

Standard Terms and Conditions

1. **GENERAL.** These Terms and Conditions (“T&Cs”) shall govern orders for healthcare validation testing services, including but not limited to medical device cleaning validations, packaging and shelf life validations, sterilization efficacy testing, low/medium/high level disinfection, repetitive cycling, material compatibility testing, biocompatibility testing, microbiological testing or other miscellaneous testing for medical devices (collectively, “Services”) as provided by HIGHPOWER Validation Testing & Lab Services Inc. (“HIGHPOWER”) to you (“Customer”). (Some industrial services will be provided pursuant to a separate Master Service Agreement (MSA). In these instances, the separate MSA terms and conditions (“MSA T&Cs”) will supersede all other T&Cs.) The T&Cs shall be automatically incorporated by reference into each quote given, and each Purchase Order (“PO”) (as defined below) accepted, by HIGHPOWER. The Customer accepts, agrees, and will be bound by HIGHPOWER’s T&Cs, and Customer’s terms and conditions will be of no force and effect (even if Customer’s terms and conditions are contained in Customer’s PO) unless otherwise agreed to in writing by HIGHPOWER and Customer. A PO shall be effective only when HIGHPOWER accepts, in writing, or actually begins performance of the services requested pursuant to the PO.
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 in writing. Prices for Services are provided via custom quote or proposal based on Service’s, utilizing test codes and descriptions that are detailed for the specific scope of work. Any change in test plan including, but not limited to, test code, testing description, methodology, scope of work, number of cycles, sample size, procedure, or process parameters provided by Customer may require an adjustment of previously quoted prices or fees for Services and HIGHPOWER reserves the right to requote all testing services in the entirety of the quote. Customer shall be liable for the cost of all raw materials and supplies reasonably purchased by HIGHPOWER to perform agreed upon Services, including raw materials and supplies purchased by HIGHPOWER that may become unnecessary as a result of an agreed upon change in Services. If HIGHPOWER submits a quote without first receiving and reviewing the applicable test protocols or instructions for use that may alter the anticipated scope of work, any pricing submitted shall be subject to change when such document(s) are provided to HIGHPOWER for 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 PO to cover each Service that HIGHPOWER is requested to perform. All POs submitted by a Customer shall include a sample submission form executed by Customer. The submission of a PO and signed sample submission form shall constitute Customer’s acceptance all of these T&Cs. Each PO must contain the applicable quote number from HIGHPOWER. Customer may establish a standing PO by contacting our customer service dept. at (585) 743-1930. Any expanding testing or re-performance of Services required by the Customer will require a modified or separate PO which shall also be governed by these Terms and Conditions.
4. **PAYMENT TERMS.** HIGHPOWER reserves the right to revise these payment terms at any time.
 - For Services quoted, with domestic customers in good standing, payment is due within thirty (30) days from the date of HIGHPOWER’s invoice to Customer in connection with such Services.
 - All POs in excess of Fifty Thousand Dollars (\$50,000) require prepayment of twenty-five percent (25%) of the total quoted price and the prepayment is invoiced upon HIGHPOWER’s receipt of the PO. Any applicable balance remaining will be billed according to Customer’s approved payment terms in connection with such Services. STAT testing requires prepayment of the STAT fee and any applicable balance remaining will be billed according to Customer’s approved payment terms in connection with such Services.
 - At HIGHPOWER’s sole discretion, it may issue progress invoices tied to the completion of specific deliverables or milestones during the course of the project. Such deliverables or milestones may include, but are not limited to, execution of protocols, achievement of defined testing milestones, status change to HOLD, failures, modifying scope of work or delivery of preliminary results. All progress invoices will be billed accordingly to Customer’s approved payment terms.
 - All international Customers, new domestic Customers, and Customers that do not maintain good standing, require payment due upon receipt of PO for all Services. Payment must be received by HIGHPOWER before it will commence 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.
 - All unpaid balances which are due and owing by the Customer to HIGHPOWER 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 minimum charge of Fifty Dollars (\$50) will be assessed for each returned check. All amounts due hereunder are payable in U.S. dollars.
 - If the Customer fails to remit any payment pursuant to the agreed terms, HIGHPOWER shall have the right, in its sole discretion, to suspend or cancel Services, and retain all data, samples, and/or reports, and make all invoices immediately due and payable. In the event HIGHPOWER suspends or cancels Services as a result of Customer’s failure to remit payment pursuant to the agreed terms: (a) HIGHPOWER shall not be liable to Customer for any damages that may result from the suspension or cancellation of Services; and (b) Customer shall immediately pay for all Services provided up to the date of suspension or cancellation of Services by HIGHPOWER, including amounts incurred for the purchase of supplies or materials ordered specifically for the Services.
 - Customer shall notify HIGHPOWER within forty-eight (48) hours if it becomes insolvent, files for bankruptcy, is placed in receivership, makes an assignment for the benefit of creditors, or commences proceedings to seek 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 or orders@highpowervtls.com. If payment is 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 its sole discretion, retain the services of a sub-contractor meeting our qualifications to perform any of the Services. HIGHPOWER is authorized to invoice the Customer for subcontracted services at the amounts previously quoted to the Customer. If any additional fees are incurred during testing beyond the initially quoted amount, HIGHPOWER will provide a revised quotation to the Customer for approval prior to proceeding, whenever possible. Customer is responsible for any additional fees incurred during the subcontracting process, whether or not they were included in a quote. 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 the 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, New York. 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 any such liability. 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 testing or final report release date(s) provided in writing to the Customer during quoting or thereafter. However, HIGHPOWER makes no guarantee, representation, or warranty that any such testing or report release date will be met. Customer shall not hold HIGHPOWER responsible for any damages, costs or expenses resulting or arising from study delay or release of a final report, regardless of cause. If such a delay arises, HIGHPOWER will make best effort to notify the Customer in a timely manner.
9. **STAT TESTING (STAT).** STAT testing refers to expedited or urgent testing services ("STAT Services") requested by the Client that require priority handling and faster turnaround times than standard testing Services. STAT Services receive priority status both in the laboratory and at administrative stages. STAT Services will be subject, at HIGHPOWER's discretion, to an additional, minimum fee of seventy-five percent (75%) of the amount charged the Customer for standard Services ("STAT Services Fee"). The STAT Services Fee will be invoiced upon receipt of PO, and will be due upon receipt of the PO. The remaining testing fees (exclusive of the STAT Services Fee) will be billed accordingly to Customer's approved payment terms. No testing results or reports will be released to the Client until the STAT Services Fee has been paid in full. Once PO has been submitted to HIGHPOWER, the STAT Services Fee is not refundable. HIGHPOWER will undertake all reasonable efforts to complete STAT Services within the agreed upon timeframe, however, Customer acknowledges and agrees that turnaround times may vary due to the nature of the STAT Services, the availability of equipment/supplies, or other unforeseen factors. HIGHPOWER will not be liable for delays beyond its reasonable control, including, but not limited to, delays caused by Customer, for any reason whatsoever (including, but not limited to, Customer being nonresponsive, missing, or damaged samples or provision of incomplete and/or inaccurate submissions). Customer is solely responsible for providing HIGHPOWER with accurate and complete information necessary to complete STAT Services.
10. **HAZARDOUS MATERIALS/CLINICALLY USED SAMPLES.** 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 has been 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 documentation from Customer that such item has been cleaned, sterilized, and decontaminated and that no foreign contaminants remain on such item. Samples may be rejected or additional fees may be charged if HIGHPOWER, in its sole discretion, cannot conclusively determine that the clinically used samples have been properly rendered safe for handling. 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.
11. **CANCELLATION.** If the Customer interferes with, interrupts, or otherwise suspends testing Services for any reason, the completed portion of the Services, including, but not limited to, administrative fees, supplies, materials, labor, and equipment utilization shall be billed to the Customer. In circumstances in which HIGHPOWER agrees to place testing on hold, HIGHPOWER may bill the Customer stand-by charges, up to the full cost of established testing rates, including any storage fees, until testing Services resume or are terminated by the Customer. If testing Services are terminated by the Customer, the Customer will be billed for the portion of the Services that HIGHPOWER has performed at the time of cancellation, including all materials purchased by HIGHPOWER specifically relating to the cancelled Services. Additionally, a termination fee will be assessed to cover administrative costs incurred for study management up to the point of cancellation. This termination fee may be applied to each study number or an entire PO, at the sole discretion of HIGHPOWER.
12. **CONFIDENTIALITY.** In the event HIGHPOWER and Customer execute a quality agreement, supply agreement, and/or confidentiality agreement in connection with the Services, and a conflict should arise between these T&Cs and the terms and conditions thereof, these T&Cs shall govern.
13. **WARRANTIES.** HIGHPOWER warrants that all Services will be performed with the 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 writing 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.
14. **LIMITATION OF LIABILITY.** The Customer is solely responsible for developing, seeking, and obtaining any and all required regulatory agency pre-approvals of the study design, including test protocols, prior to the initiation of testing Services. The Customer assumes all liability for the design of testing necessary to meet regulatory or other requirements for the Customer's project. HIGHPOWER's responsibility is limited to performing testing Services in accordance with the Customer's approved protocols or procedures, and any testing failures or issues arising from the study design are the sole responsibility of the Customer. Pre-approval of study design and test protocols does not guarantee regulatory or third-party approval, and HIGHPOWER bears no responsibility for the acceptance or rejection of studies by regulatory agencies or other third parties.

