



NANOLIVE GENERAL TERMS AND CONDITIONS OF SERVICE PACKAGES

1. SCOPE OF APPLICATION

- 1.1. The following Terms & Conditions (hereinafter “**Service Package T&C**”) shall apply to all price lists, quotes, purchase orders, contracts, requests and all other sales of Services Packages (collectively the “**Orders**”) by Nanolive SA or its corporate affiliates (hereinafter “**Nanolive**”) from the contract partner (and the named Service recipient, if different) (hereinafter the “**Buyer**”, “**your**” or “**you**”) purchasing a Service Package for an Instrument identified by its serial number.
- 1.2. These Service Package T&C are the only terms and conditions applicable to the sale or other provision of Service Package to Buyer except any other terms included in the Orders, which terms will control in the event of any conflict with these Service Package T&C, unless otherwise agreed upon by Nanolive in a signed writing.
- 1.3. Nanolive's agreement to provide the services agreed in the Orders is conditioned on Buyer's assent to, and limited to Buyer's acceptance of, these Service Package T&C, thus constituting an agreement. Only these Service Package T&C shall apply to the provision of Services to the exclusion of any other terms and conditions which may have been stipulated by the Buyer and which are hereby expressly rejected by Nanolive. By placing an Order for the Service Package, the Buyer will acknowledge the sole and exclusive validity and applicability of these Service Package T&C if the Buyer does not expressly reject these Service Package T&C within 15 days from the Order.

2. DEFINITIONS

- 2.1. For the purposes of these Service Package T&C:
"Additional Service" means services provided by Nanolive not included in the Service Package and subject to a separate Quote.

"Business Hours" means Monday through Friday, excluding Nanolive observed holidays, and during normal working hours of 9:00am to 5:00pm Central European Time (CET) and 9:00am to 5:00pm Eastern Standard Time (EST).

"Consumables" collectively mean disposable material and any other consumable product manufactured and/or sold by Nanolive, which may be used in conjunction with an Instrument.

"Contract Period" means the duration of coverage for the Services as set forth in the Order.

"Contract Year" means a year of coverage for the Services.

"Critical Upgrade" means a recommended Hardware or Software upgrade where lack of the upgrade will materially impair Instrument usage.

"Critical Update" means a recommended Hardware or Software update where lack of the update will materially impair Instrument usage.

"Hardware" means the Products manufactured and/or supplied by Nanolive.

"Instrument" means an equipment, a system, or any instrument provided and/or manufactured by Nanolive and all operating systems or other Software, which may be embedded therein.

"Non-Critical Update" means any Hardware or Software update that is not crucial for its functionality.

"Non-Critical Upgrade" means any Hardware or Software upgrade that is not crucial for its functionality.

"On-Call Services" means remedial services, provided by Nanolive at Buyer's request, to inspect, evaluate and repair Instrument malfunctions.

"Preventative Maintenance Services" shall mean the number of scheduled standard

maintenance inspections to be provided on an Instrument as set forth in the Order.

“**Product**” shall mean a Consumable, an Instrument and/or a Software.

“**Quote**” shall mean the proposal for Services issued by Nanolive which sets forth Service Packages, Additional Services and specifications.

“**Services**” shall mean any installation, support, repair, training, On-Call Services or Preventative Maintenance Services provided by Nanolive pursuant to a Service Package to Buyer under these Service Package T&C.

“**Service Package**” shall mean the purchased service offering set forth in the Order and further detailed (<https://www.nanolive.ch/support/service-contracts/>). Service Packages may be subject to change or customization, at Nanolive’s sole discretion.

“**Software**” means all Nanolive proprietary computer programs, operating software, firmware or other software applications which are either embedded into an Instrument or provided as an application licensed to Buyer.

“**Software Update**” means a patch or minor improvement to a version of Software already installed on an Instrument.

“**Software Upgrade**” means a replacement of an older version of Software.

“**User Maintenance**” shall mean and include all standard and routine operator maintenance required to be performed by Buyer as set forth in the applicable instruction manual provided with or made available for each Instrument.

