

NETZSCH Instruments North America, LLC, 129 Middlesex Turnpike, Burlington, MA 01803
APPLICATIONS LAB TESTING SERVICES - TERMS AND CONDITIONS AS OF 01/2022

**1. TERMS AND CONDITIONS
APPLICABLE EXCLUSIVELY
FOR LABORATORY TESTING
SERVICES**

The terms and conditions set forth herein shall apply exclusively to all product testing services ("Laboratory Testing Services") provided by NETZSCH Instruments North America, LLC (the "Company") solely at any of its thermal analysis or other product testing laboratories to customers (each, a "Customer", and collectively "Customers"). The Company's acceptance of any purchase order from a Customer for Laboratory Testing Services (each, an "Order") is expressly made conditional upon Customer's assent to the terms and conditions set forth herein. The Company does not accept and hereby expressly rejects all terms and conditions contained in any document issued by Customer which purport to pertain to any of the Laboratory Testing Services and/or the relationship between Company and Customer, which terms and conditions are in addition to or inconsistent with the terms and conditions set forth herein, and such additional or inconsistent terms and conditions shall not become part of any Order.

2. TERMS

Except as otherwise provided herein, payment for Laboratory Testing Services are net 30 days or as otherwise set forth in an applicable Order. Amounts past due are subject to a service charge of 1-1/2% per month (or fraction thereof) or maximum contract rate permitted by law. Payment for Laboratory Testing Services shall be made to the Company in U.S. Dollars in the manner set forth in an applicable Order. Payment by credit card shall be subject to a four (4%) percent service charge. If the Company deems that by reason of the financial condition of the Customer or otherwise the continuance in the terms specified herein or applicable Order is not justified, the Company

may require full or partial payment in advance. In the Company's sole discretion, in the case of large Orders for Laboratory Testing Services, a down payment may be required by the Company depending on the size of the Order. The Company, may, in its sole discretion, require progress payments on any Order. Legal fees incurred by the Company relative to the collection of delinquent accounts will be the responsibility of the Customer.

3. PRICE POLICY

Prices for Laboratory Testing Services shall be subject to adjustment to those in effect at the time of an Order, in accordance with general price increases in the market, as determined by the Company in its sole commercially reasonable discretion, for laboratory testing services comparable to the Laboratory Testing Services specified in the Order.

4. PACKING

The Company reserves the right to charge the Customer for packing and shipping to Customer any of its product or materials remaining unutilized following completion of the Laboratory Testing Services.

5. DELIVERY

Dates for completion of Laboratory Testing Services by the Company are approximate and are based on prompt receipt from Customer of all necessary information to complete the Order. The Company will use commercially reasonable efforts to meet the scheduled date shown on the Order confirmation or acknowledgement issued by the Company ("Acknowledgment"), but cannot be held responsible for a failure to do so for causes beyond its reasonable control and in no event shall it be liable for any loss or damage from the failure to complete any Laboratory Testing Services within the time specified in an Order. In the event of any delay in Laboratory Testing Services

requested by the Customer, the Company will store all items supplied for testing at the Customer's risk and expense. If Laboratory Testing Services are delayed at the request of, or due to action or inaction of, Customer, payment shall be made on the percent of completion of testing and the price set forth in the Order.

6. TEST RESULTS

Company shall deliver in writing to Customer the results of the Laboratory Testing Services to which its Order relates upon completion of such Laboratory Testing Services as specified in the Order.

7. CHANGES

The Customer may with the written consent of the Company make changes in Laboratory Testing Services covered by an Order. In the event of any such change, the Customer shall pay to the Company any additional costs and other expenses incurred by the Company for all work rendered to effect such change, plus the Company's usual profit thereon.

8. CANCELLATION

The Customer may cancel an Order at any time without cost or penalty prior to delivery of the product or materials to be tested under the Order provided that if the Company has incurred actual costs in preparation for the Laboratory Testing Services to which the Order relates, the Customer shall reimburse the Company for such actual costs. By contrast, where the Company has already commenced, or is in the process of, performing Laboratory Testing Services pursuant to a Customer Order, the Customer may cancel the Order only with the written consent of the Company and upon payment to the Company of expenses incurred and commitments already made by the Company in connection with the Order.

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9. REGULATORY LAWS AND/OR STANDARDS

The Company makes no promises or representations that its Laboratory Testing Services will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance by Company in writing as part of the Order or other agreement between Customer and the Company. Company prices for Laboratory Testing Services do not include the cost of any inspections, permits or inspection fees related to any of the foregoing.

10. MATERIALS

Title and ownership of any product or materials provided to Company for Laboratory Testing Services shall remain vested in the Customer, subject to the utilization and consumption thereof pursuant to performance and completion of the Laboratory Testing Services. The Customer must maintain, at its own expense, insurance in an amount equal to the value of the product or materials supplied to the Company for Laboratory Testing Services in connection with an Order.

