

TERMS AND CONDITIONS

The following terms and conditions ("**Terms and Conditions**") apply to all work and services performed by the Polyurethane Physical Property Testing Laboratory ("**P3T**").

1. The "**Client**" is as named on P3T's offer to sell, estimate or quotation (hereinafter, the "**Quotation**"). P3T and Client are collectively herein the "**Parties**" or individually a "**Party**".
 2. Any Quotation is expressly made conditional on Client's assent to all of the terms and conditions contained in the Quotation and these Terms and Conditions, without deviation. Upon acceptance, these Terms and Conditions together with the Quotation constitute a binding agreement between the Parties with respect to the products or services described in the Quotation (the "**Agreement**"). The Acceptance by Client of the Quotation may be evidenced by: (i) Client's issuance of a purchase order referencing the Quotation; (ii) Client's written or verbal assent of the Quotation, acceptance of delivery or performance of work product or services described in the Quotation or payment of fees for the first instalment of work product or services (if applicable), or any such acceptance by any representative of Client, or (iii) other conduct by Client or any representative of Client consistent with acceptance of the Quotation. P3T's Quotations are open for acceptance within the period stated by P3T in the Quotation or, when no period is stated, within thirty (30) days from the date of the Quotation, provided that any Quotation may be withdrawn or revoked by P3T at any time prior to the receipt by P3T of Client's acceptance related thereto. These Terms and Conditions supersede and/or replace all terms and conditions appearing on any Client purchase order or terms and conditions, unless specifically exempted in writing by an officer of P3T. Any addition to or variation from the terms hereof (whether set forth in Client's purchase order or other documents) is hereby expressly rejected and shall not be binding upon P3T unless expressly acknowledged in writing by an officer of P3T.
 3. P3T represents to the Client that P3T's 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.
 4. 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 tests or operating conditions. P3T reports are issued on the basis of information, documents and/or samples provided by, or on behalf of, Client and solely for the benefit of Client who is responsible for acting as it sees fit on the basis of such reports. Neither P3T nor any of its officers, employees, agents or subcontractors shall be liable to Client nor any third party for any deductions, inferences or generalizations drawn by the Client or others from P3T reports or any actions taken or not taken on the basis of such reports nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to P3T.
 5. When P3T performs services, its work and reports are not governed by the Uniform Commercial Code. Except as stated in Section 3, P3T disclaims all warranties, conditions and other terms implied by statute or common law (including but not limited to any implied warranties of merchantability or fitness for a particular purpose) to the fullest extent permitted by law. No performance, deliverable, oral or other information or advice provided by P3T (including its agents, subcontractors, employees or other representatives) will create a warranty or otherwise increase the scope of any warranty provided.
6. **INTELLECTUAL PROPERTY RIGHTS**
 - (a) All Intellectual Property Rights belonging to a Party prior to entry into the Agreement shall remain vested in that Party. Nothing in these Terms and Conditions is intended to transfer any intellectual property rights from either Party to the other.
 - (b) Client shall not publish, advertise or otherwise use the P3T name or any of P3T's seals, certification marks, servicemarks, trademarks or brand names (collectively, "**Marks**") for any reason unless approved in writing by an officer of P3T. Any other use of P3T's Marks is strictly prohibited and P3T reserves the right to terminate the Agreement as a result of any such unauthorized use.
 - (c) All intellectual property rights in any reports or any other material in whatever medium produced by P3T shall belong to P3T. Client agrees and acknowledges that P3T retains any and all proprietary rights in concepts, ideas and inventions that may arise during the preparation or provision of any reports or any other materials provided by P3T to Client and the provision of services to Client. Any reports provided to Client by P3T shall not be reproduced by Client, except in their entirety and with all markings intact, without the prior written approval of P3T. Any loss, damage or prejudice resulting from the misuse or fraudulent misrepresentation of any such reports or other materials, including of any information contained therein, is the exclusive liability of Client.

