

Huddleston-Berry Engineering & Testing, LLC
Testing Services Terms and Conditions

DEFINITIONS: "HBET" shall mean Huddleston-Berry Engineering & Testing, LLC., and "CLIENT" shall mean exclusively the party for whom HBET is providing testing services as set forth on the face of this Order. "Order" shall mean the contract between HBET and CLIENT created by this document.

COMPENSATION: HBET will be compensated for testing services as specified on the face of this Order. Unit prices shall govern in the event of any discrepancy between unit prices, and extended prices. Terms of payment of net thirty (30) days from HBET's transmittal of the CLIENT monthly invoice.

SAMPLE RETRIEVAL AND DISPOSAL: Unless otherwise specified, CLIENT shall retrieve and dispose of, in accordance with applicable law, all test samples and sample, residuals within thirty (30) days of HBET's transmittal of test results to CLIENT. Test samples and sample residuals not retrieved within 30 days may be disposed of, at HBET's sole discretion, and/or will be subject to HBET's then-current storage fees for which CLIENT agrees to be fully responsible and pay promptly.

WARRANTY: HBET will strive to perform testing services and present results in accordance with currently accepted practices and standards for firms engaged in similar work and using personnel and equipment suitable therefore, THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED.

INDEMNIFICATION: To the extent permitted by law, CLIENT shall indemnify CLIENT shall indemnify and save HBET harmless from and against loss, damage, injury, costs (including attorney's fees and cost of investigation), or liability to the extent arising from the negligent acts or omissions or willful misconduct of CLIENT and its employees and agents.

LIMITATION OF LIABILITY: CLIENT's sole and exclusive remedy for any alleged breach or warranty by HBET shall be to require HBET to re-perform any defective testing services; however, fees and costs to re-perform Testing services shall not exceed the Order value paid or to be paid to HBET. Notwithstanding any other provision of this Order, the total liability of HBET for liabilities, claims, judgments, demands and causes of action arising under or related to this Order, whether based in contract or tort, shall be limited to HBET's fee as set forth on the face of this Order. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the testing services by HBET.

HBET SHALL NOT BE RESPONSIBLE TO CLIENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS) INCURRED BY CLIENT OR FOR WHICH CLIENT MAY BE LIABLE TO ANY THIRD PARTY WHICH DAMAGES HAVE BEEN OR ARE OCCASIONED BY TESTING SERVICES PERFORMED OR REPORTS PREPARED OR THER WORK PERFORMED HEREUNDER.

ASSIGNMENT AND SUBCONTRACTING: CLIENT shall not assign this Order without the prior written approval of HBET. HBET may subcontract portions of the testing services to a qualified subcontractor without prior approval of CLIENT.

TERMINATION: HBET may terminate this Order upon prior written notice to CLIENT. Upon termination, CLIENT shall pay HBET for all services performed hereunder through the date of termination.

FORCE MAJEURE: Should performance of HBET's services be materially, affected by causes beyond its reasonable control, a Force Majeure results, Force Majeure includes, but is not restricted to acts of God, acts or legislative, administrative or judicial entity, acts of contractors other than HBET's contractors, fires, floods, labor disturbances, and unusually severe weather. HBET will be granted a time extension and the parties will negotiate an adjustment to the fee, where appropriate, based upon the effect of the Force Majeure upon HBET's performance.

DOCUMENTS: All Reports or other documents (or copies) furnished to HBET by CLIENT, shall at CLIENTS written request, be returned upon completion of the services hereunder; provided, however, that HBET may retain one (1) copy of all such documents. All reports or documents (or copies thereof) in any form prepared by HBET under this Order are instruments of Service and are prepared for the sole and exclusive benefit of the CLIENT. HBET has title to all Instruments of Service. CLIENT'S right of use is limited to specified deliverables as set forth in this Order, if any.

ATTORNEY FEES: The prevailing party in any suit arising out of or relating to this Order shall be entitled to recover as part of its damages its reasonable legal costs and expenses.

WAIVER OF TERMS AND CONDITIONS: The failure of either HBET or CLIENT in any one or more instances to enforce one or more of the terms or conditions of this Order or to exercise any right or privilege in the Order of the waiver by HBET or CLIENT of any breach of the terms or conditions of this Order shall not be construed as thereafter waiving any such term, condition, right, or privilege, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

DISPUTES: If a claim, dispute, or controversy arises out of or related to the interpretation, application, enforcement, or performance of Services under this Order, HBET and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of HBET and CLIENT. If such negotiations are unsuccessful, HBET and CLIENT agree to attempt to settle the dispute by arbitration if both parties agree. If the dispute can not be settled through arbitration, HBET and CLIENT agree to attempt to settle the dispute through good faith mediation. If the dispute can not be resolved through mediation and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Grand Junction, Colorado. The non-prevailing party in any litigation shall reimburse the prevailing party for the prevailing party's documented legal costs (including reasonable attorneys' fees), in addition to whatever other judgment or settlement sums may be due.

GOVERNING LAW: This Order shall be governed and construed in accordance with the laws of Colorado.

INDEPENDENT CONTRACTOR: HBET shall be fully independent in performing the services and shall not act as an agent or employee of CLIENT.

ENTIRE AGREEMENT/ACCEPTANCE: The terms and conditions set forth herein constitute the entire understanding of HBET and CLIENT. All previous proposals, offers, and other communications relative to the provision of these services are hereby superseded. Any modification or revision of any provision hereto or any additional provision contained in any purchase order, acknowledgment or other form of the CLIENT is hereby expressly objected to by HBET and shall not operate to modify the Order.