11. TAXES

Customer shall be responsible for the payment or disposition of any state or federal taxes imposed upon Company arising from performance of an Order, whether such taxes are imposed or levied at the time of the Order or at any subsequent time. "Taxes" shall include any penalty or interest on such tax obligation. Company agrees to use commercially reasonable means to cooperate with Customer in any attempt by Customer to have any such Taxes released or reduced. The prices charged by Company for performance of an Order do not include any applicable sales, use, excise or similar taxes. The Customer assumes responsibility for all such Taxes.

12. PRODUCT LIABILITY

Customer acknowledges that the Company is responsible solely for the performance of Laboratory Testing Services in accordance with a relevant Order and Customer further acknowledges that the Company has no control over, and is not responsible for, the manner in which Customer's products will be used or otherwise dealt with by the Customer. The Customer therefore agrees to assume all responsibility for, and shall indemnify, defend and hold the Company harmless from and against, any and all losses, liabilities, actions, claims, demands and expenses (including without limitation attorneys' fees and court costs) (collectively, "Losses") arising out of or in any way connected with the use or operation of the products, following completion of Laboratory Testing Services performed by Company under any Order. Customer shall further indemnify the Company with respect to any Losses relating to any alleged infringement of or the use of third party rights to, any products or materials supplied by Customer for Laboratory Testing Services.

13. RETURN OF GOODS

Should the Customer cancel an Order in accordance with Paragraph 8 hereof, so long as Customer complies with its payment obligations thereunder, Company shall return to Customer any remaining products or materials supplied by Customer not previously utilized for Laboratory Testing Services.

14. LIMITED WARRANTY

The Company warrants that it will perform all Laboratory Testing Services in accordance with the terms of the relevant Order utilizing commercially reasonable industry standards appropriate for the performance of such Order. All claims for breach of the foregoing warranty must be made by Customer within six (6) weeks after the

completion of the Laboratory Testing Services Order (the "Warranty Period"). The Company further warrants that Laboratory Testing Services performed by the Company will be free from any material error or non-compliance with the specifications contained in any Order for a period of ninety (90) days from the date of completion of the applicable Laboratory Testing Services.

Company's exclusive obligation under the foregoing warranties, and Customer's exclusive remedy with respect to same, shall be limited as set forth above and the Company shall have no liability with respect to any warranty claim not made within the specified Warranty Periods. For avoidance of doubt, the foregoing warranties apply only to Laboratory Testing Services performed at the Company's laboratory testing facilities within the United States.

THE FOREGOING WARRANTY IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, EACH OF WHICH IS HEREBY DISCLAIMED BY THE COMPANY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF NONINFRINGEMENT, TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL THE COMPANY HAVE ANY LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY LOSS, COST, EXPENSE, LIABILITY OR DAMAGE, WHETHER DIRECT OR INDIRECT, IN CONNECTION WITH OR ARISING OUT OF ANY ORDER FOR LABORATORY TESTING SERVICES HEREUNDER OR ANY ORDER THEREFOR. IN NO EVENT WILL THE COMPANY'S LIABILITY WITH RESPECT TO ANY ORDER EXCEED THE AMOUNT ACTUALLY PAID BY THE CUSTOMER WITH RESPECT TO SUCH ORDER.

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EXCLUSIONS AND LIMITATIONS TO WARRANTY

The foregoing warranties exclude, and Company shall have no liability for any loss, damage, or defects resulting from: transportation to any Company laboratory of Customer's products or materials for testing, the improper maintenance, use, modification or operation of any Customer product by the Customer following completion of Laboratory Testing Services.

15. PROPRIETARY RIGHTS

Any and all models, drawings, sketches, parts and other information supplied by one party to the other shall remain the property of the party who shall have supplied it. The other party may not use any material or information except as required to fulfil an Order.

16. APPLICABLE LAW; JURISDICTION

All rights and duties of the Company and the Customer hereunder and under any Order will be governed by the laws of the Commonwealth of Massachusetts, without regard to its conflict of law principles. Any dispute arising out of or in connection with the terms and conditions contained herein or any Order or the relationship of Company and Customer shall be adjudicated exclusively in the state courts for Middlesex County, Massachusetts or the federal courts of Massachusetts, and both Company and Customer consent to personal jurisdiction and venue therein.

17. CUSTOMER'S DELEGATION

Customer may not assign or delegate any of its rights or obligations under any Order without the prior written consent of the Company. Any attempted assignment or delegation in violation of this paragraph will be null and void.

18. PARTIES BOUND

The terms and conditions contained herein and any Order

Acknowledgment shall be binding upon and inure to the benefit of the Company and the Customer and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this contract.

19. INTEGRATED AGREEMENT; NO WAIVER

The terms and conditions contained herein and any Order are intended by the parties as a final expression of their agreement with respect to such terms and also as a complete and exclusive statement of such terms. No failure by Company to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

20. SEVERABILITY

In case any one or more of the provisions contained in these Terms and Conditions shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and these Terms and Conditions shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

21. ATTORNEY FEES AND EXPENSES

In addition to all other remedies provided by law, the party aggrieved by any breach where settlement is made through negotiation, or the prevailing party in any litigation resulting from the breach, will be entitled to reasonable attorney's fees.