



SURGITRAC INSTRUMENTS UK LIMITED TERMS AND CONDITIONS OF SERVICE AND MAINTENANCE

1 Definition and Interpretation

1.1 In these Conditions, the following words and expression shall have the following meanings except where the context otherwise requires:

"Surgitrac" means the Surgitrac Instruments UK Limited company named on the cover page of the Agreement including its successors, agents and assigns.

"Agreement" means the Service & Maintenance Agreement (including its Schedules) for the Services entered into by Surgitrac Instruments UK Limited and the Customer, and includes these Conditions.

"Services" means the maintenance and other services provided in respect of the Equipment detailed in Schedule 2 and as defined in these Conditions.

"Service Time" means the period set out in Clause 2 herein. "Site" means the premises where the Services are provided.

"Conditions" means these General Conditions of Service & Maintenance which are incorporated into and form part of the Agreement.

"Additional Charge" means a charge payable by the Customer for additional services outside the scope of the Services in accordance with Surgitrac's prevailing rates for such services including without limitation, the supply of spare parts and goods.

"Customer" means the person or persons, firm or company named on the cover page of the Agreement.

"Equipment" means the equipment listed in Schedule 1.

"Fee" means the fee payable for the Services as specified in Section II of the Agreement.

"Term" means the duration of the Agreement as set out in Section III of the Agreement.

1.2 Any reference in these Conditions to any provision of a statute and any regulations made in pursuance thereof as from time to time modified or re-enacted, whether before, on or after the date of the Agreement, so far as such modification or re-enactment applies or is capable of applying to any transaction entered into prior to completion of the Agreement (so far as liability thereunder may exist or can arise) shall be construed as a reference to that provision or regulation as amended, re-enacted or extended at the relevant time and shall include also any past statutory provision or regulation (as from time to time modified or re-enacted) which such provision or regulation has directly or indirectly replaced.

1.3 The headings in these Conditions are for convenience only and shall be ignored in construing these Conditions and shall not affect their interpretation.

1.4 Words (including words defined in the Agreement) importing the singular also include the plural and vice-versa where the context requires. The words "written" and "in writing" include any means of visible reproduction.

1.5 Surgitrac shall provide the Services to Customer in accordance with this Agreement. In the event of any inconsistency between these Conditions and other documents forming part of the Agreement, the following order of priority shall apply:

1.5.1 Any written agreement between the Parties where the Parties agree that any of the provisions in these Conditions should be superseded with an express reference to this Clause 1.5;

1.5.2 Surgitrac's quotation and documents (if any) incorporated by express reference to this Clause 1.5;

1.5.3 This Agreement; and

1.5.4 These Conditions.

2 Service Time

The Services shall be performed within the Service Time, which shall be between 9.00 a.m. and 5.00 p.m., Mondays to Fridays, Public Holidays excluded unless otherwise agreed in Schedule 2. Response times for corrective maintenance services shall be as set out in Schedule 2 or as otherwise agreed between the Parties. Surgitrac and the Customer shall cooperate in good faith to arrange each service visit, agreeing the date of each such service visit at least two weeks in advance where possible.

3 Modification, Changes and Enhancements

3.1. During the Term, Surgitrac shall at their discretion undertake such modifications, changes or enhancements to the Equipment and/or implement any practice, procedure or measure, which is deemed by Surgitrac to be necessary and/or to prevent or minimise damage to the Equipment.

3.2. Surgitrac will before undertaking any such modification, change or enhancement etc as mentioned in 3.1 above, explain to the Customer, if Surgitrac deems necessary, the need and cost (where applicable) of such modification, change or enhancement. The Customer shall pay any Additional Charge for such modification, change or enhancement according to Clause 7.2.

