2.1 the Instrument(s) has been subjected to an accident or damage from neglect, misuse, failure of electrical power, storm damage, flood and water damage, lightning strike, air conditioning, humidity control, or any other cause whatsoever other than ordinary use; or
 - 10.2.2 the Instrument is maintained or repaired, or if attempts to repair or service the Instrument are made by other than bioMérieux personnel, except under the strict guidance of a bioMérieux field service engineer; or
 - 10.2.3 the Instrument is relocated without written approval of bioMérieux.
 - 10.2.4 if maintenance other than routine cleaning and service described in the Operator's Manual is required as a result of any such cause the service will be subject to bioMérieux applicable per-call travel and labour rates and terms then in effect.
- 10.3 Service shall not include:
 - 10.3.1 operating supplies or accessories (e.g. Printer, printer ribbon, or cartridges, backup media etc), painting or refinishing the Instrument;
 - 10.3.2 electrical work external to the Instrument or maintenance of accessories, alterations, attachments, or other devices not provided by bioMérieux, unless previously and specifically agreed.

Passing of Risk

- 11. The risk in any Spare Parts and liability for any damage shall pass to the Buyer immediately the Spare Part leave the premises of bioMérieux or of any sub-contractor for delivery to the Buyer

Delivery of Services or Goods

- 12.1 Lead and delivery times for Service made known to the Customer are estimates only and bioMérieux is not liable for late delivery or non-delivery.

- 12.2 bioMérieux is not liable for any loss, damage or delay occasioned to the Customer or its customers arising from late provision or non-delivery of the Maintenance.

Limitation of Liability

- 13.1 bioMérieux's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the Trade Practices Act 1974 (other than s 69) is limited to:
 - 13.1.1 in the case of goods, anyone or more of the following:
 - 13.1.1.1 the replacement of the Goods or the supply of equivalent goods;
 - 13.1.1.2 the repair of the goods;
 - 13.1.1.3 the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - 13.1.1.4 the payment of the cost of having the Goods repaired; or
 - 13.1.2 in the case of services:
 - 13.1.2.1 the supplying of the Services again; or
 - 13.1.2.2 the payment of the cost of having the Services supplied again.
- 13.2 Where the goods are not manufactured by bioMérieux the guarantee of the manufacturer of those goods is accepted by the Customer and is the only guarantee given to the Customer in respect of the goods. bioMérieux agrees to assign to the Customer on request made by the Customer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to bioMérieux under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- 13.3 bioMérieux is not liable for and the Buyer releases bioMérieux from any claims in respect of faulty or defective goods based on specifications supplied by the Buyer unless such specifications have been wholly prepared by bioMérieux and the responsibility for any claim has been specifically accepted by bioMérieux in writing. In any event bioMérieux's liability under this paragraph is limited strictly to the replacement of defective goods in accordance with para 13.1 of these conditions.
- 13.4 Except as provided in these conditions and the extent allowable by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the services or goods for any purpose or as to design, materials, workmanship or otherwise are expressly excluded. bioMérieux is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply of the Service or Spare Parts, arising out of bioMérieux's negligence or in any way whatsoever.
- 13.5 The Buyer is solely responsible for the proper backup and protection of all of its software and data, as well as the implementation and maintenance of firewalls and security measures (including proper virus control) in relation to any computer programmes or software supplied.



bioMerieux Service Terms & Conditions

- 13.6 The Buyer shall be solely responsible for ensuring that the laboratory is equipped with a stable and compliant power supply necessary for the proper operation of the equipment. The Buyer is also responsible for providing appropriate power supply to the supplier-provided UPS units, as well as managing their setup and workflow to ensure optimal equipment performance and protection.
- 13.7 bioMerieux reserves the right to terminate this Agreement in the event that the covered instrument exceeds ten (10) years of age and the cost of repair is determined to exceed the value of the contract. In such cases, a pro rata refund of the contract amount will be issued, calculated from the effective date of termination.
- 13.8 bioMerieux reserves the right to decline the offering of a service contract for instruments that have exceeded their useful life.

Prices

- 14.1 Unless stated as being fixed, Prices quoted are those at the date of issue of an invoice or where no invoice has been issued then on the acceptance of an order by bioMerieux.
- 14.2 Prices listed by bioMerieux are subject to variation without notice.