3. SERVICES

- 3.1. Nanolive agrees to provide the Services detailed in the Quote and defined in Appendix 1 during Business Hours. Services shall only be provided to the Instrument identified by its serial number in the Order.
- 3.2. Subject to the availability of personnel, Services out of Business Hours may be available upon request subject to an additional charge which shall be communicated to Buyer.
- 3.3. Buyer acknowledges that the Instruments may not be available for use during scheduled maintenance and Service visits and that Nanolive shall not be liable for such Instrument downtime.

3.4. Preventative Maintenance Services must be requested and scheduled directly by Buyer. If a Preventative Maintenance Services visit is not requested by the Buyer during a Contract Year, it is non-refundable and does not roll over to a next Contract Year.

3.5. As detailed in the Service Package, the place of performance for the Services shall be either remote, at the Buyer’s designated facility, the nearest Nanolive authorized service center, or such other place as determined by Nanolive in its sole discretion.

3.6. While every effort will be made to render Services promptly, Nanolive does not make any representation or make any commitment or guarantee regarding response time to Service requests or Instrument uptime minimums. Nanolive will use reasonable endeavors to respond to Service requests within 48 hours of receipt during Business Hours.

3.7. Unless otherwise agreed by the Parties, Services are not offered or provided on Consumables, reagents, or other third-party products not supplied by Nanolive.

4. ADDITIONAL SERVICES

4.1. Additional Services which are not otherwise included in the ordered Service Package may be provided by Nanolive at Buyer’s request. Such Additional Services shall be subject to a specific Quote which shall set out the following:

- 4.1.1. Nanolive’s then current time and rates and pricing for labor, travel and waiting time, travel expenses, parts and materials, shipping and packaging, installation of additional Instruments, modifications, and improvements, requested de-installation and re-installation, optional specific services, and
- 4.1.2. additional items, terms and conditions as relevant.

5. ORDER

- 5.1. All Orders, in any form whatsoever, are free of obligation and do not constitute an offer by Nanolive. All Quotes lapse after 30 days or the lesser period specified in the Quote.
- 5.2. An Order placed is considered an irrevocable offer by the Buyer. No Orders submitted by Buyer will bind Nanolive until accepted by Nanolive in writing, for example through an

acknowledgement of order (the "**Order Acknowledgement**").

- 5.3. The buyer may not cancel Orders for Service Contracts.

6. PRICING

- 6.1. All Service fees, as set forth in the Order, shall remain fixed for the duration of the Contract Period. Additional fees may be invoiced for Additional Services as required. All pricing for any agreed extension of the Contract Period shall be subject to change by Nanolive.

7. PAYMENT

- 7.1. Service Package invoiced to the Buyer shall be paid net, without deduction, at the latest on the due date by wire transfer on the bank account specified by Nanolive on the Order Acknowledgement and/or the invoice. With the prior approval of Nanolive, other payment modalities may be used (for example credit cards). In such a case, a 5% surcharge administrative fee will be added to the invoice.

- 7.2. Nanolive shall offer payment terms, pursuant to the conditions expressly set forth in Nanolive's Order Acknowledgement and/or invoice. Absent such due date in these documents, the payment term is 30 days net from the date of invoice.

- 7.3. Payments are not subject to setoff or recoupment for any present or future claim Buyer may have.

- 7.4. A 5% admin charge will be added for payments overdue by 7 days (i.e., 37 days after date of invoice). In addition, late payment interest penalty will accrue at the annual rate of 5% from the due date onwards pursuant to Article 104 of the Swiss Code of Obligations.

- 7.4.1. All Service fees are exclusive of any applicable sales tax, goods and services taxes, value added tax, or any similar taxes or other charges. The buyer is responsible for all taxes, duties, fees, and expenses imposed by any governmental entities, applicable to the Services furnished hereunder or in lieu thereof. Where the Buyer is exempt from such taxes, the Buyer shall provide Nanolive with a tax exemption certificate acceptable to and considered valid by the applicable taxing authorities prior to placing any Order.

