

## Otech Terms and Conditions

The following are the general terms and conditions for wind tunnel test or calibration services provided by Otech Engineering, Inc. (Otech) to its customers as a part of a quote or contract. An accepted quote or contract combined with these terms and conditions define the entire agreement for service between Otech and its customers.

- 1) **SCOPE OF SERVICE.** Otech shall provide services to its customer according to work agreements defined in a quote or contract and agreed upon between both parties. Most often, instruments to be tested are exchanged between Otech and the customer, thus part of the agreement includes shipping arrangements. A customer may request from Otech electronic records maintained by Otech, which are directly pertinent to the work agreed upon in a quote or contract, for the purpose of audits, examination, excerpts, and transcriptions. Otech maintains all required records for at least two (2) years after the customer makes final payment for the work performed.
- 2) **COMPENSATION.** Customers will compensate to Otech, in full, the service rates specified in a quote or contract, which may also include upfront costs that the customer must pay to Otech prior to the start of a promised service. Shipping costs (including insurance and/or customs fees or duties on foreign shipments) are not included in the service rates set forth in a quote or contract and must be paid by the customer. A customer's shipping account number via United Parcel Service or Federal Express may be furnished to Otech prior to return shipment of the customer property. All shipping is at the customer's risk and the customer accepts full responsibility for any damages that may occur during shipping and shall indemnify and hold Otech harmless from any costs incurred. In the event that instruments to be tested or supporting fixtures/instruments delivered to Otech from the customer are deemed by Otech unsuitable to complete the services required by Otech, the work agreement is terminated by Otech and, depending on the volume of the service, a handling fee of \$75.00 may apply. Said termination shall not be construed as a breach of this contract.
- 3) **PAYMENT METHOD.** Upon completion of the work, Otech will send to the customer an itemized billing invoice via electronic mail or hardcopy mail/shipment. This invoice will indicate, at a minimum, company names, addresses, and contact numbers, a description of the tasks or reference to the description of tasks performed, the total amount to be compensated, upfront costs already paid, and the total compensation due. All payments for compensation, as indicated on the invoice, are due upon receipt of invoice. If the invoice is not paid in full within 30 days of the invoice date, a penalty of 1.5% per month of the unpaid monthly balance will be charged. A \$30.00 fee will be charged for any check which is refused payment by the bank on which it is drawn. Final products generated by Otech are laboratory test reports. A customer agrees to pay Otech in full before utilizing said test reports. Payment must be made only in U.S. Dollars by check, account transfer, or wire transfer. If requested, account information for wire transfers will be provided when a quote or contract is finalized. Wire transfer and other related fees will be at the expense of the customer. Check payments are made payable to "Otech Engineering, Inc." and addressed to: Otech Engineering, Inc., 630 Peña Drive Suite 800, Davis, CA 95618-7726.
- 4) **INDEPENDENT CONTRACTOR.** Otech is as an independent contractor. Services are provided by Otech in a professional manner. A customer shall not be involved in any manner in the method or timing of the provision of such services other than as set forth in supplemental work agreements.
- 5) **INSURANCE.** During the term of work agreements, Otech shall obtain and maintain in full force and effect liability insurance, issued by a company licensed to transact business in the State of California and/or having an A.M. Best rating of A VII or better. Such insurance includes coverage for Customer's instruments to be tested and/or supporting fixtures/instruments while in possession of Otech.
- 6) **TERMINATION FOR CAUSE.** If either Otech or the customer fails to perform in a timely and proper manner and fails to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the failure, the non-defaulting party may, in addition to any other remedies, terminate work agreements by giving no less than five (5) days written notice to the defaulting party. Specific termination provision may exist in individual work agreements. Those terms shall govern if there is any conflict with the provisions of these general terms and conditions.
- 7) **DISPOSITION OF AND PAYMENT FOR SERVICES UPON EXPIRATION OR TERMINATION OF AGREEMENTS.** Upon expiration or cancellation of work agreements, all finished or unfinished documents and other materials, if any, shall become, at the option of Otech and upon the receipt of all necessary compensation to Otech from a customer, the property of the customer and shall be returned to the customer, although Otech may retain a copy of such work for its records. Otech shall be entitled to receive compensation for all work completed prior to receipt of the notice of termination or commenced prior to receipt of the notice and completed prior to the effective date of the termination. Should the agreed-upon compensation not be paid, Otech may hold the final product(s) and/or the customer's property for a period of thirty (30) days, or a specified duration in an individual work agreement. Should compensation not be forthcoming, the customer shall have abandoned all rights to the final product(s).
- 8) **CONFIDENTIALITY.** All information disclosed by Otech to the customer is deemed confidential and is not to be released to the public except upon written approval from Otech. Upon cancellation, expiration, or other termination of work agreements, the customer shall promptly return to Otech all written and descriptive matter produced by Otech, all of which presumptively contain information confidential to Otech. Otech will retain for its records a copy of Otech's confidential work if made available to the public in any manner by either party.

Electronic records generated by Otech from work agreements and paid by the customer are owned by the customer. Otech ensures that such records are not disclosed to the public by Otech unless Otech has been specifically instructed to do so in writing by the customer.

Additionally, any and all information received by Otech from, about, or on behalf of the customer is considered confidential. Such information includes, but is not limited to, rates, payment terms, or any form of compensation data, customer preferences, and proprietary product information. Otech has policies and procedures in place that ensure non-disclosure of customer confidential information.
- 9) **AMENDMENT/MODIFICATION.** Except as specifically provided, work agreements may be modified or amended only in writing along with the necessary adjustments in compensation or duration of service and with prior written consent from both Otech and the customer.
- 10) **VENUE.** Work agreements along with these terms and conditions are governed by the laws of the State of California. Yolo County, California shall be the venue for any legal action filed by either Otech or the customer for the purpose of interpreting or enforcing any provision of the work agreements. The appropriate venue for arbitration, mediation, or similar legal proceedings shall be Yolo County, California; however, nothing in this sentence shall obligate Otech or the customer to submit to mediation or arbitration of any dispute arising in work agreements.
- 11) **CONFLICT OF INTEREST.** Otech and the customer hereby covenant to have no interest, disclosed or not disclosed, and shall not, during the course of the work agreement, acquire any interest, direct or indirect, which would conflict in any material manner or degree or place any undue influence with or upon Otech's performance and/or its confidentiality obligation hereunder, except such as either Otech or the customer may consent to in writing prior to the acquisition of such conflicting interest by the party acquiring the conflict. Otech independently conducts business within policies and guidelines that prohibit actual or potential conflicts of interest. Guidelines enforced as part of Otech's policies and practices include, but are not limited to the following:
  - Otech management and personnel are impartial, and are free from any undue internal and external commercial, financial and/or other pressures which may influence technical judgment and/or adversely affect the quality of Otech testing activity.
  - Otech does not engage in activities that may endanger the trust in its independence of judgment and integrity in relation to its testing activities and procedures.
  - Otech has written policies and procedures in place to avoid involvement in any activities that would diminish confidence in its competence, impartiality, judgment, and/or operational integrity.
- 12) **ATTORNEYS' FEES.** In the event that Otech or the customer commences legal action of any kind or character to either enforce the provisions of work agreements or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney fees incurred in connection with such action.
- 13) **SEVERABILITY.** If any provision of work agreements along with these terms and conditions, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of agreed work agreements.
- 14) **ENTIRETY OF CONTRACT.** Work agreements along with terms and conditions presented in this document constitute the entire agreement between Otech and the customer and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among parties with respect to the subject matter hereof.