

# WENDELL HULL & ASSOCIATES, INC.

## STANDARD TERMS AND CONDITIONS

**DEFINITIONS:** In these Terms and Conditions ("Terms and Conditions"), Wendell Hull & Associates, Inc. will be referred to as "WHA." The materials, articles, goods or services to be furnished will be referred to as the "Services." The person or firm purchasing the Services will be referred to as "Client." WHA and Client may be referred to individually as "Party" or collectively as "Parties," and the rate schedule, invoice or any other WHA document to which these Terms and Conditions are attached, together with these Terms and Conditions, will be referred to as the "Agreement."

**ACCEPTANCE:** Client's acceptance to WHA's offer to provide Services is limited to the Terms and Conditions contained herein and by entering this Agreement, Client accepts and assents to all such Terms and Conditions. Upon such acceptance, WHA will provide the Services to Client in accordance with the Terms and subject to the Conditions set forth herein. **To the extent that WHA Terms and Conditions conflict with agreements, contracts, purchase orders, forms, and other documents utilized or to be utilized by Client, WHA Terms and Conditions control.** Client represents by acceptance of this Agreement that Client maintains current general business and errors and omissions insurance coverage and agrees to provide proof of said insurance to WHA if requested.

**PRICES:** Services performed by WHA are based on one of two conditions, Time and Materials or Fixed Price. In some situations, a combination of these conditions is used.

- a. **TIME AND MATERIALS:** Services performed on a Time and Materials basis are charged according to the amount of time and materials that are actually consumed. A Time and Materials basis is typically used on projects involving development and experimental services. Due to the nature of a Time and Materials basis, there is no guarantee that the Services costs will not exceed the estimated costs.
- b. **FIXED PRICE:** Services are performed according to defined objectives and costs. Fixed price services place the burden of uncertainty with WHA. An exception to the fixed price costs is when the scope of the services is either increased or decreased by mutual assent relative to the original Agreement.

### **FEES AND PAYMENT TERMS:**

- a. **FEES:** Client agrees to pay WHA for Services in accordance with the Rate Schedule set forth herewith.
- b. **OUT-OF-POCKET EXPENSES:** Client shall reimburse WHA for all reasonable out-of-pocket expenses incurred in performance of the Services.
- c. **INVOICES:** For short duration Services (Services lasting 30 days or less) WHA shall submit a final and total billing at the conclusion of the Services. For Services extending beyond 30 days, WHA shall invoice Client on a monthly basis for Services rendered during the preceding monthly period, or according to work phases established between Parties.
- d. **PAYMENT:** Payment is due and payable upon receipt of all billing invoices. A service charge or late fee in the amount of twelve percent (12%) per annum (or the legally allowable limit) will be charged on any sum due to WHA that is not paid by Client within 30 days.
- e. **DISPUTED FEES:** Should Client dispute the accuracy of any portion of any invoice, Client shall promptly notify WHA, specifying the amount in dispute and the reasons therefore. The Parties shall attempt to resolve the dispute promptly. To maintain uninterrupted services by WHA, Client shall make timely payment of all amounts not in dispute.

**STANDARD OF CARE:** WHA provides Services with a high professional standard of consulting expertise, utilizing reasonable care and skill in accordance and consistent with customary industry standards. This standard of care is the sole and exclusive standard of care that will be applied to measure WHA's performance of WHA's services. WHA's information, advice, recommendations, findings, and conclusions will be made to the best of WHA's knowledge, opinion, and belief, based upon data and information made available to WHA at the time of review, and upon a variety of factors appropriate to the situation. A change in any of the factors upon which the review is based may adversely affect the information, advice, recommendations, findings, and conclusions expressed by WHA. WHA disclaims any and all warranties, express or implied. Upon delivery to Client, application of the Services and implementation of the recommendations provided by WHA are the sole responsibility of Client. WHA agrees to maintain the privacy of Client's proprietary information, materials, and disclosures to WHA under this Agreement. Due to the nature of Services provided by WHA, Client acknowledges that multiple clients in the same or different industries and with similar products and applications may be served.

**LIMITATION OF LIABILITY:** Notwithstanding any other provision of this Agreement to the contrary, neither Party shall be liable to the other for incidental or consequential damages, including, without limitation, loss of profit or business or business interruption, including loss or delay of production, loss of business opportunities, damages for failure to meet deadlines, and loss of use of any vessel or equipment, howsoever same may be caused. To the fullest extent permitted by law, both Parties agree to indemnify, defend, and hold harmless each other and their clients and each of their agents, employees, and officers from any and all claims, demands, judgments, actions, liabilities, and costs and expenses of any kind for all injuries, disease, or death to any person (including employees, notwithstanding Workers' Compensation laws) or damage to real or personal property (including Government and/or Client furnished property) arising out of or in connection with the performance of work under this Agreement or any actual or alleged error, omission, negligent act, statutory violation, or breach of obligation of the other Party, its employees or agents. Notwithstanding the foregoing, the Parties understand and agree that this indemnification language is not intended as an unconditional promise by WHA of the suitability for use of the product or process being evaluated by WHA under this Agreement. WHA's opinion provided pursuant to this Agreement is based on WHA's experience and expertise. The indemnification provided herein is limited to loss directly related to the failure of the WHA hereunder to perform WHA's work in a manner consistent with industry standards.

**WHA OXYGEN HAZARDS ANALYSIS SERVICES DISCLAIMER:** WHA performs hazard analyses and risk assessments on oxygen systems as detailed herein. **Clients must understand that because of their use of oxygen, inherent fire hazards exist. WHA performs analyses to assess the reasonably foreseeable fire risks, based on its understanding of the design/operation, but does not attempt a general design analysis or assessment for the purpose of determining the propriety of the design for any purpose or use.** WHA employees and consultants undertake to reasonably and prudently identify all oxygen-related fire hazards associated with the relevant portions of the design and assess the risk of fire for the identified hazards. **However, due to the inherent uncertainties associated with the ignition of oxygen fires, WHA does not guarantee that all potential fire hazards will be identified, nor does WHA warrant that the design will be free from the risk of fire, in its foreseeable uses.**

**GOVERNING LAW:** This Agreement is governed by, takes effect and will be construed in accordance with the laws of the State of New Mexico in the United States of America, and the Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New Mexico and courts entitled to hear appeals in the State of New Mexico.