- 7.5. If Buyer fails to make any payment when due, Nanolive may immediately suspend provision of Services. Nanolive will also be entitled to

reimbursement of any reasonable out-of-pocket expenses incurred in collecting payments due, including without limitation attorneys' and collections fees.

8. UPDATES AND UPGRADES

- 8.1. Critical Upgrades and Critical Updates will be offered to the Buyer within 10 days of release.

- 8.2. Non-Critical Updates will be provided at the next scheduled Software update and may not be scheduled outside of these times.

- 8.3. Non-Critical Upgrades will be provided as an Additional Service.

9. PRE-EXISTING CONDITIONS

- 9.1. Any Instruments which have not been maintained under a Nanolive [warranty](#) or previous Service Package by Nanolive immediately prior to the date of the Order, must be subject to inspection, certification and acceptance by Nanolive (which Nanolive will grant in its sole discretion) and, if necessary, repaired or reconditioned such that the Instrument meets the Nanolive standards for continued maintenance and support. Such inspections and repairs will be subject to Nanolive's then applicable service rates.

10. BUYER RESPONSIBILITIES

- 10.1. While the Instruments are covered by an applicable Service Package, the Buyer must always adhere to the following:

10.1.1. Ensure that the Instrument is always operated by trained personnel in accordance with the applicable instruction manual and best practices.

10.1.2. Perform all required User Maintenance and schedule periodic Preventative Maintenance Service visits with Nanolive.

10.1.3. Notify Nanolive as soon as possible through Nanolive's designated telephone support contact number at +41213530631 or by email at support@nanolive.ch of any malfunction or inoperability of an Instrument and promptly provide a full description including screenshots log files or photos where available of the fault or problem.

10.1.4. Buyer must provide Nanolive with ninety (90) days written notice of its

intent to move any Instrument and proceed as instructed by Nanolive.

- 10.1.5. Nanolive best practice recommendations as stated in the user guides.

11. SERVICE VISIT REQUIREMENTS

- 11.1. Prior to any service visit by Nanolive personnel, Buyer shall:
 - 11.1.1. Ensure that Nanolive has complete, accompanied access to the Instrument at the times mutually agreed and scheduled for the Service. Any delay or waiting time may be subject to additional fees.
 - 11.1.2. Provide required safe and functional working conditions and facilities (including heat, light, ventilation, and electrical supplies, telephone and communication access) for use by Nanolive personnel.
 - 11.1.3. Ensure that any third-party auxiliary equipment which is affixed to or positioned near the Instrument is removed or adequately protected. In the event of the failure of Buyer to remove or protect such auxiliary equipment, Nanolive shall not be responsible for any accidental damage thereto.
 - 11.1.4. Implement other necessary safeguards to protect all programming, programs, data, and other removable storage media before an Instrument is to be repaired. In the event of the failure of Buyer to implement such safeguards, Nanolive shall not be responsible for any accidental loss of data or functionality.
 - 11.1.5. At the time of service visit, notify Nanolive's personnel of any special safety or plant regulations in force at Buyer's premises or of any hazardous or dangerous environments within the vicinity of the Instruments and instruct and assist Nanolive's personnel to prevent exposure to them.

12. EFFECTIVE DATE & DURATION

- 12.1. A Service Package shall commence on the Instrument delivery date as stated in the Order and run for the number of years stated in the Order unless terminated earlier by either party

as provided in this Section 12. In cases where the Instrument requires assembly and installation the start date of a Contract Year for the Services may be postponed to a maximum of two (2) months after the Instrument delivery.

