

Wichita State University Research Terms and Conditions

Terms and conditions for research and commercial testing at Wichita State University (WSU) laboratories are covered in this document. **These terms and conditions are applicable when a quote/purchase order contracting method is utilized.** These terms and conditions supersede all previous rates, conditions and scheduling policies, and are to be used in conjunction with any work or services performed by WSU. The terms and conditions herein may NOT be altered, supplemented, or amended by the use of any additional document(s).

1. Formation of Contract.

These terms and conditions, together with the quote and, if applicable, Statement of Work (SOW), embodies the entire Agreement between WSU and Company. Company's offer to purchase certain services (Services) from WSU as described in the quote and/or SOW is conditioned upon acceptance by WSU. Acceptance by WSU is conditioned upon these terms and conditions.

2. Assignment.

Neither this Agreement nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by any party without the prior written consent of all other parties.

3. Governing Law and Venue.

This Agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this Agreement shall reside only in courts located in the State of Kansas.

4. Termination.

This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. In any case, upon termination, WSU will be reimbursed for all costs actually incurred in the performance of the Agreement and all non-cancelable obligations, pursuant to Section 13.5.

5. Force Majeure.

WSU will not be liable for any failure to perform as required by this Agreement, due to circumstances reasonably beyond WSU's control, including, but not limited to: labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, or other such occurrences.

6. Independent Contractor.

WSU and Company are not (and nothing in this Agreement may be construed to constitute them as) partners, agents, representatives or employees of the other, nor is there any status or relationship between them other than that

of independent contractors. Neither party has any responsibility nor liability for the actions of the other party except as specifically provided in this Agreement. Neither party has any right or authority to bind or obligate the other party in any manner or make any representation of warranty on behalf of the other party.

7. Notices.

Any notice or communication required or permitted under this Agreement shall be made in writing and sent postage prepaid, and addressed as set out below. However, if the communication involves an alleged breach of this Agreement or a cancellation of this Agreement, such communication shall be sent by registered or certified mail, or overnight delivery, and also communicated by telephone as promptly as possible. Notices may be given by email, and is accomplished when the recipient, by an email sent to the email address for the sender stated in this section, acknowledges having received that email. An automatic "read receipt" does not constitute acknowledgement of an email for purposes of this section.

Wichita State University – WSU Ventures
1845 Fairmount Street
Wichita, Kansas 67260-0129

8. Disputes.

Pending resolution of any dispute arising under this Agreement, excluding disputes regarding payment issues, WSU shall proceed with the performance of this Agreement, providing however that the parties proceed in good faith to resolve disputes between themselves. If the parties are unable to resolve the dispute after sixty (60) days WSU may issue a stop work order.

9. Insurance/Indemnity.

Company agrees to indemnify, defend and hold WSU, its officers, agents and employees, harmless from any liability resulting from the use by Company of the research and/or testing results provided to Company by WSU under this Agreement. Should Company or its employees, representatives or agents participate in an on-site visit to WSU, Company understands and agrees to be responsible for the safety of such employees, representatives or agents and Company warrants that it maintains a policy or program of insurance or self-insurance at levels sufficient to support the indemnification obligations assumed herein. Company further understands that WSU and its officers and employees acting within the scope of their employment are subject to the Kansas Tort Claims Act, K.S.A. 75-6101 et seq. WSU relies on the provisions of the Kansas Tort Claims Act and no further insurance is maintained by WSU.

10. Proprietary Information.

Proprietary Information is defined as any information, knowledge or data received in furtherance of or pursuant to this Agreement and which is clearly marked with

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proprietary legends by the disclosing party at the time of disclosure and, if the information is orally or visually disclosed, that is identified as proprietary at the time of said first disclosure and is clearly marked with proprietary legends and/or is reduced to writing within thirty (30) days of oral or visual disclosure. Should it be necessary for WSU personnel to receive proprietary information from Company: the parties agree, subject to the provisions of the Kansas Open Records Act, K. S. A. 45-215 et seq., as amended, that all documents received from and marked as Proprietary Information shall be kept confidential and shall not be disclosed to third parties and will be treated by the parties with the same degree of care with which each treats and protects its own Proprietary Information. In addition, Proprietary Information shall only be disclosed to those personnel within its organization or affiliates requiring access to perform tasks contemplated by this Agreement, and any such personnel or affiliates shall be made aware of the restrictions imposed on the use of the Proprietary Information. Proprietary Information shall be held as such for a period of time not to exceed three (3) years from the date of written delivery to WSU. The obligations of confidentiality and non-use under this Agreement do not apply to: a.) such information is in the public domain at the time of initial disclosure, or subsequently becomes publicly known through no wrongful act of receiving party; b.) such information is known to receiving party prior to the time of initial disclosure, as evidenced by competent and contemporaneous written documentation; c.) such information is furnished to a third party by disclosing party without confidentiality restrictions substantially similar to those herein; d.) such information is rightfully received by receiving party, without restrictions as to further disclosure, from a third party that had the lawful right to disclose such information; or such item is required to be disclosed pursuant to applicable law or proper governmental or judicial process, provided that notice of such disclosure is promptly provided to disclosing party in order that it may have every reasonable opportunity to intervene in such process to contest such disclosure. WSU retains the right to refuse to accept any information that is not considered to be essential to the completion of the project/test.

11. Waiver/Severability.

Waiver of Rights: Any waiver shall be in writing and provided to all other parties. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any party hereto.

Severability: The illegality or invalidity of any provision of this Agreement shall not impair, affect or invalidate the other provisions of this Agreement.