HIGHPOWER shall not be liable for any damages, whether direct, indirect, consequential, incidental, punitive or special (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 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 toward 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. EXCEPT AS OTHERWISE PROVIDED HEREIN, HIGHPOWER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15. **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.
16. **FORCE MAJEURE.** Neither party will be held responsible for failing to perform its obligations under this Agreement if the failure is caused by events beyond its reasonable control, including but not limited to natural disasters, acts of government, war, terrorism, labor disputes, or public health emergencies. The affected party must notify the other party as soon as possible and will resume performance once the event is resolved.
17. **CHOICE OF LAW/CHOICE OF FORUM.** These T&Cs shall be and are 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, New York. 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.
18. **SEVERABILITY.** The lack of enforceability or invalidity of any provision or provisions contained in these T&Cs 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.
19. **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.
20. **ENTIRE AGREEMENT.** These T&Cs, the applicable PO and, if applicable, the confidentiality agreement referred to in Section 11 here of 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 T&Cs and may not be changed except in writing duly acknowledged by HIGHPOWER and Customer.
21. **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.
22. **ASSIGNMENT.** Customer shall not assign any of its or their rights or obligations under these T&Cs without the advance written consent of HIGHPOWER.
23. **INTELLECTUAL PROPERTY.** Customer shall have no rights in HIGHPOWER's patents, trademarks, copyrights, or other intellectual property.