- 12.2. Buyer may purchase additional Contract Years under a new Order provided however that the Contract Years must be consecutive without interruption and may not exceed 5 years in total.
- 12.3. A Service Package may be terminated for convenience by Buyer at any time by providing sixty (60) days' notice to Nanolive. Unless otherwise agreed by the Parties, such termination will not entitle the Buyer to a refund of any Service fees already paid or due under the Order.
- 12.4. If either party commits a material breach of its obligations under the Service Package and fails to cure that breach within sixty (60) days after receiving written notice thereof, the other party may terminate the Service Package immediately upon written notice to the party in breach. Where the breach is committed by Nanolive, Buyer will be entitled to a pro rata refund of any unused portion of the Service fees.

13. STANDARD OF SERVICE

- 13.1. Nanolive represents and warrants that the Services will be performed in a workmanlike and professional manner with reasonable skill, care, and diligence, all in accordance with prudent industry practices and standards and otherwise in accordance with the Order and the Terms and in compliance with all applicable laws. All Services shall be provided by an authorized Nanolive representative subject to the fees set forth under the applicable Order and Service Package for the affected Instrument(s). The buyer's sole remedy for breach of the guarantee shall be a re-performance of the Services.
- 13.2. Nanolive does not warrant that the Services will render an Instrument to be error free, or that continued use and operation of the Instrument will be uninterrupted. Nanolive telephone support or remote monitoring support shall be provided "as is" without guarantee of any kind. The foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, express, implied, or statutory to the fullest extent permitted by law.
- 13.3. ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS WHATSOEVER

IMPLIED BY STATUTORY OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THIS AGREEMENT. IN PARTICULAR, NO IMPLIED STATUTORY GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

14. EXCLUSIONS

- 14.1. Service support shall not apply to any defect or performance deficiency on an Instrument (including failure to conform to Product descriptions or specifications) which results, in whole or in part, from:
- 14.1.1. negligent storage or handling of the Product by Buyer, its employees, agents, contractors or any affiliated entities;
 - 14.1.2. failure of Buyer to prepare or maintain the site, provide power requirements or operating environmental conditions in compliance with any applicable instructions or recommendations of Nanolive;
 - 14.1.3. adverse power conditions or environmental conditions such as erratic power, voltage spikes, RF or magnetic interference, HVAC failure or other causes beyond the reasonable control of the Nanolive;
 - 14.1.4. absence of any Product, component, or accessory recommended by Nanolive but omitted or removed at Buyer's request;
 - 14.1.5. any misuse, alteration, or damage to the Product by any persons other than Nanolive's representatives;
 - 14.1.6. combining Nanolive's Product with any product furnished by others, or with incompatible products, where such combination causes failure or decrease in performance of Nanolive's Product (including the substitution of any reagent not authorized by Nanolive);
 - 14.1.7. improper or extraordinary use of the Product, improper maintenance of the Product, failure to maintain the Product or comply with any applicable instructions or user manuals provided by Nanolive; or
 - 14.1.8. any service, repair or relocation of an Instrument performed or attempted by personnel not authorized by Nanolive.

15. REPLACEMENT PARTS

- 15.1. Replacement parts for the Instruments will be provided only as required or on an exchange or new part basis at Nanolive's discretion.
- 15.2. Nanolive reserves the right to use refurbished material or parts for all repairs for Instruments covered by a Service Package.
- 15.3. Refurbished parts will carry the same warranty provisions and duration as original parts.
- 15.4. All parts which become subject to removal and replacement shall become the property of Nanolive who will dispose of them or refurbish them at its discretion.
- 15.5. Consumables and reagent items are not eligible for replacement as part of the Services.

16. LIMITATION OF LIABILITY

- 16.1. Nanolive's entire aggregate cumulative liability and Buyer's exclusive remedy for damages, for any cause whatsoever, regardless of the form of action, whether in contract or in tort arising under this Agreement shall be limited to the greater of CHF 1,000 (one thousand Swiss francs) or the amount paid by Buyer for the Services that caused such damage.
- 16.2. To the fullest extent permitted by law, in no event shall Nanolive be liable for any punitive, special, indirect, incidental or consequential damages including but not limited to loss of revenues, loss of actual or anticipated profits, economic loss, loss of, damage to, comprise or corruption of data, downtime, unavailability or replacement of an Instrument any costs of recovering, programming or reproducing any program or data stored or used with an Instrument and any failure to maintain the confidentiality of the data stored on an Instrument.
- 16.3. Nothing in this Agreement excludes Nanolive's liability for death or personal injury caused by its negligence or fraudulent misrepresentation.

