

System Safety, Inc.

GENERAL TERMS AND CONDITIONS

Consulting and Testing Services (January 2012)

The following General Terms and Conditions are applicable to Agreements between System Safety, Inc. (SSI) and the CLIENT, when attached to and made part of such Agreement or Proposals by reference.

1. *Acceptance of Agreement*

This Agreement's General Conditions, of which this provision is a part, have been established in large measure to allocate certain risks between CLIENT and SSI, and SSI will not initiate service without formal agreement of General Conditions and other terms and conditions set forth in this Agreement. For purposes of convenience, CLIENT may choose to accept this Agreement orally or to orally authorize SSI to initiate services. In that event, CLIENT specifically agrees that, as a material element of the consideration SSI requires to execute the services indicated herein, oral acceptance or authorization to initiate services shall be considered by both parties to constitute formal acceptance of all terms and conditions of this Agreement. Unilateral modification of this Agreement subsequent to SSI's initiation of service is expressly prohibited. Furthermore, all preprinted terms and conditions on CLIENT's purchase order acknowledgement forms are inapplicable to this Agreement and SSI's involvement in CLIENT's project.

2. *Maintenance of Professional Standards and Ethics*

The CLIENT recognizes that SSI's services in all cases must be rendered in accordance with prevailing professional standards and ethics. Services performed by SSI under this Agreement will be conducted in a manner consistent with the level of care and skill standard to the industry under similar conditions. NO OTHER WARRANTY EXPRESSED OR IMPLIED IS MADE. If a situation emerges that causes SSI to believe compliance with the CLIENT's wishes could result in SSI violating an applicable provision or aspect of professional standards, or ethics, laws or regulations, SSI shall so advise the CLIENT. The CLIENT and SSI shall immediately enter into discussions to arrive at a mutually satisfactory solution. Failing achievement of a solution, either party may terminate this Agreement in accordance with the termination provisions stated herein.

3. *Compliance with Codes and Standards*

SSI shall exercise due and reasonable care in observing those federal, state and local codes, standards, statutes, and regulations applicable at the time SSI prepared the scope of services included in this Agreement. In the event that SSI becomes aware of any changes in such codes, standards, statutes, or regulations, and if SSI believes such changes affect SSI's services, SSI shall inform CLIENT of such changes and the impact abiding by them may have on services already performed or to be performed, the fees and costs involved, and scheduling. If either CLIENT or SSI believes a change requires renegotiations of this Agreement both CLIENT and SSI shall bargain promptly and in good faith. If a renegotiated Agreement cannot be developed, CLIENT shall give SSI the right to terminate this Agreement without penalty. In any event, CLIENT shall, to the fullest extent permitted by law, waive any

claim against SSI, and indemnify, defend, and hold SSI harmless from any claim or liability for injury or loss arising from SSI's alleged failure to abide by federal, state or local codes, standards, statutes, or regulations that were not in effect or publicly announced at the time SSI otherwise would have incorporated their intent into SSI's services.

CLIENT shall also compensate SSI for any time spent of expenses incurred by SSI in defense of any such claim.

Such compensation shall be based upon SSI's prevailing fee schedule and expense reimbursement policy. The term "any claim" used in this provision means "any claim in contract, tort, or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability."

4. Alteration of Instruments of Service

CLIENT agrees that designs, plans, specifications, reports, proposals and similar documents prepared by SSI are instruments of professional service and, as such, no matter who owns or uses them, they may not under any circumstances be altered by any party except SSI. CLIENT warrants that SSI's instruments of service will be used only and exactly as submitted by SSI. Accordingly, CLIENT shall waive any claim against SSI, and shall, to the fullest extent permitted by law, indemnify, defend, and hold SSI harmless from any claim or liability for injury or loss arising from unauthorized alteration of SSI's instruments of service. CLIENT also shall compensate SSI for any time spent or expenses incurred by SSI in defense of any such claim. The term "any claim" means "any claim in contract, tort or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation or other acts giving rise to liability". Such compensation shall be based upon SSI's prevailing fee schedule and expense reimbursement policy.

5. Invoices, Reimbursable Expenses, Escalation of Fees

SSI will submit invoices to CLIENT monthly on SSI's standard invoice form, terms due on receipt. Partially completed items of work for which a fee has been specified may be billed based upon percentage of completion as estimated by SSI, otherwise, invoices will be based upon SSI's Schedule of Standard Hourly Rates in effect at the time the work is performed. Past due balances are subject to interest of 10% above the currently valid prime rate, or the maximum permitted by state law, whichever is less. SSI, after giving seven (7) days written notice, may suspend services under any Agreement until all past due accounts, including applicable interest, have been paid. In the event that the invoice is not paid voluntary and promptly, and must be referred to an attorney or agent for collection, the CLIENT agrees to pay to SSI, SSI's reasonable collection and attorney's fee limited to the amount equal to 25 percent of the total amount due at that time.

The minimum time segment for charging of off-site work is four (4) hours. The minimum time segment for charging of all other work is one-half hour.

6. Reimbursable Expenses

Reimbursable expenses, those outside of the scope of the proposed services, are charged to the CLIENT at cost based on the SSI Travel Policy in effect at the time of travel.

The cost of equipment rental including where applicable equipment operators and subcontracted services, such as testing services, laboratory services, and other specialized services, excluding those services which are explicitly included in the SSI proposal.

