

# GENERAL TERMS AND CONDITIONS OF SERVICE

**1.0 GENERAL** – These terms and conditions shall govern all services performed by Seller on behalf of purchaser.

**1.1 Definitions:** “Seller” shall mean Gray’s Engineering & Consulting, Inc. “Purchaser” shall be the person or entity for whom Seller is performing the Services. “Services” shall mean all work performed by Seller, including services, test reports, test result, test data, materials, goods and other testing and labor to be supplied by Seller hereunder.

**1.2 Acceptance.** Purchaser’s agreement to these terms and conditions may be expressed by written consent, or implied if Purchaser fails to object prior to the initiation of the services.

**1.3 Quotations.** Quotations are offered for acceptance within sixty (60) days unless a longer time is specified on the face of the quotation and, if not so accepted within the designated period, shall be deemed withdrawn. Unless otherwise specified, the prices quoted are based upon receipt of all Purchaser furnished articles, technical data, and support equipment in good condition within thirty (30) days after receipt of order. If the Purchaser-supplied items are not provided in a timely manner, the prices and schedule quoted shall be subject to change. Seller’s acceptance of any order is contingent upon seller’s approval of Purchaser’s credit.

Seller is under no obligation to enter an order acknowledgement and may rescind its quotation at any time prior to acknowledgement. If the quotation is made prior to receipt and review by Seller of all applicable specifications and proposed contract documents, prices quoted are subject to revision once missing documents are received.

The prices quoted are valid only for the purposes of this proposal and may not be utilized as a basis for pricing subsequent or repeat tests.

**2.0 SPECIFICATIONS AND DRAWINGS** – Seller agrees to perform Services in compliance with procedures(s) and specifications(s) furnished by Purchaser, if any, at the time of quotation, except for deviation as noted by Seller on the face of the quotation. In any event or instance not covered by Purchaser’s specification(s), Seller reserves the right to perform Services in accordance with its standard practices.

Seller will not be responsible for errors or omissions resulting from Purchaser-supplied or approved procedures(s), specifications(s), or other Purchaser-supplied information, if any. Seller will not be responsible for incompatibility of the Purchaser’s supplied or approved materials, or test specimens.

**3.0 TOOLING AND SET-UPS** – Where applicable, partial tooling and set-ups quoted and made by Seller are designated for Seller’s special testing techniques, and will not be released from Seller’s plant. Seller may dispose of any fixtures, special tooling, drawings or the like which are the property of Purchaser and are left unclaimed for thirty (30) days after completion of the services.

Except as otherwise agreed, in writing, all right, title and interest to fixtures, special tooling, drawings, designs and other data is and shall remain the property of Seller. Purchaser-owned equipment at Seller’s facilities shall be subject to additional charges for storage, transportation and taxes to the extent applicable.

**4.0 SCHEDULES** – The estimated schedule for completion of any Service is based on Seller’s current commitments, and Seller’s acceptance of Purchaser’s supplied documents and materials.

ALL DATES ARE APPROXIMATE. All prices are F.O.B. Seller’s facility unless otherwise specified. All orders are subject to reschedule due to the possibility of Government priority orders superseding Seller’s commercial schedule. Performance of Services is subject to delays caused by acts of God, labor difficulties, shutdowns, materials shortages, equipment breakdown, unforeseen engineering problems, government regulations priorities, preemption, or other causes beyond Seller’s control, and Purchaser caused delays. Delays in the performance of any Service shall not constitute cause for cancellation of Purchaser’s order, but shall extend Seller’s time to perform for a period equal to the duration of such delay.

