

# **NIHON PALL LTD ("Pall")**

## **STANDARD TERMS AND CONDITIONS OF SERVICE**

These Pall Standard Terms and Conditions of Service ("Service Terms") apply to services to be performed by, Pall ("Seller"), and to any related replacement or spare parts that may be supplied by Seller in connection with such services, that may be performed or supplied under purchase orders (each an "Order") agreed to between Seller and the buyer ("Buyer") that is identified on an applicable Order, as issued from time to time.

**1. Provision of Services.** Services are made available to Seller's customers at various service levels. Details of the levels of Services available for each equipment type are detailed as service agreement categories and the current versions of which can be found at <https://www.pall.com/en/instrument-service-support.html> (each a "Service Contract") or in the current services brochure ("Brochure"). Seller will provide the services ("Services") under the Service Contract that is selected by Buyer and listed in an Order that is accepted by Seller as provided below. The service contract cover sheet or quotation will detail the instrument/equipment ("Equipment") covered, the category of service to be provided and the length of such Services. The service contract cover sheet, these Service Terms and the Brochure (together the "Service Contract") set out the whole agreement between Seller and Buyer for the supply of Services for the Equipment. Seller may inspect any equipment prior to accepting its inclusion in the Service Contract. The inspection and any remedial action required to bring the Equipment to an acceptable standard is at the discretion of Seller and is chargeable at Seller's current rates. Under such Service Contracts, certain preventative maintenance services are provided on a regular schedule established mutually by Buyer and Seller. Seller may, in limited circumstances, agree with Buyer to provide additional special services beyond the scope of a usual Service Contract, or preventative maintenance services on a Buyer specific schedule, which, if applicable, are subject to agreement on the terms of a special Order between Buyer and Seller.

Unless otherwise agreed by Seller, all Services shall be provided during normal business hours and according to Seller's normal scheduling and timing. Any schedule provided by Seller in relation to the timing of Services is the best estimate possible based on conditions existing at the time of Seller's acceptance of the Order or receipt of all specifications from Buyer, as applicable. In the case of non-standard Services, any such date is subject to Seller's receipt of complete information necessary for completion of Services. Seller assumes no liability whatsoever, including loss of use or for any other direct, indirect, or consequential damages, due to delays, including without limitation delays that may be caused by Buyer. It is understood that the Services provided by Seller are not to be considered professional engineering services or work-for-hire. In the event design documentation requires a professional engineering stamp, a separate written scope and definition of responsibility must be executed by Buyer and Seller.

**2. Supply of Spare Parts.** From time to time, in connection with or to facilitate the performance of certain of the ordered Services, the Seller may also supply and sell to Buyer replacement or spare parts (the "Spare Parts"). Spare Parts may be supplied on a periodic basis as part of a particular Service Contract. Alternatively, Seller may supply such Spare Parts as required at the time of performance of applicable Services. Buyer may also purchase Spare Parts for their own stocking and use. Except for Spare Parts to be supplied without additional cost as specified in an applicable Service Contract, Seller will invoice Buyer for any such Spare Parts in accordance with Seller's then current price list, unless an applicable Spare Part is a replacement for a part that is covered by Seller's standard warranty as provided in Section 7.2 below.

### **3. Quotations and Orders.**

**3.1** All quotations by Seller are subject to change or withdrawal without prior notice to Buyer, unless otherwise specifically stated in the quotation.

**3.2** Seller's acceptance of any Order is subject to approval by Seller of Buyer's credit. Subject to these Service Terms, Seller shall provide to Buyer such Services, and supply and sell to Buyer such related Spare Parts, as may be stated in an accepted Order. Any Orders become effective only if and when approved and accepted in writing by Seller, as confirmed by the issuance of a Seller acceptance or execution of the Order by Seller. All such Orders shall be subject to these Service Terms.

**3.3** Buyer and Seller may make changes to an Order upon mutual execution of a change order which indicates the change and the new pricing, if any, for the remainder of the Order (each a "Change Order"). Each Change Order shall amend the Order to which it applies and shall be subject to the remaining terms of such Order and these Service Terms.

**3.4** Buyer may not terminate or cancel an Order or a Change Order after Seller's acceptance, unless Buyer provides Seller with thirty (30) days' prior written notice and Seller approves such cancellation in writing, which approval may be made subject

to Buyer's agreement to pay any service fees, costs and expenses accrued prior to the date of termination, and any termination charges that may be specified in an Order.

**3.5** Notwithstanding the foregoing, if a party fails to perform or observe any material term or condition of these Service Terms or the terms of an Order and the failure continues unremedied for thirty (30) days after receipt of written notice, the other party may terminate the applicable Order for cause. In addition, either party also may terminate any pending Orders immediately by written notice if the other party makes an assignment for the benefit of creditors, becomes subject to a bankruptcy proceeding, is subject to the appointment of a receiver, or admits its inability to pay its debts as they become due.

