

General Terms and Conditions - Testing Services -

The terms and conditions contained in this statement of General Terms and Conditions, Testing Services (hereinafter referred to as “Terms and Conditions”), are in addition to and intended to supplement the terms and conditions stated in the Quotation for Testing Services (hereinafter referred to as the “Quotation”) prepared by Test Devices, Inc. (hereinafter referred to as “TDI” or “Seller”). Upon Buyer’s Acceptance, the Sales Agreement (as defined in Paragraph 1, Definitions, below and hereinafter referred to as the “Sales Agreement”) shall be the exclusive statement of the agreement between Buyer and Seller. Nothing in the Buyer’s Acceptance, whether acceptance is made by purchase order, quotation acknowledgment or other documentation shall have the effect of altering or changing the terms, conditions and provisions of the Terms and Conditions and Quotation. Buyer expressly accepts the Sales Agreement Terms and Conditions and agrees that any additional or different terms provided by Buyer (in a purchase order, Quotation acknowledgment or otherwise) will be ineffective. Further, any inconsistency or conflict arising between the terms and conditions of the documentation constituting the Sales Agreement, shall be resolved in the manner more fully described in Paragraph 19, Terms of Agreement; Conflicts, herein.

1. DEFINITIONS

- A. Seller shall be defined as Test Devices, Inc., a Massachusetts Business Corporation with its principal place of business located at 571 Main Street, Hudson, MA 01749 or any of its subsidiary companies or divisions issuing the Sales Agreement to Buyer.
- B. Buyer shall be defined as the company or entity contracting for the provision of testing services and/or the company or entity that receives the Quotation.
- C. Sales Agreement shall be defined as the Terms and Conditions, Quotation and any attachments, drawings, specifications or other documents that are incorporated by reference, as each may be amended, modified or supplemented from time to time by mutual agreement of the Parties together with Buyer’s Acceptance. As stated above, nothing in the Buyer’s Acceptance shall have the effect of altering or changing the terms, conditions and provisions of the Terms and Conditions or Quotation.
- D. Quotation shall be defined as the Quotation issued by Seller to Buyer and shall contain specific provisions for such items as the Work, price and delivery dates and which is subject to these Terms and Conditions.
- E. Work shall be defined as all labor, services, materials, supplies, equipment or other items or documentation furnished by Seller to Buyer pursuant to and in accordance with the provisions of the Sales Agreement.

2. COMMUNICATIONS

All written communications must be directed to Seller’s Sales Representative, who shall be designated by Seller. No adjustments to the Work shall be made except in accordance with the provisions of Paragraph 3 - Amendments, Changes and Modifications, below. Buyer may engage in informal oral communications with engineering or quality assurance personnel on technical matters only. These communications ARE NOT sufficient to effect adjustments or modifications to the Work.

3. CHANGES AND MODIFICATIONS

- A. Buyer may at any time, by written notice to Seller, request changes or modifications to the Work, including substitutions of materials or accessories. Such changes or modifications may only be accepted by Seller’s Sales Representative. If any such change or modification causes an increase or decrease in the cost of or the time required for performance of the Work, Seller shall notify Buyer. Buyer shall execute a written agreement satisfactory to the Seller which details such changes and modifications to the Work and which adequately amends the other relevant contract terms including but not limited to Price, Delivery Terms, Demurrage. Seller will suspend performance unless and until Buyer and Seller reach a mutual agreement on the scope of any changes or modifications and compensation for said changes or modifications or the Buyer determines to continue with the Work for which Buyer originally contracted. During this suspension, Demurrage charges may accrue pursuant to the terms and at the rates stated in Paragraph 6- Demurrage, below. Seller’s Sales Representative will notify Buyer in the event that Demurrage charges will apply.
- B. Any amendment to, waiver of or modification of, any of the terms and conditions of the Sales Agreement shall only be valid when done in writing and signed by both Buyer and Seller.
- C. Buyer shall not make any changes or modifications to the Work, including substitutions of materials or accessories, without prior written agreement with Seller’s Sales Representative.

