



Contractual Terms and Conditions of Service

TERMS AND CONDITIONS – SERVICES

Definitions

Term	Meaning
Buyer	the party who contracts to buy the Scope of Work.
Buyer Scope	all works relevant to the Scope of Work which are not expressly included in Seller's Scope of Work, including any works specified in these Terms or Seller's Offer as being the responsibility of Buyer.
Contract	the contract formed between Buyer and Seller for purchase and sale of the Scope of Work.
Contract Price	the price set out in Seller's Offer or, in case of binding contract, in the Contract.
Costs	all costs and expenses incurred or to be incurred by Seller, including overhead, insurance, financing costs and similar charges and a reasonable profit; when calculating Costs, the costs of Seller's personnel shall be based on Seller's periodic rates as set forth in Seller's Offer or, if not contained therein, according to its rates prevailing when the work is performed.
day	a calendar day.
Defect	a flaw in the workmanship or materials of Seller's equipment at the time of delivery or a failure to prepare documentation or provide Site Services according to commercially reasonable skill and care.
Export Control Event	a situation where the Export Control Regulations may require an Export License or may cause additional costs, delay, prohibit Seller's performance and/or render the Contract not reasonable to perform.
Export Control Regulations	all applicable national and international laws, regulations, orders, embargoes, administrative practices or resolutions that may prohibit or restrict the trade of the Goods.
Export License	license or an equivalent formal approval by the competent authorities for the supply of the Goods under this Contract which is required to be obtained by Seller under the Export Control Regulations.
Force Majeure	acts of war or terrorism, riots, civil commotion, embargoes, export/import permit delays or refusals, epidemics, strikes, fires, delays in transport or customs clearance, earthquakes, floods, hurricanes, typhoons, storms, other acts of God or government or any other circumstances beyond the reasonable control of a party.
including	including without limitation.
Schedule	the time schedule for the Scope of Work as set out in Seller Offer or, in case of binding contract, in the Contract, as such schedule may be modified according to Clause 5 of these Terms.
Scope of Work	the goods, documentation and services (including Site Services, if any) expressly listed as Seller's responsibility in Seller's Offer or, in case of binding contract, the Contract.
Seller	Sentrimax Centrifuges
Seller's Offer	Seller's quotation, proposal or offer for the Scope of Work.
Site	the place at which the Scope of Work is to be performed.
Site Services	the services (if any) provided by Seller at the Site expressly listed as Seller's responsibility in Seller's Offer or, in case of binding contract, the Contract.
Terms	these Terms and Conditions – Services.
Warranty Conditions	has the meaning set out in Clause 7.1.4.
Warranty Period	ninety (90) days from performance of the Scope of Work.

General Provisions



These Terms shall apply to and form an integral part of any Seller's Offer and any Contract.

Any provision of Buyer's purchase order, offer, acceptance or other document or requirement of Buyer which forms a part of the Contract and is in conflict or inconsistent with these Terms or which imposes on Seller liabilities that are additional to or different from those set forth in the Terms shall not apply to the Contract and is of no force or effect. Buyer's terms of purchase and/or service, if any, shall not apply to the Contract and are of no force or effect.

These Terms shall prevail over any inconsistent or conflicting provision of the Contract (including Seller's Offer), except only where (i) Seller has by way of its Seller's Offer or a duly signed document expressly amended a provision of these Terms and has referenced the specific provision of these Terms being amended or (ii) these Terms expressly provide for an option to deviate from the respective provision in Seller's Offer or, as the case may be, in the Contract.

Annex A shall apply where the Scope of Work includes the testing of Buyer's materials at Seller's (or its affiliate's) facility.

1. Scope of Work:

1.1 Seller's works shall be limited to the Scope of Work. Buyer shall be responsible for the Buyer Scope.

2. Site Services:

2.1 If Site Services are included in the Scope of Work, Buyer shall ensure that Seller has safe and appropriate access to the Site at all times required by Seller. Any failure by Buyer to perform this obligation and any failure as regards readiness of the civil works or equipment outside the Scope of Work at the Site will entitle Seller to suspend its Site Services.

