

TERMS AND CONDITIONS

The following terms and conditions apply to all work performed by the Polyurethane Physical Property Testing Laboratory ("P3T") and supersedes and/or replaces terms and conditions of Client's purchase order unless specifically exempted in writing by an officer of P3T.

1. P3T represents to the Client that testing is done in accordance with standard procedures as applicable and that reported test results are accurate within generally accepted commercial ranges of accuracy, unless a specific measure of greater accuracy has been agreed to in writing by P3T and the Client.
2. P3T reports apply only to the specific sample(s) tested under stated test conditions and test results are not necessarily indicative of the qualities of apparently identical or similar test or operating conditions. P3T shall have no liability for any deductions, inferences or generalizations drawn by the Client or others from P3T reports.
3. When P3T performs services, its work and reports are not governed by the Uniform Commercial Code. Except as stated in Paragraph 1, P3T disclaims all warrants of merchantability or fitness for a particular purpose.
4. The Client shall not advertise or publish the name, the seal or servicemark, reports, test results, documentation or procedures of P3T without written authorization from P3T. Any test reports provided to Client by P3T shall not be reproduced except in full without the approval of P3T. The Client's actual or threatened failure to abide by this Paragraph 4 may result in legal action for injunctive and other relief.
5. Payment for the services rendered is the obligation of the Client issuing the purchase order or accepting the proposal. The obligation is not contingent on any specific result from P3T's services and may not be assigned without the written permission of P3T.
6. If services are to be supplied to a Client who has not established credit with P3T, or in connection with a legal action, a retainer equal to the estimated cost is required with the order, which retainer may be applied at P3T's option to its final billings. The minimum retainer required for services to be performed in connection with a legal action is \$1,000.
7. If the service to be performed requires more than one (1) month for completion, P3T will make monthly billings of the approximate percentage of the work completed each month, supplying with the interim invoice a progress report showing accomplishments to date. Terms of all invoices shall be net fifteen (15) days upon receipt of invoice. P3T shall have the right to charge interest on all amounts not paid by the due date at the rate of one (1%) percent interest per month, compounded monthly, from the due date of payment in Canadian funds.
8. If the Client desires forensic testing services, the Client must mark each test sample and supporting documents and the test authorization form conspicuously as "LEGAL". Unless otherwise indicated in writing, prices quoted or charged by P3T do not include charges for any court appearance, record retrieval/storage, expert witness testimony, deposition, or affidavit, or preparation thereof, in connection with forensic testing services. Such charges will be computed at P3T's then prevailing hourly rates, plus expenses. All such charges must be prepaid by the Client prior to such appearance, testimony, deposition or affidavit and, where required by law, the Client at the Client's expense must obtain advance court approval of charges.
9. In the event that P3T, as a result of an order or subpoena issued by a court, is called upon to produce or testify in respect to a report, it will advise the Client of the fact and the time and place of the scheduled hearing, if reasonable advance notice is given to P3T. If the Client has any objections to P3T complying with such order or subpoena, it will be the Client's obligation to present such objections to the court at or prior to the time specified in such order or subpoena, and to give timely notice to P3T of the results.
10. Sample(s) will be destroyed thirty (30) days after the date of the final report, unless the Client indicates otherwise in writing before the expiration of said 30-day period. Tested samples shall be returned at Client's expense including return charges and cost of insurance against risk of loss or damage of goods.
11. Prices quoted by P3T are subject to change if not accepted by the client within thirty (30) days, or if the work involved is not commenced within forty-five (45) days of such acceptance through no fault of P3T.
12. P3T's liability is limited as follows:
 - (a) The Client agrees to limit P3T's liability arising from P3T's professional activity, errors or omissions, such that the total aggregate liability of P3T shall not exceed P3T's total fee for services rendered on the project in question, except in the case of a finding of gross negligence or wilful misconduct on the part of P3T by a court of competent jurisdiction.
 - (b) P3T shall be discharged from all liability to the Client for all claims of loss, damage, or expense unless a claim is made within three (3) months of the date of which damage, defect or alleged non-performance became apparent to the Client, and the process of law served no later than two (2) years from the provision of services by P3T.
 - (c) P3T shall not be liable to Client for any consequential damages incurred by the Client due to the fault of P3T, regardless of the nature of this fault, whether it was committed by P3T, its employees, agents, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.
 - (d) The Client agrees to extend any and all limitations, indemnifications, and waivers provided by the Client to P3T and to those individuals and organisations P3T retains for execution of work. These shall be deemed to include but not necessarily limited to P3T's officers and employees and their heirs and assigns, as well as P3T's agents, subcontractors and their officers, employees, heirs and assigns.
 - (e) Client acknowledges that testing, including sample preparation and transportation, may damage or destroy Client's property. Client agrees to hold P3T harmless from any and all responsibility for such alteration.
 - (f) The Client agrees P3T shall not be responsible for any injuries to the Client representatives while attending to or observing testing at P3T's facility. If testing takes place at the Client's facility, Client agrees that P3T will not operate and shall not be responsible for any of P3T's equipment and that although P3T agrees to abide by Client's safety procedures, P3T shall not be responsible for injury to any of Client's personnel.
13. Any order or agreement for testing services by P3T may be terminated in writing by the Client before completion thereof with P3T's written consent in which event the Client shall pay to P3T an amount to be determined by P3T as being sufficient to reimburse P3T for all direct and indirect costs and expenses, including (but not limited to) supplies, materials, labour and overhead incurred with respect to the order or agreement through the date of termination.
14. P3T shall not be liable for any failure or delay in performance which is caused in whole or in part by fire, flood, accident, riot, war, operation of law, government action, strikes or other labour disturbances, fuel shortages, or any other cause beyond the control of P3T.
15. All contracts between P3T and the Client shall be deemed to be made in and governed by the laws of the Province of Ontario.
16. Should P3T be required to subcontract any testing or other services, the Client will be informed of such arrangement either verbally or in writing. P3T shall have no liability for any deductions, inferences or generalizations drawn by the Client or others from subcontractor's data.
17. It is the Client's responsibility to understand the procedures utilized in the testing process. Any action taken by a Client based on any consulting, recommendations, results, observations, conclusions, discussions, or data as provided by P3T, is the sole responsibility of the Client.
18. P3T and the Client will first endeavour to resolve through good faith negotiations any dispute arising between them. If the dispute cannot be resolved in a reasonable time, either party may submit the dispute to binding arbitration by notice to the other party. The arbitration proceedings will be conducted by a single arbitrator in the Province of Ontario in accordance with the laws of that province. Each party will bear equally the costs of the arbitration.