



PO Box 572455 / Salt Lake City UT 84157-2455 / USA
TEL +1 801 262 2448 · FAX +1 801 262 9870 · www.TEi-TS.com

TERMS AND CONDITIONS

1. **AUTHORIZATION TO PROCEED.** The issuance of a Purchase Order, Payment of a Deposit and/or submission of Samples (even without a Request for Testing and Information Form) to TEI-Testing Services, LLC a Utah Limited Liability Company (hereafter TEI-TS) will serve as authorization for TEI-TS to proceed with the services called for in this Quote and upon execution becomes the Agreement for Testing Services as outlined in this Quote/Agreement for Testing Services between TEI-TS and the Client. The issuance of a Purchase Order, Payment of a Deposit and/or submission of Samples also constitutes acknowledgement by the Client that Client has read and agrees to the Terms and Conditions listed herein.
2. **EXTENT OF AGREEMENT.** This Agreement, including attachments incorporated herein by reference, represents the entire agreement between TEI-TS and Client and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be altered only by written instrument signed by authorized representatives of both TEI-TS and Client.
3. **CHANGES.** Work beyond the Scope of Services or redoing any part of the project through no fault of TEI-TS, shall constitute extra work and shall be paid for on either a time-and-materials basis or TEI-TS firm fix price for the extra work performed, in addition to any other payment provided for in this Agreement. In the event TEI-TS' work is interrupted due to delays other than delays caused by TEI-TS, where expenses are incurred by TEI-TS, TEI-TS shall be compensated equitably (based on TEI-TS' current Fee Schedule) for the additional labor or other charges associated with maintaining its work force for Client's benefit during the delay, or at the option of the Client, for charges incurred by TEI-TS for demobilization and subsequent remobilization. If, during the course of performance of this Agreement, conditions or circumstances are discovered which were not contemplated by TEI-TS at the commencement of this Agreement, TEI-TS shall notify Client in writing of the newly discovered conditions or circumstances and the impact on the Agreement. Client and TEI-TS agree to negotiate in good faith any changes to the price, terms and conditions or schedule of this Agreement.
4. **PAYMENT.** TEI-TS can invoice Client periodically for the services performed under this Agreement. Client shall pay such invoice upon receipt. Invoices not paid within thirty (30) days of the invoice date shall be subject to a late payment charge of 1-1/2 percent per month (18% per annum) from date of billing until paid. The invoice amounts shall be presumed to be correct unless Client notifies TEI-TS in writing within fourteen (14) days of receipt. Progress billings, when paid, represent acceptances by Client of the invoiced services performed by TEI-TS. The Client agrees to pay attorney fees and costs necessary to collect on past due accounts. If client fails to pay an invoice when due, TEI-TS may suspend all services until such invoice is paid in full. All invoices shall be paid to Testing Engineers International, Inc. PO Box 57025, Salt Lake City, UT 84157-0025, USA.
5. **DISPUTES.** Any dispute arising hereunder shall first be resolved by taking the following steps, where a successive step is taken if the issue is not resolved at the preceding step: 1) by the technical and contractual personnel for each party performing this Subcontract, 2) by executive management of each party, 3) by mediation, 4) by arbitration if both parties agree or 5) through the court system of the jurisdiction of the TEI-TS office that entered this Agreement.
6. **STANDARD OF CARE.** TEI-TS shall perform its services in a manner consistent with the standard of care and skill ordinarily exercised by members of the profession practicing under similar conditions at the time the services are performed. This Agreement neither makes nor intends a warranty or guarantee, express or implied.
7. **EXPECTATION OF FINDINGS.** Client agrees that no promise of outcome, expected results or implied compliance to Standards are expressed by TEI-TS, its officers, directors, employees and agents even if communicated verbally and/or in writing. If such communication is given it is only an opinion and not to be relied upon as guarantee of any expected finding.
8. **INDEMNITY.** Client waives any claim against TEI-TS, its officers, employees and agents and agrees to defend, indemnify, protect and hold harmless TEI-TS and its officers, employees and agents from any and all claims, liabilities, damages or expenses, including but not limited to delay of project, reduction of property value, fear of or actual exposure to or release of toxic or hazardous substances, and any consequential damages of whatever nature, which may arise directly or indirectly, to any party, as a result of the services provided by TEI-TS under this Agreement, unless such injury or loss is caused by the sole negligence of TEI-TS. All claims by Client shall be deemed relinquished unless filed within one (1) year after substantial completion of the services.
9. **LIMITATION OF LIABILITY.** Notwithstanding any other provision of this Agreement, Client agrees to limit TEI-TS' and its officers, directors, employees and agents liability due to professional negligence and to any liability arising out of or relating to this Agreement to the lesser of \$50,000 or the stated value of this Agreement. This limit applies to all services on this project, whether provided under this or subsequent agreements, unless modified in writing, agreed to and signed by authorized representatives of the parties. In addition, TEI-TS shall not be liable for consequential, incidental or indirect damages as a result of the performance of this Agreement.
10. **INSURANCE.** TEI-TS will maintain insurance for this Agreement in the following types: 1) worker's compensation insurance at statutorily required levels, 2) comprehensive general liability insurance and 3) automotive insurance.
11. **RESPONSIBILITY.** TEI-TS is not responsible for the completion or quality of work that is dependent upon or performed by the Client or third parties not under the direct control of TEI-TS, nor is TEI-TS responsible for their acts or omissions or for any damages resulting therefrom.



