
NuWaves' Standard Terms and Conditions

1. **Agreement.** "Agreement" shall mean this Standard Services Agreement when executed by "Customer" and upon its acceptance by NuWaves Ltd. doing business as NuWaves Engineering ("NuWaves"). Acceptance of this Agreement by NuWaves, shall entitle the Customer to access Services subscribed by the Customer, subject to the terms and conditions herein. No modifications to the terms and conditions are accepted by NuWaves unless specifically agreed to in writing by an authorized representative of NuWaves.
2. **Services.** "Services" shall mean the engineering services or products to be provided to the Customer by NuWaves pursuant to the attached proposal or quote. In the event that the Customer desires Services which are not set forth in the attached proposal or quote, the Customer and NuWaves will agree on the scope of such additional services and the compensation for such additional services as a change order executed by the Customer and NuWaves. All additional services will be performed in accordance with the terms of this Agreement.
3. **Use of Purchase Order or Contract.** In case of any conflict with the terms of this Agreement and the Customer's purchase order or Contract, terms of this Agreement and the associated proposal or quote shall control and prevail.
4. **U.S. Payment Terms.** Net 30 days for customers with established line of credit. Customers without an established line of credit will agree to pay retainer fees prior to NuWaves commencing work. Invoices are processed upon shipment of product or services. NuWaves accepts business checks, Electronic Funds Transfer, and credit cards (Visa, Discover, American Express and MasterCard). All payments will be in U.S. Dollars drawn on a U.S. Financial institution and available for immediate withdrawal. Undisputed accounts not paid within 30 days shall be considered delinquent and subject to late payment charges of 1.5% per month on the unpaid balance (or the maximum rate allowed by law, if such rates are less than 1.5%). NuWaves reserves the right to suspend Services to a delinquent account without prior notice to the Customer. Should a customer be delinquent in the payment of invoices, Customer shall be liable for all costs of collection incurred by NuWaves, including without limitation collection agency fees and reasonable attorney's fees, as well as court costs.
5. **International Payment Terms.** All international work will require pre-payment of retainer fees for Engineering Services and pre-payment for products. NuWaves accepts Electronic Funds Transfer and letters of credit. A \$35 wire transfer fee will be charged for Electronic Funds Transfers. An irrevocable letter of credit will be required for all work over \$10,000. Credit card payments (Visa, Discover and MasterCard) are acceptable for purchases less than \$10,000. All payments will be in U.S. dollars.
6. **Firm Fixed Price ("FFP").** All FFP development projects that have schedules greater than 60 days or >\$50,000 in value, will include milestone payment schedules. If no milestone payments are provided, then the default payment will be 50% down and 50% after final delivery.
7. **Time and Material ("T&M").** All Time and Material purchase orders or contracts shall be at the latest published labor and material burdened rates. Invoices are prepared and sent every two weeks, unless the parties mutually agree to another invoicing period. On Time and Material projects greater than \$25,000, NuWaves will notify the Customer when 90% of funds have been exhausted to provide the Customer with the option of either increasing funding or NuWaves stopping work.
8. **Change in Services.** Changes as described in this paragraph, if performed or to be performed by NuWaves, will be deemed to be Services hereunder. In the event the Customer requests an

addition to or a change in the scope of the Services under this proposal, and such request, or delay results in increased costs to NuWaves in performing the Services, the Customer will pay to NuWaves additional compensation in accordance with a schedule accepted in writing by NuWaves, or, absent that acceptance, according to NuWaves' then current schedule of fees for salaried professionals, plus out of pocket costs (including third parties, hourly employees' salaries, benefits and insurance, allocated general and overhead expenses).

