

# MAX IV General Terms and Conditions for Proprietary Access

These MAX IV General Terms and Conditions for Proprietary Access (hereinafter the “**Proprietary Terms and Conditions**”) apply to all Customers’ and their Users’ Proprietary Access to MAX IV. MAX IV and Customer may collectively be referred to as “Parties” and individually also as a “Party”.

## 1. General

1.1 Under these Proprietary Terms and Conditions, MAX IV will make available to Customer the Facilities and any related services for purposes of carrying out one or more Experiments as specified in the Quotation or Statement of Work to which these Proprietary Terms and Conditions are attached (the “**Project**”).

1.2 Customer shall be solely responsible for the acts and omissions of its Users and to ensure that Users act in accordance with these Proprietary Terms and Conditions and any applicable laws and regulations in the performance of the Project and that the Project is carried out professionally and in accordance with the Project Description.

1.3 Customers and Users are subject to the administrative and technical supervision and control of MAX IV; and shall comply with all from time to time applicable legislative requirements and other governmental regulations as well as all from time to time applicable policies and other internal regulations of MAX IV with regard to access to and use of the Facility, including but not limited to safety, operating procedures, environment protection, access to information, experimental data, IT-security, hours of work, and general conduct. Customer shall execute any documents required by MAX IV, acknowledging and agreeing to comply with these Proprietary Terms and Conditions and hence, any such applicable rules of MAX IV.

1.4 Customer must at all times have appropriate insurance coverage in order for the Project to be allowed at the Facilities, including, for the avoidance of doubt, a liability insurance of at least the amount 10 MSEK or the equivalent in another currency, and must be able to show evidence of such insurance coverage upon MAX IV’s request.

1.5 Any personal data submitted in relation to the Project Description or registration of a visit to the Facilities, may be used by MAX IV for statistical and administrative purposes only. More information about the use of personal data can be found here: [duo.maxiv.lu.se/duo/disclaimer.php](http://duo.maxiv.lu.se/duo/disclaimer.php).

1.6 If the information provided in the Project Description or sample and equipment declarations substantially changes after it has been submitted (including but not limited to changes to samples, equipment, personnel or Project scope), MAX IV has the right to withdraw Customer’s and/or User’s access to the Facilities.

## 2. Scientific and Technical Assistance

2.1 A Local Contact will be assigned to the Project and assist in preparing the Facilities, within the limits of a standard set-up, and introduce the Customer’s personnel to the operation of the Facilities. The role of the Local Contact is not to perform the Experiment.

2.2 Except where scientific assistance is included in the Quotation, Customer must provide sufficient personnel to conduct the Experiment safely and the Users must have correct and adequate training and education in order to perform the Experiment.

## 3. Data Analysis and Software

3.1 Unless otherwise agreed in writing, no interpretation of data will be provided to Customer by MAX IV. Should Customer require the use of software for processing and/or analysing of the data collected

at MAX IV, the access to appropriate software is the responsibility of Customer.

## 4. Fees and Payment Terms

4.1 Customer will pay the fees set out in the Quotation or Statement of Work. 30 percent of the fees will be invoiced upon signing of Quotation or Statement of Work and 70 percent will be invoiced upon completion of the Project. The fee amounts in the Quotation or Statement of Work are stated exclusive of any applicable VAT, which will be added to the invoices.

4.2 Payment shall be made within thirty (30) days of invoice. In the case of late payment, MAX IV shall be entitled to late payment interest in accordance with the Swedish Interest Act (*räntelagen 1975:635*).

## 5. Property and Materials

5.1 Customer may be permitted by MAX IV to furnish equipment, tooling, test apparatus or Materials, necessary to assist in the performance of their Experiment(s) at the Facilities. The provision, including transportation and insurance, of such equipment, tooling, test apparatus or Materials, is the sole responsibility of the Customer. Such items must comply with MAX IV safety policy and requirements applicable from time to time and shall remain the property of Customer. Unless an exception is granted by MAX IV, all such items (except for Materials, see below) shall be removed by Customer within thirty (30) days of the end of each Experiment or will be disposed of at Customer’s expense. Any equipment that is integrated into the Facility will become the property of MAX IV. Customer acknowledges that any items supplied by Customer may be damaged, consumed or lost. Materials (including residues and/or other contaminated items) remaining after performance of the Experiment shall be removed immediately by Customer at its expense. Customer shall leave Facilities and equipment utilised in their original condition except for normal wear and tear.

