

Hamilton Thorne Service Agreement Terms and Conditions

1. Agreement, Scope and Pricing

1.1 Agreement/Acceptance

This Hamilton Thorne, Inc. ("HT") Service Agreement Terms and Conditions, together with the quotation (the "Quotation") that accompanied it (together, the "Agreement") is the complete and exclusive agreement regarding your acquisition of HT services ("Service(s)") and replaces any prior oral or written communications between you, your HT reseller or HT regarding such acquisition.

By signing this Agreement, either manually or electronically, or issuing a purchase order to HT for the described Services, you signify your acceptance of this Agreement. In entering into this Agreement neither party is relying on any representation that is not specified in the Agreement. Additional or different terms in any written communication from you (such as a purchase order) are void.

1.2 Scope of Services

HT Services plans are designed to keep your HT hardware and software (collectively "Product") in, or restore them to, conformance with its original specifications. The scope of the HT Services that you have contracted for is described in our Quotation forming part of this agreement and on our web site: www.hamiltonthorne.com/services.

To be eligible for a Service plan, Product must be at current specified revision levels and may require HT's certification, at Customer's expense, that the Product is in good operating condition. If the Product is not in an acceptable condition for Service, we will notify you, terminate coverage, and refund the cost of the Service plan (less the charge for inspection).

HT will provide Service, 8 hours per day 5 days a week (Monday through Friday, excluding national holidays in the United States) during normal business hours (Eastern US time zone).

Certain Service plans do not cover accessories, supply items, and wear parts, such as batteries, cables, and bulbs. In addition, this Agreement does not cover Service of a Product damaged by misuse, accident, modification, fire or water damage, power fluctuations, unsuitable physical or operating environment, improper maintenance by you, removal or alteration of Product or parts identification labels, or failure caused by a product for which HT is not responsible, such as installation of third party software. HT will not cover lost parts or security keys.

If purchased, software maintenance includes updates to software such as patches and reliability

enhancements. It does not include major software upgrades.

Many repairs may be performed via remote diagnostics or shipment of a customer installable replacement part. Under no circumstances should Product be shipped to HT unless HT has first issued a Return Authorization Number. All Products must be shipped in appropriate protective packaging. Shipping charges vary depending upon which Service plan you have purchased.

Preventative Maintenance and Basic Training are provided together during one physical visit. The visit shall last no more than eight hours. If covered under a Service plan, the visit should be scheduled two months in advance.

Service Plans may be offered for periods beginning five years after the system's purchase date solely at HT's discretion. An inspection of the Product may be required.

1.3 Pricing/Payment

You agree to pay HT for the Services in the amounts and on the terms reflected in the Quotation. Pricing shown in a Quotation is valid only for the period specified in the Quotation. Pricing for subsequent years may be changed, as reflected in a subsequent quotation. Catch-Up fees may apply to periods spent not covered by a purchased Service Plan.

2. Your Responsibilities

You will fully disclose to HT any known problems with the Product prior to the acceptance of a Quotation.

You are responsible for using and maintaining the Product in a proper manner in accordance with its instructions, including daily maintenance, cleaning and upkeep of equipment. You are responsible for maintaining a procedure external to the Product to reconstruct lost or altered files, data or programs.

You will notify HT if a Product is being used in an environment that poses a potential health hazard to HT employees or subcontractors.

3. Warranty for Services

HT warrants that the Service(s) will be performed using reasonable care and skill in accordance with the description of Service plan and/or the tasks specified in this Agreement. You agree to provide timely written notice of any failure to comply with this warranty so that HT can take corrective action.

THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

HT does not warrant uninterrupted or error-free operation of the Product or that HT will correct all defects. This Agreement does not guarantee availability of parts. HT will make reasonable efforts to do so, but will not be responsible for downtime occurring due to parts unavailability. HT may have to classify Product as 'not repairable' and in such event this Agreement shall cease and equitable refund of any unused payment will be made.

4. Limitation of Liability

Circumstances may arise where, because of a default on HT's part or other liability, you are entitled to recover damages from HT. In each such instance, regardless of the basis on which you are entitled to claim damages from HT (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), HT is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property, and 2) the amount of any other actual direct damages or loss up to the charge for the Service(s) that is the subject of the claim. This limit also applies to any of HT's subcontractors. It is the maximum for which HT and its subcontractors are collectively responsible.

Under no circumstances is HT or its subcontractors liable for any of the following even if informed of their possibility: 1) loss of, or damage to, your records or data, or 2) special, incidental, or indirect damages or for any economic, consequential damages or 3) lost profits, business, revenue, goodwill, or anticipated savings.

5. General

5.1 HT reserves the right to subcontract the Service(s), or any part of them, to subcontractors selected by HT.

5.2 Neither of us is responsible for failure to fulfill any obligations due to causes beyond its control.

5.3 Neither of us will bring a legal action, regardless of form, arising out of or related to this Agreement or the transaction under it more than two years after the cause of action arose. After such time limit, any legal action arising out of this Agreement or the transaction under it and all respective rights related to any such action lapse, unless otherwise required by applicable law without the possibility of contractual waiver or limitation.

5.4 You may not assign, or otherwise transfer, this Agreement or your rights under it, or delegate your obligations without HT's prior written consent. Any attempted assignment or transfer without such consent will be void. As conditions to such consent; (i) the assignee or transferee must agree in writing to the applicable HT Service terms; (ii) HT may require that a Product included within a Service agreement is in good operating condition; and (iii) HT may impose applicable charges in connection with the assignment or transfer. Customer may not assume a Service agreement in connection with any bankruptcy proceedings without HT's written consent.

5.5 No right or cause of action for any third party is created by this Agreement or the transaction under it, nor is HT responsible for any third party claims against you except as permitted by the Limitation of Liability section herein for bodily injury (including death) or damage to real or tangible personal property for which HT is legally liable to that third party.

5.6 In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

6. Governing Law

Both parties agree to the application of the laws of the Commonwealth of Massachusetts to govern, interpret, and enforce all of your and HT's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

Laser Care Elite Addendum

For Customers on the Laser Care Elite Service Plan: HT will provide, within three business days after confirmation of need, a like or equivalent loaner for the period of the repair. You agree to immediately ship the unit to be repaired, as directed by HT. You are liable for damage to loaner equipment during the repair period. You agree to return the unit sent on loan to HT within 24 hours of receiving the repaired unit.

CASA Care Elite Addendum

For Customers on the CASA Care Elite Service Plan: HT will use reasonable efforts to schedule an on-site service visit within seven business days after confirmation of need. You will ensure that the HT technician has access to the Product at the time scheduled for a sufficient period of time to complete remedial action.