4 Exclusions & Additional Services

4.1 The Services do not include:-

a) Repair of damage arising from the act, error, fault, neglect, misuse, improper operation or omission of the Customer or its servants, agents, contractors or invitees or any person whether or not that person is under the control or direction or authority of the Customer.

b) Repair of damage arising from changes, alterations, additions or modifications of the Equipment by a person other than Surgitrac)



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- c) Repair of damage caused by incorrect power supply, failure of electrical power, air-conditioning, humidity control or any environmental factor.
 - d) Repair of damage caused by the operation of the Equipment other than in accordance with the specifications or otherwise than in accordance with the direction, instruction or recommendations of Surgitrac or its personnel.
 - e) Repair of damage arising from the re-installation, moving or removing of the Equipment by a person other than Surgitrac

 - f) Repair of damage caused by any circumstances beyond Surgitrac's reasonable control.
 - g) Furnishing or supplying maintenance of accessories, attachments, supplies, spare parts, consumables or items associated with the Equipment unless otherwise provided in Schedule 2.

 - h) Work performed outside Surgitrac's Service Time.
 - i) The cost of any Equipment or part whether spare part, consumable or otherwise supplied, unless otherwise provided in Schedule 2.
 - j) The upgrading of or retrofitting of improvements or major modification to the Equipment.
- 4.2 Additional Services
- a) Surgitrac undertakes to respond to any reported failures within 48 hours of a notification of failure by the Customer. Surgitrac shall use its best endeavours to return the equipment/system to trouble-free operation to the reasonable satisfaction of the Customer as soon as reasonably practicable.
 - b) Surgitrac shall ensure that a telephone service is made available to the Customer for reporting purposes from Monday to Thursday between 9.00 and 17.00 hours and Friday between 9.00 and 16.30 hours. Outside these hours calls shall be answered by a telephone answering machine.
 - c) The Customer undertakes to have faults or damage on the system eliminated or repaired only by Surgitrac or by personnel authorized by Surgitrac
 - d) The Customer shall cooperate with Surgitrac where reasonable required to eliminate any fault or damage to the system. For instance diagnostics by telephone
- 4.3 Surgitrac may at the Customer's option provide any of the services referred to in clause 4.1 or any other services requested by the Customer, at the relevant Additional Charge. Surgitrac shall inform the Customer of the associated Additional Charge, and the Customer shall accept the Additional Charge in writing before the services are performed. The Additional Charge shall be payable by the Customer according to clause 7.2
- 5 Customer's Responsibilities**
- 5.1 The Customer shall undertake to release all Equipment which is being maintained by Surgitrac from all operational demands when so requested to do so by Surgitrac in order for Surgitrac to perform the Services. Alternatively, the Customer shall ensure that Surgitrac's personnel have full and safe access to the Equipment at all reasonable times for the purpose of providing the Services. The Customer shall also ensure that such access conforms to any specifications issued by Surgitrac from time to time.
- 5.2 The Customer will ensure that Surgitrac's personnel or representatives are provided a safe and secure work environment at all times while they are on the Site to enable work to be carried out.
- 5.3 The Customer shall provide on request a suitably qualified or informed representative, agent or employee to accompany Surgitrac's personnel when providing the Services or to render such assistance or to give such advice as will enable Surgitrac's personnel to exercise unrestricted access to the Site and the Equipment and otherwise to perform the Services effectively.
- 5.4 The Customer shall supply auxiliary facilities and services when requested by Surgitrac as necessary for the provision of the Services. Where the Customer does not provide the auxiliary facilities and services, Surgitrac shall be entitled to procure such auxiliary facilities and services and seek full reimbursement from the Customer provided Surgitrac has given the Customer written notice of the non-compliance and the Customer has failed to remedy the non-compliance within the time specified in the notice. The auxiliary facilities and services shall include without limitation:-
- a. Adequate telephone/communications facilities;
 - b. Lighting for all work areas;
 - c. Main and auxiliary electrical power necessary for the operation of all equipment, capable of being isolated either by isolating switches, removal of fuses or other means to the reasonable satisfaction of Surgitrac.
 - d. 240 volt, 50 cycle single phase at 3 pin general purpose outlets at suitable locations;
 - e. Suitable dry lockable storage space for the storage of machinery, equipment, materials and tools;
 - f. Suitable rooms on or adjacent to the Site with adequate air-conditioning, lighting, washing, toilet and drinking water facilities for the use of Surgitrac's personnel or representatives; and/or
 - g. Lifting machinery or devices, timber, planking, strutting, cement, fuels, water, gas etc.
- 5.5 The Customer shall upon Surgitrac's request furnish to Surgitrac sufficient information which, in Surgitrac's reasonable opinion, will enable the Services to be carried out forthwith and without interruption. The Customer shall be responsible for and bear the cost of any modification to the scope of the Services arising from any discrepancy, error or omission in any drawings, specification or other information supplied or approved by the Customer.
- 5.6 All such assistance to be provided by the Customer under this Clause 5 or in general shall be at the Customer's sole cost and expense.
- 5.7 The Customer undertakes to comply with the operating manual supplied with the Equipment/System at all times. Nothing in this Agreement shall relieve the Customer from its obligations to perform normal day to day maintenance on the Equipment as per the Operator's Manuals supplied by the manufacturer and/or Surgitrac including but not restricted to normal cleaning procedures, checks and adjustments designed for operational use.
- 5.8 During the continuance of this Agreement, the Customer shall not carry out or attempt to carry out modifications to, repair of, experiments on, or maintenance of the Equipment other than day to day maintenance and the Customer shall not permit any other person except Surgitrac's personnel or representatives to carry out such work unless prior written approval has first been obtained from Surgitrac