**5.0 CHANGE ORDERS, INTERRUPTIONS, TERMINATION** – Seller is not obligated to perform any additional services not specifically referenced in the quotation including, but not limited to repeat testing. If Seller agrees to perform such additional services, charges for Purchaser’s change orders will be commensurate with the additional requirement and the status of Seller’s work in process at the time of Seller’s receipt of Purchaser’s change requirement, and Seller’s written acknowledgement. If, for any reason beyond Seller’s control, the program is interrupted at Purchaser’s direction or by failure of items under test or Purchaser’s equipment, standby costs will accrue until resumption or termination of testing is directed by purchaser in writing. Re-set-up charges will apply to resumption of testing. Rescheduling shall be at the discretion of Seller. Termination or cancellations, whether partial or complete, may be made by Purchaser subject to payment of cancellation charges based upon status of work in process, commitments made and facilities allocated. Additional services (e.g. repeated tests) necessitated by specimen failure or Purchaser provided equipment malfunctions will be construed as change order and the appropriate charges will be added accordingly. If Purchaser should disagree for any reason with the results or conclusion of the testing and requires additional work for verification, Seller shall be entitled to the expense of the additional work required to verify results.

**6.0 SELLER’S OBLIGATION** – Purchaser agrees that Seller’s obligation is to perform Services and report the results in accordance with specification(s). Seller does not render opinions on the suitability of the item tested for any intended purpose. Reasonable care will be exercised by Seller in the performance of Services, in accordance with applicable specification(s) and instructions received from the purchaser.

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**7.0 LIMITATIONS OF LIABILITY** – Purchaser agrees that (1) Seller shall have no liability for any special, indirect, incidental, consequential, exemplary, punitive or compensatory loss or damages, including but not limited to loss of profits, loss of business, loss of opportunity, or loss of goodwill and cost of product recall; (2) Seller shall not be liable for any direct damages arising from delay in the performance of Services, if such delay is due to a cause beyond reasonable control of Seller, including failure of purchaser to comply with any of its obligations hereunder; (3) Seller shall have no indemnification obligations or liability for any loss, damage or expenses arising from any and all actual or threatened claims of any third party (including, without limitation, product liability claims) incurred by Purchaser; and (4) Seller's liability with respect to any claim for any loss, damage, or expense of any nature and howsoever arising shall in no circumstances exceed the price of the order from which the claim arose. In the event of a claim, Purchaser must give written notice to Seller within thirty (30) days after discovery of the facts alleged to justify such claim, and in any case, Seller shall be discharged for any and all actual or threatened liability, claims for loss, direct damage or expense unless suit is brought within one (1) year from either the date of performance by Seller of the Service which gives rise to the claim, or the date when the Service should have been completed in the event of any alleged non-performance.

**8.0 DAMAGE TO PURCHASER'S SAMPLES** – Services furnished by Seller may be destructive in nature and therefore shall be at the risk of Purchaser. Seller shall not be liable for damage to products submitted for testing unless Seller fails to comply with testing procedures contractually agreed to, and only if such failure to comply causes damage to Purchaser's products submitted for testing. Seller will, if so requested, perform an identical retest of the same identical products at no charge, and compensate Purchaser for product cost, or cost of repair, of those products submitted for testing, not to exceed the price of Purchaser's order. In addition, Seller shall not be liable for loss of product value due to failure to follow agreed on delivery dates of products or their associated test reports to Purchaser. If the Services to be performed pursuant to prime or sub-tier contract issued by any agency of the United States Government, Seller's liability for damage, loss or injury to test specimens or other property furnished by Purchaser shall be governed by the provisions of FAR 52.246-25. For purposes thereof, the term, "Contractor" shall be construed to mean Seller and "Government" shall be construed to mean Purchaser.

**9.0 TERMS AND PAYMENT** – All accounts are due and payable in U.S. funds Net thirty (30) days. A 2% per month service charge will apply to all amounts past due. On any test program or order requiring more than thirty (30) days (or other number of days agreed to Seller) to complete, invoices will be submitted for Services performed on a monthly basis and payment is due Net thirty (30) days. All accounts outside of the contiguous United States of America will be required to pay the full invoice amount prior to start of testing.

Payment of Seller's invoices by Purchaser shall not be delayed by, or contingent upon, approval or payment by Purchaser's customer or any other third party.

Purchaser agrees to pay all costs associated with collection of any overdue amount, including reasonable attorney's fees. In addition to other remedies provided by law, where conditions warrant, Seller reserves the right to withhold test data, reports, and test samples until payment of all amounts due is received.

