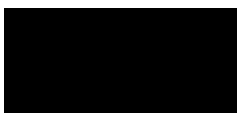


TCM Contract # 2021-505



University of North Texas  
UNT Discovery Park  
3940 North Elm St, E-178G  
Denton, TX 76207  
USA

Attn:  
Email:  
Phone:  
Fax:



Date: 4/14/2021  
Quotation: CM2228-6  
P #: 4496  
Customer #: 51584000  
User #: E1584001  
Payment Terms: Net 30 Days  
Contract Period: 9/1/2021 - 8/31/2022  
Contract Level: Standard

System: TEAM  
PEGASUS  
S/N:9219

Detector: Octane Elite  
70 S/N:21068  
Camera: Hikari Super  
S/N: H4-S1-2016-49-3219

**"The Material contained in this Quotation is Confidential."**

Item	Qty	Catalog Number	Description	Price
1	1	S2-DU-4-2021	Elite Super/Octane Super System	\$ 11,750.00
2	1	S5-Opt-1-2021	SDD Module Coverage	\$ 6,100.00
3	1	S3-EBSD-2-2021	Hikari Pro, Plus, Super (With EDS)	\$ 8,750.00

Quotation Sub-Total:	\$ 26,600.00
Discount:	\$ 1,330.00
Total:	\$ 25,270.00

**NOTE:**

Sales Tax Status: If Sales Tax exempt, a Sales Tax Exempt Certificate for the State where goods are shipped or service provided must be presented with the Purchase Order. **If applicable, please include Sales Tax on the PO.**

**Terms:**

- Quote is valid for 180 days
- Terms for the service contract are 12 months

**PURCHASE ORDER REQUIRED ITEMS:**

Purchase Orders must contain the following information when submitted to EDAX for processing:

**Emailed PO:**

1. Purchase order has to be issued on the Company letterhead
2. It has to reflect P.O. number
3. P.O. date
4. Buyer's name, telephone number, email address
5. Accounts Payable contact
6. Description of goods / services / service contract
7. Quantity
8. Unit price
9. Total amount
10. Payment terms





11. Freight terms (in case of order of goods)
12. Tax status
13. Bill to address
14. Ship to address (in case of order of goods)
15. End user address (in case of service contracts or service t/b render)
16. Delivery date (if requested by the customer)

## SERVICE MAINTENANCE AGREEMENT TERMS AND CONDITIONS

This Service Maintenance Agreement (the "SMA") is made by and between the EDAX Business Unit of the Materials Analysis Division of AMETEK, Inc., a Delaware corporation, ("EDAX") and the Customer, defined in the SMA signature section. EDAX and Customer will each be referred to as a "Party" and collectively as the "Parties". The effective date of this SMA is per EDAX Quotation defined in the signature section of this SMA.

The Parties agree as follows: During the 1 year period beginning on the Effective Date, ("SMA Year"), EDAX will provide to the Customer routine maintenance services for the EDAX-supplied EQUIPMENT at Customer's facility (the "Facility") per the level of service selected, within the specifications of the Equipment's original EDAX purchase agreement, subject to the exclusions listed in paragraph II. Customer may choose from the following service plans by checking the box next to the option that it selects.

Choose Contract Options			
<b>Select Contract Model</b>	<b>Comprehensive</b> <input type="checkbox"/>	<b>Standard Plus</b> <input type="checkbox"/>	<b>Standard</b> <input type="checkbox"/>
SDD Module Coverage - Option	✓	Option <input type="checkbox"/>	Option <input type="checkbox"/>
SiLi Window & Crystal Coverage Option (Only SiLi Models)	✓	Option <input type="checkbox"/>	Option <input type="checkbox"/>
Additional Preventive Maintenance	Option <input type="checkbox"/>	Option <input type="checkbox"/>	Option <input type="checkbox"/>
Facility Visits (includes labor, travel and living expenses)			
Unscheduled Repair Visits	unlimited	2	1
Scheduled (Preventative Maintenance visits)	1	1	1
Additional Preventive Maintenance	Option	Option	Option
Personnel Support			
Technical - M-F, 8:30am-5pm EST (Except Holidays)	✓	✓	✓
Telephone	Within 4 hrs	Within 8 hrs	Within 24 hrs
Additional Included Benefits			
Parts for Detector System & Computer	✓	✓	✓
Software updates	✓	✓	✓
Shipping	✓	✓	✓



Windows 10 Computer Upgrade Discount every 3 years	75%	50%	25%
System Move or Conversion Labor & Travel	25%	25%	25%
Training Discount	30% off Classroom Training	N/A	N/A

All Maintenance Agreement rates are based on providing service during hours of coverage as stated in contract plans. For users with a Maintenance Agreement who may require service in addition to, or outside of the hours, such service is offered at a 25% discount from EDAX's standard labor rates as shown in section titled "Labor Rates" on page 2.

