

General Terms and Conditions for Customers

- 1. General.** These General Terms and Conditions shall apply to all services ("Services") provided by Empirical Testing Corp., a Colorado corporation ("ETC"), to its customers (each a "Customer"). All orders by Customer shall be made subject to these General Terms and Conditions (and those specific terms set out on the front page of the Order Confirmation), which terms and conditions represent the entire agreement (the "Agreement") with respect to Customer's order and which supersedes all prior agreements, understandings, representations or warranties, whether oral or written, between Customer and ETC relating to such order. No statements subsequent to Customer's acceptance of this order shall be binding upon ETC and no variation of these General Terms and Conditions nor of those specific terms set out on the front page of the Order confirmation shall be made (and if made shall not be valid) unless agreed to in writing by ETC. Customer's acceptance of ETC's proposal is expressly limited to and conditioned upon Customer's acceptance of, and assent to, these terms and conditions. Any additional, inconsistent or different terms and conditions contained in Customer's purchase order or in other documents submitted by Customer to ETC at any time, whether before or after the date hereof, are hereby expressly rejected by ETC. Customer acknowledges that, notwithstanding anything to the contrary contained in such purchase order or other documents, delivery by Customer of the items to be tested by ETC shall constitute acceptance by Customer of these terms and conditions.
- 2. Payment.** Unless other terms are approved by ETC on a case-by-case basis, all orders shall be paid by Customer within 30 days after delivery of the report summarizing the results of ETC's Services (a "Test Report"). Accounts will be opened only with firms or individuals with credit approved by ETC. ETC reserves the privilege of providing Services only on a cash or sight draft basis whenever doubt as to Customer's responsibility develops for any reason. ETC does not allow retainage on payment of invoices; all invoices are to be paid in full when due. ETC may refuse to do future business with Customer if Customer fails to keep its account current.
- 3. Completion of Services.** **ALL COMPLETION DATES ARE APPROXIMATE AND ARE NOT GUARANTEED.** Due to the many variables associated with providing the Services, all completion dates stated by ETC are approximate dates only and estimated in good faith to the best of ETC's ability. ETC shall not be responsible for any loss or damages resulting from any delays in delivery of Services. Time shall not be deemed to be of the essence in delivery Test Reports unless specifically agreed to in writing by ETC.
- 4. Force Majeure.** If performance of any of ETC's obligations hereunder is prevented or impaired due to Force Majeure (as defined below), ETC shall have no liability to Customer and ETC reserves the right to terminate this Agreement in whole or in part or to postpone the delivery date by a reasonable period. For the purposes of these General Terms and Conditions, "Force Majeure" shall mean any circumstances outside ETC's reasonable control including, but without limitation, labor disputes, blockade, political unrest. Civil commotion, riot, war (declared or undeclared), acts of terrorism, accident, natural disasters, explosion, fire, damage by water, wind, climactic conditions or contamination, breakdown of the plant, delay by suppliers, shortage of labor, power or materials and government interference. Where ETC terminates the Agreement pursuant to this Section 4, ETC shall refund any payment which Customer has already made on account of the price (subject to deduction of any amount ETC is entitled to claim from Customer) but ETC shall not be liable to compensate Customer for any further loss or damage caused by the termination or any failure to deliver Services arising out of it.
- 5. Warranty.** **EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN A PARTICULAR TEST REPORT, ETC MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR OTHERWISE, WITH RESPECT TO ANY ITEM TESTED BY ETC.**

To the extent that any warranty is provided in a particular written Test Report, nothing therein shall in any way create or imply any warranty with respect to test data or results provided in such report with respect to any product or specimen other than the particular product specimen provided by Customer and physically tested by ETC.

6. Customer's Remedy, Limited Liability of ETC. In the event that services provided to Customer fail to accord with the agreed specification for them set out on the front page of the Order Confirmation ("Nonconforming Services"), ETC shall re-perform the Nonconforming Services in question or, at ETC's sole option, repay the price (where this has been paid), save that ETC shall be under no liability pursuant to this Section 6 unless notice of the relevant defect or deficiency in Services delivered is given to ETC within thirty (30) days after delivery of the Test Report to Customer.

CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AGAINST ETC SHALL BE THE RE- PERFORMANCE OF NONCONFORMING SERVICES AS PROVIDED HEREIN. ETC'S LIABILITY ON ANY CLAIM, WHETHER IN CONTRACT, TORT NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S ORDER OF SERVICES, SHALL IN NO CASE EXCEED THE AMOUNT PAID BY CUSTOMER TO ETC FOR SUCH SERVICES.