**3.6.** Without prejudice to any other right or remedy of Seller, in the event either party terminates an Order, Buyer will pay Seller all fees due and payable through the effective date of termination, plus 65% of the remaining contract value in the instance where termination or cancellation relates to a Service Contract. Fees for Spare Parts and billable Services will be subject to the following fee schedule:

<b>Cancellation</b>	
<b>Time Horizon*</b>	<b>Fee</b>
Within 5 days	10%
After 5 days – AOS (Stock item available on shelf)	15% Flat Rate
After 5 days – MTO (Made to Order)	Up to 90% per MTO Schedule below
*based on Confirmed Delivery Date	
<b>MTO (valued less than \$50K)</b>	
<b>% Time Elapsed **</b>	<b>% Fee</b>
<25%	25%
<50%	50%
<75%	75%
>75%	90%
<b>MTO (valued greater than or equal to \$50K)</b>	
Fee is up to 90%	
**Order Date to Confirmed Delivery Date measured in Net Days	

**4. Fees.** Seller will charge Buyer for Services in accordance with Seller's then current schedule of rates. If Seller agrees to perform Services that are not covered by the Service Contract (e.g. billable time and material) selected by Buyer or a separate Order, or that are requested or required by Buyer to be performed outside of normal business hours or in an expedited manner, such Services will be charged at Seller's then current schedule of rates, including any applicable overtime or expediting charges, and will be in addition to the charges outlined in the Order. Except as may be specifically otherwise provided in an accepted and binding Order, all prices are subject to change at any time, without notice. Buyer may be charged additional fees for time taken by Seller to attend on site safety briefs/presentations required by Buyer. All prices are based upon normal use of Equipment. If Equipment is put to abnormal use then Seller reserves the right to vary the prices for the Services accordingly. "Normal use" means that the Equipment is used within its stated specifications as specified in the operating manuals or instructions for use.

**5. Taxes.** All prices are exclusive of any applicable direct or indirect taxes. Buyer is liable for withholding any direct taxes due in its jurisdiction, reduced under an applicable tax treaty and for presenting Seller with an official receipt from the relevant tax authorities. Buyer shall cooperate with Seller in providing necessary documentation required to secure a reduced withholding tax rate under an applicable treaty. GST will be added to the invoice as required by local laws and will be for Buyer's account and will be paid by Buyer to Seller upon submission of Seller's invoices. Buyer will be solely responsible for any local indirect taxes accruing in its jurisdiction.

**6. Invoicing and Payment**

**6.1** All payments are due within thirty (30) days of the date of invoice unless Service Contract states otherwise. If Buyer fails to make payment on or before the due date then, without prejudice to any other right or remedy available to Pall, Pall shall be entitled to (i) apply a monthly interest charge at the maximum rate legally permitted according to applicable law on all amounts not received by the due date (such interest will be calculated and will accrue daily from the date for payment until the date Pall actually receives payment) or (ii) cancel the purchase order contract or suspend any further deliveries to Buyer. Buyer shall pay all reasonable costs and expenses (including legal fees) incurred by Pall in collecting amounts due but unpaid. All services are subject to the approval of Pall's credit department.

**6.2** Buyer and Seller both recognize that there is a risk of banking fraud when individuals impersonating a business demand payment under new banking or mailing instructions. To avoid this risk, Buyer must verbally confirm any new or changed bank transfer or mailing instructions by calling Seller and speaking with an accounts receivable representative before mailing or transferring any monies using the new instructions. Seller will provide Buyer with that information in connection with the transaction. Both parties agree that they will not institute mailing or bank transfer instruction changes and require immediate payment under the new instructions, but instead will provide a ten (10) day grace period to verify any payment instruction changes before any new or outstanding payments are due using the new instructions.

## **7. Warranties**

**7.1** Seller warrants to Buyer that all Services shall be performed in a workmanlike manner by suitably qualified personnel. This warranty with respect to the Services shall survive for thirty (30) days following Seller's completion of the Services. A warranty claim for Service will only be valid for that specific Service that is performed on the Equipment.

**7.2** Spare Parts that are purchased pursuant to an Order are subject to Seller's standard warranty for a period of 12 months from date of delivery. If an applicable Spare Part is replaced by Seller under the terms of the foregoing warranty during such 12-month period, the replacement part will be warranted for the remainder of the original 12-month warranty term of the replaced part. In no event will the warranty period for a replacement part exceed the warranty period of the original Spare Part.