5.2 MAX IV will, at all times, handle Customer’s material or property with reasonable care. MAX IV shall have no responsibility for any Customer property in MAX IV’s possession other than loss or damage caused by wilful misconduct or gross negligence on MAX IV’s part.

## 6. Scheduling and Cancellations

6.1 Customer acknowledges that MAX IV will have sole responsibility for allocating and scheduling use of the Facilities and equipment needed for Customer’s Experiment(s) and that MAX IV at its own discretion may reallocate time for use of the Facilities.

6.2 If Customer has to cancel scheduled access to the Facilities, Customer must as soon as possible inform MAX IV. Unless otherwise specified in the Quotation or Statement of Work, cancellations shall be made in writing by Customer to MAX IV. In case Customer cancels an Experiment, MAX IV shall have the right to charge Customer in accordance with the following. Cancellations with less than:

- three weeks’ notice in writing: 20 percent
- two weeks’ notice in writing: 50 percent
- one week’s notice in writing: 100 percent

of the full price plus any applicable VAT.

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## 7. Confidentiality

7.1 “Confidential Information” refers to such information provided by a Party during the Project which:

- a) is clearly marked as confidential or similar, or
- b) if disclosed orally, is characterised as confidential at the time of disclosure, and has been confirmed in writing within fifteen (15) calendar days from oral disclosure as confidential information by the disclosing Party. In addition, Results will be considered Confidential Information by MAX IV.

7.2 The Parties agree not to disclose Confidential Information to any third party. The Parties agree not to use Confidential Information for any purpose other than as set out in these Terms without the prior written consent of the disclosing Party in each specific case. Each Party reserves all rights in its Confidential Information, or any other information disclosed hereunder, and no rights or obligations other than those explicitly stated herein are granted or to be implied from these Terms. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right now or in the future held, made, obtained or licensed by either Party.

7.3 The receiving Party must take all reasonable measures to ensure that Confidential Information is kept confidential. The receiving Party may only disclose Confidential Information on a need-to-know basis to employees and other persons engaged by that Party for the performance of Project work. The receiving Party ensures that employees or other persons to whom Confidential Information is disclosed will observe confidentiality in accordance with the provisions of these Terms.

7.4 Confidentiality shall remain in force for three (3) years after disclosure of the confidential information.

7.5 Confidentiality, as defined in this section 7, shall not apply to information that:

- a) was in the public domain at the time of disclosure or that has come into the public domain thereafter through other means than a breach of this Terms;
- b) the receiving Party can show was already known to that Party at the time of disclosure;
- c) has been legitimately disclosed to a Party by another source than, and independently of, a Party to this Terms; and/or
- d) which receiving Party is required to disclose by law or a court or administrative order.

## 8. Non-compliance

8.1 Without prejudice to any other legal or contractual rights, MAX IV retains the right to withdraw Customer’s access to the Facilities upon breach of any of the provisions of these Proprietary Terms and Conditions, including non-compliance with any MAX IV internal policies or other reasonable instructions of MAX IV.

## 9. Intellectual Property Rights

9.1 All Results shall belong to the Customer.

9.2 MAX IV retains ownership to any other intellectual property than Results, including its Background IP and, for the avoidance of doubt, any intellectual property relating to the services performed, or the analytical methods used in the Project, or any improvements, modification or developments thereof generated in the Project,

whether or not protected as a matter of intellectual property laws or if application or registration is required.

## 10. Publication

10.1 MAX IV will not publish Results independently. Customer’s publication of Results, if any, must include appropriate acknowledgment of MAX IV as a facility and personnel as scientists. References for publications related to Experiments carried out at the Facilities must be deposited in the MAX IV publications’ database within three (3) months of the publication date.

10.2 Customer will not use the name of MAX IV or its staff in any promotional activity, such as advertisements, with reference to any product or service resulting from the Project, without prior written approval of MAX IV.

10.3 MAX IV will not use the name of Customer or its staff in any promotional activity, such as advertisements or industrial user cases, with reference to any product or service resulting from the Project, without prior written approval of Customer. Customer will, however, in good faith discuss MAX IV’s request for using the Project as an industrial user case.

## 11. No Warranty, Liability

11.1 MAX IV makes no express or implied warranty as to the conditions of the Facilities furnished hereunder. In addition, neither MAX IV nor Customer make any express or implied warranty or representation as to the research or any intellectual property, information, or product generated, made or developed under these Proprietary Terms and Conditions, or the ownership, merchantability, or fitness for a particular purpose of the research or resulting product; that the goods, services, materials, products, processes, information, or data to be furnished hereunder will accomplish any particular or intended results or are safe for any purpose including the intended purpose; or that any of the above will not interfere with privately owned rights of others.