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6 Replacement and Spare Parts

- 6.1 In the case of Services for which an Additional Charge is payable by the customer for replacement of spare parts, title in such replacement or spare parts shall pass to the Customer only upon full payment of the Additional Charge. Unless otherwise agreed in writing between the Parties, risk of damage to or loss of replacement spare parts shall pass to the Customer as soon as they are delivered to the Customer's designated premises.
- 6.2 Surgitrac may from time to time require the Customer to purchase and store at the Site such spare parts as Surgitrac considers necessary for the provision of effective Services.
- 6.3 Surgitrac will not be liable for any failure or delay in providing the Services where such failure or delay is the direct or indirect result of the failure of the Customer to comply with clause 6.3.
- 6.4 Save as aforesaid, the property of and risk in the Equipment is not affected by the provisions contained in this Agreement.

7 Payment, Charges and Fees, etc.

- 7.1 The Customer shall pay all Fees at the rate and in the manner specified Section II of the Agreement.
- 7.2 The Customer shall pay the Fee, all Additional Charges and any cost wherever and howsoever incurred within thirty (30) days from the date of Surgitrac's invoice.
- 7.3 If the Customer fails to make full payment on the due date, then without prejudice to any other right or remedy available to Surgitrac, Surgitrac shall be entitled to:
- terminate the Agreement or suspend any further Services or other obligations to the Customer under the Agreement (without being liable to Customer for any losses so caused);
 - at its sole discretion, apply any monies received from the Customer in relation to the Agreement or any other contract or agreement between the Customer and Surgitrac, including but not limited to deposits or security payments, towards the payment of the relevant invoice; and/or
- 7.4 The Customer shall not be entitled to withhold from, set off against or otherwise reduce any payments due to Surgitrac unless agreed in writing by Surgitrac
- 7.5 Surgitrac shall be entitled to adjustment of the Fees and Additional Charges (to be mutually agreed in writing) in the event of changes in law or engineering standards applicable to or affecting the Equipment and/or Services after the execution of the Agreement.

8 Maintenance Equipment

Surgitrac shall provide all the necessary tools, equipment, testing and diagnostic apparatus which Surgitrac requires in order to carry out the Service unless otherwise agreed.

9 Customer Records & Service Reports

- 9.1 The Customer shall keep such records relating to the use and performance of the Equipment as may be directed by Surgitrac from time to time.
- 9.2 The Customer shall permit Surgitrac to have access to such records at all reasonable times, including all periods during which the Services are being performed or preparations are being made for the Services to be performed.

