CLEMSON UNIVERSITY
MACHINING AND TECHNICAL SERVICES
TERMS AND CONDITIONS

1. Purpose. Clemson University ("University") has developed measurement, fabrication, machining, or prototyping expertise and related technologies, equipment, or facilities in the Unit identified in the Project Request Form (the "Unit"), which the University intends to utilize to fulfill its role as a Land Grant University by performing services for its various constituents, including private companies.

2. Services and Deliverables. The individual or entity submitting the Project Request Form (the "Requester") desires services and deliverables as indicated in the Project Request Form. Unit will provide a quote to Requester identifying the services ("Services") to be performed, any deliverables ("Deliverables") to be provided, and the fees ("Fees") to be charged. The Project Request Form, final quote, and these Terms and Conditions together constitute the "Agreement" between the parties. Unit will use reasonable efforts to perform the Services and provide the Deliverables, subject to the terms and conditions of the Agreement and limitations of the Fees specified. Performing such Services and providing such Deliverables are consistent, compatible, and beneficial to the academic, research, and public service role and mission of University as an institution of higher education.

3. Materials. Requester will not, without prior written permission, provide any materials to University that consist of any of the following: (a) human or animal specimens or tissues; (b) live, vertebrate animals; (c) infectious agents; (d) select agents or toxins; (e) identifiable human data; (f) recombinant DNA; (g) Drug Enforcement Administration scheduled substances; (h) export-controlled items or information. Requester certifies that it may legally transfer any materials provided to University and that it will not transfer any materials to University that are not specifically identified to Unit's technical contact prior to transfer. At the conclusion of the Services, Unit, at Requester's request and expense, will either return all unused materials provided by Requester to Requester or will destroy all unused materials and certify such destruction to Requester.

4. Intellectual Property. Requester maintains ownership of all Requester-provided materials and Deliverables. University maintains ownership of all measurement, fabrication, machining, or prototyping processes, techniques, and equipment used or developed by University to perform the Services.

5. Requester Observation of Services. University acknowledges that Requester may wish to observe performance of the Services to be rendered. In such event, Requester may enter the University's premises on which the Services are being performed (the "Premises") with permission of the University, such permission not to be unreasonably withheld. Requester acknowledges that University is a community of professionals and students. As such, Requester is expected to act in a professional, responsible, and courteous manner at all times. If University grants Requester access to the Premises, Requester will ensure any individuals acting on behalf of Requester as Requester's employees, agents, associates, subcontractors and/or business invitees abide by all Premises policies and safety procedures. Any individual accessing the Premises must be supervised by an employee of the University. Requester will ensure that each individual accessing the Premises abides by the terms and conditions of the Agreement. Access to the Premises is a privilege and may be revoked by University for failure of Requester to comply with the terms and conditions of the Agreement or other policies and regulations not explicitly described herein but pertaining to Premises policies and safety procedures. Requester hereby agrees to maintain (i) Workers' Compensation covering its employees and (ii) commercial general liability insurance in sufficient amounts to cover the activities of Requester's employees, agents, associates, subcontractors and/or business invitees for claims arising from Requester's access to the Premises.

6. Publicity. Neither party will use the name of the other party in any publicity, advertising, or news release without the prior written approval of the authorized representative of the other party. Exception is made hereunder to the standard activity reports of University, which may include the name of the technical contact, the name of Requester, and the amount of funding provided. Requester will not state or imply that University has tested or approved any product or process without prior written approval of University's authorized representative.

7. Termination. Either party may terminate the Services with prior written notice to the other party. University may terminate the Services immediately upon written notice to Requester if (i) University fails to receive any payment from Requester when due, or (ii) circumstances beyond University's control preclude performance of the Services. All costs and non-cancelable obligations incurred by University at the time of termination, not to exceed the total Fees, will be reimbursed by Requester. Any provisions intended to survive termination of the Services will survive termination, including Sections 3, 4, 5, 6, 7, 9, 10, 12 and 14.