11.2 MAX IV shall not be liable for any loss or damages relating to the Project, except where such loss or damages are caused by gross negligence or wilful misconduct on MAX IV’s part.

11.3 MAX IV shall not be liable for any special, consequential, punitive or incidental damages attributed to use of the Facilities, research or resulting product, intellectual property, information, or product generated, made or delivered under these Proprietary Terms and Conditions.

## 12. Personnel

12.1 Users will remain employees or representatives of the Customer at all times during their participation in the work under these Proprietary Terms and Conditions, and shall not be considered employees of MAX IV in any respect or for any purpose.

## 13. Force Majeure

13.1 The Parties shall be relieved from liability for a failure to perform any obligation under these Proprietary Terms and Conditions during such period and to the extent that the due performance thereof by either of the Parties is prevented by reason of any circumstance beyond the reasonable control of that Party, such as war, warlike hostilities, mobilisation or general military call-up, fire, flood, power failure, labour disputes or other circumstances of similar importance, provided, however, that the Party who is unable

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to perform resumes performance as soon as possible following the end of the event causing delay or failure.

## 14. Assignment and Sub-contracting

14.1 Neither Party shall be entitled to assign any of their rights and obligations under these Proprietary Terms and Conditions. Notwithstanding the foregoing, MAX IV shall be entitled to sub-contract parts of the Project.

## 15. Governing Law

15.1 These Proprietary Terms and Conditions are subject to Swedish substantive law, without reference to its conflict-of-laws rules.

## 16. Dispute Resolution

16.1 Any dispute, controversy or claim arising out of or in connection with these Proprietary Terms and Conditions, or the breach, termination or invalidity thereof, shall be solved by mediation in accordance with the Rules of the Mediation Institute of the Stockholm Chamber of Commerce ("Mediation Rules").

16.2 Where the dispute is not solved by mediation, within the period of time prescribed by the Mediation Rules, or when a Party opposes mediation, the dispute shall be finally settled by arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce in accordance with its Rules for Expedited Arbitrations. The seat of arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall be English unless the Parties agree otherwise.

16.3 The above provisions do not prevent either Party from submitting a definite and payable claim to a court or other authority of competent jurisdiction.

## Definitions

**Background IP:** information and/or intellectual property, whether or not protected as a matter of intellectual property laws or if application or registration is required, existing prior to an Experiment at MAX IV and related to a Party's own technology and services including analytical methods contributed to or generated by MAX IV.

**Customer:** any company, institution, university or other organisation, regardless of legal form, having Proprietary Access to MAX IV and/or its services.

**Experiment:** a set of tests or procedures carried out under controlled conditions at the MAX IV Facilities to determine the validity of a hypothesis, perform measurements or make a discovery within a research field.

**Facilities:** all research facilities made available by and at MAX IV, which may include equipment, services, information and other material, with or without MAX IV scientist collaboration, for purposes of performing Experiments at MAX IV.

**Local Contact:** MAX IV Staff assigned to the Project.

**Materials:** any item being subjected to Experiment including its containers, vials or sample holders and consumables needed to support the Experiment; including, for the avoidance of doubt, samples.

**MAX IV:** the Swedish national synchrotron light laboratory as set out in regulation SFS 1994:946 (*Förordning (1994:946) om den nationella forskningsanläggningen i electronacceleratorlaboratoriet (MAX IV-laboratoriet) i Lund*), being a part of Lund University.

**MAX IV Staff:** individuals working at MAX IV under a contract of employment or consultancy with Lund University.

**Project Description:** The description of the Project as attached to the Quotation or Statement of Work.

**Proprietary Access:** non-peer reviewed, market driven, access.

**Quotation:** MAX IV's quotation for the Project to which these Proprietary Terms and Conditions are attached.

**Results:** Any data, information or intellectual property related to Customer's Materials generated in the course of the Project, regardless of whether they can be protected or not.

**Statement of Work:** A specific description of the Project that is signed by both Parties and governed by these Proprietary Terms and Conditions as well as by a framework agreement between the Parties.

**User:** all individuals making use of the Facilities including scientists, engineers and students from academia, research councils and charitable institutions, researchers from commercial and non-commercial organisations and MAX IV Staff.