10 Intellectual Property Rights & Confidentiality

- 10.1 All intellectual property rights in all materials (whether in hard copy or electronic form) which Surgitrac creates or supplies to the Customer in the course of performing the Services under this Agreement will, as between the Parties, be owned by Surgitrac.
- 10.2 The Customer acknowledges the confidential nature of, and the technology and design of the replacement parts and spare parts for the Equipment and items associated with the Equipment including, but not limited to, documentation, forms, trademarks, instructions, operating manuals and other information.
- 10.3 The Customer shall not, without Surgitrac's prior consent in writing, copy or cause to be copied or disclosed any details of such technology, design, procedure or items to a third party.
- 10.4 The Customer may only make use of such details to the extent necessary to enable the Equipment to be used in a manner reasonably contemplated by Surgitrac.
- 10.5 The Customer may only disclose such details to those of its employees by whom it is required to enable the Equipment to be used in a manner reasonably contemplated by Surgitrac.
- 10.6 The Customer acknowledges that any discoveries, inventions, patents, designs or other rights arising directly or indirectly out of or in the performance of this Agreement are the property of Surgitrac.
- 10.7 The Customer's obligations under this clause 10 shall survive the termination of this Agreement.
- 10.8 The Customer is responsible for the security of its proprietary and other classified information. The Customer undertakes to indemnify Surgitrac against all claims brought by any party for loss or damage to such information howsoever caused.
- 10.9 Other than as specifically provided for in this Agreement, nothing in this Agreement assigns, transfers or grants a licence to a Party over or in relation to pre-existing intellectual property rights owned by the other Party, Surgitrac's supplier or a third party.



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10.10 Each Party agrees not to, and shall ensure that its employees, agents and advisors do not, disclose to third parties, any confidential or proprietary information arising or disclosed pursuant to this Agreement (including information not generally known to the public, such as without limitation technical, development, marketing, sales, operating, performance, cost, know-how, business and process information or computer programming techniques), except: (i) with the prior written permission of the Party to whom such information belongs; (ii) as required by applicable law or regulation or pursuant to a court order or direction of any government authority or regulatory body or stock exchange; or (iii) where the information is already known to, or obtained by independent means, or independently developed, by the recipient, or is already in the public domain through no fault of the recipient.

11. Liability of Parties

11.1 The Customer shall keep Surgitrac, its personnel and agents fully and effectively indemnified against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or breach of this Agreement by the Customer, its employees, agents or servants, and shall pay to Surgitrac all reasonable costs, charges and losses sustained or incurred by Surgitrac as a result of Surgitrac being prevented or delayed from performing its obligations under this Agreement by reason of any act or omission of the Customer, its employees, agents or servants.

11.2 Except as expressly provided in this Agreement, all terms, conditions, warranties, undertakings or representations whether express, implied, statutory or otherwise relating in any way to the Services or to this Agreement are excluded. Without limiting the generality of the foregoing, Surgitrac shall not be under any liability to the Customer for any loss of profit (actual or anticipated), loss of use, loss of production (including loss of hydrocarbons), loss of contracts, loss of opportunities, loss of revenue, cost of capital, costs of replacement, loss of goodwill, loss of reputation, party contracts, loss due to business interruption, loss of interest, loss of power, cost of purchased or replacement power, contractual claims from third parties or any indirect, incidental, special or consequential losses or damages arising from or in connection with its performance or non-performance under this Agreement and whether based upon contract, tort, or any other legal theory. This clause 10.2 shall apply to the benefit of Surgitrac's personnel, Surgitrac's affiliates and Surgitrac's sub-contractors.

11.3 Notwithstanding any other provision of this Agreement Surgitrac's total cumulative liability for any act or omission, whether in contract, tort (including negligence or strict liability) or any other legal or equitable theory during the Term of this Agreement shall not exceed in the aggregate, 10% of the Fee payable under this Agreement during the preceding one (1) year. This Clause 11.3 shall apply to the benefit of Surgitrac's personnel, Surgitrac's affiliates and Surgitrac's sub-contractors.

12. Warranties

12.1 Surgitrac warrants that:

- a. it will provide the Services in a proper, workmanlike and professional manner at all times;
- b. it will exercise the reasonable standards of skill, care and diligence in the performance of the Services;
- c. it will retain a sufficient number of personnel with the expertise required to provide the Services; and
- d. its personnel possess the required skills and experience required to provide the Services.

12.2 The above warranties shall not replace or supersede the warranty applicable to the Equipment as specified in any sale and purchase agreement.