Payment

- 15.1 Unless otherwise agreed by bioMerieux in writing or stated on an invoice, all invoices issued by bioMerieux to the Buyer are payable thirty (30) days net commencing from the date of the invoice.
- 15.2 If the Buyer fails to pay by the due date or any cheque, credit card or other form of payment by the Buyer or by any third party is dishonoured:
- 15.2.1 bioMerieux may refuse to supply any further Service or Spare Parts until satisfactory payment is received in full; and
- 15.2.2 bioMerieux is entitled to treat the dishonour of the Buyer's payment as a repudiation of this Contract and to elect between terminating the Contract or affirming it, and in each case, claiming and recovering from the Buyer, compensation for loss or damage suffered.
- 15.3 If bioMerieux is not paid for any Service or Spare Parts on the due-date for payment, without prejudice to any other right or remedy:
- 15.3.1 all outstanding money carries interest on daily balances until paid at a rate of interest per annum equal to 3% in excess of the interest rate charged by bioMerieux's principal bankers on overdraft accounts for sums up to \$100,000;
- 15.3.2 bioMerieux may recover the price of the Service or Spare Parts together with all interest forthwith from the Buyer as a liquidated debt in a court of competent jurisdiction irrespective of any claim that the Buyer may have against bioMerieux for any thing or matter related to the supply of them.
- 15.4 Notwithstanding termination of this Contract for any reason by bioMerieux the Buyer shall remain liable and pay to bioMerieux all amounts owing and unpaid to it as at the date of termination.

Changes in Requirements

- 16.1 bioMerieux's prices for providing the Service are based on bioMerieux's estimates to meet the Buyer's requirements set out in the Contract. In the event there are any adjustments to those requirements or additional work is required to be undertaken by bioMerieux in excess of that set out in the Contract, bioMerieux reserves the right to charge its usual hourly rates for any such additional work payable by the Buyer in addition to those amounts stated in the Contract.
- 16.2 Notwithstanding anything else contained in the Contract, bioMerieux shall not be under any obligation to accept any changes once it has placed an order for any Spare Parts required to fulfil the Contract.
- 16.3 No error or misdescription by the Buyer shall vitiate a contract between bioMerieux and the Buyer for the supply of Service and for Spare Parts and the Buyer shall be bound to accept the Service and take any Spare Parts or other items produced by bioMerieux and pay for them without deduction or set-off of any kind.

Goods and Services Tax

- 17.1 In this clause a reference to the GST Act is a reference to A New Tax System (Goods and Services Tax) Act 1999 as amended.
- 17.2 Words and terms used in this clause where they are defined in the GST Act shall have those meanings.
- 17.3 Unless specifically described as including GST all fees, rates, charges and prices indicated in this Agreement are exclusive of GST.
- 17.4 The Buyer must pay to bioMerieux in respect of any taxable supply made to the Buyer any GST which is payable by bioMerieux on that taxable supply.
- 17.5 bioMerieux will provide the Buyer with a Tax Invoice which may be issued in addition to any other invoice for that taxable supply.
- 17.6 The GST must be paid at the same time as the payment of the fees, prices, charges or any other amount is payable in respect of the taxable supply.

Waiver

18. If bioMerieux shall grant to the Buyer any extension of time or other indulgence, the same shall not in any way affect or prejudice the rights of bioMerieux under the Contract except to the extent of the specific extension or indulgence.

Severability

19. If any provision of the Contract is deemed by a court of law to be void, invalid or unenforceable then such provision shall be severed from the Contract & the remaining provisions shall remain in full force and effect.

Separate Contract

20. Each order agreed between bioMerieux and the Buyer constitutes a separate contract for the provision of Service or supply of Spare Parts and unless otherwise permitted in the Contract, the breach of any one such contract shall not be ground for the termination of any other contract so formed between the parties.



bioMérieux Service Terms & Conditions

Force Majeure

21. If by reason of any fact, circumstance, matter or thing beyond the reasonable control of bioMérieux or the Buyer either is unable to perform in whole or in part any obligation in the Contract, that party is relieved of their obligations to the extent and for the period that it is so unable to perform and is not liable to the other party in respect of such inability except that an obligation to pay money is never excused by such circumstances.

Confidentiality

22. Each party undertakes to treat as confidential and keep secret all Confidential Information of the other party and any disclosures may only be made with the prior written consent of the other party.

