

**DynaQual LLC ("Company")**  
**TERMS AND CONDITIONS OF SALE**

**1. CONTRACT ACCEPTANCE:**

Any written or oral purchase order received from Buyer by Company shall be construed as a written acceptance of Company's offer of services and shall be filled in accordance with the terms and conditions set forth herein. COMPANY'S ACCEPTANCE OF THIS ORDER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THE TERMS CONTAINED HEREIN. The terms and conditions of Company's proposal (if any) and acknowledgement shall prevail over any conflicting or different terms in Buyer's order unless Buyer notifies Company in writing of its objections thereto within fifteen (15) days from receipt of Company's acknowledgement. Buyer's standard terms will not be considered a counteroffer to Company's terms and conditions. The failure of Company to object to any provision in conflict herewith whether contained on Buyer's purchase order or otherwise shall not be construed as a waiver of the provisions hereof nor as an acceptance thereof.

**2. QUOTATIONS AND PRICES:**

Prices quoted are subject to change without notice. The price in effect at the time of services including any escalation formula will apply, unless a valid quotation or written agreement to the contrary exists between Buyer and Company. All prices shown are in U.S. dollars and are F.O.B. Company's facility. Company reserves the right to place a service charge on past due accounts at the highest rate permitted by law. Any documentation required for any routine or special processes must be identified by the Buyer at the time of quotation (if any) or at the time of order placement.

**3. TAXES:**

Any tax or other charge imposed by law on the performance of services shall be paid by the Buyer, unless the law specifically provides that such payment must be made by Company, in which case Buyer shall reimburse Company for such payment as part of the purchase price. Insurance charges and other comparable charges will be borne by Buyer.

**4. SHIPPING SCHEDULE AND DELIVERY:**

Buyer shall be responsible for all costs and arrangements for the delivery of goods to Company and for having goods returned to Buyer. Buyer shall consult with Company on delivery schedules. Company will not be responsible for deviations in meeting shipping schedules nor for any losses or damages to Buyer (or any third party) occasioned by deviations in the shipping schedule, whether due to Acts of God, orders bearing priority ratings established pursuant to law, differences with workmen, local labor shortages, fire, flood, shortages or failure of raw materials, supplies, fuel, power or transportation, breakdown of equipment or any other causes, whether of similar or dissimilar nature than those enumerated. In no event shall Company be liable for any consequential or other damages resulting from failure or delay in shipment.

**5. TERMS OF PAYMENT:**

Terms of payment are 30 days from date of invoice unless otherwise stated in the quotation or Company's order acknowledgment.

**6. WARRANTIES:**

Any test results or data presented or any interpretation of data or tests results are opinions based upon measurements, assumptions and empirical relationships, which inferences and assumptions are not incapable of error. Company cannot and does not guarantee the accuracy, correctness or completeness or such results, data, or interpretations and the Buyer agrees that Company shall not be liable or responsible for any loss, cost, damage or expense incurred or sustained by Buyer resulting directly or indirectly therefrom. Under no circumstances should any such interpretation, data, or result be relied upon as the basis for any procedure which involves any risk to the safety of any personnel, equipment or venture. The Buyer shall always have full responsibility for such decisions and for all decisions concerning the test results.

**7. ENGINEERING AND SERVICE:**

Upon request, Company will provide engineering and/or technical information regarding its services. Any such information shall be advisory only.

**8. INSPECTION:**

Buyer's representatives may inspect the Company's facility during working hours in such manner as will not interfere with operations.

**9. OWNERSHIP and RESPONSIBILITY:**

Buyer shall retain ownership of its goods at all times. Buyer shall be liable for any loss or damage to its goods at all times, even while goods are located at Company's facility, regardless of cause.

**10. INDEMNIFICATION AND LIMITATION OF LIABILITY:**

**A. INDEMNIFICATION:**

"Buyer Group" means: Buyer, its parent (if any), subsidiaries, affiliates, co-owners, co-venturers, partners and any entity with whom Buyer has an economic interest with respect to the services including Buyer's customer or a third party engaged by Buyer to be present at

Company facility and their respective employees, personnel, directors, officers, borrowed servants, representatives, agents, contractors and subcontractors (respectively and of any tier or level and who are not included within the Company Group);

"Company Group" means: Company, its parent (if any), subsidiaries, affiliates, co-owners and its and their respective employees, personnel, directors, officers, borrowed servants, representatives, agents, contractors and subcontractors (respectively and of any tier or level and who are not included within the Buyer Group);

"Negligence" means: sole, joint or concurrent, active, passive, gross or willful misconduct.