This Section 6 shall survive termination of the Agreement for any reason.
 7. Payment for the services rendered is the obligation of the Client issuing an applicable purchase order or accepting the Quotation. Client's payment obligations for services rendered shall survive termination of the Agreement for any reason. Client's payment obligation is not contingent on any specific result from P3T's services and may not be assigned without the written approval of an officer of P3T. Client shall not be entitled to retain or defer payment of any sums due to P3T on account of any dispute, counter claim or set off which it may allege against P3T.
 8. 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. All prices quoted are exclusive of taxes, unless otherwise specified in the Quotation. Client agrees that all taxes, interest and penalties thereon, if any, relating to the services performed or products produced or sold hereunder, shall be paid by Client at the rate and in the manner prescribed by law, on the issue by P3T of a valid invoice. Client is responsible for all freight charges, freight insurance, duties, customs brokerage fees, transit taxes and export/import filings for transfer of freight inbound or outbound, unless otherwise agreed to by P3T in writing.

9. 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 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 CAD.
10. If the services to be performed require 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 the invoice by Client. 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. Interest shall accrue on all unpaid amounts irrespective of whether the Agreement has been terminated. Payment of P3T's invoices by Client shall not be delayed by, or contingent upon, approval or payment by Client's customer or any other third party. Failure to make payments when due shall entitle P3T to discontinue all products and services without further notice and such failure may result in additional requirements or deposit requirements being imposed before services are resumed. Client agrees to pay costs associated with the collection of any overdue amount, including reasonable attorney's fees. For the avoidance of doubt, this Section shall survive termination of the Agreement for any reason.
11. 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 tax and expenses. All such charges must be prepaid by the Client prior to such appearance, record retrieval/storage, testimony, deposition or affidavit and, where required by law, the Client at the Client's expense must obtain advance court approval of charges.
12. 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.
13. Client shall inform P3T in advance and in writing of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or explosive elements or materials. All 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. Additional special disposal charges may be billed to Client if incurred by P3T. Upon Client's request within the aforesaid 30-day period, tested samples shall be returned to Client at Client's expense including return charges and cost of insurance against risk of loss or damage of goods.
14. Client shall identify all applicable test items, materials or information which are subject to control by any import and export regulations. Client agrees to cooperate with P3T by providing any information required under the *Canadian Controlled Goods Program, Defence Production Act, Export and Import Permit Act, Nuclear Safety and Control Act* or the *U.S. Arms Control Export Act, Export Administration Act, International Traffic in Arms Regulations (ITAR), Export Administration Regulations*, or other export control laws and regulations. Client agrees not to export, reexport, transmit or otherwise transfer to P3T any controlled items, materials or information in violation of any export control laws and regulations.
15. P3T's liability is limited as follows:
 - (a) To the maximum extent permitted by applicable law, P3T's maximum aggregate liability in contract, tort (including negligence) or otherwise for any breach of the Agreement or any matter arising out of or in connection with the services to be provided in accordance with the contract between Client and P3T shall not exceed the total fees due by Client to P3T in respect of the service which gives rise to such claim or liability.
 - (b) P3T shall be discharged from all liability to Client for all claims for loss, damage, or expense unless a claim is made by Client within three (3) months of the date of which such damage, defect or alleged non-performance became apparent to the Client, and in any case, P3T shall be discharged from all liability for all claims for loss, damage or expense unless legal suit is brought no later than two (2) years from: (i) the date of performance by P3T of the service which gives rise to the claim; or (ii) the date when the service should have been completed in the event of any alleged non-performance.
 - (c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL P3T BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF EQUIPMENT OR BUSINESS INTERRUPTION, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY SHALL MAINTAIN INSURANCE IN REASONABLE AND RESPONSIBLE AMOUNTS FOR SUCH LIABILITIES.
 - (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 respective officers, employees, heirs and assigns.
 - (e) P3T is neither an insurer nor a guarantor and disclaims all liability in such capacity. Client is not a co-insured under P3T's insurance. Clients seeking a guarantee against loss or damage should obtain appropriate insurance. 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) P3T shall not be responsible for any injuries to the Client's 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.