**SMA:** Support hours are Monday through Friday, 8:30am-5pm EST as applicable, except holidays. Telephone response within the number of hours as specified in Support - Telephone section above for the selected contract level. Includes parts, labor, travel and living expenses. Software updates are included.

**EQUIPMENT:** This SMA covers services to the listed equipment (the "Equipment") during the term hereof. Services shall include inspection (performance check, alignment and cleaning, as needed) and testing at reasonable intervals as specified in the chosen service plan, but shall not include general overhaul, hardware upgrades, moves, or reconditioning, which if requested, shall be estimated, with the discount given on the previous page, and billed separately to the Customer.

**CONDITIONS OF ACCEPTANCE:** Where Equipment is not covered under an EDAX warranty or existing SMA, EDAX shall have the right to inspect the Equipment before accepting it for SMA hereunder. Such inspection shall take place on the Customer's premises and charged to customer at EDAX's published rates.

**REPAIR:** Whenever possible, repairs will be made at the Customer site per the chosen SMA. In the case where this is not possible, e.g. detector repair, EDAX at its discretion may send Equipment or parts thereof to EDAX's repair facilities or subcontractors for repair. For SMA Customers, EDAX will take responsibility for all standard ground transportation charges. The Customer may elect to use expedited shipping services, in which case, the SMA Customer will be billed for the full value of all expedited transportation services. For non SMA Customers, in the case of Customer Property repair returns, EDAX at its discretion may send Equipment or parts thereof to EDAX's repair facilities or subcontractors for repair and all transportation charges shall be billed to the Customer.

**REPAIR VISIT:** A repair visit is defined as an onsite response from EDAX authorized service personnel to correct a reported malfunction or failure of the EQUIPMENT which cannot be corrected by phone support. A single repair visit may include more than one onsite service call to fully correct the reported problem. Once the initially reported problem or problems is corrected, the repair visit is considered completed and is counted as a single repair visit. A system move may never be substituted for a REPAIR VISIT.

**PARTS:** All parts shall be invoiced at list price, plus shipping, unless otherwise provided in EDAX SMA. EDAX at its discretion may exchange or modify parts used in servicing the Equipment; however, parts shall only be used where they have not been modified in a way that significantly impairs their intrinsic value as determined by EDAX.

**CONSUMABLES:** Parts or other items that are consumed in the everyday operation of the Equipment, including but not limited to sample holders, printer paper, manuals, tools, and X-ray tube assemblies, are not covered by this agreement, unless otherwise noted in your contract offering.

**SYSTEM MOVES:** Relocation or movement of a system is not covered under a Maintenance Agreement. A 25% discount will be applied to all labor required to move a system covered by a Maintenance Agreement. Contact EDAX for a quotation.

**LABOR RATES:** EDAX's standard labor rate for Field Service is \$295 per hour during regular business hours (Mon-Fri, 8:30a.m. - 5:00p.m.) Extended service rates will be charged at \$495 per hour for Saturdays and after-hours and at a rate of \$590 per hour for Sundays and EDAX holidays. A minimum 8 hour charge, including travel hours, plus travel expenses per service call is required. SMA Customers receive a 25% discount off extended service rates.

**FACTORY SERVICE:** The hourly labor rate for work performed by factory service is \$245 per hour (Mon.-Fri.; 8 a.m. - 5 p.m.) plus parts and shipping.

**UNSCHEDULED REPAIRS:** Repairs to the Equipment in addition to scheduled visits may be requested by the Customer but shall be limited to the number provided in the EDAX quotation. Visits in excess of this number shall be at the sole discretion of EDAX and at an additional cost to Customer with the discount given on the previous page being applicable. EDAX shall make every effort to promptly schedule additional visits to address emergencies.

**ACCESSORIES:** Accessories to the Equipment shall be covered hereunder only where the Equipment is covered under the SMA. Accessories shall be covered under the same service plan as the Equipment to which they are related.

