



## KELLY SPACE & TECHNOLOGY, INC. (KST) TERMS AND CONDITIONS – TESTING SERVICES

- ENTIRE AGREEMENT:** The Kelly Space and Technology, Inc. ("KST") quotation, including these referenced Terms and Conditions, and any applicable Statement of Work, represent the entire agreement between Buyer and KST, Buyer's acceptance of which shall be evidenced by Buyer's Purchase Order. This agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding the services to be performed by KST. If any term of this agreement is found to be invalid or unenforceable, for any reason, the remaining provisions will remain effective. It is expressly agreed that the terms of this agreement shall supersede the terms in any purchase order, and no terms included in a purchase order shall apply to the services ordered. This agreement may not be modified or waived except in writing signed by authorized representatives of both parties. Emails, including emails that bear an electronic "signature block" identifying the sender, do not constitute signed writings for purposes of this agreement.
- QUOTATION VALIDITY:** Quotation validity is (90) days from date of issue, unless a different period is specified in KST's quotation.
- PRICING / RATES:** Fees for services performed shall be as specified in the quotation. Quotations that do not reference or incorporate a specific description of services (e.g., an applicable test specification, protocol, drawings, etc.) are subject to review and revision by KST. Any repeat testing, performance of repairs, standby, and/or redundant setup may result in additional fees. Prices / rates quoted are valid only for services to be performed under this agreement; any price breakdown provided in a quotation is for informational purposes only and shall not obligate KST to perform subsequent services at comparable prices. Prices quoted do not include duties, sales, use or excise taxes.
- SCHEDULE:** Quoted schedules are based on the best information available at the time of quotation and are predicated on a commercially reasonable effort basis, subject to change. The schedule provided does not reflect cost on a time basis, but is used to identify the overall program duration. KST shall not be liable for delays in delivery occasioned by force majeure or any cause beyond its control, including, but not limited to, war, civil disturbance, terrorism, fire, flood, earthquake, casualties, labor strikes, windstorm, acts or defaults of common carriers, actions of the Buyer (or its representatives or customers), acts of vendors and suppliers, governmental laws, acts or regulations or any other occurrence, whether or not similar in character to the foregoing. Any such delay shall affect an extension of the schedule and if necessary an equitable adjustment in the purchase order. Buyer agrees to provide technical data and any test specimen, as applicable, to permit KST to proceed on a timely basis after receipt of Buyer's order and test specimen, as applicable. Failure of Buyer to provide necessary technical data and/or test specimens shall result in an extension of the schedule.
- INTERRUPTIONS, DELAYS AND STANDBY CHARGES:** If for any reason beyond Seller's control, the original test program is interrupted at Buyer's direction, or is interrupted or delayed due to: (i) a failure or malfunction of items under test; (ii) a failure or malfunction of Buyer's support equipment; (iii) additional services (e.g., repeat tests) necessitated by specimen failure, standby charges will accrue until resumption or termination of testing is directed by Buyer in writing. Unless otherwise stated in the Quotation, standby charges will begin to accrue, in whole business day increments, four (4) business hours after Seller's notification (by telephone, e-mail and/or in-person) to Buyer of the interruption or delay, and will accrue at the average daily rate, per business day, of the delayed line items. The average daily rate for standby charges is calculated by dividing the line item price by the estimated duration, as stated in the quotation. Seller will use best efforts to mitigate such stand-by charges. Re-setup charges may apply at resumption of testing. Rescheduling shall be at the discretion of the Seller.
- PROPRIETARY INFORMATION:** Information that is considered proprietary by KST shall be marked "PROPRIETARY". Proprietary information shall be treated by Buyer with the same internal security procedures and same degree of care regarding its confidentiality as similar Buyer's information is treated within the Buyer's organization, but in no event less than a reasonable standard of care, and shall not be disclosed to any other entities or persons, other than directors, officers and/or employees of Buyer on a need-to-know basis, or duplicated, unless specifically authorized in writing by KST.
- RISK OF LOSS OR DAMAGE:** Buyer is responsible for all risk associated with loss or damage of Buyer's materials (e.g., test samples, specimens or equipment) while in transit to/from KST's facilities. In addition, services performed by KST may cause loss, damage or consumption of Buyer's materials in the normal course of performance of KST testing and test-related activities. KST Shall not be responsible for any loss, damage or consumption of Buyer's materials while in KST's possession, including losses caused by the negligent actions of its employees, unless such actions represent gross negligence or willful misconduct. KST shall not be responsible for damage to or loss of Buyer's materials which result from material malfunction or failure, or the inability of materials to meet any testing requirements. Buyer is responsible for maintaining adequate insurance to cover loss or damage to Buyer's materials at all times. If the work to be performed hereunder is directly or indirectly attributable to a contract on behalf of any agency of the United States Government, KST's liability for damage, loss, or injury to test specimens or other equipment furnished by the Buyer shall be governed by the provisions of FAR 52.245-1(h). Applicable to the language thereof, Contractor shall be construed to mean "KST and "Government property" shall be construed to mean "property furnished by the Buyer."
- WARRANTY:** Unless otherwise delineated in the KST quotation, the following warranty applies to this agreement. KST warrants that services provided by KST shall be performed pursuant to the description of services delineated in the KST quotation or otherwise in a manner consistent with industry standards and that any tests performed shall be carefully conducted with reasonable diligence and the



