

FOBA
1500 Mittel Boulevard
Wood Dale, IL 60191-1043 USA
Phone:
Fax:
www.fobalaser.com

TERMS AND CONDITIONS OF FOBA LEASE PACKAGE

1. Acceptance. These Terms and Conditions of Foba Lease Package ("Terms") supplement the Foba Lease Package Order Form signed by the Customer (these Terms, the Foba Lease Package Order Form and any other documents provided by Company in connection with the Foba Lease Package purchased by Customer hereinafter referred to as "FLP Agreement"). CUSTOMER'S SIGNATURE ON THE FOBA CARE PACKAGE ORDER FORM ACKNOWLEDGES CUSTOMER HAS READ AND UNDERSTANDS THE FLP AGREEMENT AND CONSTITUTES ITS ACCEPTANCE OF THE FLP AGREEMENT.

2. Services and Equipment.

(a) Company shall provide the maintenance services in the FLP Agreement, if any, for the equipment identified in the FLP Agreement ("Equipment"), repair services included in the FLP Agreement, if any, for the Equipment if the Equipment fails to conform to Company's specifications, and any other services included in the FLP Agreement ("Services").

(b) The pricing in the FLP Agreement is based on Company performing Services at the Customer Site provided in the FLP Agreement. If Customer relocates Equipment, Company may increase pricing if such relocation affects Company's cost of performing its obligations.

(c) Company shall provide Services during Company's standard local business hours, which excludes weekends and Company holidays. Company will provide Services on Customer's premises unless it is necessary to remove Equipment for Service to the Company's repair depot for maintenance.

(d) The following services are not included in the FLP Agreement and Customer will be charged separately for any such service: (i) maintenance of Equipment if Customer's modification of Equipment has materially increased cost of maintenance; (ii) overhauling or rebuilding of Equipment; (iii) repairs needed due to Customer's use of filters or other consumables not approved by Company with Equipment; and (iv) de-installation or reinstallation of Equipment or any part thereof at Customer's request. The FLP Agreement does not cover repairs or maintenance resulting from: (i) Customer misconduct, accident, neglect or misuse; (ii) failure of installation site to conform to Company's applicable specifications; (iii) failure or inadequacy of electric power, humidity or air control; (iv) Customer's use of supplies and other consumables not approved by Company for use with Equipment; (v) Customer's failure to follow operating procedures provided by Company; (vi) service or maintenance performed by a third party or unauthorized representative of Company; (vii) Force Majeure; or (viii) Customers' breach of the FLP Agreement.

(e) Company will lease the Equipment to Customer during the term of the FLP Agreement. Title and all other rights to Equipment shall remain with Company at all times and Customer shall take no action that interferes with or impairs such rights.

3. Billing and Payment.

(a) Payment is due within 30 days from Customer's receipt of invoice. Company shall issue invoices at commencement of each Payment Period identified in the FLP Agreement.

(b) Payments are not subject to setoff or recoupment for any present or future claim Customer may have.

4. Customer's Obligations.

Customer shall: (i) exercise reasonable care in operation and normal maintenance of Equipment; (ii) operate Equipment within Company's published specifications (including, without limitation, all environmental specifications); (iii) maintain Equipment in conformance with Company's maintenance standards, which shall include following and performing Company's recommended customer care and cleaning program between calls of Company's service representative; (iv) properly maintain installation site and operating environment; (v) provide necessary utility services for use of Equipment in accordance with Company's specifications; and (vi) not remove Equipment from the Customer Site location without Company's prior written consent. Moreover, Customer will use only Foba-branded parts and consumables with the Equipment; in the event of Customer's breach of the foregoing, Company will no longer be required to provide any Services pursuant to the FLP Agreement..

5. Limited Warranty.

Company warrants all of its products and services in accordance with its standard warranty policy attached hereto or available online at www.fobalaser.com/general-terms/ (specifically refer to Section VIII (Customer Rights based on Defects) of the General Terms and Conditions; all other Sections of the General Terms and Conditions shall not apply for purposes of the FLP Agreement). THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. No employee or agent of Company, other than an officer of Company by way of a signed writing, is authorized to make any warranty in addition to the foregoing. Customer's sole and exclusive remedy for breach of warranty shall be, in Company's sole discretion, repair or replacement, or refund if either of the foregoing is not possible.

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6. Remedies and Liability.

(a) Without waiving any other rights or remedies available to it under applicable law or otherwise, Company may suspend provision of Services hereunder, until all past-due accounts of Customer are fully satisfied.

(b) Company's rights and remedies herein are in addition to, and not in lieu of, any other rights or remedies Company may have at law or in equity.

(c) EXCEPT AS OTHERWISE PROVIDED BY LAW, IN NO EVENT WILL COMPANY BE LIABLE FOR SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, THIRD PARTY OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION THOSE BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER LEGAL, EQUITABLE OR STATUTORY CLAIM, CAUSE OF ACTION OR LEGAL THEORY. MOREOVER, COMPANY'S MAXIMUM LIABILITY HEREUNDER REGARDLESS OF LEGAL THEORY WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO COMPANY PURSUANT TO THE FLP AGREEMENT. COMPANY WILL NOT BE LIABLE FOR ANY DAMAGES OR COSTS RESULTING FROM ANY DELAYS IN PERFORMANCE.