**7.3** With respect to the Services, Buyer shall notify Seller promptly in writing of any claims and provide Seller with an opportunity to inspect and test the Service claimed to fail to meet the above warranty. Buyer shall provide Seller with a copy of the original invoice for the Service or Spare Parts. All claims must be accompanied by full particulars, including system operating conditions, if applicable.

**7.4** If Buyer makes a valid warranty claim prior to the end of such 30-day period, Seller's liability and Buyer's remedy with respect to the foregoing warranty is limited to, at Seller's option, to repeating the Service that during the foregoing 30-day period does not meet this warranty or issuing a credit for the nonconforming portion of the Service. Notwithstanding the foregoing, in no event shall Buyer be entitled to claim under the above warranty if Buyer is in breach of its obligations, including but not limited to payment, hereunder.

**7.5** If Seller reasonably determines that any warranty claim is not, in fact, covered by the foregoing warranties, Buyer shall pay Seller's then customary charges for any additional required Services or Spare Parts.

**7.6** THE FOREGOING WARRANTIES ARE SELLER'S ONLY WARRANTIES CONCERNING THE SERVICES (INCLUDING ALL COMPONENTS) AND SPARE PARTS, AND SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

## **8. Indemnification.**

**8.1** Each party agrees to indemnify, defend and hold the other party and its employees, directors, officers and agents harmless against any claim, liability, damages, losses, judgment, and other expenses including reasonable attorney's fees and court costs (each a "Liability") arising out of or resulting from any third party claims made or proceedings brought against a party to the extent that such Liability arises as a result of (a) the other party's breach of its obligations under these Service Terms; (b) the other party's gross negligence or willful misconduct; or (c) the other party's violation of applicable law or regulation.

**8.2** A party seeking indemnification hereunder shall promptly notify the other party in writing of a third party claim or suit upon which it intends to base a request for indemnification and shall provide reasonable cooperation (at the indemnifying party's expense). No settlement or compromise shall be binding on a party hereto without its prior written consent, not to be unreasonably withheld.

## **9. LIMITATION OF LIABILITY.**

**9.1** IN ADDITION TO ANY OTHER LIMITS ON LIABILITY IN THESE SERVICE TERMS, THE MAXIMUM AGGREGATE LIABILITY OF SELLER, ITS AGENTS, DIRECTORS AND OFFICERS, AND BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM ARISING IN CONNECTION WITH THESE SERVICE TERMS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID BY BUYER FOR THE PARTICULAR SERVICES OR SPARE PARTS THAT ARE THE SUBJECT OF THE CLAIM.

**9.2** IN NO EVENT SHALL SELLER, ITS AGENTS, DIRECTORS OR OFFICERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO ANY SERVICES PROVIDED BY SELLER, INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFIT, REMANUFACTURING COSTS, REWORK COSTS, OR LOST BUYER PRODUCT COSTS. WHATEVER THE CLAIM (TORT, BREACH OF CONTRACT OR WARRANTY OR OTHERWISE) AND WHATEVER THE FORUM, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**9.3** BUYER ACKNOWLEDGES THAT WITHOUT THE DISCLAIMERS AND LIMITATIONS SET FORTH IN THIS SECTION 9, THE COST OF THE SERVICES OR SPARE PARTS WOULD HAVE BEEN SUBSTANTIALLY GREATER OR SELLER WOULD NOT HAVE ENTERED INTO THE APPLICABLE ORDER.

**10. Confidentiality.** All designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by Seller in connection with Services provided, any research, development, technical, economic, or other business information or "know-how" of a confidential nature, whether reduced to writing or not, and all related intellectual property rights ("Confidential Information"), shall remain Seller's property. Buyer shall not disclose any such Confidential Information or material to third parties without Seller's prior written consent. Buyer shall be responsible for any breach of the foregoing obligations by any of its employees, contractors or agents. Upon termination or completion of all Orders and upon Seller's request, Buyer shall destroy all Confidential information in its possession and shall cease all use of such Confidential Information, and upon Seller's request shall certify in writing that it has done so. In the event that Buyer and Seller have entered into a separate confidentiality agreement ("Confidentiality Agreement"), the terms and conditions of such Confidentiality Agreement shall take precedence over the terms of this Section 10.

**11. Governing Law; Dispute Resolution.** These Service Terms and all Orders relating hereto shall be governed by the laws of Japan, without regard to conflict of laws principles therein. Any dispute arising out of this Agreement shall be settled by The Japan Commercial Arbitration Association in Tokyo. The arbitration award shall be final and binding on both parties.

**12. Notices.** Any legal notice under these Service Terms shall be in writing and shall be effective upon confirmed delivery by a nationally recognized overnight courier service addressed to the administrative contact for each party as set forth on the applicable Order or such other address as that party may notify the other from time to time in writing.

