



TERMS AND CONDITIONS OF SALE - ENGINEERING SERVICES

1. STANDARD TERMS

These terms and conditions for professional engineering services are the sole terms and conditions to which Concepts NREC (the "Company"), with principal places of business in Massachusetts and Vermont, agrees. No other writings, whether contained in requests for proposals, confirmations, purchase orders, or other documents, shall form a part of the agreement between Client and the Company, unless the additional terms are set forth and are in a writing signed by the Company and Client in which the Company and Client expressly agree to additional or modified terms and conditions.

2. NATURE OF ENGINEERING SERVICES

It is understood and agreed that:

- 2.1 The Company will use current design methods for all aerodynamic, structural, or other analyses.
- 2.2 Such calculations invariably involve current understanding, and all areas of engineering are subject to continued evolution and further refinement.
- 2.3 All engineering analyses are by their basic nature incomplete in the sense that they can be revised and refined at later times with further analysis resulting from further advances in the field of work.
- 2.4 Such extensions, when requested by Client, shall be the subject of additional contracts.
- 2.5 The Company will use technical data available in the open literature and proprietary Company internal data.
- 2.6 No data which are considered proprietary to third parties shall be considered in any way for application to this project.
- 2.7 Work carried out by the Company is of an educational, research, and development nature. All projects are carried out to further assist Client in better understanding the fundamental nature of performance problems with turbomachinery or related disciplines.
- 2.8 All the information derived by the Company efforts must be integrated carefully by Client with additional information resulting from Client's own design, development, and application processes.
- 2.9 The Company shall have no responsibility or liability beyond the obligation to carry out its work in a professional manner.
- 2.10 The Company agrees that it will revise, restate, and recalculate, at its own expense, any mistakes made by its personnel during the course of the Company's work for such mistakes resulting solely from errors due to negligence or carelessness by the Company staff in performance of its services. Such errors include avoidable miscalculation and mistakes in programming, but do not include the recalculation of projects or problems for which negative answers were obtained as a natural and possible outcome of exploration and investigation. Client's sole recourse shall be to obtain recalculation and restatement of results which are found

to be in error solely due to an avoidable mistake of the Company employees. Otherwise, there shall be no liability or recourse.

- 2.11 The Company's liability for damages in the performance of these services, regardless of whether said damages arise as a breach of warranty, breach of contract, tort, infringement, or otherwise, shall in no event exceed the amount paid to the Company by Client for the Company's performance of services hereunder. In no event will the Company have any liability of any nature for any incidental, special, indirect, consequential, multiplied, exemplary or punitive damages. The pricing of the Company's proposal for performance of professional engineering services has been predicated on the Company's and Client's agreement on the foregoing limitation of liability. Unless Client has advised the Company of its objection to this limitation of liability clause and has obtained a signed amendment deleting that clause and adjusting the price of this contract, Client agrees that it will not seek to recover damages in excess of the limitation of liability clause, and that it will not contest the validity or enforceability of that clause.

3. DELIVERY

- 3.1 Engineering services delivery dates shall be interpreted as estimated, and in no event shall such dates be construed as falling within the meaning of "time is of the essence."
- 3.2 Company shall not be held liable to Client for any costs or damages due to nonperformance under this Agreement arising out of any cause or event not within the reasonable control of Company and without its fault or negligence including, but not limited to: riots, wars or hostilities between any nations, Acts of God, fires, storms, floods or earthquake, strikes, labor disputes, shortages or curtailments of raw materials, labor, power or other utility services, governmental restrictions, or other contingencies.

4. INCORPORATION OF DESIGN AND DEVELOPMENT SERVICES INTO PRODUCT

It is understood and agreed that:

- 4.1 Any of the design and development services conducted by the Company are preparatory to the inclusion of the resulting components or stages in a full product system by the Client.
- 4.2 The Company can never be fully cognizant of the entire range of conditions to which the product will ultimately be subjected.
- 4.3 The Company shall not be responsible for the ultimate application of these components or stages in any industrial product.
- 4.4 Client is responsible to properly integrate design and development services and resulting components into

Client's product and continuously to examine and reevaluate the appropriateness of the individual components for each application. If stated within the Proposal, the Company will provide an assembly drawing to facilitate this integration.

