

Standard Terms and Conditions

- 1. GENERAL.** These Terms and Conditions shall govern all orders for laboratory tests, laboratory services, sterilization services, or other services (collectively, "Services") as provided by HIGHPOWER Validation Testing & Lab Services Inc. ("HIGHPOWER") to you ("Customer"). These Terms and Conditions shall be automatically incorporated by reference into each quote given by and each Purchase Offer (as defined below) accepted by HIGHPOWER. The Customer accepts and agrees to all of HIGHPOWER's Terms and Conditions in lieu of the Customer's terms and conditions (even if terms and conditions are contained in the Customer's purchase order) unless otherwise agreed to in writing by both parties. A PO shall only be effective if HIGHPOWER accepts such PO in writing or actually begins performance of the Services requested thereon.
- 2. PRICE TERMS.** All prices or fees for Services quoted by HIGHPOWER are stated in U.S. dollars, and are valid for ninety (90) days unless otherwise specified therein. Prices and related quotes are based on test descriptions provided to HIGHPOWER by Customer and detailed in such quote. Any change in test descriptions or process parameters provided by Customer may require any previously quoted prices or fees for Services to be adjusted and HIGHPOWER reserves the right to make such adjustments. If HIGHPOWER submits a quotation without first receiving and reviewing the applicable test protocols, any pricing submitted shall be subject to change when such protocols are made available for HIGHPOWER's review. In the event HIGHPOWER issues conflicting oral and written quotes, the written quote shall control.
- 3. PURCHASE ORDERS.** Upon Customer's satisfaction with a quote, the Customer must submit a written purchase order ("PO") to cover each Service which HIGHPOWER is requested to perform. Submission of such PO will be accompanied by a signed sample submission form (as set forth above) executed on behalf of the Customer, and such submission shall be conclusive proof that Customer has accepted all of these Terms and Conditions. Each PO must contain the applicable quote number, from HIGHPOWER. Acceptance of a PO by HIGHPOWER is expressly conditioned upon these Terms and Conditions being incorporated therein and superseding any conflicting term or provision contained in such PO. Customer hereby acknowledges and agrees that any such conflicting term or provision shall be deemed immediately null and void upon HIGHPOWER's acceptance of such PO. Customer may establish a standing PO by contacting our customer service dept. at (585) 743-1930. Any re-performance of Services required by the Customer will require a separate PO which shall also be governed by these Terms and Conditions.
- 4. PAYMENT TERMS.** For Services quoted, with domestic customers in good standing for whom HIGHPOWER has performed Services for more than one (1) year, payment is due within thirty (30) days from the date of HIGHPOWER's invoice to Customer in connection with such Services. On all such orders in excess of Fifty Thousand Dollars (\$50,000), HIGHPOWER will not begin performance of any Services until HIGHPOWER has received prepayment from Customer equal to fifty percent (50%) of the total quoted price or fees, and any balance remaining shall be due within thirty (30) days from the date of HIGHPOWER's invoice to Customer in connection with such Services. All customers for whom HIGHPOWER has not performed Services for more than one (1) year (unless other arrangements have been made) and all non-domestic customers must pay 100% of any quoted price or fees prior to HIGHPOWER commencing the Services. Commencement of any Services may be conditioned upon credit approval of Customer to the satisfaction of HIGHPOWER, and Customer hereby grants to HIGHPOWER the authority to obtain any required credit information of Customer. HIGHPOWER reserves the right to revise these payment terms at any time. All balances which are due and owing by the Customer to HIGHPOWER and not paid when due hereunder shall accrue interest at a rate of one and twenty-five hundredths percent (1.25%) per month until payment is received in full. HIGHPOWER shall have the right to suspend all Services under any PO upon Customer's failure to pay any amount due hereunder. A charge of Fifty Dollars (\$50) will be incurred for each returned check. All amounts due hereunder are payable in U.S. dollars. If the Customer fails to make payment within the agreed terms, HIGHPOWER shall have the full right to stop all work, withhold test data and/or reports, and make all invoices immediately due and payable (even if such stoppage would compromise the Customer's study and require the Customer to prepare and submit new samples). Customer is still obligated to pay for the testing up to the date of cancellation or stoppage by HIGHPOWER. Customer shall notify HIGHPOWER within twenty-four (24) hours of Customer's becoming insolvent, filing for bankruptcy, being placed in receivership, making an assignment for the benefit of creditors or commencing proceedings seeking protection from its creditors. Upon the occurrence of any such event, all amounts hereunder shall become immediately due and payable and HIGHPOWER shall have the right to suspend or cancel any Services not yet provided.