8. Independent Contractor. For purposes of the activities hereunder, the parties are independent contractors and neither may be considered an agent or an employee of the other at any time or for any purpose. No joint venture, partnership, or like relationship is created between the parties.

9. Warranty Disclaimer. ANY AND ALL INFORMATION, RESULTS, REPORTS, DATA, MATERIALS, SERVICES, INTELLECTUAL PROPERTY AND OTHER PROPERTY AND RIGHTS GRANTED AND/OR PROVIDED BY UNIVERSITY PURSUANT TO THIS AGREEMENT (INCLUDING ANY DELIVERABLES), ARE GRANTED AND/OR PROVIDED ON AN "AS IS" BASIS. UNIVERSITY MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER, AND ALL SUCH WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED.

10. Liabilities. Requester will be liable for the acts and omissions of its employees, officers, and agents. University will be liable for the acts and omissions of its employees, officers, and agents, when acting within the scope of their employment, to the extent permitted under the South Carolina Tort Claims Act (S.C. Code Ann. Section 15-78-10 et seq.) Nothing herein, however, will be construed as an express or implied waiver by University of any applicable governmental or sovereign immunity, as an express or implied acceptance by University of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of any liabilities allowable under applicable state law, as a pledge of the full faith and credit of any state, or as the assumption by University of a debt, contract or liability of Requester in violation of applicable law. Requester agrees to indemnify, defend, and hold harmless University, its trustees, officers, employees and agents from and against any liabilities, damages, or claims (including attorneys' fees) arising out of injury (including death) or property damage suffered by any person arising out of Requester's breach of its obligations hereunder, Requester's acts or omissions, and use or possession by Requester or any third party acting on behalf of or under authorization from Requester of any and all information, reports, data, materials, services, intellectual property and other property produced hereunder, including Deliverables. Except for liabilities for which Requester must indemnify University, neither party will be liable for any indirect, special, incidental, consequential, or punitive damages, regardless whether a claim therefor is based in contract, tort, warranty, strict liability, or any other theory. Except for liabilities for which Requester must indemnify University, neither party's total liability hereunder will exceed the total Fees contemplated being paid by Requester to University.

11. Export Control. Requester will not, without prior written permission by an authorized representative of University, provide to University any information or materials subject to United States Export Control licensing. Requester further agrees that it may receive any results, reports, data, or other Deliverables from University without such a license and will not re-export said results, reports, data, or other Deliverables in contravention to all relevant United States Export Control Regulations.

12. Governing Law. The Services and this Agreement are governed by and construed in accordance with the laws of the State of South Carolina. The University, as a public body and agency of the State of South Carolina, and this Agreement are subject to the South Carolina Freedom of Information Act (S.C. Code Ann. §30-4-10 et. seq.).

13. Force Majeure. University will not be liable for any delays or failure to perform as required by this Agreement if the delay or failure to perform is caused by circumstances reasonably beyond University's control, such as labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, fires, floods, embargoes, extreme weather, explosions, failure of utilities, mechanical breakdowns, material shortages, supply chain disruptions, disease, theft, pandemics, University closure for any reason, or other occurrences (each a "Force Majeure Event"). In the event of a Force Majeure Event, University will provide written notice to Requester of the nature and extent of such event, and University agrees to use reasonable efforts to remove any such causes and resume performance under this Agreement as soon as reasonably practicable. The Parties agree to adjust the Services timeline impacted by the Force Majeure Event.

14. Entire Agreement. This Agreement is the entire understanding between Requester and University with regard to the subject matter contained herein, and any previous discussion, negotiations, or agreements are superseded by this Agreement. If any provision of the Agreement is held unenforceable or void, the remaining provisions will be enforced in accordance with their terms. Should processing of the Agreement require issuance of a purchase order or other contractual document, all terms and conditions of said document are hereby deleted in their entirety. In the event of a conflict between or among the terms and provisions of the Project Request Form, the final quote, and these Terms and Conditions, the order of precedence is: (i) Terms and Conditions, (ii) final quote, (iii) Project Request Form. No modification, alteration, or amendment may be made to the Agreement without prior written authorization from University.

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