- 4.5 The Company makes no warranty concerning the marketability or appropriateness of the stages of components for any particular commercial application.
- 4.6 The commercialization of each component or stage design and the final design worthiness are the sole responsibility of the Client.
- 4.7 The Company shall use its best efforts in the performance of services hereunder, but makes no guarantee or warranty of any nature with regard to the use, performance, or operation of any results of any such services.
- 4.8 The final responsibility for the accuracy and correctness of any supplied drawings and the liability for the function of any instrumentation, hardware, apparatus, equipment, mechanism, device, software, or the like delivered by the Company or prepared from the Company's designs shall rest solely with the Client.
- 4.9 Client hereby indemnifies the Company and holds the Company harmless from any and all actions arising from Client's use of the instrumentation, hardware, advice, data, designs, devices, software, or other information provided by the Company under this agreement.
- 4.10 Except as provided herein, all warranties are excluded. **IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXPRESSLY EXCLUDED.**
- 4.11 The Company claims ownership rights to all inventions, patents, copyrights, trademarks, trade secrets and know-how, including proprietary design and manufacturing technology, (Intellectual Property) which have been previously developed by the Company at the Company's expense and which will be used as a basis for the engineering services to be provided to the Client. All Intellectual Property developed as a result of the engineering services provided hereunder shall be owned by the Company. These terms and conditions apply solely to the provision of engineering services under this agreement. An agreement concerning goods produced using the Company's technology and concerning the licensing of that technology shall be set forth separately in writing and shall be signed by the parties.

5 OWNERSHIP

It is understood and agreed that:

- 5.1 Unless specified under writings both by Client and the Company, all property (generally, but not limited to, prototype hardware and instrumentation) procured for Client will become the property of the Company thirty (30) days after the completion of the project.

- 5.2 Should Client require ownership of Article 5.1 property, the Company will submit a cost estimate to Client for the disassembly, packaging, and shipping of property, under separate contract, to a destination specified by Client. Client shall have the option to acquire the ownership of the property as specified in that separate contract for a period of thirty days. Should the separate contract not be accepted within thirty (30) days, Client's option to acquire the property will terminate, and the Company will continue to maintain ownership of the property.

6 DEFAULT

- 6.1 Default Due to Work Stoppage – in the event of a work stoppage called by or caused by the Client lasting more than five (5) working days, the contract may be declared by the Company to be in default.
- 6.2 Default by Late Payments – in the event of late payments, a ten (10) day warning will be issued by the Company, after which the contract is in default.
- 6.3 A contract in default concludes all work efforts.
- 6.4 Default Remedies – in the event of a contract default, both parties shall negotiate in good faith to resume work as soon as possible. Work shall be resumed as soon as all issues are resolved, and an amended contract is put in place. It is understood that resumption is on a "time available basis", as other commitments may have been made in the interim.

7 DISPUTE RESOLUTION

- 7.1 If any dispute arises between the parties, then the parties shall negotiate in good faith to resolve such dispute. If the parties are unable to resolve the dispute to their mutual satisfaction within thirty (30) days after one party gives written notice to such effect to the other party, then either party may initiate litigation to resolve the dispute. Notwithstanding the foregoing, either party is authorized to seek preliminary relief without seeking to resolve the dispute through negotiations to the extent necessary to avoid irreparable harm. In the event of litigation between the parties with respect to rights or responsibilities arising under this Agreement, the substantially prevailing party in such litigation shall be entitled to recover, in addition to any other provable damages, reasonable attorney fees and expenses.
- 7.2 These terms are governed by and construed under the laws of the State of Vermont, without reference to its conflict of laws provisions. Any dispute or claim arising out of or relating to these terms or claim of breach hereof shall be brought exclusively in Vermont federal court or an appropriate Vermont State Court. By execution of the Agreement.