In the event Purchaser defaults on any payment(s), becomes insolvent, or makes a general assignment to the benefit of creditors or files or has filed against it a petition in bankruptcy or for reorganization, or pursues any other remedy under law relating to the relief of debtors, or in the event a receiver be appointed of Purchaser's property or business, Seller may, at its option, without prejudice to any other remedy, suspend or terminate its performance under the contract and treat Purchaser as in default. Notwithstanding any suspension or termination, purchaser remains obligated to pay Seller for the Services rendered prior to such suspension or cancellation.

Purchaser shall also pay Seller a surcharge to cover increased direct or indirect electrical power costs, which may be included in each line item or shown as a separate line item.

**10.0 HOLD HARMLESS AGREEMENT** – Purchaser acknowledges that the performance of the Services are or may be hazardous, thus Purchaser further agrees that it shall indemnify, defend, and save harmless Seller from and against any and all injuries to and deaths of persons howsoever occurring, and damage to all property wheresoever situated, and additionally from any and all claims, demands, costs, losses and damages howsoever caused, resulting directly or indirectly from the performance of any or all services, except to the extent such damages are caused by the sole negligence of Seller.

**11.0 ACCEPTANCE OF PURCHASER'S ORDER** – Acceptance of Purchaser's order does not constitute acceptance of Purchaser's general terms and conditions quoted therein which are specifically rejected by Seller. If Purchaser fails to notify Seller in writing within ten (10) days of Seller's order acknowledgement that any terms or condition of that acknowledgement is unacceptable to Purchaser, Purchaser shall be deemed to have accepted the agreement as set forth in the acknowledgement. Upon acceptance in this manner, these terms and conditions cannot be canceled, revoked, or modified without the specific written consent of Seller, after appropriate provision for payment by Purchaser for additional costs and expenses resulting from such changes.

**12.0 LIENS** – Seller shall have a lien on all reports and data generated as a result of Services rendered as well as all items of Purchaser in Seller's possession, for all charges under this contract, if not paid for as provided herein.

**13.0 WARRANTY** – Seller warrants that the Services shall be performed and delivered in accordance with Seller's usual standards. Subject to the provisions of Para. 6.0 above, aside from those limited warranties specifically set forth herein, Seller specifically disclaims all other warranties including implied warranties of merchantability and fitness for its intended purpose. In the event the services fail to conform, Purchaser shall notify Seller within three months of completion, and Seller shall promptly re-perform the services at no cost, which shall be its sole liability for the non-conforming services.