17. REMEDIES

- 17.1. Without limiting its remedies at law, Nanolive may, in the event of a material breach of the Terms or of the Quote by Buyer, and in its sole discretion, pursue any or all the following remedies:
 - 17.1.1. suspend or cancel the performance of any Service, including any pending or scheduled Services;

17.1.2. declare all unpaid balances, payments and expenses due or to become due hereunder immediately due and owing; or

17.1.3. seek any other cumulative remedies at law or in equity.

17.2. The foregoing remedies are cumulative, and may be exercised by Nanolive, in whole or in part, at Nanolive's sole discretion. The substantially prevailing party shall be entitled to its attorneys' fees, costs, and expenses (including expert expenses) in connection with any claims, causes of action or litigation.

18. CONFIDENTIALITY

18.1. The Quote, any Order and any Instrument subject thereto may contain information confidential or proprietary to either party, its subsidiaries or affiliates ("**Confidential Information**") and such information is not to be used by the receiving party other than the purpose for which it was transmitted by the disclosing party. Each party shall (i) hold such information in strictest confidence and not disclose such information to third parties without prior, written consent of the disclosing party; and (ii) not collect, access, retain use or share the Confidential Information other than for performance of the Services under this Agreement.

19. DATA PRIVACY

19.1. Nanolive shall be entitled to process personal data of the Buyer and to transfer personal data to affiliated companies to the extent this is necessary for the execution of the Order or provided that the Buyer has acknowledged the processing and transfer of personal data. Insofar as personal data is transmitted to Nanolive, Buyer is obliged to ensure that the collection and transmission of the data is lawful and has taken place. Insofar as one of the parties processes personal data for the other party or the parties process personal data together, the parties undertake to enter the necessary data protection contracts.

20. COMPLIANCE

20.1. The buyer shall comply with the terms of any statutory regulations, including applicable occupational safety and health regulations, hazardous regulations, privacy regulations governing the use of the Instrument(s). Buyer shall not engage in any activity prohibited by

anti-kickback, anti-self-referral, or any other law or regulation which relates to health care and/or the performance of Services, as those regulations now exist or as subsequently amended, renumbered, or revised.

21. GENERAL PROVISIONS

21.1. Force majeure

21.1.1. Except as expressly stated in a Service Package or in these Service Package T&C, neither party shall be liable for any failure to perform hereunder (other than the payment of sums due and owing) due to labour strikes, lockouts, fires, floods, water damage, riots, government acts or orders, interruption of transportation, inability to obtain material upon reasonable prices or terms, or any other causes beyond its control.

21.2. Severability & Waiver

21.2.1. If any one or more provisions contained herein (other than the provisions obligating Buyer to pay Nanolive for the Services) shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. A party's failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

21.3. Notices

21.3.1. Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received three (3) days after being sent via registered mail. Copies may be sent via email (with evidence of receipt required) at the addresses specified on the applicable Order for the respective parties or at such other address as either party may from time to time designate to the other in writing.

21.4. Assignment

21.4.1. A Service Package may not be assigned by Buyer without the prior written consent of Nanolive, which shall not be unreasonably withheld. Notwithstanding any provision to the contrary, Buyer shall have the right to assign or otherwise transfer its interest under a Service Package, without consent of Nanolive, to any of its affiliated entities or to any entity to which it may sell, transfer, convey, assign or lease substantially all its assets or properties. Any other assignment of a Service Package without

the express written consent of Nanolive will be invalid.

