

SEPAC INC. TERMS AND CONDITIONS FOR NON-RECURRING ENGINEERING SERVICES

These Terms and Conditions for Non-Recurring Engineering Services (the "Terms and Conditions") form the general agreement between the parties hereto. SEPAC, INC. ("SEPAC") shall perform and provide to Customer such non-recurring engineering services ("NRE Services") as purchased by Customer and specified in a quote (the "Order," and together with these Terms and Conditions, the "Contract"). Therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. CONTRACT AND ACCEPTANCE.** Customer has read and understands these Terms and Conditions, and Customer acknowledges and agrees that any services purchased by Customer from SEPAC are subject to these Terms and Conditions in all respects.
- 2. NRE SERVICES.** SEPAC shall diligently and completely render the NRE Services. SEPAC will notify Customer promptly of any factor, occurrence, or event coming to its attention that may affect SEPAC's ability to meet the requirements of the Order or that is likely to occasion any material delay in delivery of any deliverables to be created and provided to Customer as part of the NRE Services and set forth in the Quote (the "Deliverables"). If at any time SEPAC determines a requirement to be infeasible, SEPAC will alert the Customer and adjust the pricing accordingly. If this condition is not acceptable to the Customer, SEPAC will invoice for time and materials spent to date and terminate the contract. SEPAC shall not be responsible for and SEPAC shall be excused from and shall have no liability resulting from any failure to meet the timetable and deadlines or for failure to perform its obligations set out in the Order caused by anything done or failed to be done by Customer, its service providers and or its agents, and all dates by which SEPAC is required to perform any obligation under the Order will be deemed to be changed to a subsequent date determined by the parties, each acting reasonably and taking into account the availability of the required SEPAC resources, and such change (including the additional cost, if any, payable by Customer as a result of such delay) shall be implemented pursuant to mutually agreed change order process.
- 3. STANDARDS.** SEPAC shall render the NRE Services in compliance with all applicable laws, in accordance with generally accepted engineering standards and practices, and pursuant to the specifications (if any) described by Customer in the Order.
- 4. BILLING AND PAYMENT.** SEPAC will submit an invoice(s) listing a description of the NRE Services provided. Payment terms are net 30 days from receipt of invoice unless otherwise stated on the face of the Order or other written agreement executed by both SEPAC and Customer. If Customer fails to make payments when due, SEPAC may charge Customer interest on the overdue amounts, from the date such amount became due at the lesser of the rate of one and one-half percent (1½%) per month or the maximum interest rate permitted by applicable law. SEPAC reserves the right to revoke any credit extended to Customer at any time for good and sufficient cause. If applicable, Tooling and Fixtures will be invoiced upon receipt of Customer purchase order.
 - a.** Unless an otherwise agreed upon payment plan has been presented, SEPAC will bill for NRE Services using the following invoice schedule:
 - i.** 25% of total NRE due upon receipt of Customer purchase order
 - ii.** 25% of total NRE due upon Customer acceptance of design approach
 - iii.** 50% of total NRE due upon release of completed design package
- 5. DEFAULT.** If either Customer or SEPAC is in material default of its obligations under the Contract, the non-breaching party shall have the right to deliver to the breaching party written notice specifying that a breach has occurred and providing in detail the particulars of the alleged breach. The party in breach shall have thirty (30) days to cure the alleged breach (ten days if the alleged breach relates to the payment of any amounts due hereunder) or such other period as may be agreed to in writing by the parties. If such breach is not cured within such period, then the non-breaching party shall be entitled to exercise all of its rights and remedies at law and in equity, including the right to terminate the Contract if such non-performance constitutes a material breach of the Contract.
- 6. HIRING OF EMPLOYEES.** Neither party shall solicit or recruit for employment (other than by general advertising), any person who was an employee of the other party during the provision of the NRE Services and for a period of one (1) year thereafter, without the other party's written consent. Any violation of this section shall be deemed a material breach hereof and the non-breaching party may immediately terminate the Contract.
- 7. INDEPENDENT CONTRACTOR.** SEPAC will manage its personnel and be free to exercise independent judgment as to the manner and method of performance of the NRE Services. SEPAC is an independent contractor and nothing herein will be deemed to make one party the agent of the other.

