



Terms and Conditions of Services

All engineering services are expressly performed subject to these terms and conditions. Direction to proceed with the work specified or submittal of a purchase order requesting services shall constitute acceptance of these terms. Any terms in such purchase order that are an addition to or are inconsistent with these terms are not accepted.

- 1. Sales and similar taxes.** METRIX prices do not include local sales, use, excise, value-added, or similar taxes. Customer shall pay METRIX for the gross amount of any present or future tax applicable to the price, sale, or furnishing of services hereunder.
- 2. Payment.** Payment in full will be due within 30 Days after receipt of invoice. For work extending beyond one month, the option of periodic invoicing may be exercised and will be issued biweekly based on percentage of job completion minus the total of previous payments. After 30 days, a penalty fee of 3% of the total invoice will be applied to all invoices that are past due. An additional 3% will be applied after each additional 30 day period that the invoice remains unpaid.
- 3. Suspension/cancellation.** In the event Customer requests a suspension of work under this contract, Customer shall, in writing, notify METRIX reasonably in advance of the suspension date; this notification will indicate the anticipated suspension period and the cause for said suspension. Customer will reimburse METRIX for any direct or indirect cancellation charges incurred by METRIX, including without limitation reasonable profits, all costs and expenses incurred by METRIX to prepare to perform the Services under this Agreement as determined by Seller, any cancellation costs described in the Services Rate Sheet or imposed on METRIX by one of its subcontractors, and the costs of any Services partially performed at the time of cancellation, termination, or suspension as those Services are priced by the Services Rate Sheet. These reimbursements shall include all actual costs of METRIX under this Agreement that are not preventable after the cancellation, termination, or suspension, including but not limited to, any travel costs incurred or not reimbursed to METRIX by travel company after cancellation, termination, or suspension.
- 4. Delay in performance.** METRIX shall not be liable for delay in performance or for any direct or consequential damages, caused directly or indirectly by causes beyond its reasonable control, including, but not limited to (i) any act of God, including but not limited to natural disasters such as floods, earthquakes or tornadoes; (ii) failure of supplies or transportation, or governmental action; (iii) damages resulting from or under the conditions of labor disputes, strikes, riot, insurrection, civil commotion or war; (iv) damages or improper operation due to intermittent power line voltage, frequency, electrical spikes or surges, unusual shock or electrical damage; (v) accident, fire or water damage, corrosive atmosphere or causes other than ordinary use; or (vi) any other causes beyond METRIX's reasonable control, time necessary to repair machinery problems discovered upon teardown or inability to access machinery due to Customer delay. In the event METRIX' performance or work is so delayed, METRIX shall be entitled to price adjustment for costs resulting therefrom, in addition to extension of the time of performance
- 5. Overtime Work.** The Scope of Work states the schedule upon which METRIX's proposal is based. In the event Customer changes the work schedule to any basis other than the stated period or desires to complete the work earlier than that specified, the price shall be adjusted in accordance with the published rate schedule.
- 6. Quality Workmanship and Remedy.** METRIX agrees to perform service for Customer on the expressed condition that METRIX's sole obligation will be that the service will be performed in a good and workmanlike manner and will be of the kind and quality described in the proposal. If there is a specific problem with the quality of the service performed within 12 months of completion of the service work, METRIX should be notified immediately and the service will be repeated at no additional charge. In the event METRIX performs corrective work hereunder, Customer must provide adequate access to the machinery to allow METRIX employees to perform these services. Any additional costs incurred to provide this access will be assumed by Customer. Regardless of whether under contract, negligence, or any other legal theory, this shall constitute the exclusive remedy of Customer and the sole liability of METRIX with regard to services performed. METRIX DOES NOT WARRANT THE FITNESS, SUITABILITY OR CONDITION OF CUSTOMER'S MACHINERY UPON WHICH THE SERVICES ARE PERFORMED.
- 7. Indemnification.** As limited by the above, each party agrees to defend, indemnify and hold harmless the other, its officers, directors, employees, partners, subsidiaries, parents, and agents from and against any and all causes of action and liability for bodily injury, death or property damage, occurring in connection with or arising from use of products furnished or work performed on the premises that is caused by the negligent acts of either party, its subcontractors or employees. In the event any cause of action for bodily injury, death or property damage is found to be caused by the joint negligence of the parties, each party shall be responsible only to the extent of their respective negligence.