12. Export Compliance.

Company certifies that to the best of its knowledge neither it nor any of its principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations §120.27, or otherwise declared ineligible for the award of contracts by any Federal agency. Company shall provide immediate written notice to WSU if at any time Company learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Company further agrees to comply with all U.S. Laws relating to the transfer, export, or re-export of technical data (as defined in the Export Regulations defined herein) that is subject to export controls under the International Traffic in Arms Regulations (ITAR) 22 Code of Federal Regulations Parts 120-130 or the Export Administration Regulations (EAR) 15 Code of Federal Regulations Parts 730-774 without an export license to any employee or other person who is not a U.S. Citizen or permanent resident, as well as to corporations or to any other entity, organization, or group that is not incorporated or otherwise organized to do business in the United States. Company shall notify WSU in writing prior to disclosure of any technical data or other items subject to EAR or ITAR to WSU. Company will reasonably cooperate with and support WSU in obtaining the correct Export Control Classification Number (ECCN), classification of United States Munitions List (USML) category, and any necessary licenses or authorizations required to complete the SOW.

Company agrees that WSU may retain one archival copy of all documents from the project for the purposes of (a) proving what information it did or did not receive hereunder in the event of a future dispute, or (b) complying with governmental regulatory requirements.

13. Scheduling.

13.1 Tentative Scheduling: A tentative or estimated schedule may be provided with the quote. This schedule only represents a snapshot of opportunity at the time of the quote.

13.2 Project/Test Schedule: The project/test schedule will be agreed to by WSU and the Company based on the final Company SOW and receipt of the Purchase Order (PO). WSU is not responsible for schedule delays due to: a.) Late material, test panel, test article, or other test related delivery; b.) Test article failures during testing; c.) Changes to the SOW; d.) Equipment failure; e.) Environmental conditioning; or f.) Other acts beyond WSU's control.

13.3 Postponement/Cancellation: If Company must postpone and/or cancel a test, WSU reserves the right to charge the Company against the PO for any charges that may have been incurred or for non-cancelable obligations, and for lost revenue due to the reserved testing slot.

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These charges include but are not limited to staffing, materials purchases, equipment, rental fees, and storage.

13.4 Maintenance and Repairs: WSU reserves the right to adjust schedules to allow for maintenance and/or repairs that may be necessary.

14. Data/Test Results.

14.1 Preliminary Data: Data that is provided to the Company during testing and before the formal report is considered by WSU as preliminary and not final. If no formal report is requested, only preliminary data will be supplied.

14.2 Final Data: Final data will be provided to the Company per the project schedule in the formal report. A formal report will only be generated if requested by the Company in the SOW. Cost of the report will be reflected in the quote.

14.3 Storage: Unless other arrangements are made, tested articles will be returned to the Company at the Company's expense. Storage of tested articles will be at the Company's expense. WSU reserves the right to remove and store failed test articles at the Company's expense until articles are repaired and testing can be resumed.

14.4 Tools, Equipment, and Test Fixtures: WSU will retain all tools, equipment and test fixtures used in a test. The Company may request these items after a test if the Company paid for such items.

14.5 Test Results: WSU is responsible for providing test results per Company guidelines or other recognized testing standards. WSU will maintain calibration records for testing traceability. WSU is not responsible for test values below predicted values when WSU Quality Manual testing protocols have been followed. WSU is not responsible for accidental data loss after the test is complete and results have been supplied to Company.

15. Billing.

WSU payment terms are net 30 days. Company will be invoiced upon completion of the project and/or testing. Company may be required to pay the invoice prior to release of data unless prior credit approval has been given.

16. Disclaimer of Warranty.

WSU disclaims all warranties including all implied warranties of merchantability and fitness for a particular purpose. WSU shall not be liable to Company for any direct, indirect, consequential, special, punitive or other damages arising from or related to this Agreement.

17. Intellectual Property.

All intellectual property (inventions, information, data, results, know-how, whether protectable by patents, copyrights, trade secrets, or otherwise) arising out of the

performance of any work or services conducted by WSU in completion of this Agreement will be promptly disclosed to the Company. To produce the greatest benefit to the public and in accordance with Kansas Board of Regents policy, where it is proposed that all costs including overhead, salary of investigator, reasonable rent on the use of equipment, etc. are paid by Company, rights to intellectual property conceived or developed by at least one employee or agent of WSU pursuant to the project will be determined as follows:

a) Company shall have exclusive rights to intellectual property which involves the use of, composition of, modification to, or improvement to Company-provided materials or information or a derivative analogue thereof.

b) WSU shall have exclusive rights to intellectual property involving a scientific process, technique, procedure, medium, device or other process which is not unique to or derived from Company-provided materials or information. WSU shall notify Company of such intellectual property, and Company shall have a ninety (90) day option to negotiate an exclusive license thereto.

The Parties shall execute a separate license agreement consistent with the exclusive rights and obligations herein, the remaining terms of which shall be negotiated in good faith on fair and reasonable terms by WSU and Company to vest such exclusive rights in either WSU or Company as applicable. Notwithstanding anything herein, Company hereby grants and WSU hereby reserves for itself a fully paid up, non-exclusive, non-royalty-bearing license to use intellectual property arising out of the project for non-commercial educational and research purposes.

18. Publication Rights.

Under Kansas Board of Regents policy, WSU investigators shall be permitted to publish in journals, dissertations, theses and other scholarly and professional publications, and to present at symposia and professional meetings the methods and results of the projects. Company shall, at its request in writing, be furnished copies of any proposed publication or presentation at least sixty (60) days in advance of the submission of such proposed publication to a journal, editor or third party. During the 60 day review period, company may object to the proposed publication or presentation only on the basis that it contains patentable subject matter that needs protection and/or it contains confidential information belonging to Company. In the event of such an objection, the parties shall negotiate in good faith an acceptable version of the document.