7. Term and Termination.

(a) The term of the FLP Agreement is as provided in the FLP Agreement, which term shall automatically renew for month to month periods for no longer than two years, unless terminated by a party upon at least thirty (30) days prior written notice during the renewal period. Any such renewal is subject to a price increase.

(b) Without limiting any other available legal or equitable rights or remedies, either party may terminate the FLP Agreement immediately at any time for cause upon written notice to the other if the other party: (i) fails to perform any material obligation of the FLP Agreement and fails to cure within thirty (30) days after written demand to cure; or (ii) becomes insolvent, makes an assignment for the benefit of creditors, files or has filed against it a petition in bankruptcy, has a receiver appointed for its assets, or is dissolved or liquidated. Upon termination by Company pursuant to this Section, all amounts due and payable under the FLP Agreement for the entire term of the FLP Agreement will become immediately due and owing by Customer. (c) Customer shall return Equipment and all other products provided to Company pursuant to the FLP Agreement within five (5) days of expiration or termination of the FLP Agreement in accordance with shipping instructions provided by Company. If Customer fails to timely comply with this provision, Customer acknowledges and agrees that Company may enter Customer's facility where the Equipment is located and repossess the same. Customer will reimburse Company for all reasonable expenses incurred.

8. Force Majeure. Except for Customer's payment obligations, neither party will be liable for delays in performance or nonperformance resulting from causes beyond its reasonable control, such as acts of God, fire, strikes, embargo, acts of the government and other third parties, or other similar causes ("Force Majeure").

In such event, the party delayed shall promptly give notice to the other party. The party affected by the delay may: (i) extend the time for performance for the duration of the event, or (ii) cancel all or any part of the unperformed part of the FLP Agreement if such Event lasts longer than sixty (60) days. If an Event affects Company's ability to meet its obligations at the agreed upon pricing, or Company's costs are otherwise increased as a result of such Event, Company may increase pricing accordingly upon written notice to Customer.

9. Assignment; Successors and Assigns. Customer may not assign the FLP Agreement without Company's prior written consent. Any assignment contrary to this Section will be null and void. The FLP Agreement shall apply and inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

10. Governing Law; Venue; Actions; Attorneys Fees. The FLP Agreement is governed by and construed in accordance with the laws of country and local geographic designation in which Company's main place of business is located without regard to conflict of laws provisions. The parties consent to the sole and exclusive venue and jurisdiction of the courts situated in or having jurisdiction over such country and local geographic designation. Any action brought by Customer pursuant to the FLP Agreement must be commenced within the earlier of one (1) year from the date of delivery of Services or occurrence of the event giving rise to the claim, or such claim will be forever barred.

11. Miscellaneous. The documents comprising the FLP Agreement are the sole and exclusive terms and conditions applicable to the FLP purchased by Customer. Company hereby objects to and rejects any other terms and conditions appearing on, incorporated by reference in, or attached to, Customer's orders or other documents. In the event of any conflict between any of the documents comprising the FLP Agreement, the descending order of precedence will be the Foba Lease Package Order Form, these Terms and any other documents. If any provision of these Terms to any extent is declared invalid or unenforceable, the remainder of the FLP Agreement will not be affected thereby and will continue to be valid and enforceable to the fullest extent permitted by law. Any modifications hereto must be in writing and signed by both parties. Either party's failure to strictly enforce any of these terms shall not be considered a waiver of any of its rights hereunder. If any term in the FLP Agreement is declared invalid or unenforceable to any extent, the remainder of these terms in the FLP Agreement will not be affected thereby, and will continue to be valid and enforceable to the fullest extent permitted by law. The termination or expiration of the FLP Agreement will not affect the survival and continuing validity of any provision which expressly or by implication is intended to continue in force after such termination or expiration.

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SERVICE COVERAGE

Company shall provide Services during the Company's normal business hours, 8:00am to 4:30pm local time, Monday through Friday, excluding Company holidays.

¹User Instruction Course includes a 2 hour curriculum and can accommodate up to 6 operators. For other training options please [contact Foba representative](#).

²Wear parts include laser heads and moving machine parts

*Optional services for medical customers that can be included for an additional fee, which will be calculated into the Foba Lease Package monthly payment.

Features Included	Classic	Comprehensive ECO	Comprehensive
Hotline Support	24/6	24/6	24/6
Free Software Updates	+	+	+
Free Software Upgrades		+	+
FOBA Remote Service	+	+	+
Priority Status	+	+	+
Guaranteed remote reaction time	+	+	+
Webinars and training videos	+	+	+
Preventive maintenance visits	+	+	+
Spare parts		+ (excl beam source)	+
Application consulting		+ remote	+ remote
Remote Camera kit		+	+
Foba Academy Training	+ during maintenance	+ 2 days	+ 2 days
Tech Support (on site and off site incl travel)		+	+
IQ/OQ/PQ*		+	+

**Optional services for medical customers that can be included for an additional fee, which will be calculated into the Foba Lease Package monthly payment.*