2.2 For the purpose of Seller carrying out the Site Services, Buyer shall be responsible for providing all of the following: (i) civil works; (ii) feed and other raw materials for making product; consumables and utilities, each in strict conformity with all requirements of the Contract; (iii) communications connections; (iv) trained and qualified laborers, operators and other personnel required by Seller; (v) safe and reliable equipment to assist in the transport of the Goods at the Site, including cranes and other lifting and transport equipment (to be operated and maintained by Buyer's personnel); (vi) a secure lock-up dry room for keeping tools and small machine parts; (vii) security; (viii) sufficient lighting; (ix) heating or cooling of the buildings at the Site to ensure reasonable climate and required ambient conditions for performing Site Services; (x) office space and facilities and welfare, messing, changing and washing facilities; (xi) any drawings or information which Seller may require for the purposes of carrying out the Site Services; (xii) special tools required for commissioning of the Goods; and (xiii) analyses of feed, utilities and product according to Seller's requirements.

2.3 Under no circumstances will Seller be responsible for the acts and/or omissions of any other contractor or person provided or made available by Buyer or for any works or equipment supplied by them, either by way of a deemed employer or otherwise, or for their payment, welfare, provision of safety equipment or safe means of working, or for their work, productivity or workmanship. Buyer shall be solely responsible for any failure of such persons or contractors to strictly comply with the instructions and requirements of Seller. Buyer shall indemnify, defend and hold Seller harmless from any resulting claims and liability for loss or damage to any property or for bodily injury or death in any way arising out of the acts or omissions of any such persons and contractors, save in each case to the extent directly caused by the negligence of Seller.

3. Payment:

3.1 Buyer shall pay Seller the Contract Price pursuant to the milestone schedule set forth in Seller's Offer or the Contract.

3.2 All payments are to be made by electronic transfer, net cash without any deduction, in United States Dollars unless a different currency is stated in Seller's Offer and within 30 days of the date of Seller's applicable invoice.

3.3 Payment shall not be deemed effected until irrevocably available funds have been received in full by Seller in its nominated bank account.

3.4 Buyer shall notify Seller in writing of any objection to the validity of any invoice within 5 days of receipt, absent which the invoice shall be deemed valid and payable.

3.5 Buyer shall have no right of set-off or right to make any form of withholding or retention against any payment of the Contract Price.

3.3 If any payment is not received by the applicable date for payment, Seller shall be entitled to interest thereon at 2.5% per month and pro rata for any part thereof, without formal demand being made. In addition and upon 7 days' written notice to that effect, Seller may suspend all or part of its performance under the Contract until the payment and any due interest is received in full.

4. Taxes:

4.1 The Contract Price and any other amounts to be paid to Seller are exclusive of, and Buyer shall be responsible for, all federal, local, or municipal duties, taxes (including value added, sales, use, business, excise, gross receipts, contractor's, withholding, or similar taxes), assessments or charges of any kind, except to the extent any taxes or other charges that are assessed on the profits of Seller or which under the applicable Incoterm relating to delivery of the Scope of Work are payable by Seller. The payment of all such duties, taxes, assessments, or charges are the responsibility of Buyer. Seller must receive appropriate tax exemption certificates from Buyer; otherwise, applicable taxes will be charged by Seller on each invoice.

4.2 If any duties, taxes, assessments or charges are imposed on Seller by authorities in the country where the Scope of Work will be installed in connection with any Site Services and/or in connection with the Contract itself, Buyer shall reimburse Seller all such amounts.

4.3 Where Buyer is obliged by applicable law to make a deduction from any payment due to Seller in relation to any such duties, taxes, assessments or charges, Buyer shall increase the payment to be made such that the net payment received by Seller is without any such deduction.

5. Delivery / Risk of Loss / Delays:

5.1 Seller shall deliver the Scope of Work according to the applicable Incoterms by the date specified in the Schedule. If no Incoterm is stipulated, delivery shall be Ex Works manufacturer plant as specified by Seller. In case the respective stipulated Incoterm obliges Seller to perform any import formalities for the import into the country of delivery, Buyer at its cost is obliged to support Seller in any way reasonably required by Seller. Any delay (other than a delay by Seller) in