**13. Independent Contractors.** Seller is an independent contractor to Buyer. Neither party shall have the authority to bind, represent or commit the other party. Nothing in these Service Terms shall be deemed or construed to create a joint venture, partnership, joint employer or agency relationship between the parties.

**14. Subcontractors.** Seller may use subcontractors in relation to the provision of the Services. Seller shall be responsible for any breach of these Service Terms by any such subcontractors.

**15. Survival.** All payment, confidentiality and indemnity obligations, warranties, limitations of liability, product return, and ownership of materials provisions together with those Sections the survival of which is necessary for the interpretation or enforcement of these Service Terms, shall survive the completion or termination of any Order until the end of the time period established in the applicable statute of limitations.

**16. Force Majeure.** If performance by Seller of any of its obligations hereunder, is substantially prevented by reason of any act of God, strike, lock-out, or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions, epidemic, pandemic or by reason of any other matter beyond its reasonable control, then such performance shall be excused, and deemed suspended during the continuation of such event and for a reasonable time thereafter, and the timing of performance of the applicable Services or delivery of the Spare Parts shall be delayed or adjusted accordingly.

**17. Exclusions.**

**17.1** The Service Contract does not cover:

- (1) Equipment problems caused by use of non-Seller approved consumables, supplies, spare parts and labor. Additional charges will be made to cover labor and new parts required to rectify Equipment faults arising from use of non-Seller approved consumables, supplies and spare parts, or if any maintenance servicing is performed by persons other than Seller's authorized personnel, including Buyer's employees that have not been trained, certified and authorized to provide said support, preventative maintenance, calibration and corrective maintenance to the Equipment;

- (2) Updating, upgrading or modification of Equipment except where this is deemed by Seller to be a safety requirement;
- (3) Any maintenance required to be carried out by Buyer and detailed in the appropriate instruction manuals supplied with the Equipment;
- (4) Any maintenance of equipment which is not included in the list of Equipment;
- (5) Replacement of non-defective spare parts once opened.

**17.2** In addition, where the Equipment is controlled by or used in conjunction with personal computers and/or interfacing or management software, these are not included in the Service Contract and falls outside the Seller's normal terms of warranty. It is therefore recommended that, if required, service support should be arranged for these items through an alternative supplier.

**17.3** Seller shall be relieved of its obligations under the Service Contract or any warranty in relation to any Equipment if:

- (1) The Equipment is damaged through accident, relocation, change of custody, misuse, theft, fire, water or neglect except where this is directly due to any act or omission of Seller, its employees or duly authorized agents.
- (2) additional attachments, features or devices are added to the Equipment (except those specifically authorized by Seller in writing or in its Customer Instruction Manual) or any alteration is made to the Equipment or any maintenance is carried out on the Equipment without Seller's prior written consent.
- (3) the Equipment has not been used in accordance with the instructions in the Seller's handbook or user manuals;
- (4) Buyer replaces any part of the Equipment with non-Seller approved products;
- (5) Buyer removes parts from one piece of Equipment and replaces them in another piece of Equipment;
- (6) Certain parts of the Equipment are excluded from Service Contract Agreements. These include, but are not limited to, those parts that are customer consumables, sample accessories of a fragile nature, or have a life which is directly related to usage. These parts are specified in the Brochure for each type of Equipment.

**18. Entire Agreement.** These Service Terms, the Confidentiality Agreement, if any, and any applicable Service Contract or Orders constitute the entire agreement between the parties hereto and supersede all prior agreements, communications and understandings, oral or written, between the parties relating to the subject matter hereof. These Service Terms shall be binding on the parties and their successors and permitted assigns. These Service Terms may be amended, changed, or modified by Seller at any time upon notice to Buyer, and any such amendment, change or modification shall apply to any Services to be performed, or Spare Parts to be supplied, in whole or in part thereafter.

**19. Waiver; Severability.** A waiver of a breach or right arising under these Service Terms must be in a writing executed by an authorized representative of the party against which such waiver is sought to be enforced. Any such waiver or any failure to enforce any term of these Service Terms will not be deemed a waiver of any other breach or right to enforce other terms at any time.

**20. Validity.** If any term of these Service Terms is found by a court of competent jurisdiction to be unenforceable, such term shall not affect the other terms of these Service Terms, and such unenforceable term shall be modified by the Court only to the extent necessary in the court's opinion to render such term enforceable, preserving to the extent possible the intent and the agreements of the parties.

**21. Resolution of Documentation Conflicts.** In the event of a conflict between these Service Terms and the specific terms of a particular Order, the terms of these Service Terms shall take precedence and shall govern the overall agreement between the parties with respect to the particular Services or Spare Parts that are the subject of such Order.