

Testing Terms and Conditions

Standard Terms and Conditions

- Proposals.** All proposals or samples submitted (the "Proposal(s)") for testing and/or consulting services (the "Services") are subject to acceptance by TCR Advanced Engineering Pvt. Ltd. (TCR) in writing. Unless otherwise specified, the Services specified in the Proposal shall be performed by TCR or the designated subcontractor selected by TCR in its sole discretion, within a reasonable period of time (following receipt of Client's samples) in accordance with TCR's customary practices. The Proposal and these Standard Terms and Conditions (with the latter controlling in the event of any inconsistencies with the Proposal) constitute the entire agreement between the parties (the "Agreement") and unless expressly assented to in writing by TCR, terms and conditions different, therefore, are expressly rejected. No course of dealing between the parties hereto shall be deemed to affect or to modify, amend or discharge any provision or term of the Agreement.
- Specifications.** All testing or consulting services rendered by TCR or its designated subcontractor shall be conducted according to the specific test conditions, consulting parameters and specifications (the "Specifications") set forth on the Proposal and in the Report.
- Report/Results.** Client may use and distribute copies of the full Report for the purpose of securing process or product approval from governmental authorities, businesses and industry, traders, architects, engineers, and customers or from accredited standardizing committees and organizations. All other reproductions, distributions, or disclosures, in any form, in whole or in part, of any portion of the data, observations, or Report, oral or written, require prior written consent of TCR. Test results and consultant findings (the "Results") shall only apply to the specific sample tested or consultant service rendered by TCR or its designated subcontractor under the Specifications.
- Payment.** All payments for the Services are due without regard to the Results and notwithstanding any early termination of the Agreement by the Client. The Client further agrees to pay TCR its then customary charge for work performed by TCR or its designated subcontractor at the request of the Client and not included on any Proposal, and for any work performed in connection with any legal proceeding respecting the Client or its products.

5. **Consulting Services.** Client hereby engages TCR as an independent contractor, and not as an employee or agent of Client in connection with the rendering of any consulting Services to the Client. Client hereby acknowledges that it, and not TCR or TCR's designated subcontractor, shall be responsible for all final decisions based on the application of the Results or the findings expressed in the Report.
6. **Samples.** Client will provide samples for testing (at Client's expense). TCR will maintain unused portions of samples for 15 days after the Report has been issued. After 15 days, TCR will return or dispose of unused portions of samples at Client's expense. Client shall abide by all applicable regulations when shipping samples to TCR or its designated subcontractor. TCR or its designated subcontractor has the right to refuse receipt and/or testing of any shipment that, in TCR's or its designated subcontractor's sole discretion, is hazardous, unsafe, unlawful or has been shipped improperly. Client shall bear associated costs including, but not limited to, identification of sample content, damage incurred by TCR or its designated subcontractor as a result of improper packaging, labelling or omission of documents, return or disposal of materials.
7. **Confidential Information.** The confidential information, observations and data relating to the businesses and products of TCR, its designated subcontractor and the Client are the property of the respective parties. The parties will not use for their own purposes or disclose to any third party any of such information, observations or data obtained regarding the other party's business or products without the prior written consent of that party, unless such matters become publicly known other than as a result of the acts of the party seeking to use or disclose such matters; provided, however, that TCR shall be entitled to share any confidential information concerning Client or Client's product or business with TCR's designated subcontractor, which information shall remain confidential and shall not be used or disclosed by the subcontractor except as provided herein. TCR is entitled to disclose the name of the Client to its Parent Companies and in its customer listing.
8. **Intellectual Property.** Intellectual Property. All testing equipment, methods, designs, concepts, inventions, processes, trade secrets, proprietary information and know-how, uses, and/or applications used or useful in the delivery of the Services, whether patentable or not, are the property of TCR ("TCR Intellectual Property"). Client may not use or register any name, trademark or service mark of TCR or any of their affiliates for any promotion or other purpose, except as provided in paragraph 3, above.

9. **Disclaimer of Warranties.** TCR has relied on information supplied by the Client in rendering the Services. The Results assume the accuracy of such information and that the Client is entitled to share such information with TCR and its designated subcontractor. Any information provided by TCR in the Report or in connection with the Services is for the benefit of the Client only and no third party shall be entitled to rely thereon without the prior written consent of TCR.

TCR warrants only that it and its designated subcontractor shall conform the Services to the specifications set forth in the relevant Proposal. Because of numerous factors affecting results, TCR makes no other warranty of any kind with regard to the Services or the results set forth in the Report, either express or implied. Statements made in the Report or in connection with the Agreement shall not be construed as representations or warranties or as inducements to violate any law, safety code or insurance regulation.

10. **Limitation on Liability.** Client's right to recover damages caused by the negligence or breach of TCR or its designated subcontractor with respect to any testing or consulting Services shall not exceed the amount actually paid by Client to TCR. TCR or its designated subcontractor will not be liable for any other damages whatsoever arising from or in any way connected to the Services or the Report for any purpose whatsoever. In no event shall TCR or its designated subcontractor be liable for any special, indirect, or incidental or consequential damages of any kind, including without limitation any damages with respect to loss of income, compensation or prospective profits, any expenditures, investments or commitments of the Client, any loss with respect to business reputation or good will, or arising from the claims of third parties (including, without limitation, product liability claims).

Client further agrees to indemnify, hold harmless and defend TCR, its officers, directors, agents, representatives and employees from any and all claims, liabilities, damages, and expenses on account of death or injury to any person or damage to any property, including without limitation, loss of earnings or profits, arising from or in connection with the testing services to be performed hereunder, any omissions in connection with such services or any defect related to a manufactured product where a sample of such product was tested hereunder.

11. **Litigation Services.** Client shall notify TCR in writing if any Services to be performed are in support of pending or contemplated litigation and shall further advise TCR of the parties involved in

such litigation prior to TCR commencing the requested Services. In the event employees or contractors of TCR are subpoenaed to testify before any tribunal, panel, official, or judicial officer by the Client or by another litigant in connection with the Services, Client shall be responsible to pay TCR its costs plus the usual customary hourly rate for TCR consulting for the time spent to travel, attend and appear to so testify.

12. **Non-solicitation of Employees.** Client agrees not to solicit any employees of TCR, any of its affiliates or its designated subcontractor for employment or hire unless TCR and/or such affiliate or designated subcontractor shall have first consented to such solicitation in writing.
13. **Delay; Excused Non-performance.** Performance of the Services by TCR and/or its designated subcontractor may be delayed or excused when such performance is commercially impossible or impracticable as a result of war, strikes, shortages, weather events, or other causes beyond their reasonable control.
14. **Indemnification/Hold Harmless.** The Client shall indemnify and hold TCR and its designated subcontractor harmless to the fullest extent permitted by law from any and all damages, expenses, fines, judgments, liabilities, losses and costs, including reasonable attorneys' fees incurred by TCR or its designated subcontractor (a) in connection with or arising from any breach by the Client of the terms of this Agreement, and (b) as a result of any claims, causes of action, suits or legal proceedings brought against TCR and arising out of its delivery of the Services and preparation of the Report contemplated hereunder; provided that the Client shall not be required to indemnify TCR or its designated subcontractor for any claim or cause of action resulting from the gross negligence or wilful misconduct of TCR or its designated subcontractor.
15. **Dispute Resolution.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration in Mumbai, India, in accordance with the Commercial Arbitration Rules of the Arbitration Association of India, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
16. **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the Country of India, without regard to its conflict of laws provision, and each party hereto submits to the non-exclusive jurisdiction of any state or federal court sitting in Mumbai in any action or proceeding relating to or arising out of this Agreement.