- completion of import formalities shall be an event entitling Seller to an extension of time and compensation of Costs.
- 5.2 Transfer of risk of loss and damage to the Scope of Work shall be in accordance with the stipulated Incoterm. The inclusion of any Site Services within Seller's Scope of Work shall not alter this transfer of risk of loss and damage and shall not create any assumption by Seller of any form of care, custody and control over any Buyer Scope and/or the Site.
- 5.3 In case of any delay, disruption, impediment or prevention of Seller or any breach of contract by Buyer (including third parties for whom it is responsible), Seller shall be entitled to payment by Buyer of its additional Costs and to an extension of time for any delay incurred.
- 5.4 Each party shall be released from the performance of its obligations under the Contract to the extent such performance is delayed, disrupted, hindered or obstructed by Force Majeure. The time for performance shall be extended by at least the amount of time lost due to the Force Majeure event.
6. **Ownership:**
- 6.1 Title in the Scope of Work will transfer to Buyer when Seller has received payment of the Contract Price in full.
7. **Warranties:**
- 7.1 **Warranties regarding Scope of Work:**
- 7.1.1 Subject to the provisions of this Clause 7.1 and Clause 7.2, Seller warrants that the Scope of Work shall be free of Defects. This warranty shall expire on the last day of the Warranty Period.
- 7.1.2 Seller shall be responsible for remedying any Defect under Clause 7.1.1 provided that Buyer promptly gives detailed written notice to Seller of the Defect and in any event before the end of the Warranty Period. To the maximum extent permitted by applicable law, Seller shall have no liability for any form of Defect under Clause 7.1.1, latent or otherwise, for which it received written notification after the Warranty Period.
- 7.1.3 Where Seller is responsible for a Defect under Clause 7.1.1, Seller shall investigate and rectify the same as soon as reasonably practicable (taking into consideration the nature of the Defect, lead-time for replacement parts, etc.). Rectification of a Defect under Clause 7.1.1 relating to goods included in the Scope of Work shall be by way of repair or replacement, at Seller's option, of the relevant part of the goods that is defective. Rectification of a Defect under Clause 7.1.1 relating to Site Services and documentation included in the Scope of Work shall be by way of re- performance by Seller of the relevant part of the Site Service or documentation that is defective. Buyer shall in each case give Seller all necessary and safe access to and possession of the Site. Any replacement parts shall be delivered according to the same delivery (Incoterms) terms as specified in the Contract. Buyer shall be responsible for all labor, equipment, costs used or incurred in the disassembly, removal, transport, installation and commissioning of repaired or replaced defective parts. Seller shall not be deemed to have breached any of its warranty obligations where it has rectified a Defect according to this Clause.
- 7.1.4 Seller's responsibility for any Defect under Clause 7.1.1 is subject to the condition that it is not caused by one or more of the following: (i) normal wear and tear of parts; (ii) use of non-original spare parts; (iii) use of feed, consumables or utilities not in strict conformity with the specifications stated in the Contract or in Seller's written manuals; (iv) any failure of upstream and/or downstream equipment; (v) modifications without Seller's express prior written consent; (vi) use of corrosive or abrasive substances; (vii) the storage, handling, use, operation or maintenance of any goods which is not in strict conformity with good engineering practice, the Contract or any written requirements of Seller, including any failure to comply with Seller's written manuals or instructions and Buyer's own quality assurance requirements; (viii) information, services, personnel, equipment or other items supplied by Buyer; (ix) failure to permit Seller to perform supervision of installation and/or installation; and/or (x) other conditions or circumstances not due to the fault of Seller (collectively, "Warranty Conditions").
- 7.2 **Disclaimer and Limitations:**
- SELLER HEREBY EXCLUDES AND DISCLAIMS ALL CONDITIONS, WARRANTIES, GUARANTEES AND REPRESENTATIONS THAT ARE NOT EXPRESSLY SET OUT IN CLAUSE 7.1 OR WHICH ARE IMPLIED, STATUTORY, CUSTOMARY OR OTHERWISE AND WHICH, BUT FOR THIS EXCLUSION AND DISCLAIMER, WOULD OR MIGHT SUBSIST IN FAVOR OF BUYER, INCLUDING ANY WARRANTIES AS TO FITNESS FOR SPECIFIC PURPOSE OR MERCHANTABILITY. Buyer's remedies as set forth in Clause 7.1.3 above shall be Buyer's sole and exclusive remedies in respect of any Defect. If it is ultimately determined that this remedy fails of its essential purpose, then Seller's maximum liability is limited to the Contract Price attributable to the portion of the Scope of Work for which the exclusive remedy has failed. Seller's warranty does not include the replacement of lost refrigerant. Seller assumes no responsibility and shall have no liability for any repairs or replacements by Buyer without Seller's prior written authorization. Seller shall have no liability for the costs of removing or segregating any defective equipment so that the repairs or replacements can be made.
8. **Confidentiality and IP:**
- 8.1 Buyer shall treat all information, drawings and data of any kind made available or provided by Seller in Seller's Offer or under the Contract whether orally, electronically, in writing, visually (such as through site visits, tests or audits) or otherwise and regardless of whether marked "confidential" ("Confidential Information") as private and confidential. Buyer shall not publish or disclose Confidential Information or any particulars thereof (except as may be necessary for the purposes of the Contract, including disclosure to its and its affiliates' officers, directors and employees, and/or as required by a recognized stock exchange or by applicable law), without the previous written consent of Seller. Buyer may use Confidential Information only for the work covered by the Contract and not for any other project. Nothing in this Clause 8 shall prevent the publication or disclosure of any Confidential Information which either has come within the public domain otherwise than by breach of this provision or was already in the possession of Buyer with a right to disclose and use such information.
- 8.2 Intellectual property or patent rights which may be obtained on the basis of the information given or made available to Buyer in Seller's Offer or under the Contract or with respect to Seller's Scope of Work, including, without limitation, any discovery, invention, improvement or enhancement to Seller's Scope of Work or the process, operating parameters, or controls associated with such Scope of Work will remain the exclusive property of Seller or its subcontractors and/or sub-suppliers, respectively. Buyer shall not, nor shall Buyer permit any third party to, reverse engineer or otherwise technically examine, measure or test Seller's Scope of Work (except for the purposes of maintaining and operating the