The obligations set out in this Section 15 shall survive termination of the Agreement for any reason.

16. TERMINATION

- (a) Any Agreement for testing services by P3T may be terminated in writing by the Client before completion of such services by P3T, with P3T's written consent. Such termination shall be effective upon issuance of P3T's written consent.
- (b) P3T shall be entitled to immediately and without liability either suspend or terminate any Agreement for testing services and/or any Client credit terms in the event of: (i) failure by Client to comply with any of its obligations hereunder if such failure is not remedied within ten (10) days that notice of such failure has been given to Client; or any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by Client.
- (c) In the event of termination of the Agreement, the Client shall pay to P3T an amount to be determined by P3T as being sufficient to reimburse P3T for all services provided and all direct and indirect costs and expenses, including (but not limited to) supplies, materials, labour and overhead incurred with respect to the agreement through the effective date of termination.
- (d) For the avoidance of doubt, all payment obligations of Client shall survive termination of the Agreement for any reason.

17. Performance of services may be subject to delays caused by causes beyond P3T's reasonable control. P3T shall not be liable for any failure or delay in performance which is caused in whole or in part by acts of God, fire, flood, severe weather, accident, riot, war, unavailability of utilities or materials, unforeseen engineering problems or breakdown of equipment, operation of law, government action, strikes or other labour disturbances, fuel shortages, or any other cause beyond the reasonable control of P3T (collectively, "**Force Majeure**"). If the Force Majeure continues for more than sixty (60) days after the day on which it started, each Party may terminate Agreement for testing services by giving at least ten (10) days' written notice to the other Party. Client's payment obligations as set out in Section 16 shall apply in the event of such termination.

18. The Agreement between P3T and the Client shall be deemed to be made in and governed by the laws of the Province of Ontario and applicable laws of Canada therein. P3T and Client agree not to pursue any suit, action or judicial proceeding against the other arising out of, or connected with the Agreement, or the performance thereof in any jurisdiction other than the Province of Ontario.

19. Should P3T be required to subcontract any testing or other services, the Client will be informed of such arrangement either verbally or in writing. Neither P3T nor any of its officers, employees, agents or subcontractors shall be liable for any deductions, inferences or generalizations drawn by the Client or others from subcontractor's data or reports or any actions taken or not taken on the basis of such data or reports.

20. 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.

21. CONFIDENTIALITY

- (a) Where either Party (the "**Receiving Party**") obtains Confidential Information of the other Party (the "**Disclosing Party**") in connection with the Agreement it shall, (i) keep that information confidential, by applying

the standard of care that it uses for its own confidential information; (ii) use that Confidential Information only for the purposes of performing its obligations under the Agreement; and (iii) not disclose that Confidential Information to any third party without the prior written consent of the Disclosing Party. Each party shall ensure the compliance by its employees, agents and representatives with its obligations under this Section 21.

- (b) Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information on a "need to know" basis: (i) to any legal advisers and statutory auditors that it has engaged for itself; (ii) to any regulator having regulatory or supervisory authority over its business if required by such regulator; (iii) to any director, officer or employee of the Receiving Party provided that, in each case, the Receiving Party has first advised that person of the obligations under this Section 21 and ensured that the person is bound by obligations of confidence in respect of the Confidential Information no less onerous than those set out in Section 21; and (iv) where the Receiving Party is P3T, to any of its subsidiaries, affiliates or subcontractors. The Receiving Party may also disclose Confidential Information of the Disclosing Party to the extent required by law, a valid subpoena or other court order, provided that the Receiving Party has given the Disclosing Party written notice of the requirement to disclose and where possible given the Disclosing Party a reasonable opportunity to prevent the disclosure through appropriate legal means.