21.5. Independent Contractor

21.5.1. Nanolive is performing the Services as an independent contractor and not as an employee of the Buyer and none of Nanolive's personnel shall be entitled to receive any compensation, benefits, or other incidents of employment from the Buyer. Nothing in the Service Package T&C shall be deemed to constitute a partnership, joint venture, or agency relationship between Buyer and Nanolive. Neither Nanolive nor Buyer shall be or become liable or bound by any representation, act, or omission whatsoever of the other.

22. GOVERNING LAW AND JURISDICTION

22.1. This Agreement shall be governed by and construed in accordance with the laws of Switzerland, excluding any conflict of law provision. The competent courts of the Canton of Vaud, Switzerland shall have exclusive jurisdiction.

Appendix 1

	Basic	Standard	Total
Duration	1 to 5 years	1 to 5 years	1 to 5 years
Region	Worldwide excl. Europe and US	Europe US	Europe US
Repairs			
Parts & Labor	Yes	Yes	Yes
Shipping costs	No	Yes	Yes
Priority On site repairs	No	No	Yes
Accidental Damage Protection	No	No	Yes
Support			
Technical Email/Phone support	Yes	Yes	Priority
Application Email/phone support	Yes	Yes	Priority
Maintenance			
Remote diagnostic and performance check (1/year)	Yes	Yes	Yes
Software updates	Yes	Yes	Yes
On site preventative maintenance (1 day/year)	No	No	Yes
Reinstallation (1day/year)	No	No	Yes

Accidental Damage Protection	Covers repairs due to mishandling, user error or accidents that would normally not be covered by the standard or extended warranty. Up to a maximum of CHF 5,000.00 for CXA and CHF 3,000.00 for CXF per year outside warranty coverage (above the maximum amount, labor is charged at CHF 160.00 per hour). Shipping excluded. Year start is counted from the warranty start date. Any unused accidental damage incidents will expire and shall not give rise to any reimbursement, indemnification or credit. Devices that have been modified by the user are excluded.
Application Email / Phone support	Application questions through dedicated support email address or phone (support@nanolive.ch, +41213530631). Standard hours of operation are Monday to Friday from 9am to 5pm CET and ET.
On-site preventative maintenance	Cleaning, performance check, optimization, software update. 1day/year on request.
On-site repairs	Whenever possible on-site repairs will be performed in order to reduce downtime. Excluding all repairs that require opening of microscope optical path. Repairs, which require Nanolive lab analysis are excluded from the on-site repairs.
On-site services	On-site installation and maintenance services need to be agreed upon between Nanolive and Buyer at least 4 weeks in advance. Mandatory travel restrictions might apply for which Nanolive cannot be held responsible. On site emergency repairs need to be agreed upon between Nanolive and Buyer at least 1 week in advance.
Parts & Labor	Covers repairs due to mishandling, user error or accidents that would normally not be covered by the standard or extended warranty. Parts & Labor coverage is available for Nanolive products and their original

	included accessories for protection against defects in materials or workmanship. Included for the duration of the warranty and extended for the duration of the contract. Labor time from Nanolive service, repair or production department. Outside warranty and maintenance contract repairs are charged at CHF 160.00 per hour.
Priority support	Direct contact with Nanolive support engineer. Reply within 2 working days.
Reinstallation	Device reinstallation after moving or if not used for extended time. 1x per year, upon request.
Remote diagnostic and performance check	Diagnostic tests and reports, performance optimization and recalibration as necessary. Upon request.
Remote services	Remote services require internet connection and the use of TeamViewer or similar. Remote control must be allowed, and administrator rights must be granted during the service activities.
Shipping costs	Shipping costs from Buyer to Nanolive then from Nanolive to Buyer for repairs and maintenance. Custom duties and taxes may apply.
Software updates	Eve or Steve updates, including bug fixes excluding Eve analytics packages and newly released modules. Can either be installed by the Buyer or during the remote diagnostic or preventative maintenance activities on site.
Technical Email / Phone support	Technical questions through dedicated support email address or phone (support@nanolive.ch, +41213530631). Standard hours of operation are Monday to Friday from 9am to 5pm CET.