Scope of Work) without Seller's prior written consent.

- 8.3 To the extent the Scope of Work includes the furnishing of engineering deliverables such as, but not limited to, engineering studies, process studies, detailed price proposals, preliminary drawings, preliminary bills of materials, process and instrumentation diagrams, or specifications not concurrent with a contract for the sale of tangible goods ("Engineering Deliverables"), such Engineering Deliverables are licensed to Buyer by Seller on a fully-paid up basis only for the purpose of Buyer utilizing such Engineering Deliverables to procure equipment from Seller and no other supplier. Buyer is not authorized to use or disclose the Engineering Deliverables in connection with the purchase of equipment from any other supplier and Buyer will indemnify and hold Seller harmless from any claims, damages, losses and costs (including reasonable attorney's fees) that result from the use of any Engineering Deliverables in conflict with this provision.
9. **Remedies and Limitations of Liability:**
- 9.1 **Exclusive Remedies:**
TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BUYER'S RIGHTS AND REMEDIES AS EXPRESSLY STATED IN THE CONTRACT (WHETHER BY WAY OF DAMAGES, PAYMENT OR REIMBURSEMENT OF COSTS, LIQUIDATED DAMAGES, PRICE REDUCTION, MAKE GOOD OR REMEDIATION, TERMINATION OR OTHERWISE) SHALL BE ITS SOLE AND EXCLUSIVE RIGHTS AND REMEDIES REGARDLESS OF THE EVENTS, CIRCUMSTANCES OR THEORY ON WHICH A CLAIM MAY BE BASED (INCLUDING TERMINATION, BREACH OF CONTRACT OR STATUTORY DUTY, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, INDEMNITY, RESCISSION / WITHDRAWAL OR OTHERWISE).
- 9.2 **Exclusion of Certain Damages:**
NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY EXCLUSIVE OR LIMITED REMEDY, EXCEPT ONLY (i) TO THE EXTENT OF ANY LIQUIDATED DAMAGES PROVIDED FOR IN THE CONTRACT AND (ii) TO THE EXTENT THE EXCLUSION OF SELLER'S LIABILITY IS PROHIBITED BY APPLICABLE LAW (IN WHICH CIRCUMSTANCES SELLER'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW):
SELLER SHALL IN NO CASE WHATSOEVER BE LIABLE FOR ANY (A) LOSS OF REVENUES OR PROFITS; LOSS OF OPPORTUNITY, PRODUCTION OR CONTRACTS; LOSS OF USE; STANDBY COSTS; LOSS OF OR DAMAGE TO FEED, RAW MATERIALS, UTILITIES OR PRODUCT; PLANT DOWNTIME OR DELAYS; LOSS OF GOODWILL; LIQUIDATED DAMAGES OR PENALTIES IMPOSED ON BUYER BY ITS CUSTOMERS OR THIRD PARTIES; BUYER'S CONTRACTUAL LIABILITY TOWARDS ANY THIRD PARTY; COSTS TO RECALL BUYER'S PRODUCT; ANY DAMAGES FINES OR PENALTIES PAYABLE BY BUYER; OR OTHERWISE FOR ANY FINANCIAL OR ECONOMIC LOSSES OR DAMAGES, AND IN EACH CASE IRRESPECTIVE WHETHER THE LOSSES OR DAMAGES IN QUESTION ARE DEEMED OR CLAIMED TO BE DIRECT, CONSEQUENTIAL, INDIRECT OR OTHERWISE, OR (B) FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY, LOSSES OR DAMAGES HOWSOEVER CAUSED OR ARISING; OR (C) FOR ANY LOSS OR DAMAGE TO THE EXTENT ARISING OUT OF THE SOLE OR CONTRIBUTORY NEGLIGENCE OF BUYER, ITS EMPLOYEES OR AGENTS OR ANY THIRD PARTY.
- 9.3 **Maximum Aggregate Liability:**
NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY EXCLUSIVE OR LIMITED REMEDY, EXCEPT ONLY TO THE EXTENT THE EXCLUSION OR LIMITATION OF SELLER'S LIABILITY IS PROHIBITED BY APPLICABLE LAW (IN WHICH CIRCUMSTANCES SELLER'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW), SELLER'S MAXIMUM AGGREGATE LIABILITY TO BUYER UNDER OR IN CONNECTION WITH THE CONTRACT SHALL IN NO CASE EXCEED THE CONTRACT PRICE AS RECEIVED BY SELLER, IRRESPECTIVE WHETHER SUCH LIABILITY ARISES BY WAY OF BREACH OF CONTRACT (INCLUDING TERMINATION) OR OF STATUTORY DUTY, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, INDEMNITY, CONTRACT PRICE REDUCTION OR REPAYMENT, TERMINATION, RESCISSION/WITHDRAWAL, MAKE GOOD OR REMEDIATION OR OTHERWISE.
- 9.4 The expiry of the Warranty Period shall, to the maximum extent permitted by applicable law, constitute conclusive evidence for all purposes and in all proceedings whatsoever between the parties that Seller has completed its obligations under or arising out of the Contract and performed the Scope of Work and made good all Defects therein in accordance with its obligations under the Contract. After the expiry of the Warranty Period, all claims of any nature whatsoever Buyer may have against Seller, whether known or not, under or arising out of the Contract and the use of the Scope of Work, and any right, cause of action and or remedy shall be deemed to be barred and extinguished. Provided always that this provision shall not apply in case of fraud or to the extent any proceedings were commenced and served in writing on Seller within the Warranty Period.
- 9.5 TO THE EXTENT THAT BUYER MAKES ANY CLAIM UNDER ANY FRAUD OR TORT THEORY FOR THE PURPOSE OF CIRCUMVENTING THE LIMITATIONS AND DISCLAIMERS SET FORTH ABOVE AND IS UNSUCCESSFUL IN PREVAILING ON THOSE CLAIMS, BUYER HEREBY AGREES TO REIMBURSE AND INDEMNIFY SELLER FOR ALL ATTORNEYS' FEES AND EXPENSES AND COSTS INCURRED BY SELLER IN DEFENDING THOSE CLAIMS.