- (c) "Confidential Information" means all information in whatever form or manner presented which: (i) is disclosed in writing, electronically, visually, orally or otherwise howsoever and is marked, stamped or identified as confidential by the Disclosing Party at the time of such disclosure; and/or (ii) is information, howsoever disclosed, which would reasonably be considered to be confidential by the Receiving Party. Confidential Information shall not include information which: (i) was already in the possession of the Receiving Party prior to its receipt from the Disclosing Party without restriction on its use or disclosure; (ii) is or becomes public knowledge other than by breach of the Agreement; (iii) is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or (iv) is independently developed by the Receiving Party without access to the relevant Confidential Information.

- (d) No license of any intellectual property rights is given in respect of any Confidential Information solely by the disclosure of such Confidential Information by the Disclosing Party. With respect to archival storage, Client acknowledges that P3T may retain in its archive, for the period required by its quality and assurance processes, or by the testing and certification rules of the relevant accreditation body, all materials necessary to document the services provided.

The obligations set out in this Section 21 shall survive termination of the Agreement for any reason.

22. Client shall indemnify and hold harmless P3T, its officers, employees, agents, representatives, contractors and subcontractors from and against any and all claims, suits, liabilities (including costs of litigation and reasonable attorney's fees) arising out of or in connection with:

- (a) any claims or suits for any actual or asserted failure of the Client to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;
- (b) any claim or suits for personal injuries, loss of or damage to property, economic loss, and loss of or damage to

intellectual property rights incurred by or occurring to any person or entity and arising in connection with or related to the Client's products or equipment and the services provided hereunder by P3T its officers, employees, agents, representatives, contractors and sub-contractors;

- (c) any breach or alleged breach by Client of the Agreement;
- (d) any claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any services by P3T to the extent that the aggregate of any such claims exceeds the limit of liability set out in Section 15(a) above;
- (e) any claims or suits arising as a result of any misuse or unauthorized use of any reports issued by P3T or any intellectual property rights belonging to P3T; and
- (f) any claims arising out of or relating to any third party's use of or reliance on any reports, analyses, data or conclusions of P3T or Client (or any third party to whom the Client has provided such materials) based in whole or in part.

The obligations set out in this Section 22 shall survive termination of the Agreement for any reason.

- 23. P3T may delegate the performance of all or part of its obligations and the provision of services to one or more of its affiliates, agents or subcontractors and Client authorizes P3T to produce and disclose all materials and information necessary for such performance to the affiliate, agent or subcontractor.
- 24. In the event of any controversy or claim arising out of or relating to the Agreement, or a breach thereof, P3T and the Client shall first endeavour to resolve such dispute through good faith negotiations, provided, however, that this shall not preclude either Party from instituting an action seeking injunctive relief to prevent irreparable damage to such Party or if an applicable limitation period is about to expire. All disputes under this contract which are not disposed of by mutual agreement following good-faith negotiations within a period of sixty (60) days from notification of the dispute shall be resolved, at P3T's sole discretion, by submission of a claim to (i) the courts of the Province of Ontario, or (ii) binding arbitration to be conducted by a single, mutually acceptable arbitrator in the Province of Ontario, in accordance with the laws of that province. In any dispute resolved by the aforementioned methods, the prevailing Party shall be entitled to all reasonable attorney's fees and cost.
- 25. MISCELLANEOUS
 - (g) If any provision of the Agreement is or becomes invalid, illegal or unenforceable, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if the Agreement had been executed without the invalid illegal or unenforceable provision.
 - (h) Nothing in the Agreement and no action taken by the Parties under the Agreement shall constitute a partnership, association, joint venture or other co-operative entity between the parties or constitute any party the partner, agent or legal representative of the other.
 - (i) The failure of any party to insist upon strict performance of any provision of the Agreement, or to exercise any right or remedy to which it is entitled, shall not constitute a waiver and shall not cause a diminution of the obligations established by the Agreement. A waiver of any breach shall not constitute a waiver of any subsequent breach. No waiver of any right or remedy under this Agreement shall be effective unless it is expressly authorized in writing.

- (j) The Agreement contains the whole agreement between the parties relating to the transactions contemplated by the agreement and supersedes all previous agreements, arrangements and understandings between the parties relating to those transactions or that subject matter.