

PREFERRED TESTING LABS.  
GENERAL TERMS AND CONDITIONS

7 H L R V & R Q G L W L R Q V μ

1) CONTRACT FORMATION AND ACCEPTANCE:

(a) 7KH '6HOOHU μ LQ WKLV FRQWUDFW IRU WKHEI...  
Preferred Testing Lab, Inc. 7KH '%X\HU μ LV QDPHG RQ WKH 6HOOHU·V...  
KHUHLQDIW...  
Quotation or FUHDWHV D ' & Re...  
Conditions, (2) a return to Seller of a copy...  
SD\PHQW DQG WKH 6HOOHU·V DFNQRZOHGJPHQW...  
Notwithstanding the foregoing, the Buyer and Seller may have executed certain separate Nondisclosure Agreements that also form a part of the contract. Any ambiguity or inconsistency in these documents shall be resolved in the following order of precedence: (1) these Terms and Conditions, (2) the Quotation, (3) the Seller accepted Order, (4) any separate Nondisclosure Agreement. All other prior agreements are hereby made null and void.

(b) \$GGLWLRQDO RU GLIIHULQJ WHUPV RU FRQGLV...  
to

ACCEPTANCE, WITHOUT ADDITIONS OR  
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TO OTHER PRICES, TERMS OR CONDITIONS IN SIGNED WRITING. NO OTHER DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS SHALL APPLY.

(c) Seller Quotations are offered for acceptance within sixty (60)

reports, certificates, test or inspection records, drawings, recommendations, advice or the like in respect of the Service (H 5) H S R U W μ or certificate thereon to the Buyer by any date reasonably requested in writing by the Buyer, but the Seller shall not be liable to the Buyer for: (i) any delay in the performance of any obligation under the Contract; or (ii) damages suffered by the Buyer by reason of such delay.

(c)

## 5) TOOLING AND SETUPS:

Where applicable, tooling and setups quoted by Seller reflect costs and special designs to adapt or modify 6 H O 0 b p l e t a r y t e s t  
H T X L S P H Q W R U I L [ W X U H V R U % X \ H U . W W R U R F S L H Q V Q R D Q V K Q H I H M O I O H H W . W K V H H M K C S V H Z L . O O E H  
facility. All U L J K W W L W O H D Q G L Q W H U H V W R 6 H O O H U . V I L [ W X U H V V S H F L D @ p e t r R O L Q J G  
of the Seller, except where the fixtures, tooling, drawings, design and related data are specifically identified as deliverable items in the  
accepted Order. Seller may incorporate proprietary information, intellectual property or trade secrets of the Seller in such deliverable  
items or data. Where such information is incorporated into deliverable items, Buyer shall protect such items or data in accordance with  
the confidentiality provisions of these terms and conditions rendering the same degree of care as Buyer uses to protect its own  
confidential information, but no less than a reasonable degree of care.

## 6) SERVICES:

(a) Reports are issued on the basis of information known to the Seller at the time that the Services are carried out. Although Seller  
will use all commercially reasonable efforts to ensure accuracy, the Services depend, inter alia, on the effective operation of the  
Buyer, including its staff, and on the information submitted to the Seller. All Reports are prepared on the basis that:

- (i) there is no responsibility to any person or entity other than the Buyer;
- (ii)

(b) In the event that the Seller is required by a Party other than the Buyer to present the results or findings of Services carried out by the Seller for the Buyer in any legal proceedings relating to the Buyer, the Buyer shall pay all costs and fees arising from any services which the Seller is required to do as a result, including the preparation of any witness statement and the preparation for and appearance at any court hearing and reasonable travel and out-of-pocket expenses. The Buyer shall pay all such costs, whether or not the Buyer has paid all outstanding Consideration under the Contract and whether or not the Seller has closed the Buyer. V I L O H L Q U H V S H F W R I W

(c) If any aspect or element of the Services (including any Sample) is, or is likely to be, the subject of or relevant to legal proceedings, this fact must be notified to the Seller in writing before the Services are carried out. If that fact is not disclosed to the Seller at that stage, the Seller may not, in its absolute discretion, be prepared to provide testimony and/or documentation, or serve as the expert witness on behalf of the Buyer.

(c) This Section 8 shall survive termination of the Contract.

## 9) ~~CHANGE ORDERS, INTERRUPTIONS, CANCELLATIONS AND TERMINATIONS:~~

(a) Change Orders. Seller is not obligated to perform any additional services not specified in the accepted Order, including but not limited to