- 8. CONFIDENTIAL INFORMATION.** Each party agrees not to permit unauthorized access to and to take reasonable steps to protect the confidentiality of the other party's information, marked "confidential," "proprietary," or with a similar legend indicating its sensitive nature. Customer agrees to treat as confidential information all SEPAC techniques, processes, methods and know-how observed at Customer's facilities. Customer acknowledges that all processes, materials and data used or furnished by SEPAC pursuant to the Contract have been developed at great expense to SEPAC, contain trade secrets of SEPAC, are the sole property of SEPAC and shall be kept confidential by Customer. The obligations of the party receiving the confidential information ("Recipient") shall not apply to any portion of the confidential information: (a) which was rightfully known or becomes rightfully known to Recipient without confidential restrictions from a source other than the disclosing party; (b) which was or becomes publicly available or a matter of public knowledge generally, through no fault of Recipient; (c) which is approved by the disclosing party, in writing, for disclosure without restrictions; (d) which is independently developed by Recipient; (e) which is generalized know-how or skills; or (f) which Recipient is legally compelled to disclose; provided that Recipient has given the disclosing party reasonable notice and opportunity to contest such compulsive disclosure, and Recipient requests that the confidential information disclosed be treated as confidential.
- 9. INTELLECTUAL PROPERTY.** All rights, title and interests in and to the Deliverables and any and all intellectual property rights and other rights therein, including, without limitation, all trademark rights, patent rights, copyrights and trade secret rights in the Deliverables, shall be and remain the property of SEPAC. All intellectual property rights in the third party products/software used in providing Services including those forming part of or incorporated into the Deliverable, if any, referred to above shall remain with the respective third party owners and Customer shall have user rights in accordance with the End User License Agreement (EULA) or relevant third party agreement, as applicable to use of such products/software.
- 10. Warranty.** SEPAC warrants that it will render the NRE Services in a good and workmanlike manner. In the event of any material failure to meet such standard, Customer's exclusive remedy and SEPAC's sole responsibility shall be for SEPAC to re-perform the NRE Services or, if in SEPAC's discretion it is not commercially reasonable to re-perform the NRE Services, provide Customer with a refund of the fees paid by Customer in respect of such non-conforming NRE Services. SEPAC's obligations and liability under this warranty are conditioned upon the receipt of prompt notice of defects as to workmanship from Customer. Timely completion of NRE Services by SEPAC is subject to the timely satisfaction by Customer of any Customer obligation or requirement. TO THE FULLEST EXTENT ALLOWED BY LAW, THE WARRANTIES PROVIDED IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, SEPAC DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED WITH REGARD TO THE NRE SERVICES PROVIDED UNDER THE CONTRACT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THESE DISCLAIMERS OF WARRANTY CONSTITUTE AN ESSENTIAL PART OF THE CONTRACT.
- 11. INDEMNITY.** Each party agrees to indemnify, defend, and hold harmless the other party from and against any liabilities, costs, losses, damages and expenses (including reasonable attorneys' fees actually incurred) arising from any claim or action against or incurred by the other party for any claim for personal injury or real or tangible property damage, to the extent such damages are caused by the action or inaction of indemnifying party's personnel while SEPAC is performing NRE Services at Customer's facility. The respective parties' obligations and liability under this Section 11 are contingent upon: (a) the indemnified party providing the indemnifying party with prompt, written notice of a claim or threat of claim hereunder; (b) the indemnifying party having full control of the settlement and/or defense of the claim; (c) the indemnified party providing the indemnifying party the assistance necessary to settle and defend the claim, and (d) the indemnifying party not entering into any settlement or compromise which admits the fault of, or necessitates payment by, the indemnified party without the consent of the indemnified party.
- 12. LIMITATION OF LIABILITY.** SEPAC's liability for any and all claims, including claims of contract, negligence and strict liability, shall not exceed the amounts paid and payable by Customer to SEPAC for the NRE Services giving rise to the claim. SEPAC shall have no responsibility for defects in hardware, software or services supplied by persons other than SEPAC or for modifications to any hardware or software manufactured by persons other than SEPAC. IN NO EVENT SHALL SEPAC BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, AND LOSS OF PROFITS. THESE LIMITATION OF DAMAGES AND REMEDIES CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES AND MEASURE OF DAMAGES. THESE LIMITATIONS OF DAMAGES AND REMEDIES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.
- 13. FORCE MAJEURE.** Notwithstanding anything in the Contract to the contrary, SEPAC shall not be liable for any delay or failure to provide the NRE Services hereunder, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake or any act of God, delay by subcontractor or the failure of any third party subcontractor, or third party hardware, software, network system equipment, wiring, electrical systems or utilities, or other causes beyond SEPAC's reasonable control. If any third party subcontractor providing service or hardware with respect to the Contract ceases to provide such services or hardware, and SEPAC cannot find a suitable replacement

vendor, then SEPAC shall have the right to terminate the Contract by providing thirty (30) days prior written notice to Customer.

- 14. GOVERNING LAW.** The Contract is to be construed according to the laws of the State of New York, without regard to any conflicts of law principles, other than Section 5-1401 of the New York General Obligations Law (and any successor provision thereto).
- 15. SEVERABILITY.** If any provision of the Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Contract shall remain in full force and effect.
- 16. ENTIRE AGREEMENT; MODIFICATION.** The Contract, together with any attachments, exhibits, supplements, schedules, purchase orders, Statement of Requirements or other terms of Customer specifically referenced in these Terms and Conditions, constitutes the entire agreement between SEPAC and Customer with respect to the matters contained in the Contract and supersedes all prior oral or written agreements. No amendment to the Contract or these Terms and Conditions shall be binding on either party unless such amendment is in writing and signed by authorized representatives SEPAC. Any additional or differing terms, whether or not materially different, set forth in any communication from Customer are hereby expressly rejected.
- 17. MISCELLANEOUS.** (a) This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither party shall assign or otherwise transfer this Contract without the prior express written consent of the other party, such consent not to be unreasonably withheld; provided however, either party may assign this Contract without the other party's consent incidental to a merger, reorganization, change of control, or sale of all or substantially all of its assets or the assets of a division. (b) No term or provision of this Contract shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. (c) Section headings are for convenience only and do not form a part of this Contract. (d) All notices hereunder shall be in writing, sent by certified mail, or overnight delivery service addressed to the parties at their respective addresses set forth on the Order.