4. DELIVERY TERMS

- A. The delivery terms for the Work shall be as set forth in the Sales Agreement. In the event the Seller fails to meet the established delivery date for any reason, the Buyer shall not be entitled to any damages. Further, Buyer hereby waives any and all consequential damages resulting from such delay. In the event of a delay resulting from action of Buyer, the delivery terms shall be automatically extended by adding the number of days of such delay to the delivery date.
- B. As more fully detailed in Paragraph 8 - Risk of Loss and Title, below, Buyer hereby accepts all risk of loss to the Work and to Buyer furnished materials, equipment, articles and other items or documents upon delivery by the Seller to the transportation company or shipping company.
- C. Seller shall use competent carriers to transport the Work and Buyer furnished materials, equipment, articles and other items or documents to the Buyer. Buyer shall be solely responsible for all shipping and transportation charges, as well as any damages resulting from transportation.

5. BURST CONTINGENCY

In the event of a burst of the test article in Seller’s test facility, Buyer is responsible for the cost of repair and replacement of all items and components, (i.e. oven, drive, damper, etc.) and any repair of the spin chamber which might be required as a result. All charges shall be at standard published rates. Payment of the Burst

Contingency shall be upon the same terms as stated in Paragraph 8 - Terms of Payment, below.

6. DEMURRAGE

In the event that the Buyer elects to interrupt a test for any reason, including but not limited to, inspection of the test article, a demurrage charge will be imposed to hold Seller's facility or equipment open for reinstallation of the test article and resumption of the test program. The Demurrage Charge will be billed at a rate of Two Hundred Fifty Dollars (\$250.00) per hour up to a maximum of Two Thousand Dollars (\$2,000) per diem (eight (8) hours per diem at a rate of \$250.00 per hour). Fractions of an hour shall be rounded up to the nearest hour. The Demurrage Charge will be in effect immediately upon interruption of the test. No grace period applies.

7. ARBORS, TOOLING AND INSTRUMENTATION

Arbors, tooling, designs, and instrumentation remain the property of Seller and are covered by Seller's property and casualty insurance policies. Seller will store these items for a period of 1 year from last use. Buyer and Seller hereby agree that tooling and instrumentation is generic and can be used at Seller's discretion as part of Seller's equipment. At time of order, Buyer can request special terms for ownership of arbors, tooling and instrumentation. Seller may, at its option, store this Buyer owned equipment at Seller's place of business. As detailed more fully in Paragraph 13, Insurance and Indemnity, below, Buyer owned equipment is expressly excluded from and not covered by Seller's property and casualty insurance. In the event that Seller agrees to store Buyer owned equipment at Seller's place of business, Buyer will be required to provide Seller with a Certificate of Insurance or other documentation adequate to Seller, indicating said Buyer owned equipment is covered under Buyer's property and casualty insurance.

8. RISK OF LOSS AND TITLE

- A. Buyer agrees to assume all risk of damage to, and loss of, its property delivered to Seller and agrees that Seller shall not be liable for any loss or damage to Buyer's property under any circumstances, either while on Seller's premises or in transit to or from Seller's plant. As stated in Paragraph 4 - Delivery Terms, supra, Buyer assumes all risk of loss once Seller has made delivery to the transportation company or shipping company.
- B. Seller retains all right title and interest in and to the Work until such time as the Seller has received full payment on the Sales Agreement, including any delivery charges, Demurrage Charges, Burst Contingencies, interest and any other charges or fees due and payable to Seller and funds constituting full payment have cleared. Title shall pass to Buyer only upon such time as the funds constituting full payment have cleared, and not otherwise.

9. TERMS OF PAYMENT

Buyer will compensate Seller in accordance with the payment terms set forth in the Quotation and relevant provisions of the Sales Agreement. Payments shall be made in U.S. Dollars net 30 days from the date of Seller's invoice. If payment is to be made by wire transfer, Buyer shall pay any wire transfer fees incurred by both Buyer and Seller. Buyer shall be responsible for contacting Seller's Sales Representative for information concerning wire transfers and related fees. Interest shall accrue at the rate of eighteen percent (18%) per annum, or 1½ percent (1.5%) per month on all invoices not paid in accordance with the terms herein set forth.