10. Permits / Safety:

- 10.1 Buyer shall be responsible for (i) all permissions, consents and permits in connection with the Site; (ii) maintaining the Site in a safe working condition and as a safe place of work for all personnel at the Site at any time, providing safe means of access to the Scope of Work at all times, conducting all activities on the Site in a safe manner and as prescribed by applicable directives, laws, rules, regulations, codes and standards and as set forth in the operating and maintenance manuals and instruction sheets furnished by Seller; (iii) not removing or modifying any safety device, guard or warning sign provided as part of the Scope of Work. If Buyer fails to strictly observe any of the obligations in this Clause, Buyer shall indemnify, defend and hold Seller harmless from any resulting claims and liability arising out of loss or damage to any property or out of personal injury or death, save to the extent directly caused by the negligence of Seller.

11. Export Control:

- 11.1 Buyer acknowledges that the Scope of Work may be controlled by Export Control Regulations which may result in an Export Control Event. In case of an Export Control Event, Seller shall be entitled to all additional costs and expenses which may be needed for Seller to fulfil its obligations under Seller's Offer or, in case of binding contract, the Contract, including costs and expenses needed to obtain an Export License. Buyer agrees to promptly provide to Seller all necessary information that may be requested to obtain an Export License, such as end-user certificates. Seller will promptly inform Buyer about material delay to obtain an Export License, a revoked license or any prohibition to execute the contract.
- 11.2 If an Export License is denied or revoked or if an embargo prohibits the execution of the contract or if any other Export Control Event will hinder Seller to fulfill one or more of its contractual obligations Seller shall be excused from the performance of its obligations under Seller's Offer or, in case of binding contract, the Contract, with immediate effect. This shall, without limitation, also apply in case that Seller may be hindered to fulfill its contractual obligations due to the fact that any of Seller's suppliers or subcontractors are hindered by an Export Control Event to supply the Scope of Work all or in part. In any case, Seller shall not be liable or accountable to Buyer for any claims for delay, loss or damage in connection with an Export Control Event.
- 11.3 Subject to 11.2, if Seller gives notice to Buyer that its performance of Seller's Offer or, in case of binding contract, the Contract will be hindered by Export Control Regulations and/or Export License or embargos, each party shall be entitled to terminate Seller's Offer or, in case of binding contract, the Contract, by giving one week prior written notice.
- 11.4 Buyer shall implement and follow all necessary procedures to comply with Export Control Regulations related to the Scope of Work to be provided by Seller, and guarantees not to engage in any activity which it or Seller reasonably believes could be subject to civil, criminal or administrative liability, including but not limited to the sale, lease, transfer, or sublicensing of the Scope of Work without appropriate authorization. Buyer shall indemnify and hold harmless Seller from and against any claim, proceeding action, fine, cost, loss and damage arising from or related to the breach of this warranty.