If the services covered by this Agreement are subject to local or state taxes or fees, such additional costs will be charged to the project and are subject to reimbursement as provided herein.

7. Escalation of Fees

Fees and schedule commitments are subject to renegotiations for unreasonable delay caused by CLIENT's failure to provide specified facilities or information, or for delays caused by unpredictable occurrences, or force majeure, such as fires, floods, strikes, riots, unavailability of labor or materials or services, acts of God or of public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above may result in additional costs (reflecting a change in scope) beyond that outlined in the proposed Agreement.

SSI shall have the right to increase its compensation payable by the CLIENT to SSI in the event that SSI must modify services, facilities or equipment to comply with laws or regulations that become effective after execution of this Agreement, provided the SSI give the CLIENT thirty (30) days prior notice as to the cause for escalation and the additional amounts involved.

8. Indemnification and Limitation of Liability

Application of the joint and several liability concept could result in SSI becoming wholly liable for damages created directly or indirectly by regulated contaminants. CLIENT agrees that exposing SSI to such a liability would be unfair, because SSI had nothing whatsoever to do with creation of the hazardous conditions. Accordingly, CLIENT shall, to the fullest extent permitted by law, indemnify, defend, and hold SSI harmless from any claim or liability for injury or loss arising from SSI being considered liable for creating a hazardous materials condition or permitting one to exist, as a consequence of application of a joint and several liability concept. CLIENT also shall compensate SSI for any time spent or expenses incurred by SSI in defense of any such claim (the term "any claim" means "any claim in contract, tort or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation or other acts giving rise to liability"). Such compensation shall be based upon SSI's prevailing fee schedule and expense reimbursement policy.

The CLIENT agrees that SSI's total aggregate liability to the CLIENT and to all other parties associated with the project or its use, due to SSI professional negligent acts, errors omissions, shall not exceed SSI's total fee for services rendered on the project.

The CLIENT shall make no claim for professional negligence, either directly or in a third-party claim against SSI unless the CLIENT has first provided SSI with a written certification executed by an independent design professional currently practicing in the same discipline as SSI. The certification shall:

- a) identify the name of the professional;
- b) specify each and every act or omission that the certifier contends is a violation of the standard of care identified in this Agreement;
- c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation.

This certificate shall be provided to SSI not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding.

9. Disputes

In the event that a dispute should arise relating to the performance of the services to be provided under this Agreement, and should that dispute result in litigation in which SSI prevails, it is agreed that SSI shall be entitled to recover all reasonable costs incurred as a result of the claim, including staff time, court costs, attorney's fees and other claim-related expenses. Notwithstanding the foregoing, SSI shall have the right to submit any controversy or claim arising out of or relating to this Agreement, or the breach thereof, to binding arbitration administered by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

10. Consequential Damages

CLIENT shall not be liable to SSI and SSI shall not be liable to CLIENT for any consequential damages incurred by either party due to the fault of the other, regardless of the nature of such fault; or whether it was committed by CLIENT or SSI, their employees, agents, or subcontractors; or whether such liability arises in breach of contract or warranty, tort (including negligence), statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

11. Confidentiality

SSI agrees to keep confidential and to not disclose to any person or entity (other than SSI's employees and subcontractors), without the prior consent of CLIENT, all data and information not previously known to and generated by SSI, or furnished to SSI and marked "Confidential" by CLIENT; provided, however, that these provisions shall not apply to data that: are in the public domain; were previously known to SSI; or were independently acquired by SSI from third-parties under no obligation to CLIENT to keep said data and information confidential. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of SSI, nor shall they be interpreted to in any way restrict SSI from complying with a legally enforceable order to provide information or data. CLIENT agrees the SSI may use and publish CLIENT's name and a general description of SSI's services with respect to the project in describing SSI's experience and qualifications to others. CLIENT also agrees that any patentable or copyrightable concepts developed by SSI in the course of SSI's services hereunder are the sole and exclusive property of SSI.

12. Failure to Follow Recommendations

SSI disclaims any and all responsibility and liability for problems that may occur during implementation of SSI's plans, specifications, or recommendations when SSI is not retained to observe such implementation.

13. Defects in Service

CLIENT and CLIENT's personnel and contractors shall promptly inform SSI of any actual or suspected defects in SSI's services, to help SSI take those prompt and effective measures that in SSI's opinion will help minimize the consequences of any such defect. CLIENT's payment in full amount owed for services rendered shall be taken to mean that CLIENT is satisfied with SSI's services and is unaware of any defect.

14. Ownership of Instruments of Service

Plans, specifications, reports, calculations, laboratory test data, estimates, electronic media files, and similar paper and electronic media (other than samples) prepared by or for SSI as instruments of service are SSI's property. SSI shall retain these instruments of service for four years following submission of project deliverables, during which period SSI's instruments of service will be made available for CLIENT's review at any reasonable time.

15. Termination

This Agreement may be terminated by either party upon ten- (10) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. Such termination shall not be effective if the substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, SSI shall be paid for services performed to the termination notice date plus reasonable termination expenses. The expenses shall include any fees incurred by SSI from the laboratory prior to receipt of a termination notice date.

16. Governing Law

Unless otherwise provided, the substantive law of the state of California will govern the validity of this Agreement, its interpretation and performance, and remedies for contract breach or any other claims related to this Agreement.

17. Assigns

The CLIENT may not delegate, assign, sublet or transfer his duties, obligations or interests in this Agreement without the written consent of SSI.