10. TAXES AND DUTIES

The sales price under this Sales Agreement does not include any sales, use or other applicable taxes or duties. If said taxes are applicable to the sale and purchase as indicated on the Sales Agreement, the Seller shall add the applicable tax to the invoice (as a separate item) and Buyer will pay the Seller such tax as an addition to the sales price. Buyer hereby agrees and represents that it is solely responsible for any and all taxes which may accrue as a result of this Sales Agreement. Further, Buyer agrees that it will indemnify and hold harmless Seller for all costs, including reasonable attorney's fees resulting from Buyer's failure to pay any taxes and duties arising from the Sales Agreement.

11. INSPECTION AND ACCEPTANCE

- A. Inspection and testing by Buyer shall be performed in such manner as to not delay the Work. Seller may charge Buyer any additional costs related to inspection and testing by Buyer. Such costs may include but are not limited to the Demurrage Charge as detailed in Paragraph 6, supra.
- B. Within ten (10) days of receipt of the Work, Buyer shall notify the Seller, in writing, of any alleged deficiencies in the Work. Seller shall be entitled to a reasonable period of time to attempt to correct any such alleged deficiencies. Buyer shall not back-charge Seller for any costs incurred by Buyer for correcting any alleged deficiency in the Work.

12. DEFAULT

Seller may terminate the Sales Agreement upon the occurrence of any default of the Buyer, including but not limited to the following: (i) Buyer fails to provide test articles or test plans to the Seller and/or authorize commencement of the Work within the time frame specified in the Sales Agreement or any modification thereof; (ii) a breach of any other term or condition of the Quotation and/or Sales Agreement; (iii) failure to make payments due and owing under the Sales Agreement in a timely manner; (iv) Buyer becomes insolvent, ceases to do business as a going concern, or becomes unable to pay its debts generally as they become due; or a petition for an order for relief under the bankruptcy or insolvency laws or for reorganization, composition, adjustment or other relief of debtors under any law is filed by or against Buyer or Buyer makes an assignment for the benefit of creditors; or a receiver or liquidator is appointed for Buyer or any court of competent jurisdiction orders the winding up or liquidation of the affairs of Buyer. In the event of such termination, Seller may seek to sell the Work to an alternative party it deems appropriate without consultation with Buyer, and Buyer shall pay to the Seller any difference between the Sales Agreement amount and the amount received by the Seller for the work covered by the Sales Agreement.

13. INSURANCE

- A. Buyer is responsible for maintaining insurance on any of its property while it is on Seller's premises or in transit thereto or therefrom Seller's premises. Buyer hereby acknowledges Buyer owned property is specifically excluded from coverage under Seller's property and casualty insurance. Upon Buyer's written request, Seller can provide insurance for Buyer-owned equipment for a fee. Buyer must contact Seller's Sales Representative, in writing, to request such insurance coverage. Buyer-owned equipment that is actively involved in a test is NOT covered by Seller's insurance policies.
- B. Buyer shall provide Seller with Certificates of Insurance for all Buyer owned property. All insurance certificates shall be in a form satisfactory to Seller and shall stipulate that the insurance will not be cancelled nor any change made in the policy and/or coverage(s) without thirty (30) days prior written notice beginning upon the day of receipt of registered mail concerning same by Seller. Evidence of insurance is to be furnished before any Work is started and in the amounts stated herein unless and only if specifically otherwise indicated or directed in writing by Seller. Failure of the Seller to request certificates of

insurance does not constitute a waiver of the terms of this requirement.

- C. Neither the procurement, maintenance or acceptance of insurance coverage by Seller shall relieve Buyer of liability for loss or damage in excess of the policy coverage or limits of Seller's insurance nor does it in any way limit or release Buyer of its obligations or liabilities under the Sales Agreement.
- D. Breach of this insurance provision shall constitute a basis to terminate Seller's further performance under the Sales Agreement, at Seller's discretion.