IN NO EVENT SHALL ETC BE LIABLE (A) FOR THE FUNCTIONING OR NONFUNCTIONING OF ANY OF CUSTOMER'S PRODUCTS, OR (B) FOR THE USE OR MISUSE OF ANY OF CUSTOMER'S PRODUCTS, OR (C) FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES FOR DEATH, INJURY TO PERSON OR PROPERTY, LOST PROFITS OR REVENUE, LOST SALES, LOSS OF USE OF ANY OF CUSTOMER'S PRODUCTS, OR THE COST OF ANY SUBSTITUTE PRODUCTS.

7. Event of Default. ETC may, without any liability, suspend performance of Services ordered by Customer and/or (at ETC's option) terminated the Agreement if Customer: (a) fails to perform any of the terms and conditions hereof and does not cure such failure within a period of ten (10) days after receipt of written notice from ETC specifying such failure, provided, that, no such cure period shall apply to Customer's failure to pay in a timely manner; (b) in ETC's opinion, has not established or maintained credit to meet promptly ETC's payment terms or has defaulted on the payment terms of any other transaction with ETC; or (c) becomes insolvent, makes an assignment in favor of creditors, or becomes subject to any bankruptcy, dissolution or similar proceedings.
8. Taxes. Any tax, impost, levy, duty or other charge hereafter imposed by any governmental or other authority upon the production, use or sale of any Services or upon the materials, methods or machines for providing the same and any increase in cost to ETC in delivering any Services resulting directly from governmental supervision, regulation or control, now in force or hereafter prescribed by law and affecting ETC's performance of its obligations hereunder, will be added to the purchase price and will be paid by Customer . Notwithstanding anything herein or in the Order Confirmation to the contrary, ETC reserves the right at any time prior to payment for the Services to adjust the purchase price to take account of such increased costs.
9. Assignment; Severability. Customer may not assign any of its rights or obligations under this Agreement without ETC's prior written consent. In the event that any phrase, clause or other provision hereof shall violate any applicable statute, ordinance or rule of law in any jurisdiction in which it is used, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof.
10. Attorney's Fees; Non-Waiver. In the event of any litigation or collection action arising out of this Agreement, ETC shall be entitled to reimbursement from Customer for its reasonable attorneys' fees and costs. Failure by ETC to enforce any rights under or to insist upon strict performance of any provision in this Agreement shall not constitute a waiver of any breach or a waiver of such provision, irrespective of the length of time for which such failure continues.
11. Governing Law; Forum. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado, without giving effect to the choice of law provisions thereof. Any action or proceeding arising from or in connection with this Agreement shall be brought and prosecuted as to all parties exclusively in, and each of the parties hereby consents to service of process, personal jurisdiction and venue in, the state and federal courts located in El Paso County, Colorado.
12. Independent Contractor. ETC will perform Services as an Independent Contractor and will have complete control and be responsible for all Services conducted or performed by ETC. Neither ETC nor any of its employees will be deemed to be Customer's servants, employees, agents, partners, affiliates or joint venturers.