**CUSTOMER OBLIGATIONS:**

For scheduled visits scheduled more than 24 hours in advance, Customer shall provide 24 hours advance notice of cancellation of a scheduled visit or any restrictions or hindrances which impairs EDAX's ability to complete service during a scheduled visit. If 24 hour advance notice is not received of cancellation of a scheduled visit, the Customer agrees to compensate EDAX for lost travel time, travel expenses and labor hours at rates previously described. If 24 hour advance notice is not received concerning any restrictions or hindrances in providing scheduled service, the Customer, at their expense, shall resolve the specified restrictions or hindrances within 2 hours when EDAX is onsite. This may include but is not limited to resources to move or transport the Equipment, as well as the services of electricians, plumbers, masons, carpenters and other craftspeople, needed to provide EDAX with necessary access to the Equipment and to return the Equipment to its original location. In the event this is not possible, the Customer agrees to compensate EDAX for lost travel time, travel expenses and labor hours at rates previously described.

**FORCE MAJEURE:** No liability shall result to EDAX from delay in performance or from nonperformance caused by circumstances beyond its control, including but not limited to delays by suppliers in providing materials/services, acts of God, decrees of government, strikes or other labor difficulties, delays in transportation, unavailability of replacement parts, and interruption of EDAX's business.

**TERM&TERMINATION:** The term of this agreement shall be one (1) year from the date hereof, unless otherwise noted in the contract offering. Customer can revoke this agreement within 30 calendar days of entering the agreement, in which case all work already performed under this agreement, including labor charges, travel charges, parts and all other expenditures become billable and will be retroactive invoiced at standard rates.

**PAYMENT:** Services shall be billed annually in advance. The term of payment shall be net thirty (30) days from date of invoice. Payment shall be made without any deduction or set-off.

**WARRANTY:** All EDAX warranties expressed or implied are limited to defects in materials and workmanship only. EDAX assumes no responsibility for products, parts, components, or labor not provided by EDAX, and reserves the right to make the final good faith determination concerning the existence and possible cause of any defects. All services performed shall be warranted for ninety (90) days following the completion date and shall be in accordance with generally-accepted industry practice. Parts are warranted for twelve (12) months from shipment invoice date, if installed by AMETEK / EDAX Service Engineer, but EDAX's obligation under such warranty shall be limited to repair or replacement, at EDAX's option, of any such parts which if properly used and maintained proved to have been defective in material or workmanship. The Detector repair warranty period is twelve (12) months from time of shipment from factory. Warranty obligations shall not apply to Equipment which has been improperly installed or serviced by non-EDAX personnel. The foregoing warranty is in lieu of all other warranties, whether oral, written, expressed, implied or statutory. No implied or statutory warranties of merchantability or fitness for a particular purpose shall apply.

**EXTENDED WARRANTY:** Offered for one year only following system Warranty. Support hours are Monday through Friday, 8:30am-5pm EST as applicable, except holidays. Telephone response within 24 hours. Includes unscheduled repair visits, parts, labor, travel, and living expenses. Software updates and shipping are included. Preventative Maintenance Visit is not included unless purchased as an option. Detector Module/Window coverage is not included unless purchased as an option, unless failure is due to defects in materials or workmanship.

**LIMITATION OF LIABILITY:** The total liability of EDAX on any claim arising with regard to the services provided hereunder shall not exceed the price allocable to the services or part thereof which gives rise to the claim. In no event shall EDAX, its affiliates, subcontractors or suppliers be liable for any loss of profit or revenues, loss of use of the services or any associated equipment, cost of capital, cost of substitute services, downtime costs, claims of customer's customers, or for any special, proximate, consequential, incidental, indirect or exemplary damages.

**TAXES:** Customer shall pay all taxes (municipal, state or federal) which may now or hereafter be paid or payable based upon the charges made or services provided hereunder.

**PRICES:** Prices shall be subject to change without notice.

**UPGRADES, MODIFICATIONS AND INSTALLATIONS:** Customers may receive discounts on labor rates for upgrades and on-site modifications to the Equipment, and for installations of new Equipment.

**DETECTOR REPAIRS:** The SDDs contain complex internal control electronics, precision mechanical parts, electric cooling devices, and thin-window sealed modules exposed to microscope chambers. In some TEM configurations, the modules have no windows. Module repairs on SDD detectors are not covered unless explicitly noted on your service contract. Contract customers with module coverage receive one (1) module repair per 12 month contract period. Element contract customers receive (1) module repair included in a 12 month contract period at no additional cost. Detector units returned for repair must be evaluated by the factory in Mahwah, NJ. Repair charges will be assessed upon completion of evaluation.

**DISCLAIMER:** EDAX shall not be obligated to perform services hereunder where the Equipment has been subjected to vandalism, fire, water, explosion, Customer abuse, unauthorized Customer modifications or upgrades, malfunctions due to Customer error, or improper power, water or environmental conditions.