- 5. PAYMENT METHODS.** Customer may make payment by check, automated clearing house transfer or wire transfer. If payment is made by check, it must be drawn on a U.S. bank. Handling charges may be applied due to additional documentation required for shipping and customs. If Customer has questions regarding HIGHPOWER's wire transfer routing information, contact our customer service at (585) 743-1930. If payment is to be made via wire transfer, Customer shall add \$50 to each applicable invoice to cover the administrative costs associated with such wire transfer.
- 6. SUBCONTRACTORS:** HIGHPOWER may, in our sole discretion, retain the services of a sub-contractor meeting our qualifications to perform any of the services contracted for by the Customer. HIGHPOWER is fully authorized to invoice the Customer for such services at standard rates. Customer may be notified when subcontracted services are required and may be required to approve subcontracted studies. Customer will be notified when subcontracted services are required for a test listed on our ISO 17025 accreditation and would be required to approve the subcontracted study.
- 7. FREIGHT & INSURANCE.** All of Customer's products, test articles, reports, data, waste and excess material shipped to or from HIGHPOWER shall be shipped F.O.B. to HIGHPOWER's facility in Rochester, NY. HIGHPOWER will invoice Customer for freight charges or will bill Customer's UPS or FedEx account, if requested by Customer. For all items shipped to Customer by HIGHPOWER, if Customer determines that standard carrier coverage is deemed inadequate, Customer shall conspicuously note such on the applicable PO, and shall include thereon the value of the items to be shipped. Any additional costs associated with any requested increase in insurance coverage shall be the responsibility of Customer and shall be added to the applicable invoice. All claims for freight damage shall be made directly against the freight carrier responsible for such damage. HIGHPOWER shall have no liability for any damage which occurs while any shipment is in the possession of any carrier and Customer hereby releases HIGHPOWER from the same. It is the Customer's responsibility to properly insure shipments to and from HIGHPOWER.
- 8. TURNAROUND TIME (TAT).** HIGHPOWER shall make all reasonable efforts to meet any final report release date provided in writing to the Customer in the applicable written quote, if any. However, HIGHPOWER makes no guarantee, representation or warranty that any such report release date will be met. Customer shall not hold HIGHPOWER responsible for any damages, cost or expenses resulting or arising from delay in the release of a final report or study delay, whatever the cause. If such a delay arises, HIGHPOWER will make best effort to notify the Customer in a timely manner.

9. **HAZARDOUS MATERIALS.** All hazardous materials submitted to HIGHPOWER for Services must be accompanied by a Safety Data Sheet (SDS) or similar safety information. HIGHPOWER will add a handling fee for Services performed on hazardous materials. In the event HIGHPOWER incurs costs in connection with the disposal of any hazardous materials, such costs shall be invoiced to the customer. In the event any item shipped to HIGHPOWER was, prior to shipping, used in any clinical or other similar setting wherein it was placed in contact with any organism or foreign contaminant, the packing for such item must clearly state so, and such item must be accompanied by a certification from Customer that such item has been cleaned, sterilized and decontaminated and that no foreign contaminants remain on such item. Customer agrees that it will indemnify and hold HIGHPOWER harmless from any damages, claims, suits, causes of action, administrative action (including action by any governmental agency or sub-agency) resulting from Customer's failure to comply with the above requirements.
10. **CANCELLATION.** If the Customer interrupts or suspends testing for any reason, the completed portion of the work, including (but not limited to) supplies, materials, labor, and equipment utilization shall be billed to the Customer. In such circumstances where HIGHPOWER agrees to place samples on hold, HIGHPOWER may bill the Customer stand-by charges, up to the full cost of established testing rates including any storage fees, until the testing resumes or is terminated by the Customer. If the testing is terminated by the Customer, the Customer will be billed for the portion of the Services that HIGHPOWER has performed at the time of cancellation and all materials purchased by HIGHPOWER specifically relating to the cancelled Services.
11. **CONFIDENTIALITY.** In the event HIGHPOWER and Customer execute a confidentiality agreement in connection with the Services, and a conflict should arise between these Terms and Conditions and the terms and conditions thereof, these Terms and Conditions shall govern.
