

NDT Solutions LLC

GENERAL TERMS AND CONDITIONS OF SALE AND PERFORMANCE OF SERVICES

1. **Formation of Contract.** These General Terms and Conditions of Sale and Performance of Services (these “Terms & Conditions”) shall control the purchase of testing and other services (the “Work”) from NDT Solutions LLC or its affiliate (“NDTS”). The person purchasing the Work (“Customer”) accepts these Terms & Conditions by submitting a request, order, and/or sample for the Work to be performed by NDTS. Each and every submission by Customer of a request, order, or sample for Work is subject to NDTS’s acceptance. The Customer’s submission of a request, order, or sample to NDTS for Work shall, upon acceptance of such request, order, or sample by NDTS, constitute an express contract of which these Terms & Conditions are a material part (the “Contract”). No custom, trade, usage, course of dealing, or any statement in any advertisement or brochure or other document shall be implied or incorporated into the Contract and each of the same is expressly excluded, unless specifically stated in these Terms & Conditions.
2. **Changes to the Terms & Conditions.** No provision in these Terms & Conditions may be varied or waived except by a writing specifically describing such variance or waiver signed by an authorized representative of NDTS. NDTS’s acceptance or acknowledgement, even if in writing and signed by NDTS, of Customer’s order form, purchase request, or any other document pertaining to the Work shall not be deemed an acceptance of any provision of Customer’s order form, purchase request, or any other document that conflicts with or adds to these Terms & Conditions. IN THE EVENT TERMS AND CONDITIONS SET FORTH IN ANY ORDER FORM, PURCHASE REQUEST, OR OTHER DOCUMENTATION PROVIDED BY CUSTOMER ADD TO OR CONFLICT WITH THESE TERMS & CONDITIONS, THESE TERMS & CONDITIONS SHALL PREVAIL AND GOVERN.
3. **Pricing and Payment for the Work.**
 - a. Prices quoted by NDTS for the Work are solely for the performance of the Work and do not include freight, insurance, inspection or packaging charges, warehousing or storage costs, or any sales, use, excise, customs, or other duties, taxes or fees (“Costs”). The Costs are to be paid by Customer and any Costs paid by NDTS shall promptly be reimbursed by Customer. The quoted pricing may include a minimum charge for each sample submitted. Written and oral quotations may be withdrawn by NDTS at any time, and, in any event, shall be valid for a maximum of sixty (60) days from the date issued.
 - b. NDTS shall provide monthly invoices to Customer for that portion of the Work performed in the previous month. Payment on an invoice is due in cash within thirty (30) days of the issuance date on the invoice, unless otherwise specified in NDTS’s quotation, proposal or order confirmation. Should performance or completion of the Work be delayed by Customer or other causes beyond NDTS’s reasonable control, NDTS may submit invoices, and payment shall become due, as if the Work had been completed as scheduled. If payment in full is not made when due, interest shall accrue on the unpaid balance at the lesser of (i) the rate of 1½% per month (18% per annum) or (ii) the maximum rate permitted under applicable law. Customer agrees to pay reasonable attorneys’ fees incurred by NDTS in the collection of past due invoices and account balances.
 - c. If NDTS at any time determines in its sole judgment that there are reasonable grounds for insecurity with respect to Customer’s payment for the Work or any other obligation of Customer set forth in the Contract, including without limitation these Terms & Conditions, NDTS may require adequate assurance of due payment or other performance, such as payment in cash or satisfactory security, and until NDTS receives such assurance, NDTS may suspend any performance for which it has not already received payment.

4. **Completion of Work and Warranty.** NDTs warrants that it will complete the Work in a satisfactory and workmanlike manner consistent with industry standards. NDTs will exercise commercially reasonable efforts to complete the Work and provide a report of the results of the Work by a reasonable date requested in writing by Customer, but shall not be liable for (i) any delay in Customer's performance of projects or delivery of goods, or (ii) any damages incurred by Customer due to such delay. NDTs' s performance of any and all Work is subject to NDTs's schedules, capacity, capabilities, governmental priorities, government regulations, purchase orders, directions, and restrictions that may be in effect from time to time. EXCEPT AS EXPLICITLY SET FORTH IN THIS SECTION 4., NDTs MAKES NO OTHER WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED. NDTs's warranty shall not apply to any portion of the Work performed by a party other than NDTs except to the extent that any such third party has warranted such performance to NDTs and is liable to NDTs under such warranty. No employee, agent or other person is authorized to give any warranties on behalf of NDTs in addition to or different from those stated in this Section 4. or to assume for NDTs any other liability in connection with the Work.

