

These terms and conditions, issued by Predictive Engineering, Inc. (PE), specifically identified below (“Consultant”), form a binding agreement between PE and the company for which services are to be provided (“Client”) and constitute the “Agreement”.

I. SERVICE AGREEMENT

Consultant shall provide to Client and Client shall acquire from Consultant the Services set forth and as specified in more detail in the attached price quotation. Consultant shall provide the Services from the order date and in accordance with the timetable set forth in the project quotation. All methods, details, and means of performing the Services will be determined by Consultant in its sole and reasonable discretion.

II. SERVICE FEES / SCHEDULE / OVERDUE INVOICE PAYMENT

Unless otherwise specified in this Agreement, Consultant’s fees and schedule are binding, inclusive of all labor and materials, based on Consultant’s experience, the Project complexity, and the information provided by Client at the time of this Agreement. If new information, instructions, or lead times are received during the course of the project that differs from this Agreement, Consultant will notify Client and may provide additional costs if required.

Overdue invoice payment charges are 1.5% per month (compounded) past the agreed upon payment terms.

III. LIMITED REMEDY

Consultant warrants that the Services will be provided with due skill and care using competent and qualified staff. If Consultant fails to perform the Services in accordance with the Agreement, Client’s sole and exclusive remedy, and Consultant’s sole and exclusive obligation, is for Consultant to re-perform such defective Services without charge for Consultant’s time expended; provided, however, that Client must report such failure in detail to Consultant in writing during the fifteen (15) day period after the earlier of: (i) conclusion of the corresponding Phase or (ii) receipt of notification that Consultant considers its Services completed. This remedy is not transferable. Consultant shall have no liability to the extent of deficiencies resulting from acts or omissions of Client or Client’s personnel involved in the Project or if Client or Client’s personnel have instructed Consultant to perform in a particular manner or in accordance with a particular schedule without regard to Consultant’s advice.

IV. EXCLUSION OF IMPLIED AND OTHER WARRANTIES

Except as otherwise expressly warranted in this Agreement, all services and work product of Consultant are provided “as is.” Consultant makes no warranties, expressed or implied, and hereby disclaims all implied warranties, including warranty of merchantability and warranty of fitness for a particular purpose.

V. LIMITATION OF LIABILITY

In addition to the above exclusions Consultant is not liable, whether in contract or in tort, for any special, indirect, incidental, or consequential damages, including, without limitation, changes to tooling, fixtures, assembly aides, packaging, and lost profits, that may arise from or in connection with Consultant’s performance or failure to perform under this Agreement. Under no circumstances (including without limitation the number of claims or occurrences) shall the aggregate of Consultant’s liability to Client exceed the total fee for Services Consultant has received from Client for the Phase that corresponds to Consultant’s disputed performance or failure to perform. Client shall have no right of set-off or recoupment against compensation payable to Consultant for any present or future claims which Client may have against Consultant.

VI. CLIENT RESPONSIBILITY

Client is solely responsible to test the design ideas and concepts Consultant provides. Client is solely responsible to ensure that any resulting products are tested, manufactured, packaged, labeled (including adequate warnings), sold, and used in a safe and careful manner and in compliance with all applicable laws, regulations, and appropriate industry standards. Unless otherwise specifically stated in this Agreement, Client is solely responsible for obtaining any applicable or necessary approvals. Client assumes all responsibility for any information and/or specifications it provides to Consultant and agrees that, unless specifically stated in this Agreement, Consultant may rely on such information and/or specifications without independent verification.

VII. INDEMNIFICATION

Client shall indemnify, defend and hold Consultant and its directors, officers, employees, and agents harmless from and against all Claims for illness, injury, and property damage (including loss of use and loss of profits), actual or alleged, that may arise out of or in connection with this Agreement or the Services, Work Product, designs, prototypes, and incidental goods furnished or to be furnished to Client by Consultant.

This obligation shall apply, without limitation, to Claims of Client and any employee, invitee, or agent of Client, of any lessee or purchaser of Client’s goods or services and of any third party.

VIII. DISPUTE RESOLUTION: BINDING FAST-TRACK ARBITRATION

In the event of any dispute over the Project or this Agreement, Consultant and Client will each use their best efforts to resolve the dispute informally and amicably within 10 business days. If this does not resolve the dispute, then Client and Consultant agree to then submit the dispute to binding fast-track arbitration to Arbitration Services of Portland (ASP) as the exclusive venue for dispute resolution under this agreement. Arbitration is not to exceed five hours with judgement rendered by ASP within 5 business days. The arbitrator’s award shall be final. If any provision of this Agreement shall be held by a court of competent jurisdiction to be void or unenforceable, such provision shall be deemed severable from this Agreement, and the remainder of this Agreement shall remain in full force and effect.

IX. RIGHTS UPON TERMINATION

Either party may terminate this Agreement upon ten (10) business days prior written notice for the material breach of any provision of this Agreement by the other party; or in the case of non-payment of fees, five (5) days prior written notice, provided that the party receiving the notice fails or refuses to cure the breach within the applicable notice period. Client early termination requires ten (10) business days advance notice. In the event of early termination, the client forfeits any start work payment and the Client shall pay Consultant all fees and reimbursable expenses for Services through the effective date of termination together with all reasonable fees and expenses charged by Consultant to archive and document work in progress, reallocate any displaced resources or personnel, or to otherwise discontinue the Services. The Consultant may, immediately upon giving written notice to Client, suspend the Services to Client if Client fails to cooperate with Consultant in performance of the Services. If Client’s lack of cooperation continues for a period of ten (10) business days after Consultant is forced to suspend services, Consultant may thereafter immediately terminate this Agreement by giving written notice to Client.