14. TESTING SERVICES PERFORMED ON BUYER'S PREMISES; INDEMNITY

When Work is performed on Buyer's premises, Buyer shall, to the extent permitted by applicable law, defend, indemnify and hold harmless Seller, its subsidiaries, affiliates, customers and other designated parties from and against any and all losses, expenses, liens, claims, demands and causes of action of every kind and character (including those of the parties, their agents and employees) for death, personal injury, property damage or any other liability, damages, fines or penalties (except where reimbursement of fines or penalties is prohibited by applicable law) including costs, attorney's fees and settlements arising out of or in connection with the Work by: (1) any act, failure to act or omission, whether performed by Buyer or any agent, employee, invitee or licensee of the parties and whether resulting from or contributed to by the negligence in any form of Seller, its agents, employees and independent agencies directly responsible to Buyer; (2) any defect in, or condition of the premises, or any equipment thereon or any materials furnished or provided by Buyer; or (3) any equipment, components, labor, materials or products provided by Buyer in conjunction with the Work.

15. WARRANTIES

Seller warrants that the Work shall, when delivered, be prepared in accordance with the Sales Agreement and shall be free from defects in workmanship or material. THE WARRANTY PROVIDED IN THIS PARAGRAPH AND THE OBLIGATIONS AND LIABILITIES OF THE SELLER THEREUNDER ARE EXCLUSIVE AND BUYER HEREBY WAIVES ALL OTHER WARRANTIES EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION ANY OBLIGATIONS OF THE SELLER WITH RESPECT TO FITNESS, MERCHANT-ABILITY OR CONSEQUENTIAL DAMAGES).

16. INTELLECTUAL PROPERTY RIGHTS

- A. Any invention, improvement, discovery, proprietary information, maskwork, software, or system resulting from the Work performed under the Sales Agreement shall be the sole property of Seller. All copyrightable material, patents, formulas, copyrights, trade secrets, techniques, designs, trademarks, maskworks or other intellectual property resulting from Work under the Sales Agreement shall be the sole property of Seller. Seller shall have the full right to use such property in any manner without any claim on the part of Buyer and without any duty to account to Buyer for such use.
- B. The Seller retains all interest in any work or authorship created under the Sales Agreement, including all rights to derivative works.
- C. The Sales Agreement DOES NOT confer or grant to Buyer, in any manner whatsoever, any license or right under any patent, trademark, trade secret, maskwork, copyright or other intellectual property right held by Seller, unless specifically set forth in the body of the Sales Agreement.

17. PROTECTION OF INFORMATION

All information marked or designated as confidential or proprietary including, but not limited to, software data, drawings, designs, specifications, photographs, and sketches relating to Work hereunder furnished by Seller to Buyer shall (except to the extent such information has been independently developed prior to the Sales Agreement by Buyer or is received by Buyer from a third party without restriction) be treated by Buyer as Seller's confidential proprietary information.

18. SELLER FURNISHED PROPERTY

The following additional provisions shall apply to any and all tools, patterns, equipment, material, or other property which is either (i) supplied to Buyer by Seller or (ii) purchased by or on behalf of Seller to perform the Work (hereinafter "Seller Furnished Property"). Seller Furnished Property provided to Buyer shall carry no guarantee as to adequacy of form, fit or function with respect to any intended use or fitness for any intended purpose or fitness for a particular purpose by Buyer as such Seller Furnished Property may be used by Buyer in conjunction with any other material and/or property of either Buyer or Seller.