13. Force Majeure

13.1 Surgitrac shall not be liable to the Customer or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of Surgitrac's obligations in relation to the Services, if the delay or failure was due to force majeure. For the purposes of this clause, force majeure shall mean any unforeseen event beyond the reasonable control of Surgitrac such as, but not limited to any act of God, act of government or any authorities, hostilities between nations, war, riot, civil commotions, civil war, insurrection, blockades, import or export regulations or embargoes, rainstorms, national emergency, earthquake, fires, explosion, flooding, hurricane or other exceptional weather conditions or natural disaster, acts of terrorism, accidents, sabotages, strikes, shortages in material or supply, infectious diseases, epidemics, as well as travel restrictions or travel warnings due to any such events. If any delay in performing, or any failure to perform the Agreement is caused by the delay of a subcontractor of Surgitrac's, and is beyond the control and without the fault or gross negligence of Surgitrac, Surgitrac shall incur no liability for such delay.

13.2 If such delay or failure continues for at least one (1) month, the other party may terminate this Agreement immediately with written notice. In such event, the Customer shall pay Surgitrac a reasonable sum in relation to Services already rendered and costs and expenses incurred prior to termination

14. Termination and/or Suspension of Services

14.1 In addition to Surgitrac's right to terminate the Agreement under Clause 7.3, Surgitrac shall be entitled to (i) terminate the Agreement or suspend any further Services under the Agreement without any liability to the Customer, and (ii) demand that the Fee, Additional Charges or balance thereof shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, and (iii) retain any security given or monies paid by the Customer and apply the said security or monies against the assessed loss and damages, if any, suffered by Surgitrac, in the event that:

- a. the Customer is in breach of the Agreement; or
- b. the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or has an order made or resolution passed for such winding-up or shall otherwise become insolvent or make such proposal, assignment or arrangement for the benefit of its creditors or have a receiver or manager appointed over its affairs or have an application made to court for the appointment of a judicial manager or be placed under a judicial management order; or
- c. an encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Customer; or
- d. the Customer ceases, or threatens to cease, to carry on business; or
- e. there is a change in control of the Customer which in the reasonable opinion of Surgitrac adversely affects the position, rights or interests of the Customer. (For the purpose of this sub-clause, "control" means the ability to direct the affairs of another whether by virtue of Agreement, ownership of shares, or otherwise howsoever); or
- f. in the reasonable opinion of Surgitrac, there occurs a material change in the financial position of the Customer which is likely to affect the Customer's ability to perform its obligations under the Agreement; or



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- g. Surgitrac reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 14.2 Termination of the Agreement by Surgitrac shall not discharge the Customer from any existing obligation accrued due on or prior to the date of termination.
- 14.3 The rights and remedies granted to Surgitrac pursuant to the Agreement are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity
- 14.4 The Customer may stop using our service agreement at any time by contacting Surgitrac in writing. In such an event, you will not be entitled to any refund of any fees that you have paid prior to you ceasing to use the service agreement.

15 General

- 15.1 Each right or remedy of Surgitrac under the Contract is without prejudice to any other right or remedy of Surgitrac, whether or not under the Contract.
- 15.2 If any provision of the Contract, including any provision of condition 9, is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall continue in full force and effect.
- 15.3 Failure or delay by Surgitrac in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract
- 15.4 Any waiver by Surgitrac of any breach by the Customer is not a waiver of any subsequent breach.
- 15.5 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.
- 15.6 Notices shall be delivered personally or sent by first class post or sent by facsimile transmission.
- 15.7 A notice is deemed to have been received:
 - if delivered personally, at the time of delivery;
 - if sent by prepaid first-class post, on the second working day after posting (exclusive of the day of posting);
 - if sent by facsimile transmission on a working day prior to 4.00pm at the time of completed transmission and otherwise on the next working day.
- 15.8 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

Applicable Law and Dispute Resolution

- 16.1 These Conditions and the Contract between Surgitrac and the Customer shall be governed by, and construed in accordance with, the laws of England and Wales, and the parties submit to the exclusive jurisdiction of the English courts.
- 16.2 Condition 16.1 is for the benefit of Surgitrac only and as a result Surgitrac shall not be prevented from taking proceedings in any other courts with jurisdiction, whether concurrently or not.
- 16.3 The Parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement or any breach of it. If any such dispute cannot be settled amicably through ordinary negotiations between representatives of the Parties, the dispute shall be referred to the management of each Party who will meet in good faith in order to try and resolve the dispute.