**INDEPENDENT CONTRACTOR:** EDAX's relationship to Customer shall be that of an independent contractor. Nothing in this agreement shall be construed to constitute EDAX, or any of its employees, as an agent, associate, joint venture or partner of Customer.



**ASSIGNMENT AND SUBCONTRACTING:** Neither party shall assign or transfer this agreement, in whole or in part, or any interest arising under this agreement, without the prior written consent of the other, which consent shall not be unreasonably withheld.

**APPLICABLE LAW:** This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to the principles of conflict of law and the courts within Pennsylvania shall be the only courts of competent jurisdiction. The parties do hereby irrevocably submit themselves to the personal jurisdiction of the Pennsylvania courts and do hereby irrevocably agree to service of process by Pennsylvania courts upon them.

**SEVERABILITY:** In the event that any section of this agreement shall be found to be void or unenforceable, such findings shall not be construed to render any other section of this agreement either void or unenforceable, and all other sections shall remain in full force and effect unless the section(s) which is/are invalid or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either party.

**NO WAIVER:** The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of this agreement or to take advantage of any of its rights shall not be construed as a waiver of any such provision or the relinquishment of any such right. Furthermore, any termination of the agreement shall not relieve or release either party hereto from any rights, liabilities, or obligations which it has accrued under law or under the terms of the agreement prior to the date of such termination.

**ENTIRE AGREEMENT:** This agreement <sup>and attached Standard Addendum to agreement</sup> embodies the entire understanding between the parties and, except as otherwise specifically stated herein, there are no contracts, agreements, understandings, conditions, or representations, oral or written, with reference to the subject matter hereof which are not merged herein. Any additional or different terms proposed by customer in any document, including, but not limited to its purchase orders shall not be binding upon EDAX and shall not be a part of this agreement. Except as otherwise specifically stated, no modification hereto shall be of any force or effect unless (1) reduced to writing and signed by a duly authorized person of each party hereto, and (2) expressly referred to as being a modification or an amendment to this agreement.

## Service Maintenance Agreement Signature

University of North Texas System

EDAX Business Unit of Materials Analysis Division of  
AMETEK, Inc.:

(Customer Company / Institution / Lab)

Signed:

DocuSigned by:

DocuSigned by:

(8/19/2021

(8/19/2021

(Date)

EDAX Quote #)

(Date)

## STANDARD ADDENDUM TO AGREEMENT

Contracts with the University of North Texas System and the University of North Texas (collectively, "UNT") are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

**Payment.** In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNT; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

**Eligibility to Receive Payment.** By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov't Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**Tax Exempt.** UNT is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

**Breach of Contract Claims Against UNT.** Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNT that cannot be resolved in the ordinary course of business.

**Governing Law and Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part in Denton County, Texas, and venue for any suit filed against UNT shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

**No Excess Obligations.** In the event this Agreement spans multiple fiscal years, UNT's continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNT shall issue written notice to Vendor that UNT may terminate the Agreement without further duty or obligation.

**Travel Expenses.** Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

**Delivery.** Delivery shall be FOB Destination.

**Insurance.** UNT, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNT shall without further requirement, satisfy all insurance obligations of UNT under the Agreement.

**Public Information.** UNT shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNT in an electronic format. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this contract and Vendor agrees that the contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Further, Vendor agrees (1) to preserve contracting information for the duration of the contract and according to UNT records retention requirements; (2) to promptly provide contracting information to UNT when requested; and (3) upon completion of the contract to provide, at no cost, all contracting information to UNT or to preserve all contracting information according to UNT's records retention requirements.

Required Posting of Contracts on Website. Vendor acknowledges and agrees that UNT is required by Section 2261.253 of the Texas Gov't Code to post each contract it enters into for the purchase of goods or services from a private vendor on its Internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

Israel Non-Boycott Verification. If the Agreement is subject to Texas Gov't Code Section 2271.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

**Limitations.** UNT is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNT property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNT, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

VENDOR: EDAX \_\_\_\_\_

UNIVERSITY OF NORTH TEXAS

By:

Name:

Title:

Date:

DocuSigned by:  
[Redacted Signature]

[Redacted Title]

Date: 8/19/2021 \_\_\_\_\_

8/19/2021 \_\_\_\_\_

## **Declaration of Procurement Method**

The attached contract document has been issued as a result of either a sole source or proprietary justification approved by the University of North Texas System Procurement Department.

The approved justification form is on file with the UNT System Procurement Department records.