12. Data Processing:

- 12.1 Buyer agrees that Seller will collect, process and use personal data and other data disclosed by Buyer in the course of the business relation with Seller for the purpose of (1) managing and performing the Contract with Buyer (which includes the creation and processing of invoices), (2) advertising and/or offering further goods and services to Buyer and/or (3) managing the business relationship with Buyer through e.g. a customer relationship management system. Such data may include the following data categories of persons being employed or retained by Buyer *inter alia* name, title, company, function within the company, business contact details (phone- and fax-number, email-address, mail address), history of orders, history of issues (e.g. warranty claims or disputes). Within the limitation of the above described purpose, Seller can collect, process and use the above described data (i) by itself and/or through the use of affiliates or other external subSellers and (ii) from countries within and/or outside the European Union or European Economic Area. Buyer will ensure (e.g., if necessary, through consent declaration of the data subjects or other appropriate means available under the law) that Seller can use the above described data for the above described purposes.

13. Cancellation:

In case Buyer cancels or postpones a Confirmed Service Order, Buyer shall reimburse all direct costs such as, but not limited to, cancellation fees for air tickets, air freight charges and visa fees incurred by Seller in connection with such cancellation or postponement. If Buyer cancels or postpones a Confirmed Service Order less than seven calendar days before the scheduled departure date of Seller's technician, Seller reserves the right to charge a fee of up to three times the daily fee for each technician allocated for the assignment. "Confirmed Service Order" means Buyer's oral or written acceptance of the services offered.

14. Personal Security:

If, in Seller's reasonable opinion, the working environment, accommodation and transport arrangements create a personal security risk for Seller's technician, Seller has the right to discontinue the Site Services without liability to Buyer.

15. Replacement:

Seller shall have the right to replace a Seller technician with another technician equally suited for the Site Services.

16. Sub Contracting:

Seller may offer the Site Services using subcontracted staff, ensuring in any event the ability of such staff to carry out their activities.

17. Miscellaneous:

- 17.1 If any provision of the Contract is determined to be invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions and the parties will substitute the invalid or unenforceable provision by a valid provision that achieves as closely as possible the same economic effect.