(1) Company shall release, defend, save, indemnify (collectively "Indemnify") and hold Buyer Group harmless from and against all claims, demands, losses, damages and causes of action of whatever kind or nature (collectively "Claims"), for loss of or damage to the property of the members of the Company Group even if such Claims arise from or attributable to the Negligence of the members of Buyer Group.

(2) Company shall Indemnify and hold Buyer Group harmless from and against all Claims for the death(s) of or personal injury(ies) to members of the Company Group even if such Claims arise from or attributable to the Negligence of the members of Buyer Group.

(3) Buyer shall Indemnify and hold Company Group harmless from and against all Claims for loss of or damage to the property (including the Work) of the members of the Buyer Group even if such Claims arise from or attributable to the Negligence of the members of Company Group.

(4) Buyer shall Indemnify and hold Company Group harmless from and against all Claims for the death(s) of or personal injury(ies) to members of the Buyer Group even if such Claims arise from or attributable to the Negligence of the members of Company Group.

**B. INDEMNITY FOR CONSEQUENTIAL DAMAGES:**

**UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (collectively "CONSEQUENTIAL"), NOR FOR ANY LOSS OF ANTICIPATED PROFITS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF USE OF EQUIPMENT OR OF ANY INSTALLATION, SYSTEM OR FACILITY INTO WHICH EQUIPMENT MAY BE LOCATED OR AT WHICH MEMBERS OF THE COMPANY GROUP MAY BE PERFORMING WORK.**

**C. LIMITATION OF LIABILITY:**

**EXCEPT AS OTHERWISE EXPRESSLY LIMITED IN THIS AGREEMENT IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT ALL INDEMNITY OBLIGATIONS AND/OR LIABILITIES HEREBY ASSUMED BY THE PARTIES SHALL BE: (i) SUPPORTED BY INSURANCE; (ii) WITHOUT LIMIT; (iii) AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF, INCLUDING, BUT NOT LIMITED TO, PREEXISTING CONDITIONS (WHETHER SUCH CONDITIONS BE PATENT OR LATENT); BREACH OF REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED); BREACH OF CONTRACT; BREACH OF DUTY (STATUTORY, CONTRACTUAL, COMMON LAW OR OTHERWISE); STRICT LIABILITY; CONDITION OF RUIN OR DEFECTIVE PREMISES, EQUIPMENT, FACILITIES, OR APPURTENANCES OF ANY PARTY UNDER ANY CODE, LAW OR (WHETHER OR NOT SAID CONDITION IS PREEXISTING AND/OR LATENT, PATENT OR OTHERWISE); THE LOADING OR UNLOADING OF PERSONS OR CARGO; TORT; OR THE NEGLIGENCE OR FAULT OF ANY PARTY (AS DEFINED AT THE BEGINNING OF THIS ARTICLE 10; OR ANY OTHER THEORY OF LEGAL LIABILITY. COMPANY'S TOTAL RESPONSIBILITY FOR ANY CLAIMS, DAMAGES, LOSSES OR LIABILITY ARISING OUT OF OR RELATED TO ITS PERFORMANCE OF THIS CONTRACT OR THE PRODUCTS OR SERVICES COVERED HEREUNDER SHALL NOT EXCEED THE PRICE OF THE SERVICES PERFORMED.**

**11. MODIFICATION, RESCISSION & WAIVER:**

The terms herein may not be modified or rescinded nor any of its provisions waived unless such modification, rescission or waiver is in writing and signed by an authorized employee of Company at its office in Houston, Texas. Failure of Company to insist in any one or more instances upon the performance of any of the terms and conditions of the contract or the failure of Company to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such term, condition, or right hereunder and shall not affect Company's right to insist upon strict performance and compliance with regard to any unexecuted portions of this contract or future performance of these terms and conditions.

All orders must be accepted by an authorized employee of Company. The rights and duties of the parties and construction and effect of all provisions hereof shall be governed by and construed according to the internal laws of the State of Texas. Any disputes which arise under this agreement shall be venued in the District Court of Harris County, Texas or in the Southern District of Texas.