Termination

23. This Agreement may be terminated in the following circumstances:
- 23.1 Immediately by bioMérieux, by notice in writing, if the Buyer fails to remedy a breach of this Agreement (including any provision as to payment) within fourteen (14) days of receipt of a notice from bioMérieux of such breach requiring it to do so; or
- 23.2 By either party immediately, by notice in writing, if the other party takes any corporate action or other steps are taken or legal proceedings are started (and are not withdrawn, discontinued or struck out within twenty-one days) for its winding up, liquidation or dissolution (other than for the purposes of reconstruction) or the appointment of an administrator, receiver, receiver and manager, official manager, Liquidator, provisional Liquidator, trustee or similar office of it or of any or all of its revenues and assets ("Insolvency Event"), and such Insolvency Event remains in existence in respect of such party at the time of service of the Notice.
- 23.3 On termination of this Agreement however occurring, all moneys unpaid by the Buyer pursuant to this Agreement will immediately become due and payable.

Assignment

24. The Buyer may not assign any of its obligations under this Agreement without the prior written consent of bioMérieux. However bioMérieux may arrange for subcontractors to perform any of bioMérieux's obligations under this Agreement.

Notices

25. Any notice required or contemplated by this Agreement shall be deemed to have been duly given if it is in writing, properly addressed and delivered personally or mailed by registered or certified mail, postage prepaid addressed or by fax or electronic mail to the Buyer or bioMérieux at the address set out in the Schedule or this Agreement or such other address nominated by a party in writing.



bioMérieux Service Terms & Conditions

TABLE 1 – Service Inclusions

		Service Agreement Options			
		Warranty ¹	Level 1 ²	Level 2	No Service Agreement ²
1	1.1. All software updates	No charge	50 % discount off List Price	No charge	List Price
2	Preventative maintenance visit(s) ³				
	2.1 FSE ⁴ travel expenses	Chargeable	No charge	No charge	List Price
	2.2 FSE Labour costs	Chargeable	No charge	No charge	List Price
	2.3 Equipment parts	Chargeable	No charge	No charge	List Price
	2.4 Number/ YEAR variable by System	< >	< >	< >	List Price
3	Hotline 24/7				
	3.1 Helpdesk System Application troubleshooting via telephone (9:00am - 5:00pm (EST) MON to FRI)	No charge	No charge	No charge	List Price (min 1 hour)
	3.2 24/7 FSE telephone support	No charge	No charge	No charge	List Price (min 1 hour)
	3.3 Tele diagnostics troubleshooting instrumentation. Only applicable if connected to VILINK	No charge	No charge	No charge	List Price (min 1 hour)
4	Short Term On Site Repair				
	4.1 System Application troubleshooting On-site within 2 business days (16 business hrs) 9:00am - 5:00pm Monday - Friday	No charge	25% discount on list price	No charge	List Price (min 2 hour)
	4.2 System Application breakdown repair - On site within 2 business days (16 hours) 9:00am - 5:00pm Monday - Friday	No charge	25% discount on list price	No charge	List Price (min 2 hour)
	4.3 FSE Travel Expenses	No charge	25% discount on list price	No charge	Travel time rate List Price + expenses (min 2 hour)
	4.4 FSE Labour costs	No charge	25% discount on list price	No charge	List Price (min 2 hour)
	4.5 Spare parts	No charge	List Price	No charge	List Price
	4.6 Other FSE Expenses	No charge	Chargeable	No charge	Chargeable
5	VILINK Connectivity – Software Licence				
	5.1 For Compatible instruments	Included No Charge	Chargeable	Included No Charge	Chargeable
6	Loan Instrument				
	For BIOFIRE FILMARRAY®, SPOTFIRE® and GENE-UP® Systems only, if the instrument is deemed to need repairs a loaner will be provided	No charge	Chargeable	No charge	Chargeable

- Warranty Agreement:** Note If Preventative Maintenance is required during the warranty period, bioMérieux recommend purchase of a Level 1 agreement in conjunction to the Warranty. The Level 1 agreement includes Preventative Maintenance. If the level 1 option is not selected during the warranty period, List Price will be charged for any scheduled Preventative Maintenance. In this case a Purchase Order is required prior to completion of the Preventative Maintenance.
- Chargeable event:** A purchase order is required prior to scheduling of each chargeable service event. All parts, travel (flights & car hire) & expenses (accommodation, meals etc) are invoiced at the prevailing rates. Discounts as stated in the table above apply to the current hourly travel time & labour rates. There is a minimum charge of 2 hours at the stated hourly rates, plus actual travel expenses for on-site visits.
- Preventative Maintenance** - The requirement for, and frequency of Preventative Maintenance is dependent on the instrument type.
- FSE** = Field Service Engineer.
- Additional fees will apply for any on-site service performed outside of normal business hours unless otherwise negotiated.
- GST will be charged if and when applicable, in addition to the amounts quoted.