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- 14.0 TAXES** – All prices quoted herein are exclusive of taxes. Purchaser agrees that all taxes, interest and penalty thereon, if any, relating to the services performed or the products produced or sold hereunder, are to be paid when due by Purchaser.
- 15.0 RISK OF LOSS** – Purchaser assumes risk of loss through acts of God, fire, forcible entry or other casualty of chattels of Purchaser left in Seller's custody or care.
- 16.0 CANCELLATION** – Subject to all provisions of Para. 5.0 above, complete or partial cancellation of any order or contract may be made by Purchaser only upon the payment of cancellation charges incurred and commitments made by Seller.
- 17.0 NOTICE** – Notice shall be deemed effective when received or refused, if sent to the other party at the address provided in Purchaser's order or on page 1 hereof prepaid.
- 18.0 PREVAILING AGREEMENT** – No change or modification of these terms and conditions shall be of any force unless such change or modification shall be executed by an authorized officer of Seller. These terms and conditions shall supersede any terms and conditions on any order or other writing of Purchaser. Acceptance of the quotation is specifically limited to the terms and conditions herein.
- 19.0 APPLICABLE LAW** – The agreement created by quotation, Purchaser's purchase order, and Seller's order acknowledgement shall be governed under the laws of the State of Arizona. The parties irrevocably submit to the jurisdiction of the courts serving Tempe, Arizona, as the exclusive jurisdiction over all disputes arising from or related to the services.
- 20.0 CONFIDENTIAL INFORMATION** – Any non-public drawings, designs, specifications, samples, know-how, processes, plans or other similar items or other technical, commercial, or financial information relating to either party's business and which is clearly marked as "Proprietary" or "Confidential" (collectively "Confidential Information") which the other party may obtain or which a party may in any way disclose to the other party in connection with or related to the performance of the services, shall be deemed to be confidential and, for a period of three years thereafter, the receiving party shall not use the Confidential Information for its own purposes (other than for the performance of the services), and shall not disclose the Confidential Information to any person or firm, other than those that may be specifically authorized by the disclosing party in writing. Upon completion or termination of the order, the receiving party shall return all Confidential Information to the disclosing party, except that the receiving party may retain one (1) copy of all Confidential Information for legal and quality archival purposes, which shall be treated as confidential until its destruction after a period of seven (7) years (or ten (10) years for nuclear related Confidential Information). Purchaser is strictly prohibited from using Seller's name or image in any advertising or publicity, including social media without Seller's implied written consent.
- 21.0 ASSIGNMENT AND SUBCONTRACTING** – Purchaser may not assign the order without the express written consent of Seller. If assigned without prior consent, such assignment shall be void, and Seller may immediately terminate the order and the terms of Section 9 will apply. Seller may assign or subcontract any or all of the Services to be provided hereunder to its parent company or its affiliates.
- 22.0 NON SOLICITATION** – Throughout the provision of Services and for a period of one-year after completion thereof, Purchaser shall not solicit for employment, directly or indirectly, any employee of Seller who was introduced as part of the Services without the express written consent of Seller.
- 23.0 EXPORT CONTROL** – Prior to purchaser disclosing any information to Seller that is subject to U.S. export control laws, including but not limited to ITAR or EAR, Purchaser shall notify Seller in advance in writing of the specific ECCN classification(s) or USML number(s) that apply.
- 24.0 OFAC CERTIFICATION** – Purchaser represents that (i) neither Purchaser nor any person or entity that directly owns 10% or greater equity interest in it nor any of its officers, directors, or managing members is a person or entity (each, a "Prohibited Person") with whom U.S. Person or entities are restricted from doing business under regulations of the office of Foreign Asset Control ("OFAC") of the Department of the U.S. Treasury (including those named on OFAC's Specifically Designated and Blocked Person List) or under Executive Order 13224 (the "Executive Order") signed on September 23, 2001, and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit Threaten to Commit, or Support Terrorism", or other governmental action, and (ii) that throughout the term of the order, Purchaser shall comply with the Executive Order.
- 25.0 ANTI-BRIBERY** – Purchaser agrees they are in compliance with all applicable Anti-Corruption Laws. No action, suit or proceeding by or before any court, or government agency, authority or body, or any arbitrator or nongovernmental authority involving any representative with respect to applicable anti-corruption laws is pending or threatened. Purchaser shall promptly notify Seller in writing if it becomes aware of facts or information which suggest a breach of the foregoing Anti-Corruption covenants or the Anti-Corruption Laws.
- 26.0 THIRD-PARTY LIABILITY** – These terms and conditions apply to and shall govern all services and products provided by Gray's Engineering & Consulting, Inc. In the event of any type of dispute between Seller and Purchaser, such as a claim for alleged damages or losses purportedly caused by Seller, Purchaser's recourse shall be likewise limited to Seller and be subject to all limitations set forth herein. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PURCHASER WAIVES AND RELEASES ANY AND ALL RIGHTS, CLAIMS, DEMANDS OR CAUSES OF ACTION THAT MAY OTHERWISE BE AVAILABLE AT LAW OR IN EQUITY OR GRANTED BY STATUTE TO AVOID OR DISREGARD THE ENTITY FORM OF SELLER OR OTHERWISE IMPOSE LIABILITY ON ANY PARENT OR AFFILIATE OF SELLER, WHETHER GRANTED BY STATUTE OR BASED ON THEORIES OF EQUITY, AGENCY, CONTROL, INSTRUMENTALITY, ALTER EGO, DOMINATION, SHAM, SINGLE BUSINESS ENTERPRISE, PIERCING THE CORPORATE VEIL, UNFAIRNESS OR UNDERCAPITALIZATION.