X. INTELLECTUAL PROPERTY: DUTIES AND OBLIGATIONS

Consultant will not, in providing Services and Work Product under this Agreement, knowingly and willfully infringe or misappropriate any intellectual property rights of third parties. Client is solely responsible for insuring that the Services and Work Product do not infringe any third party intellectual property rights. Consultant has no duty or obligation to investigate whether the Services or Work Product infringe or misappropriate any third party intellectual property rights. Client shall indemnify, defend, and hold harmless Consultant, its directors, officers, employees, and agents from and against all Claims that may arise out of or in connection with any proved or unproved claim alleging that the Services or Work Product infringe or misappropriate any intellectual property right of any third party, and Client will undertake Consultant's defense thereof at Client's expense. Consultant agrees to notify Client of any such Claim and provide at Client's expense any information reasonably requested by Client to defend the Claim. The provisions of this section and Client's obligations hereunder will survive expiration or any termination of this Agreement.

XI. INTELLECTUAL PROPERTY: PRIOR OWNERSHIP

All intellectual property owned by Client prior to execution of this Agreement or commencement of Services pursuant to this Agreement will remain the property of Client.

XII. INTELLECTUAL PROPERTY: OWNERSHIP OF WORK PRODUCT

All Work Product which is first developed by Consultant to meet specifications supplied by Client in performing Services pursuant to this Agreement shall be deemed original creations for Client and shall hereafter be referred to as Client Work Product. Client Work Product shall not, however, include: any original work that has been developed by Consultant prior to its engagement under this Agreement or that has been independently developed by Consultant prior to execution of this Agreement or to commencement of Services pursuant to this Agreement; or Work Product developed by Consultant during the term of this Agreement for Consultant's own use or use of another client.

XIII. RIGHTS TO MARKET

Unless otherwise specified, once the Project has been lawfully introduced to others in the industry, or to the general public, Consultant shall have the right to include images from the Project among Consultant's promotional and professional materials. Consultant's materials shall not include Client's confidential or proprietary information.

XIV. INDEPENDENT CONTRACTOR

Consultant acts solely as an independent contractor. Nothing in this Agreement creates a relationship of employer and employee, principal and agent, partnership, or the like between Client, Consultant, or any of their affiliates or personnel. Consultant's personnel will not be eligible for, and will not receive, any so-called "fringe benefits" or other benefits extended to Client's employees. Unless expressly stated in this Agreement, neither Consultant nor Client shall have any authority to enter into any contract on behalf of the other.

XV. CONFIDENTIALITY

Through their relationship the Consultant and Client (the "Parties") may have access to certain proprietary information and materials of the other ("Confidential Information"), including business plans, customers, technology and products that are confidential and of substantial value to the respective party, which value would be impaired if such information were disclosed to third parties. Unless governed by a separate confidentiality agreement independent of this Agreement, the parties agree that neither shall disclose any Confidential Information to any third party and shall take every reasonable precaution to protect Confidential Information. In the event of termination of this Agreement, neither party shall use or disclose any Confidential Information of the other and each party shall promptly return any tangible Confidential Information that it obtained from the other. The provisions of this section shall not apply to any information which (i) is or becomes available to the public other than by breach of this Agreement by the receiving party, (ii) is rightfully received by receiving party from a third party without confidential limitations, (iii) is independently developed by receiving party's employees without access to Confidential

XV. CONFIDENTIALITY (continued)

Information, or (iv) is known to the receiving party without any restriction on its use or disclosure prior to first receipt of it from the disclosing party.

XVI. FORCE MAJEURE

Neither Consultant nor Client shall be liable for any Claims arising from any nonperformance or delay in performance caused by circumstances beyond Consultant's reasonable control, including without limitation, act of God, fire, flood, military action, terrorist action, government action, accident, labor trouble, or shortage, or inability to obtain Intellectual Property rights from third parties, material, equipment, or transportation.

XVII. VALIDITY/BINDING

This Agreement constitutes the entire agreement between the Parties with regard to the Project and is binding and effective as of the Client's purchase order date for the Project or Project acceptance date. Any previous communications or agreements pertaining to the Project are hereby superseded. Amendments to this Agreement must be in writing and be signed by both parties. The provisions of this Agreement are severable and if any provision is declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect. Waiver of any particular default will not result in waiver of any subsequent or prior default.

XVIII. NOTICE

Notices required or desired to be given under this Agreement shall be in writing and shall be sent by email and must be confirmed by corresponding email to be considered a valid notice.

XIX. ACCEPTANCE

If Client sends to Consultant a purchase order or other form of acceptance for the Project, this acknowledgement represents Client's expression of acceptance to this Agreement, and this Agreement is effective as of the Client's purchase order or acceptance date. Consultant and Client shall be deemed to reaffirm all of the terms and conditions contained in this Agreement and reject any terms or conditions contained in Client's purchase order which are additional to or different from the terms and conditions contained in this Agreement. If Client expressly conditions its acceptance, purchase order or any form of offer upon assent by Consultant to any such different or additional terms, the commencement of services under this Agreement is a rejection of and does not constitute assent by Consultant to any such different or additional terms.

XXI ARCHIVAL OF CLIENT DATA

Client finite element model data, engineering reports and other calculations will be archived for five years from the end of the project. No absolute guarantee of data security is implied or warranted but a reasonable effort will be made to safeguard and preserve the data. The client is permitted one free retrieval of archived data during this five year period. Subsequent retrievals are at the discretion of the Consultant.