13. Modifications. Any alteration(s) by the Customer in design, quantity, testing requirement(s) or specification(s) or any delays in the Services due to Customer's instruction or lack of instruction may involve an adjustment to the price and/or to the delivery time if ETC's costs or schedule in carrying out the Services is thereby affected.
14. Indemnification. To the fullest extent permitted by law, Customer agrees to defend, indemnify, and hold harmless ETC, its employees, officers, directors, agents, parent company and affiliates from and against any and all actions, actual or threatened third party claims, demands, liens or claims of lien, lawsuits, and liabilities of any and all kind in nature ("Claims") including court costs, expenses, and reasonable attorneys' fees arising out of the work product provided by ETC hereunder, except that Customer shall not be required to indemnify ETC to the extent the Claim was caused by the negligence of ETC. Should ETC provide Customer with inspection reports or test documents, Customer shall not reproduce the report or test document except in full without express permission from ETC, and shall not use the report in any way, that will or could be detrimental to ETC.
15. Intellectual Property. ETC will maintain all of its current or future Intellectual Property ownership, rights, title and interests it uses or provides in the Services at all times. If the Services sold hereunder are prepared according to Customer's specifications, Customer shall indemnify ETC against any and all actual or threatened claims or liability for any legal complaint, intellectual property infringement on account of such Services performed by ETC.
16. Limitation of Liability. (i) ETC is neither an insurer nor guarantor and disclaims any and all liability of any kind in such capacity. Customers seeking a guarantee against any loss or damage should obtain appropriate insurance. (ii) ETC shall not be liable for any delayed, partial or total non-performance of the Services arising directly or indirectly from failure by Purchaser to comply with any of its obligations hereunder (iii) The liability of ETC in respect to any claim for any loss, damage or expense of any nature and howsoever arising shall in no circumstances exceed a total aggregate sum equal to 2 times the amount of the fees paid by Customer over the past 12 month period (iv) ETC shall have no liability for any special, indirect, incidental, punitive, statutory or consequential loss or damage including without limitation loss of profits, loss of business, loss of opportunity, and loss of goodwill and cost of product recall. ETC shall further have no liability for any loss, damage or expenses arising from any and all actual or threatened claims of any third party (including, without limitation, product liability claims) that may be incurred by the Customer (v) In the event of any Claim, Customer must give written notice to ETC within thirty (30) days of discovery of the facts alleged to justify such Claim, and in any case, ETC shall be discharged from any and all actual or threatened liability claims for loss, damage or expense unless suit is brought within one (1) year from either (1) the date of performance by ETC of the Service which gives rise to the claim; or (2) the date when the Service should have been completed in the event of any alleged non-performance.
17. Confidential Information. Any non-public drawings, designs, specifications, samples, know-how, processes, plans or other similar items or other technical, commercial, or financial information relating to either party's business and which is clearly marked as "Proprietary" or "Confidential" (collectively "Confidential Information") which the other party may obtain or which a party may in any way disclose to the other party in connection with or related to the performance of the Services, shall be deemed to be confidential and the receiving party shall not use the Confidential Information for its own purposes (other than for the performance of the Services), and shall not disclose the Confidential Information to any person or firm, other than those that may be specifically authorized by the disclosing party in writing. Upon completion or termination of this contract, the receiving party shall return all Confidential Information to the disclosing party, except that the receiving party may retain one (1) copy of all Confidential Information for legal and quality archival purposes, which shall be treated as confidential until its destruction after a period of seven (7) years (or ten (10) years for nuclear related Confidential Information). Customer is strictly prohibited from using ETC's name or image in any advertising or publicity, including social media without ETC's implied written consent.
18. ETC Assignment or Subcontracting. ETC may assign or subcontract any or all of the Services to be provided hereunder to its parent company or any of its wholly-owned subsidiaries or affiliates.
19. Non-Solicitation. Throughout the provision of Services and for a period of one-year after completion thereof, Customer shall not solicit for employment, directly or indirectly, any employee of ETC who had material contact with Customer during the provision of Services.

20. Miscellaneous. If any one or more provisions of these terms and conditions are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Export Control. Customer certifies its compliance with U.S. export laws and regulations, including but not limited to the Arms Export Control Act of 1976, the International Traffic in Arms Regulation (ITAR) and the Export Administration Regulations (EAR). Customer agrees that any export-controlled information provided to ETC shall be marked in accordance with the appropriate distribution statements and will contain the appropriate destruction notices and export control warnings as required.
22. OFAC Certification. Customer represents that (i) neither Customer nor any person or entity that directly owns 10% or greater equity interest in it nor any of its officers, directors, or managing members is a person or entity (each, a “Prohibited Person”) with whom U.S. Person or entities are restricted from doing business under regulations of the office of Foreign Asset Control (“OFAC”) of the Department of the U.S. Treasury (including those named on OFAC’s Specifically Designated and Blocked Person List) or under Executive Order 13224 (the “Executive Order”) signed on September 23, 2001, and entitled “Blocking Property and Prohibiting Transactions with Persons Who Commit Threaten to Commit, or Support Terrorism”, or other governmental action, and (ii) that throughout the term of this Contract, Customer shall comply with the Executive Order.
23. Anti-Bribery. Customer agrees it is in compliance with all applicable Anti-Corruption Laws. No action, suit or proceeding by or before any court, or government agency, authority or body, or any arbitrator or nongovernmental authority involving any Representative with respect to applicable anti-corruption laws is pending or threatened. Customer shall promptly notify ETC in writing if it becomes aware of facts or information which suggest a breach of the foregoing Anti-Corruption covenants or the Anti-Corruption Laws.

