

Hologic Breast & Skeletal Health Billable Services Terms and Conditions (US Customers)

These Hologic Breast & Skeletal Health Billable Services Terms and Conditions (“Terms”) set forth the conditions under which Hologic Sales and Service, LLC (together with its subsidiaries and affiliates, “Hologic”) will provide time and materials repair and maintenance services on Customer’s Hologic manufactured or licensed equipment (“Equipment”). Hologic and Customer may hereinafter be referred to individually as a “Party” and collectively as the “Parties.” The Parties, intending to be legally bound, agree as follows:

- 1. General.** These Terms supersede all other quotations, agreements, understandings, warranties and representations (whether written or oral) between the Parties with respect to the subject matter set forth in this Agreement. Any Customer documentation (including Customer’s purchase order terms and conditions) that conflicts with or attempts to modify these Terms in any way is hereby rejected and of no effect unless specifically agreed to in writing and signed by the Parties.
- 2. Billing and Payment.** Services and parts will be billed at the prevailing rates on the date such services and parts are provided. Hologic will remit invoice(s) to Customer and payment shall be made upon receipt of invoice. Hologic may charge monthly interest at the maximum rate permitted by law on all amounts not paid by the invoice due date until all such amounts are paid in full. Failure to make timely payment may result in suspension of services (in addition to other rights or remedies available at law or in equity) until all past due amounts are brought current. If Customer claims any tax exemption, Customer must furnish a valid tax exemption certificate to Hologic before delivery of services.
- 3. Parts.** Subject to availability, Hologic will provide all parts necessary to repair the Equipment at Hologic's then-current prices. Replacement parts for the Equipment will be supplied on an exchange basis, may be new or remanufactured, and are warranted to perform in accord with the manufacturer’s published product specifications for ninety (90) days from the date installed. Exchange parts removed from the Equipment shall become the property of Hologic.
- 4. Remote Access.** For some products, Hologic requires remote access to meet service response times and perform support services. Remote access is provided through Hologic Connect™, or other Hologic technology available at the time service is performed.
- 5. Data Backup.** Customer must backup all Customer data, such as patient data, prior to and during the provision of services. Hologic is not responsible for loss, corruption, recovery, storage, or backup of data.
- 6. Warranties and Exceptions.** Hologic warrants that the services provided hereunder will be performed by trained individuals in a professional workman-like manner. Hologic will promptly re-perform any non-conforming services at no charge as long as Customer provides written notice to Hologic within thirty days (30) from the date of performance. The foregoing remedy is Customer’s exclusive remedy and Hologic’s sole liability for warranty claims. **ALL WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED AND THOSE IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OR TRADE.**
- 7. Limitation of Liability.** Except for claims by Customer or third parties for bodily injury or damage to real property or tangible personal property caused solely and directly by the gross negligence or willful misconduct of Hologic or its authorized representatives, Hologic’s entire liability and Customer’s exclusive remedy for any damages incurred by Customer from any cause whatsoever, regardless of the form of action, whether liability in contract or in tort, arising from the services furnished hereunder or from any cause related thereto, shall not exceed an amount equal to the amount of the price, fee, or charge paid by Customer for the services provided herein. **IN NO EVENT SHALL HOLOGIC BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF GOOD WILL, LOSS OF PROFIT, LOSS OF USE, LOSS OF DATA OR INTERRUPTION OF BUSINESS, OR FOR ANY CLAIMS MADE MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION OCCURRED.**
- 8. Insurance.** During the performance of services hereunder, Hologic will maintain the following insurance coverages in amounts complying with applicable law: (a) worker’s compensation insurance covering its employees, agents or representatives; (b) general liability insurance covering the acts or omissions of Hologic and its employees, agents or representatives; and (c) products liability insurance. Hologic will provide a certificate of insurance to Customer upon request.
- 9. Delay of Performance.** Except for payment obligations, each Party’s obligations herein are subject to force majeure, including, but not limited to, civil insurrection, terrorism, fire, flood, labor disputes, shortages, delays of suppliers or contractors, or government priority systems, actions taken or threatened by any governmental agencies, unavailability of or disruptions in internet connections, acts of God or other contingencies or acts not within the sole control of a Party.
- 10. Compliance with Laws.** Hologic and Customer shall comply with all federal and state laws that govern the enforceability and performance under these Terms.
- 11. Governing Law.** These Terms are governed by the laws of the Commonwealth of Massachusetts without regard to any conflict of law principles to the contrary. The Parties specifically agree that any action relating to these Terms or the services and parts provided hereunder shall be brought and tried in State or Federal Courts located in Boston, Massachusetts. Customer hereby waives all objections to, and consents to, the venue and personal jurisdiction of such Courts.
- 12. Equal Employment Opportunity Policy.** **Hologic is an equal opportunity employer and federal contractor or subcontractor. Consequently, the Parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**