5. Customer Property and Samples.

- a. For purposes of nondestructive testing ("NDT), the Customer's property and/or samples (the "Property/Samples") shall be treated and handled as provided in the quotation or as agreed in writing by Customer and NDTs.
- b. The type of material, tolerances and specifications for processing Property/Samples shall be declared in writing delivered to NDTs by Customer prior to NDTs's commencing any Work or shall be deemed not to have been known by NDTs.
- c. NDTs will not be responsible for any costs or losses resulting from destruction of Property/Samples submitted to NDTs unless clearly marked "Do Not Destroy" both (i) in the Contract and (ii) on the Property/Samples. If either the Contract or Property/Samples are not so marked, NDTs shall have no liability for damage to the Property/Samples. If the Contract and Property/Samples are so marked, NDTs's liability for damage to the Property/Samples is limited to the lesser of either (i) the value of the Property/Samples or (ii) the cost of the Work performed on the damaged Property/Samples pursuant to the Contract. Under no conditions will NDTs be responsible for any additional costs or damages, including consequential damages and indirect costs or losses, resulting from destruction of the Property/Samples. By submitting Property/Samples to NDTs, Customer acknowledges and accepts these limitations and recognizes that NDTs bases its price for the performance of Work on the existence and enforceability of such limitations.
- d. Customer shall make all arrangements, be responsible for all costs, and bear any and all risks for transport of any Property/Samples to and from NDTs. Under no conditions will NDTs have any liability for any item transported to or from its facility.
- e. Title to the Property/Samples and all risk of loss or damage to such shall remain with Customer at all times. Customer hereby grants to NDTs a security interest in all of the Property/Samples provided to NDTs for the Work to secure the payment of the purchase price for the Work and other fees or charges due NDTs under the Contract. Customer will not be entitled to the return of the Property/Samples, and after such return shall not be entitled to transfer or encumber the Property/Samples upon which Work is performed, until all sums due and owing to NDTs have been paid. Customer shall execute and deliver any financing statements or other documents that NDTs reasonably requests for the perfection of NDTs's security interest the Property/Samples and Customer shall do all other acts necessary for the perfection and preservation of this security interest.

6. **Cancellation by Customer.** A request, order or Property/Sample for Work once placed with and accepted by NDTs can be cancelled by Customer, in whole or in part, only upon (i) a written notice of the cancellation being delivered to NDTs and (ii) all Work performed as of the end of business on the date following delivery of the written notice is paid for in full. If Customer cancels without written notice and payment in full for all Work performed, Customer shall be liable for the full price of the Work, less any actual third party expenses saved by NDTs in not having to perform the Work, as reasonably determined by NDTs in its sole discretion.
7. **Use of Results from the Work.** The results from the Work (“Reports”) constitute confidential information that is to be protected and shall be used solely to (i) assist Customer in completing its internal requirements, (ii) comply with the Customer’s customer requirements for the delivery and use of the data recited in the Reports, (iii) respond to a court order or subpoena, or (iv) respond as required by law. Except for the allowed uses in this Section 7., neither NDTs nor Customer shall disclose the results or any details of the Work to any third party without the prior written consent of the other Party. Customer shall not present or publish a Report except in full as delivered by NDTs and shall not use the Report, or any portion thereof, in any manner that might reflect unfavorably on NDTs or which might be, or includes statements, interpretations or comments that could be, misleading or false.
8. **Court and Other Proceedings.** Due to the nature of the Work, NDTs and its employees will, from time to time, be required to present the Work, with results and findings in various proceedings and forums, including without limitation depositions, court proceedings, and government agency investigations. Whenever NDTs is required to provide data, information, documents, testimony, presentations, or opinions as to the Work, whether at the direction of Customer or any other person, Customer will be charged, in addition to the agreed upon price for the Work, NDTs’s usual and customary costs and fees in effect at the time for such activities including the preparation therefore. NDTs will at Customer’s written request attempt to have the costs and fees reimbursed by the person directing the activities; however, if such person does not reimburse NDTs, such costs and fees will be the responsibility of Customer.
9. **Force Majeure.** Each Customer and NDTs shall be excused from the duty to render timely performance of any obligation under this Contract if such inability to perform is caused directly or indirectly by act of God, flood, war, riot, accident, explosion, strikes or labor trouble, act of government, delay or default by a subcontractor or supplier of materials or services, the existence of any circumstance making performance commercially impracticable, or any other cause beyond the party’s reasonable control; provided, however, that payments due under this Contract are not excused for any reason including without limitation the provisions of this Section 9.
10. **Customer Remedies.** The sole and exclusive remedy of Customer and its customers, agents and other affiliates for any claim against NDTs based on or relating to any claimed defect in the Work or otherwise relating to the Work, the Contract, or these Terms & Conditions, whether such claim is based upon contract, tort, professional errors or omissions, strict liability, or negligence, and whether such claim is for property damage, personal injury, commercial loss, or other monetary loss, shall be (i) upon the return, restoration, or replacement by Customer of Property/Samples upon which the Work was performed, the re-performance of any portion of the Work at issue, or (ii) a refund or credit to Customer in the amount of the price paid for the portion of the Work at issue. Customer’s remedies in this Section 10. shall only be available if: (i) NDTs has been paid in full for the Work pursuant to this Contract; (y) NDTs is notified in detail, in writing, of the claimed issue within twenty (20) days of Customer’s discovery thereof and within ninety (90) days after the completion of the Work; and (ii) NDTs is permitted to inspect any and all property related to the Work at issue.