Customer Rights and Responsibilities

Unless otherwise noted in the attached estimate, the proposed testing is covered under ETC's current A2LA ISO/IEC 17025:2005 Scope of Accreditation (Certificate #2142-01).

In our commitment to our customers, please note the following (Revised 21Jun11):

1. **Empirical Testing Corp. is an accredited mechanical testing facility and has been accredited to ISO/IEC 17025:2005 by A2LA (certificate #2142-01).** A copy of the certificate is provided in the final technical report. For our complete scope of accreditation, please visit us on the web at www.empiricaltesting.com.
2. The attached is an estimate of work to be performed based upon the parameters provided to Empirical Testing Corp. **The final invoice will reflect the actual costs**, including the actual number of specimens tested in any static mode and the total test frame hours utilized for dynamic batteries. A minimum of 24 hours will be charged for each dynamic specimen, whether for canceled testing, early specimen failure, etc. Interim invoices will be issued on a monthly basis for testing performed during that month.
3. ETC Engineering Time – Unless otherwise specified, estimates for ETC engineering time are not included in standard test batteries. However, instances arise where unanticipated engineering time is required to continue the test in a timely manner. These hours will be added to the final invoice (up to 5 hours will be explained on the invoice and over 5 hours will be discussed with the customer and an updated estimate/PO will be provided if required).
4. ETC consider ourselves part of your team. We will do everything we can to ensure that your testing is performed in a timely manner, that communication occurs with you during each phase of testing, and that you are provided with the knowledge base and expertise to allow you to make educated decisions about the next steps in your testing.
5. You are welcome to be present for any testing performed at ETC. Please contact us to schedule.
6. ETC's testing queue operates on a first in the door, first on the machine policy. A purchase order can be used as a place holder until your test components arrive. Please contact ETC for the current estimated queue time. If you have a specific timeline, please contact ETC to discuss.
7. ETC has a test frame set aside for next day service to help you meet your timelines. Please contact ETC for pricing and additional information regarding this service (expedited services).
8. Small batch static testing (testing $n \leq 3$ specimens in one mode at a single point in time) is considered Product Development Testing and will incur a **minimum** charge of four (4) hours. Any work performed outside of the minimum charge will be reflected in the final invoice.
9. ETC will provide weekly updates on the progress of the dynamic testing, unless otherwise requested. This update will occur on Mondays, unless there is a holiday. Additional updates will include unexpected failures, noteworthy observations, or communication on the next load levels. More frequent updates may be made upon request and additional charges may be applicable.
10. ETC will provide a complete technical document (per ASTM/ISO/custom protocol) once all static and dynamic testing is completed, unless otherwise specified. Typical timeline to receive a technical report is 1-2 weeks after the completion of testing. This timeframe can be expedited if a prior request is received and included in the cost estimates. The technical document will include any and all empirical observations and will not include any discussion of the results. Discussion of the results requires first-hand design knowledge, which is not in the scope of Empirical Testing Corp.

11. ETC will not return any test specimens, test blocks, custom fixtures, etc. until all testing is completed and the final technical document is delivered.
12. ETC reserves the right to deviate from test parameters outlined in ASTM/ISO standards. Please either provide a protocol or inform ETC prior to test start if you wish us to adhere strictly to the appropriate standard(s). Please contact ETC for a full list of deviations for each standard on our scope of accreditation.
13. If applicable, ETC to provide fixtures, test chambers, and heaters. Custom fixtures to be provided by the customer or ETC can design and manufacture (to be included in the cost estimates).
14. Unless otherwise specified, pricing for static testing is per specimen and pricing for dynamic testing is per hour.
15. For testing performed in Phosphate Buffered Saline (PBS), ETC will use an additive to retard bacterial growth; please specify if you want a specific additive or no additive.
16. Unless otherwise specified, the test fluid for all dynamic specimens will be collected and sent to the customer for further evaluation or ETC can ship to a third party for evaluation.
17. Technical Reports are paperless. You will receive a CD with the electronic version of the report and copies of all photos in the report. If you would like a hard copy of the report, please let us know and an additional charge will be added to the invoice.
18. For improved efficiency, please direct all purchase orders to our accounting department at accounting@empiricaltesting.com.