- A. Title and all rights to Seller Furnished Property shall remain with Seller. Buyer shall segregate and clearly mark Seller Furnished Property to show Seller's ownership and shall do all things necessary to preserve Seller's title thereto, free and clear of all encumbrances. Buyer shall, if requested by Seller, submit to Seller an itemized inventory showing the description, location, and identifying marks of each item of Seller Furnished Property. Seller shall have the right to enter Buyer's premises and inspect any and all Seller Furnished Property. Should Buyer fail to perform the duties imposed upon it in this Paragraph 17- Seller Furnished Property, or should Seller at any time have reason to believe that its title to, or right to the possession of, any Seller Furnished Property is threatened, Seller shall have the right to enter upon Buyer's premises and remove any or all such property. Upon completion or termination of the Sales Agreement, Buyer shall segregate and collect in one location all Seller Furnished Property and shall dispose of the same as Seller may direct. Seller reserves the right to abandon Seller Furnished Property at no additional cost to Seller upon issuance of written notification to Buyer.
- B. Unless otherwise approved by Seller in writing, Buyer shall, at its own expense, perform all maintenance, repairs, and replacements necessary with respect to Seller Furnished Property so that the same may remain suitable for the use contemplated hereby and may, at the time required by the Sales Agreement, be returned to Seller in as good condition as when received, except for reasonable wear and tear or consumption of materials necessarily resulting from their use.
- C. Buyer shall give Seller prompt written notice of any Seller Furnished Property which upon delivery to Buyer is found to be defective. The correction or replacement of such defective Seller Furnished Property shall be accomplished at Seller's written direction and expense.
- D. Upon delivery, procurement or manufacture of any Seller Furnished Property, the risk of loss or damage shall be upon Buyer. Risk of loss or damage shall transfer to Seller when such property is returned to Seller in the manner required hereunder.
- E. Buyer shall indemnify Seller against any and all liability for damage to Seller Furnished Property or injury to or death of persons arising from or incidental to the presence or use of Seller Furnished Property, whether such damage, injury, or death be caused by defects in such property, negligence in the use thereof, strict liability, or otherwise.

19. ENTIRE AGREEMENT

The Sales Agreement constitutes the entire agreement and understanding of the parties, supercedes any prior agreement between the parties and expressly limits acceptance to the terms contained in the Terms and Conditions and the Quotation.

20. TERMS OF AGREEMENT; CONFLICTS

Any conflict arising between the terms set forth in the documents constituting the Sales Agreement shall be resolved as follows (i) if the conflict arises between the Buyer's Acceptance and Seller's Quotation or the Terms and Conditions, Seller's Quotation or the TERMS AND CONDITIONS shall control, (ii) if a conflict arises between the Terms and Conditions and the Quotation, the terms of the Quotation shall govern unless expressly set forth differently herein.

21. WAIVER

Failure of any party to enforce its rights under the Sales Agreement shall not constitute a waiver of such rights or of any other right under the Sales Agreement.

22. SEVERABILITY

To the extent that any provision of the Sales Agreement is ruled illegal, invalid or unenforceable, then such provision shall be deemed severable, and the remaining provisions of the Sales Agreement shall remain in full force and effect.

23. ASSIGNMENT

The Sales Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns. Buyer shall not assign its rights and/or obligations under the Sales Agreement without the prior written consent of Seller. Buyer shall provide Seller with timely written notification of any change in its ownership or control, financial status or any material change in its business or management. Buyer's failure to obtain consent or Buyer's failure to provide such notification shall constitute a Default under the Sales Agreement. Seller may assign the Sales Agreement to any subsidiary or affiliate or any successor to the testing services and products business of Seller.

24. CHOICE OF LAW

The performance and interpretation of the Sales Agreement shall be governed by the laws of the Commonwealth of Massachusetts, USA, exclusive of its conflicts of law provisions.

25. DISPUTE RESOLUTION

Seller and Buyer shall use all reasonable efforts to amicably resolve disputes arising out of the Sales Agreement, prior to commencing any formal legal proceedings. Such efforts may include use of a mutually agreed alternative dispute resolution mechanism. Any action or proceeding filed by Buyer against Seller under the Sales Agreement shall be filed exclusively in the state or federal courts in Massachusetts, which shall then have exclusive jurisdiction, the Buyer agreeing that said court or courts shall have in personam jurisdiction over the Buyer.

26. SECTION HEADINGS

The section headings are provided for the convenience of the parties and in no way alter modify, amend, limit or restrict the contractual obligations of the parties.

27. NEWS, PUBLICITY OR ADVERTISING RELEASES

No news release or any other publicity in any way relating to Seller or Buyer concerning the Sales Agreement shall be made by Buyer to any news media or the general public without the prior written approval of Seller.

FOR THE BUYER:

Signature: _____

Name _____

Title _____

Date _____