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information contained in any report shall be true and accurate to the best of KST's knowledge. Buyer must give written notice to KST and any breach of these warranties within one (1) year of performance. BUYER'S EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY SHALL BE FOR KST, AT ITS SOLE DISCRETION, TO RE-PERFORM THE SERVICES, MAKE AN EQUITABLE ADJUSTMENT, OR PROVIDE A REFUND UP TO THE TOTAL AMOUNT PAID FOR DEFICIENT SERVICES. THIS WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PROVIDED.-

9. **LIMITATION OF LIABILITY:** NEITHER PARTY, NOR ITS SUPPLIERS OR SUB-CONTRACTORS AT ANY TIER, SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR REVENUE OR USE OF MATERIALS OR DATA OR OF PROCUREMENT OF SUBSTITUTE PRODUCTS FOR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. KST's MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, STRICT LIABILITY, TORT OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT PAID FOR THE SERVICE GIVING RISE TO THE CLAIM UNDER AN ORDER.
10. **BUYER INSOLVENCY:** In the event Buyer shall become insolvent or make a general assignment for the benefit of creditors, or files or has filed against it a petition in bankruptcy or for reorganization, or pursues any other remedy under law relating to the relief of debtors, or in the event a receiver is appointed of Buyer's property or business, KST may, at its sole option, terminate its performance under the order and treat the Buyer as in default. In this case KST shall be entitled to immediate payment for all effort performed plus a reasonable profit, as determined by KST, up to the date of KST's termination.
11. **CHANGES:** Buyer may upon written notice to KST make changes to an order accepted by KST. In the event said change(s) cause an increase in the cost of performance or time required for KST to perform the services, an equitable adjustment shall be made to the purchase order to incorporate additional funding and/or a schedule adjustment as agreed in writing between KST and Buyer. Areas constituting such a change include, but are not limited to requests for additional information, test specimen drawing or test specification changes, changes to the schedule, and instructions by Buyer's technical personnel, to the extent that changes by Buyer's technical personnel are documented in writing by Buyer's technical personnel to KST and are ultimately agreed upon by an authorized representative of Buyer's purchasing department and KST's contracts department.
12. **TERMINATION FOR CONVENIENCE:** Orders accepted by KST are not subject to termination or cancellation by Buyer except upon written request and written consent by KST, and payment by Buyer to KST of a sum to be set by KST which fairly compensates KST for materials, labor, and engineering expenses incurred, plus a reasonable profit, as determined by KST, for work completed.
13. **PAYMENT TERMS AND ESTABLISHED LINE OF CREDIT:** Terms are Net Thirty (30) days from the date of KST's invoice for established accounts with approved credit. The acceptance by KST of any order is contingent on KST's approval of Buyer's credit. Current delinquencies from prior orders may suspend or void approved credit. If, in KST's opinion, Buyer's credit is at any time unsatisfactory, then, at KST's option, KST may change the payment terms or cancel the order without liability to KST and/or performance may be suspended pending receipt of satisfactory security. For all orders where schedules extend beyond one (1) month, KST reserves the right to bill on a monthly basis for all quoted line items conducted partially the previous month. If performance is delayed by Buyer or other causes beyond KST's reasonable control, KST may submit invoices, and payment shall become due, as if the work had been completed as scheduled. If such delay is caused by Buyer, Buyer shall additionally pay all reasonable warehousing as well as other expenses and costs of KST. Any overdue payments are considered delinquent and will bear interest at the rate of three percent (3%) per month (36% per annum). In the event KST engages the services of an attorney or collection agency to collect overdue amounts, Buyer agrees to pay reasonable agency and attorney's fees and costs incurred by KST, whether or not suit is brought.
14. **SHIPPING:** To the extent delivery or return of materials and/or equipment is required, delivery shall be F.O.B. Origin at the KST facility where services are performed. Prices quoted by KST do not include shipping costs, insurance, export or import duties, sales or excise taxes, or costs or logistics associated with obtaining import or export licenses for materials and/or equipment which may be imported by Buyer or drop shipped by Buyer from an international destination for test at KST, or which may be requested by Buyer for KST to export after test. Buyer shall be solely responsible for and ensure compliance with all applicable government regulations, statutes and executive orders, including those pertaining to U.S. export controls.
15. **VERBAL/TELEPHONE ORDERS:** Verbal/Telephone orders may be accepted by KST for the convenience of Buyer or to meet expedited performance requirements. KST shall use reasonable diligence to obtain complete and accurate information from Buyer before commencing work if the Buyer places a verbal/telephone order and wishes KST to commence performance prior to issuance of a quotation. However, the risk of non-performance to Buyer's specification for such orders resides with Buyer. If the information contained in the confirming quotation is not completely in accord with Buyer's expected performance specification. Buyer shall be responsible for any required re-performance of services and any equitable adjustment associated with any changes.



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16. **APPLICABLE LAW:** Any dispute arising under or in connection with this agreement or related to any matter which is the subject of this agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in California, applying the laws of the State of California, without regard to its conflicts of laws principles. The parties expressly waive any defense jurisdiction or venue based on forum non conveniens.
  
17. **ARBITRATION:** If any dispute or difference arises between Buyer and KST in connection with or arising out of this agreement or any order hereunder and cannot be resolved by good faith negotiations between the parties, the parties consent to binding arbitration in San Bernardino, California in accordance with the commercial rules of the American Arbitration Association. Each party shall bear its own expenses relating to the arbitration. The prevailing party in arbitration may apply for an order of a Court of competent jurisdiction to enforce the arbitration award.