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12. **EXCLUSIVE USE.** Services provided under this Agreement, including all reports/information prepared or issued by TEi-TS, are for the exclusive use of the Client. No other use is authorized under this Agreement. Client will not distribute or convey TEi-TS' reports to any person or organization other than in completeness without TEi-TS' written authorization. Client releases TEi-TS from liability and agrees to defend, indemnify, protect and hold harmless TEi-TS from any and all claims, liabilities, damages or expenses arising, in whole or in part, from such unauthorized distribution.

13. **FIELD REPRESENTATION.** On-site, the presence of TEi-TS' or its subcontractors' field personnel, may be for the purpose of providing project administration, assessment, observation and/or field testing. Should a contractor(s) not retained by TEi-TS be involved in the project, Client will advise such contractor(s) that TEi-TS' services do not include supervision or direction of the means, methods or actual work of the contractor(s), his employees or agents. Client will also inform contractor that the presence of TEi-TS' field representative for project administration, assessment, observation or testing, will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If a contractor is involved on the project, Client agrees TEi-TS shall not be responsible for working conditions on the job site including the safety and security of persons or property.

14. **ENVIRONMENTAL LIABILITY.** Client has and shall retain all responsibility and liability for the environmental conditions on the site. All nonconsumed samples shall remain the property of the Client, and Client shall be responsible for and promptly pay for the removal and lawful disposal of samples, cuttings and hazardous materials, unless otherwise agreed in writing. If appropriate, TEi-TS shall preserve samples obtained for the project for not longer than 30 days after the issuance of any document that includes the data obtained from those samples.

15. **TERMINATION.** This Agreement may be terminated by either party upon ten (10) days written notice to the other. In the event of a termination, Client shall pay for all reasonable charges for work performed and demobilization by TEi-TS to date of notice of termination. The limitation of liability and indemnity obligations of this Agreement shall be binding notwithstanding any termination of this Agreement.

16. **ASSIGNMENT.** Neither Client nor TEi-TS shall assign its interest in this Agreement without the written consent of the other.

17. **SUBCONTRACTED LABORATORY SUPPORT:** If TEi-TS does not have the capabilities to perform a Client requested test, TEi-TS may use a TEi-TS approved subcontracted laboratory. If a subcontracted laboratory is used TEi-TS will notify Client in writing of the use and must receive Client approval of the arrangement.

18. **FUNDS.** All funds are in United States Dollars (USD).

19. **AUTHORIZATION FOR RELEASE OF INFORMATION TO TEI-LISTING SERVICES:** If the testing conducted is for the purpose of obtaining Certification from TEi-Listing Services, LLC (hereafter TEi-LS), the Client agrees that TEi-TS may supply a copy of the Report of Test to TEi-LS at no cost to the Client. The indicator that the Client is applying for Certification by TEi-LS will be the selection box found on The Request for Testing & Report Information Form attached to this Quote.

20. **GOVERNING LAW.** This Agreement is governed by the law the judicial jurisdiction of the TEi-TS office that entered this Agreement.

21. **STATEMENT OF RISK:** Client understands and agrees that declarations of conformity are made by directly comparing the measurement results against the test limits given in the standard without consideration to factors that may contribute to measurement uncertainty, and accepts the shared risk that arises from this approach.

22. **OWNERSHIP OF TESTING ENGINEERS INTERNATIONAL, INCORPORATED SEALS, LOGOS, TRADEMARKS, TRADENAMES, SERVICEMARKS, CERTIFICATION MARKS, STYLIZED LETTERING, ETC. (HEREAFTER MARKS):** Client acknowledges that as between TEi and its Companies and the Client, TEi is the owner of any and all Marks used by TEi and its Companies. Nothing in this Agreement shall be construed to give Client or any other person any right, title or interest in TEi's Marks, except as expressly granted under Agreement. Client shall take no action detrimental to TEi's Marks or to TEi's rights therein, or to TEi's or any third party's use of TEi's Marks. All use of TEi's Marks by Client shall inure to the exclusive benefit of TEi. Client acknowledges that TEi's Marks are valid under applicable law. Client agrees that it will not directly or indirectly register or attempt to register TEi's Marks, or anything similar thereto, in any jurisdiction as all or part of any trademark, service mark, certification mark, collective membership mark, product designation, trade dress, trade name, assumed name, corporate name, or other entity name. TEi's Marks may or may not be registered with the U.S. Patent and Trademark Office, Canadian Intellectual Property Office (CIPO), and/or registered with corresponding authorities in other countries, as a trademark, servicemark or certification mark for use.

23. **RELATIONSHIPS:** TEi-Testing Services is a wholly owned LLC of Testing Engineers International, Inc.