- 17.2 Any clause or paragraph headings or other headings appearing in the Terms are for reference only and shall not affect the construction of those Clauses or paragraphs. Words importing the singular shall include the plural and vice versa where the context requires.
- 17.3 The Contract shall not be construed or interpreted against or to the disadvantage of either Buyer or Seller whether on the grounds that the Contract represents Buyer's or Seller's standard or customary terms and conditions of business and /or that the Contract and or any particular recital, article, clause and or annex or appendix thereof may have originated from Buyer or Seller or other similar grounds.
- 17.4 The Contract sets forth the entire agreement between Seller and Buyer with respect to the subject matter thereof and supersedes any previous agreement or arrangement between the parties. Except to the extent expressly and specifically set forth in the Contract, all oral representations, warranties, undertakings and other statements of any kind and all documents given or exchanged on or prior to the date of Contract (including any brochures or sales material of Seller) are expressly excluded and disclaimed by Seller. Buyer acknowledges that it has not relied on and is not relying on any such representations, warranties, undertakings, statements or documents when entering into the Contract.
- 17.5 The Contract may not be assigned by either party without the other party's prior written consent, except that no consent is required for a party to assign the Contract to an affiliate as part of a corporate reorganization. This Clause 17.5 shall not require Seller to obtain any consent to subcontract any part of its obligations under the Contract. The Contract shall be binding upon and inure to the benefit of each of the parties and to their respective legal successors and assigns. Seller may assign receivables under the Contract to a financial entity financing Seller's performance and Seller may provide to such financial entity copies of the invoices to which those receivables relate.
- 17.6 No change in, addition to, or waiver of the provisions of the Contract shall be binding upon Seller or Buyer, unless contained within an identified written formal amendment to the Contract and signed by both parties.
- 17.7 Seller is an independent contractor and nothing in this Contract shall be construed to create a partnership, joint venture or agency relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees as well as employment related taxes. Each party will maintain appropriate workers' compensation insurance for its employees as well as general liability insurance.
- 17.8 Except when services are provided by its authorized agents or subcontractors, Seller shall be the sole employer of all individuals performing services hereunder. Seller shall assume sole and exclusive responsibility for the payment of wages to its personnel for services performed for Buyer. Seller shall, with respect to its personnel, be responsible for withholding federal, state and local income taxes, paying Social Security taxes, unemployment insurance and maintaining workers' compensation insurance coverage in an amount and under such terms as required by state law. Only Seller shall have the right to hire and fire its personnel, provide specific instructions as to the manner in which an employee performs his or her job and to set the hours of work of its personnel. In addition, Seller shall manage all employment aspects of any assigned personnel including, without limitation, employment based counseling, terminations, salary reviews, performance evaluations, work schedules, orientation, placement and rotation of assignments. The parties further acknowledge and agree that any personnel of Seller assigned to Buyer's account shall have no rights or entitlements to any of Buyer's employee benefit plans.
- 18. Disputes/Applicable law:**
- 18.1 Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall first be submitted to a senior executive dispute resolution process and mediation prior to the institution of litigation; provided that the settlement negotiation process can be completed within the statute of limitations. Either party may notify the other party in writing of the nature of the claim or dispute with as much detail as possible about the alleged deficient performance of the other party (the "Dispute Notice"). Within 14 days after delivery of a Dispute Notice, a senior executive (a President or Executive Vice President level) of each party shall meet in person or by telephone at a mutually acceptable time and place in an attempt to resolve the dispute. They shall negotiate in good faith attempting to reach a resolution satisfactory to both parties. If the senior executives have not resolved the matter, or agree upon a written plan of corrective action, within 45 days of delivery of a Dispute Notice, or if they fail to meet within 30 days after delivery of a Dispute Notice, either party may initiate mediation with a mediator and mediation location acceptable to both parties. All settlement negotiations shall be confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- 18.2 Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall exclusively be referred to and finally resolved by the competent courts in Maryland. The governing law of the Contract shall be the substantive laws of Maryland. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 18.3 EACH PARTY IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION BROUGHT TO ENFORCE THE TERMS OF THE CONTRACT.
- 18.4 EACH PARTY IRREVOCABLY WAIVES ANY RIGHT TO THE RECOVERY OF ATTORNEY'S FEES EXCEPT AS PROVIDED IN THE TERMS.
- 19. Insurance:**
- 19.1 Seller shall, upon execution of the Contract and throughout the performance of its obligations hereunder, maintain in effect and shall furnish certificates of insurance upon Buyer's request evidencing the insurance coverage based on the amounts and limits as follows: (i) Comprehensive General Liability Insurance including contractual liability coverage with specific reference to liability assumed herein and including coverage for products liability and completed operations which includes coverage for bodily injury and property damage with limits of \$2,000,000 for each occurrence, and \$4,000,000 in the aggregate; (ii) Comprehensive Automobile Liability Insurance including coverage for owned, non-owned and hired vehicles with limits of \$2,000,000 for each occurrence for bodily injury and death, and property damage; and (iii) Workmen's Compensation Insurance as required by statute in the specific jurisdiction where



- the work is to be performed.
- 19.2 Buyer shall ensure that Seller and its subcontractors carrying out the Site Services (if applicable) are covered under an all-risk insurance policy applicable to the Scope of Work and the Site. Such cover shall be primary and name Seller as an additional insured. Seller shall be entitled upon request to a copy of the policy in question. The deductible, if any, shall be at Buyer's cost.
- 19.3 Neither Seller nor Buyer will be liable to any insurance company (by way of subrogation or otherwise) for, and Seller and Buyer each waive and shall each cause their respective insurers to waive, any rights of subrogation or contribution with respect to, any and all claims covered by insurance. To the extent required by each party's applicable insurance policies, each party shall promptly give its insurance company written notice of the waivers contained in this paragraph and shall cause its insurance policies to be properly endorsed to effectuate the same, if necessary, to prevent the invalidation of any insurance coverage by reason of the waivers of subrogation. Each party represents that its current insurance policies allow such waiver.