11. **Limitation on Liability.** EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 10. OF THESE TERMS & CONDITIONS, NDTs SHALL NOT BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR ANY LOSS OR DAMAGE DIRECTLY OR INDIRECTLY ARISING FROM ITS PERFORMANCE OF THE WORK, INCLUDING WITHOUT LIMITATION ANY DAMAGE TO CUSTOMER'S PROPERTY. NDTs SHALL NOT IN ANY CIRCUMSTANCE WHATSOEVER BE LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM THE USE OF PROPERTY UPON WHICH THE WORK IS PERFORMED OR ANY SIMILAR PROPERTY OR FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER (OR PUNITIVE OR EXEMPLARY DAMAGES TO THE EXTENT PERMITTED BY LAW). IN NO EVENT, NOR UNDER ANY CIRCUMSTANCE SHALL NDTs BE LIABLE FOR ANY DAMAGES IN AN AMOUNT GREATER THAN THE COST OF THE WORK AT ISSUE, WHETHER SUCH DAMAGES SHALL ARISE FROM BREACH OF THIS CONTRACT, OR IN TORT, BY WAY OF INDEMNITY OR OTHERWISE.
12. **Effect of Waiver.** The failure of a Party at any time to require performance by the other Party of any provision of this Contract shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision.
13. **Severability.** If any Section, provision or term of this Contract is deemed to be invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such Section, provision or term shall be deemed reformed or deleted, but only to the extent necessary to comply with any statute, regulation, ordinance, executive order, or other rule of law, and all other Sections, provisions and terms of this Contract shall remain in full force and effect.
14. **Governing Law.** This Contract shall be governed by and construed under the laws of the United States of America and the State where the Work is performed excluding its choice of law rules.
15. **Dispute Resolution.** In the event of a dispute under the Contract, the Parties shall attempt to resolve the issues through discussions between their representatives for up to thirty (30) days. Prior to the filing of any lawsuit, the Parties shall submit the dispute to mediation, which shall be conducted in the State where the Work is performed. Each Party shall pay its own fees and costs for mediation and all other alternate dispute resolution mechanisms.
16. **Export Control Laws.** The Parties shall comply with all export control statutes and regulations, including without limitation, the U.S. Export Administration Regulations and the U.S. International Traffic in Arms Regulations ("Export Control Laws") as applicable to their activities and obligations under this Contract. When Export Control Laws apply, each Party shall implement policies and procedures to assure compliance and control access to any technical data disclosed under this Contract.
17. **Entire Contract.** This Contract with these Terms & Conditions contain the entire understanding of the Parties regarding the Work and all matters addressed herein and supersede any prior understandings, agreements, or discussions between the Parties relating to the Work or any other matter.