8. **Limitation of Liability and Allocation of Risk.** Certain machine failures are unpredictable and occur suddenly. Customer acknowledges that these failures cannot necessarily be detected by METRIX. Customer accepts these risks and will protect against them in a manner consistent with their overall risk management program. METRIX shall not be liable in any way for failure to detect any defects inherent in the design of goods serviced. In no event, whether in contract, negligence or any other theory, shall METRIX be liable for special, incidental, indirect, punitive, or consequential damages including, but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of purchased power, costs of substitute equipment, facilities or services, or downtime costs. The allocation of risks and liabilities in this contract is agreed to by both parties as a necessary prerequisite to providing these services and the contract price has been determined accordingly. In any event, METRIX's total liability for any and all losses and damages arising out of any and all causes whatsoever including, without limitation, defects in the Services, software, or documentation supplied under this Agreement or breach of this agreement, shall in no event exceed the purchase price of the applicable item(s) or the prices charged for the Services.
9. **Site Conditions and Access.** METRIX reserves the right to refuse or terminate service, without penalty, when in METRIX's reasonable opinion, conditions at the equipment location represents a hazard to the safety or health of any METRIX employee. When, pursuant to this contract, METRIX employees are requested to enter Customer facilities, they shall do so in accordance with the terms of this contract and no preprinted language on any access form shall vary these terms or restrict individual legal rights.
10. **Regulations.** Prior to issuing its purchase order, Customer shall advise METRIX in writing of all applicable site-specific rules, regulations and safety codes which apply to the work site and services to be performed. METRIX shall use commercially reasonable efforts to meet all advised laws, rules and regulations.
11. **Evidence of Insurance.** METRIX will, at its own expense, maintain liability insurance during the term of this contract and provide Customer with Certification upon request.
12. **Confidentiality.** Both parties agree that they each have an affirmative obligation to the other to maintain in the strictest confidence all proprietary information belonging to the other and not to disclose the same to any unauthorized third party.
13. **Nuclear Installation.** Customer shall furnish an agreement of indemnification as contemplated by Section 170 of the Atomic Energy Act of 1954, as amended (the Act) and also nuclear liability insurance from NELPIA and MAELU, or both. Customer shall reimburse METRIX for any METRIX-owned material and/or equipment, which becomes radioactive at the work site.
14. **Dispute Resolution, Governing Law.** Any controversy, claim, demand, complaint, or action, hereinafter "Claim", whether based on contract, tort, statute or other legal or equitable theory arising out of or related to this Agreement (including any amendments, annexations, and extensions) or the breach thereof shall be settled by consultation between the parties. In the event of failure of such consultations within sixty (60) days (unless otherwise extended by mutual agreement of the parties) after receipt of the written notice of such Claim, then any such Claim shall be settled by arbitration in accordance with the section 151.001 et seq. of the Texas Civil Practices and Remedies Code. The complaining party shall file a petition in the applicable district court, or other court of original jurisdiction, and that petition shall be abated pending the decision of the arbitrator. The arbitration shall be conducted in compliance with the Texas Rules of Civil Procedure and the Texas Rules of Evidence. The arbitration shall be held in Houston, Texas or such other location as may be convenient and agreed to in writing by the parties. The arbitration shall determine the Claim of the parties and render a final award in accordance with the substantive law of the State of Texas. The arbitrator shall set forth the reasons for the award in writing, and shall, at the request of either party, prepare findings of fact and conclusions of law to be provided to each party. An award or ruling by the arbitrator shall be entered as a judgment of record in the abated judicial proceeding and shall be fully subject to appeal as if it was tried in the court the petition was initially filed in. These terms may not limit any obligation of a party to defend, indemnify or hold harmless another party against a claim as provided above. The parties hereby waive all rights to a trial by jury. In addition, Customer agrees the price it is agreeing to pay for the Services reflects an analysis of the elimination of uncertainty regarding the jurisdiction and venue for any dispute.