9. **Changes in Rates and Other Pricing.** NuWaves reserves the right to change any and all Service rates and other prices or the terms and conditions of this Agreement regarding the Services at any time given 30 days notice and all such changes shall be effective immediately for all future purchase orders/contracts when published by NuWaves.
10. **Status.** Services performed by NuWaves will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other warranty, expressed or implied, is made by NuWaves.
11. **Equipment and Supplies.** NuWaves will supply all necessary equipment, tools, supplies, and other items necessary to perform the Services, except as noted in the associated quote or proposal.
12. **Documents.** NuWaves will, at all times, be deemed the owner of any and all documents, records, tests, studies, drawings, and other information that are produced by NuWaves during the performance of the Services. Upon written request by the Customer, NuWaves will provide the Customer with copies of all such items at the Customer's expense. NuWaves may make and retain copies of any documents, records, or other information provided by the Customer, whether or not designated by the Customer to be confidential or proprietary information, which NuWaves deems necessary for maintaining adequate records regarding the services performed.
13. **Exclusive Use.** All Services, including, but not limited to, reports, products, and professional advice provided by NuWaves to the Customer will be for the sole and exclusive use of the Customer and may not be relied upon by any other person, without the prior written consent of NuWaves, which consent NuWaves will have no obligation to grant. NuWaves will not delegate or assign its duties hereunder without the prior written consent of the Customer, except to a person or entity which is under the control of or which shares common ownership or control with NuWaves; however, NuWaves may retain independent consultants and contractors which NuWaves deems beneficial or necessary, without the prior written consent of the Customer.
14. **Force Majeure.** NuWaves shall not be liable or responsible for any delay in or failure of delivery of the Services by reason of force majeure, including, but not limited to, NuWaves' inability to obtain raw materials (components) from suppliers, or obtain same on a timely basis, or as a result of interruption from transportation, delays in delivery, governmental regulation, labor disputes, war, strikes, fire, flood, accidents, acts of God, civil disturbance, quota restrictions, or any other cause beyond NuWaves' control, whether or not such cause be of the same class as those enumerated above, such enumeration being expressly understood to be in addition to other causes or classes of causes beyond NuWaves' control.
15. **Limitation of Liability.** NuWaves' aggregate liability, in any Customer claim, shall not, under any circumstance, exceed the payment, if any, received by NuWaves for the Services furnished or to be furnished, as the case may be, which is subject of the claim or dispute. In no event shall NuWaves be responsible for incidental or consequential damages, however caused.
16. **Shipment and Transportation.** All orders will be shipped FOB point of shipment with the freight paid by the Customer. The Customer may request a certain shipment manner; however,

NuWaves will have the exclusive right to determine the final shipping manner if NuWaves determines that the Customer's instructions are not suitable.

17. Termination or Cancellation.

- (a) Engineering Services - Either party may terminate the Services contract and all obligations under the Agreement for the reason of the failure by the other party to comply with its obligations set forth in this Agreement, upon 30 days prior written notice to the other party. In the event of such termination, Customer shall pay to NuWaves all amounts that are due and payable for Services performed through the date of such termination.
- (b) Standard Products – All orders for Standard Products are Non-Cancellable, Non-Returnable (NCNR).

18. Taxes. NuWaves agrees to pay and be responsible for all federal, state, and local income taxes and payroll taxes, as well as contributions for unemployment insurance, pensions, or annuities which are now or may hereafter be required to be deducted from the wages of all NuWaves employees.

19. Choice of Law/Remedies. This Agreement shall be construed and interpreted solely in accordance with the laws of the State of Ohio, United States of America, without application of its conflict of laws provisions. NuWaves remedies set forth herein are not exclusive and are in addition to any and all other remedies available at law or in equity, none of which shall be deemed as waived by virtue of NuWaves' exercise of any other remedy.

20. Severability. Should any term and condition be declared illegal or otherwise unenforceable, it shall be severed from the remainder of this Agreement without affecting the legality of enforceability of the remaining portions.

21. No Waiver. The waiver by either party of any breach or violation of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation thereof.

22. Indemnity. Customer agrees to indemnify and hold harmless NuWaves, its officers, owners, directors, trustees, employees and its suppliers (collectively "Indemnitees") from and against all liability, damage, loss, claims, demands, judgments, and actions of any nature whatsoever which arise out of or are connected with NuWaves' performance of the purchase order or contract. The foregoing indemnification shall not apply to claims arising, directly or indirectly, out of the negligent acts of the Indemnitees.

23. Arbitration. Any dispute under this Agreement shall be submitted to final and binding arbitration, subject to the National Rules for the Resolution of Employment Disputes of the American Arbitration Association, effective June 1, 1997, except as hereinafter provided:

- (a) Each party shall bear the cost of its own attorney's fees; and
- (b) The arbitration hearing shall be held in Butler County, Ohio, unless the parties mutually agree to another location.

It is the intention of the parties to avoid litigation in any court of all claims concerning this Agreement, and that all such claims will be subject to this arbitration agreement. Neither party shall commence or pursue any litigation on any claim that is or was the subject of arbitration under this Agreement. Each party agrees that this agreement to arbitrate and the arbitration award are enforceable. Both parties consent that judgment upon the arbitration award may be entered in any federal or state court that has jurisdiction.