10) LIMITATIONS OF LIABILITY AND INDEMNITIES

(a) General IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, LOSS OF USE OF EQUIPMENT, COST OF CAPITAL, COST OF TEMPORARY EQUIPMENT, OVERTIME, BUSINESS INTERRUPTION, SPOILAGE OF GOODS, CLAIMS OF CUSTOMERS OR OTHER HARM, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PARTY SHALL BEAR LIABILITY AND RESPONSIBILITY FOR THE ACTS, ERRORS OR OMISSIONS OF ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, SUBCONTRACTORS, ASSIGNS, SUCCESSORS, REPRESENTATIVES OR AGENTS COMMITTED WITHIN THE SCOPE OF THEIR EMPLOYMENT OR FIDUCIARY DUTY. EACH PARTY SHALL MAINTAIN REASONABLE AND RESPONSIBLE AMOUNTS FOR SUCH LIABILITIES. (, 7 + ( 5 3 \$ 5 7 < 6 + \$ / / % ( / , \$ % / ( ) 2 5 7 + ( \$ & 7 6 ( 5 5 2 5 6 2 5 2 0 , 6 6 , 2 1 6 2 ) OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, SUBCONTRACTORS, ASSIGNS, SUCCESSORS, REPRESENTATIVES OR AGENTS WHETHER OR NOT CARRIED OUT WITHIN THE SCOPE OF THEIR EMPLOYMENT OR FIDUCIARY DUTY. Nothing in this Agreement shall H [ F O X G H R U O L P L W H L G H K W K 3 B U W S H V O R O E O L O W X I R U F D X V H G E \ V D L G 3 D U W \ . V Q H J O for any liability that cannot legally be excluded or limited. Seller is neither an insurer nor a guarantor and disclaims all liability in such capacity. Buyer is not a censured under 6 H O @ s u t a n d e , unless specifically so stated in the accepted Order. THIS SUBSECTION (a) SHALL APPLY REGARD( ) 4 f 1 0 0 T m 0 p 4 s 7 9 2 r e W \* n B T / F 1 8 . 0 4 T f 1 0 0 1 5 4 2 . 4 5 5 6 . 1 8 T m 0 G [(9)4(86 Tm 0T Q ET Q q H4 556

NOTES OR OTHERWISE APPEARING ON THE ORDER OR IN ANY COMMUNICATION THEREOF (as such shall be defined in the Contract) AND 0.00% LIMITATION, WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(e) ~~THESE TERMS AND CONDITIONS SHALL APPLY TO ALL CONTRACTS FOR THE SALE OF SERVICES BY THE SELLER TO THE BUYER.~~ THESE TERMS AND CONDITIONS SHALL APPLY TO ALL CONTRACTS FOR THE SALE OF SERVICES BY THE SELLER TO THE BUYER. ALL CLAIMS FOR DAMAGES (INCLUDING CLAIMS FOR BREACH OF CONTRACT, BREACH OF STATUTORY DUTY) MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT SHALL BE LIMITED TO THE GREATER OF (i) US\$5,000 OR (ii) THE CONSIDERATION FOR THE SERVICES PAYABLE EACH CALENDAR YEAR UNDER THE CONTRACT THAT IS SUBJECT TO THE CLAIM. UNDER NO CIRCUMSTANCES SHALL THE SELLER BE LIABLE FOR MORE THAN ONE PARTY'S PROPORTIONATE SHARE WHERE MORE THAN ONE PARTY HAS LIABILITY. Save in the case of fraud or fraudulent concealment by the Seller, the Seller shall be under no liability in respect of any claim under the Contract and any such claim shall be wholly barred and unenforceable unless: (i) the Buyer notifies the Seller in detail and in writing of the alleged basis for the claim within two (2) months of the Buyer becoming aware thereof and within one year after the completion of the Services to which the claim relates; and (ii) the Seller is permitted to inspect any and all









## 16) DISPUTES:

(a) Any dispute between the Parties relating to the contract between Buyer and Seller that cannot be resolved with reasonable promptness shall be referred to each Party's senior managers, provided, however, this shall not preclude a Party from instituting an action seeking injunctive relief to prevent irreparable damage to such Party. Seller will not proceed with any work in dispute in accordance with the terms of this contract.

(b) Each Party irrevocably agrees that any legal suit, action or proceeding arising out of or in connection with the Contract shall be instituted in the state or federal courts located in the Jurisdictional State, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any suit, action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or proceeding in courts of the Jurisdictional State and irrevocably waive and agree not to plead or claim in any court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) All disputes under this contract (including any question regarding its existence, validity and termination) which are not resolved by mutual agreement following good faith negotiations within a period of thirty (30) days from the notification of a dispute shall be finally arbitrated before a mutually acceptable arbitrator in the Jurisdictional State in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

(d) If any legal proceeding is instituted to enforce or interpret the provisions of the Contract, the prevailing Party(s) shall be entitled to recover its, his, her or their costs, including reasonable attorney fees and expert witness fees, from the prevailing Party(s) in the proceeding. For purposes of this subsection 16(d) reasonable legal fees include the reasonable fees, charges, expenses of counsel, whether in house or outside counsel, whether incurred at the trial court level, appeal or in bankruptcy, administrative or probate proceedings or otherwise and court costs.

(e) Buyer acknowledges that it has read these terms and conditions and has had the opportunity to clarify these terms and conditions with Seller and is satisfied that it reflects the intent of the Parties. Accordingly, the rule of contra proferentem shall not apply to the contract formed between Buyer and Seller, and Buyer agrees and acknowledges that any ambiguity, inconsistency, or conflict that remains in the contract between Buyer and Seller after its execution by both Parties shall not be construed for or against Buyer.

## 17) NONSOLICITATION

(a) The Buyer undertakes that during the provision of the Services and for 6 months following completion thereof, the