15. **Ownership and Use of Data and Information.** Upon execution of this contract, the Customer grants us the continuing:

- a. Internal use of all machine data and information vibration, process, performance, etc. for all machines upon which we have performed product or service work
- b. External use of all machine data and information (vibration, process, performance, etc) from all machines upon which we have performed product or service work for the specific purpose of examples and case histories for our customer training courses.

All materials used for this purpose will in no way directly reference the _____ company name or plant location where the work was performed. Additionally, no OEM (original equipment manufacturer) will be referred to by name in any materials used for this purpose.

- c. External use of all machine data and information (vibration, process, performance, etc) from all machines upon which we have performed product or service for the specific purpose of writing technical articles, papers, publications, and testimonials.

The company name and plant location where the work was performed _____ will not be directly mentioned without the express written consent of the end user.

- d. Co-ownership of all diagnostic tests and records. This information will be securely stored at a METRIX location in the form of electronic media and / or hardcopy and will not be released to any third party without the express written consent of the end user except as otherwise required by law.
- e. Right to make reference to work performed in advertising, industry / academic journals, and books. The company name and plant location where the work was performed will not be directly mentioned without the express written consent of the end user.
- f. For purposes of this Contract, the above will be considered “permitted uses” and not in breach of the confidentiality terms previously described in Section 12.

16. **General:**

- a. If any provision(s) of this contract shall be held contrary to law, the remaining provisions shall remain in full force and effect.
- b. Failure by either party to enforce any contract term shall not be deemed a waiver of future enforcement of that or any other term.
- c. These terms and conditions account for the full relationship of the parties since negotiations began and all such negotiations, oral or written, are merged into this contract.
- d. This contract shall be interpreted in accordance with the laws of the State of Texas.
- e. Unless otherwise specified in writing, all quoted prices for Services as reflected in the Services Rate Sheet, quotation or proposal are subject to change by METRIX at any time based on the prices in any updated Services Rate Sheet at the time Services are actually provided.
- f. Applicable rates will be charged for Services based on the Seller’s Services Rate Sheet in affect at the time the service is performed, unless otherwise agreed in writing by the Seller.
- g. Service Provisions for Offsite Work. In addition to the foregoing paragraphs, the following provisions shall apply to any and all Services performed by Seller’s personnel at the Buyer’s designated location:
 - i. **Safety:** Buyer shall ensure that Seller’s personnel are not exposed to unreasonable hazards on or in the vicinity of the worksite. Buyer shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the worksite. Seller shall ensure that Seller’s personnel will comply with the Buyer’s documented safety regulations provided to the Seller while on the worksite.



- ii. **Training.** Seller shall ensure that Seller's personnel are provided with basic safety training for the normal work environment. Site-specific training shall be provided at the Buyer's expense.
- iii. **Hazardous Locations.** Without incurring any liability to Buyer, Seller reserves the right to refuse to dispatch personnel to worksites threatened by warfare, terrorist activities, or other unsafe conditions as determined by the Seller's management. A variety of factors will be considered in determining whether a location is hazardous, including whether the country within which the work is to be performed is under a "Travel Warning Status" as determined by the U.S. Department of State. Seller reserves the right to recall personnel if the worksite does not meet reasonable health and safety standards. Time spent in hazardous locations will be billed at applicable hazardous location rates as provided in the Services Rate Sheet.
- iv. **Living Conditions.** If meals and living accommodations are provided by the Buyer, Seller reserves the right to recall the Seller's personnel if the accommodations and meals are not suitable (as determined by the Seller's management). Seller reserves the right to make alternate arrangements at the cost of the Buyer if other accommodations are available.
- v. **Maximum Time on Worksite.** Seller reserves the right to replace personnel after two weeks for offshore locations and three weeks for onshore locations at the Buyer's expense.
- vi. **Seller's Personnel on Worksite.** Seller reserves the right to determine the number of Seller's personnel required for implementation of a project. All costs for the Seller's personnel on worksite shall be paid by the Buyer.
- vii. **Communications Access.** Buyer shall provide at no cost to Seller unlimited access to telephone, fax, and data transmission lines to the Seller's personnel on worksite for communicating with the Seller's office for purposes associated with the required work.