12. **WARRANTIES.** HIGHPOWER warrants that all Services will be performed with reasonable care, skill and diligence and in accordance with standards generally applicable in the industry and shall at all times comply with applicable law. Unless specified in written correspondence to Customer, the results of the Services are not indicative or representative of the qualities of any samples from the same or other lots on which Services were not performed. The Services may result in damage to the applicable samples and the Customer assumes all such risk and agrees to indemnify and hold HIGHPOWER harmless from any consequences of such damage. EXCEPT AS OTHERWISE PROVIDED HEREIN, HIGHPOWER DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
13. **LIMITATION OF LIABILITY.** HIGHPOWER shall not be liable for any damages, whether direct, indirect, consequential, incidental, punitive or special damages (including without limitation, lost profits), resulting from or arising out of the Services, whether based in tort, contract or otherwise, and regardless of whether HIGHPOWER had advance notice of the possibility of such damages. Customer's sole remedy against HIGHPOWER arising out of the Services shall be limited to requiring HIGHPOWER's re-performance of such Services or a refund of any amounts paid to HIGHPOWER for such Services. In any case, HIGHPOWER's liability to Customer shall be limited to and shall not exceed the price or fees paid by Customer to HIGHPOWER towards the quote provided for the Services. Services shall be re-performed without cost only in the event of HIGHPOWER's gross negligence or willful misconduct.
14. **INDEMNIFICATION.** The Customer shall defend, indemnify and hold harmless HIGHPOWER, its affiliates, officers, directors, shareholders, members, employees, agents and representatives, from and against any and all claims, demands, suits, actions, controversies, verdicts, liabilities or costs relating to and arising out of the Services (collectively, "Costs"), including but not limited to any Costs arising in connection with the items and materials referred to in Section 8 hereof, except to the extent that any such claims, demands, suits, actions, controversies, verdicts, liabilities or costs are the direct result of gross negligence or willful misconduct by HIGHPOWER.
15. **FORCE MAJEURE.** In the event HIGHPOWER is delayed in or prevented from the performance of any Services by reason of acts of God, weather, strikes, lockouts, labor troubles, inability to procure materials, power failure, government laws or regulations, riots, insurrections, war, fire or other casualty, shortage of transportation facilities or any other reason of a similar nature not reasonably in the control of HIGHPOWER, the period for the performance of the Services shall be extended for the period of the delay, and for a reasonable time thereafter.
16. **CHOICE OF LAW/CHOICE OF FORUM.** These Terms and Conditions shall be governed by the laws of the State of New York, without giving effect to the conflict of law provisions thereof. Any and all suits, actions or proceedings arising out of or related to the Services shall be brought in the Supreme Court of New York located in Monroe County or the United States District Court for the Western District of New York located in Monroe County. Each party hereto consents to the non-exclusive jurisdiction of such courts and, to the fullest extent permitted by law, waives any objection that it may have to the laying of venue in such court or that such venue is inconvenient. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court.
17. **SEVERABILITY.** The lack of enforceability or invalidity of any provision or provisions contained in these Terms and Conditions shall not render any other provision or provisions herein contained unenforceable or invalid and the provisions found to be unenforceable or invalid shall be enforced to the maximum extent permitted by law.
18. **NON-WAIVER.** No waiver by HIGHPOWER of any condition, or of any breach of any term contained herein, in any one or more instances, shall be deemed to be a further or continuing waiver of any condition or of any breach of any term, nor may any waiver be deemed effective unless it is in writing and signed by an agent authorized to bind HIGHPOWER.
19. **ENTIRE AGREEMENT.** These Terms and Conditions, the applicable PO and, if applicable, the confidentiality agreement referred to Section 11 hereof contain the entire agreement and understanding of the parties and supersede all prior agreements, negotiations, arrangements, and understandings relating to the subject matter of these Terms and Conditions and may not be changed except in writing duly acknowledged by HIGHPOWER and Customer.
20. **REQUIRED CLAUSE.** Any clause required to be included in a document of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein.
21. **ASSIGNMENT.** Customer shall not assign any of its or his rights or obligations under these Terms and Conditions without the advance written consent of HIGHPOWER.
22. **INTELLECTUAL PROPERTY.** Customer shall have no rights in HIGHPOWER's patents, trademarks, copyrights or other intellectual property.