ANNEX A TESTING SERVICES

This Annex A applies where where the Scope of Supply includes the testing of Buyer's materials (the "Materials") at Seller's (or its affiliate's) facility (the "Testing Services"). The terms and conditions of this Annex B shall supersede any conflicting provisions in the Terms.

1. **Price Validity.** Prices are firm for thirty (30) days from the date of Seller's offer unless extended in writing by Seller.
2. **Testing Conducted by Seller Affiliates and Export/Import Matters.** To the extent that any of Seller's affiliated companies are engaged to assist in conducting the Testing Services as a necessary party to complete the testing required by the Buyer, such Seller affiliated party and its respective employees will be covered by and subject to the terms of the Contract. To the extent that any Materials are required for any reason to be shipped outside the United States or the Materials are required to be imported (or re-imported) into the United States, Buyer will be solely responsible for (i) managing all shipping and logistics, including all making all applicable import and/or export filings in its name, and (ii) complying with all applicable U.S. and applicable foreign import and export laws related to the shipment, import, export and re-import of the Materials.
3. **Right to Use the Materials.** Buyer grants Seller the right to use the Materials solely for the purpose of conducting the Testing Services.
4. **Indemnification.** Seller will defend and indemnify Buyer for any third party claims of bodily injury or death to the extent they may arise from its and its permitted employees' (i) negligence or willful misconduct, or (ii) use, storage or disposal of the Materials in conflict with the terms of the Test Confirmation Letter or with the MSDS information provided by the Buyer to Seller for the Materials. Buyer will defend and indemnify Seller for any third party claims of bodily injury or death to the extent they may arise from the Buyer's and its employees or agents (i) negligence or willful misconduct, (ii) use, storage or disposal of the Materials by Seller or its permitted employees strictly in accordance with the terms of the Contract and the MSDS information on the Materials provided by Buyer to Seller, or (iii) failure by Buyer employees to comply with Seller's health and safety rules while on Seller's premises.

Seller will defend and indemnify Buyer for any third party claims that the design, manufacture, or functioning of the test equipment infringe such third party's intellectual property rights. Buyer will defend and indemnify Seller for any third party claims that the Materials or processing of the Materials infringe such third party's intellectual property rights.

In all cases of either party's indemnity provided in this paragraph, the party seeking indemnity must promptly notify the other party in writing of such claim of infringement; the defense of any legal action relating to such claim will be under the direction and control of the indemnifying party; the indemnified party shall cooperate with the indemnifying party in making such defense; and the indemnifying party will have complete control of the litigation or proceeding, including the amount of any settlement (provided the indemnified party has no monetary contribution obligation with regard to such settlement) and the choice in retention of counsel, and shall bear all expenses of such defense; provided, however, that the indemnified party may be represented in such action by its own counsel at its own expense

5. **Health and Safety.** All employees of Buyer that participate in observing the Testing Services, to the extent permitted by Seller, must comply with all test specific instructions established by Seller as well as Seller's health and safety rules. Depending on the type of testing and the level of participation by the employees of Buyer, each employee may be required to participate in a health and safety training and may be required to acknowledge their participation in such training in writing prior to such person being granted access to any Seller testing area.
6. **Disposal of Materials.** If the Materials are regulated as hazardous or otherwise regulated or restricted materials by any governmental agency, Buyer must advise Seller of any such regulations and required actions that must be taken by Seller. Regardless of the hazardous nature of the Materials, to the extent that any destruction or disposal by Seller is deemed in Seller's sole discretion to be unduly burdensome to Seller, Seller may require the Buyer to take all required actions for the proper destruction or disposal in accordance with all applicable laws and regulations.
7. **Damage to Material.** Seller is in no way responsible or liable to the Buyer if in connection with the Testing Services the Material is damaged, destroyed, transformed, modified, etc. and the Buyer assumes the full risk of this possibility.
8. **Seller Technology.** All rights and title in and to Seller's process equipment and equipment processes, including without



limitation, process and operating parameters applied to Seller's equipment in connection with the Testing Services, including all intellectual property rights thereto and therein (collectively, "Seller Technology"), are owned by Seller and at all times remain Seller's and nothing in the Contract shall grant Buyer any ownership rights in or to the Seller Technology. Any and all enhancements, clones, improvements, discoveries, derivatives and modifications, whether or not patentable, related to, arising out of or dominated by, the Seller Technology that are made, directly or indirectly, by Seller, exclusively or with any other person or entity, shall be solely, fully and completely owned by Seller.

