

TERMS OF SERVICE

CANADIAN MEASUREMENT-METROLOGY INC.

These Terms of Service (" Agreement") comprise a legal agreement between you, the Customer, appearing on an Order (as defined below), and Canadian Measurement Metrology, Inc. ("CMMXYZ"), having a principal place of business at 2433 Meadowvale Blvd, Mississauga, Ontario. If Customer does not agree to the terms of this Agreement, do not submit a service order or acknowledgement.

1. **Formation of Contract.** This Agreement is effective ("**Effective Date**") as of the date of receipt of a service order, purchase order, Statement of Work or other indication of acceptance ("**Order**") of a proposal or quotation from CMMXYZ. The contract between Customer and CMMXYZ consists of, in order of preference, any terms expressly agreed to in writing between the parties, CMMXYZ's proposal or quotation, this Agreement (including any special terms appended to it), and the Order. The Order may set out quantities, terms and termination, and other terms to the extent those other terms do not conflict with this Agreement. The parties expressly agree that any additional terms related to warranty, indemnity, limitation of liability, intellectual property ownership, or contractual remedy will not apply, and this Agreement will govern to the exclusion of such additional terms in the absence of an express written agreement to the contrary.
2. **Services of CMMXYZ.** CMMXYZ will perform metrology services or make available the short-term-leased product set out in CMMXYZ's quote or statement of work, as applicable, and as updated or changed in accordance with Section 4 (the "**Services**"). By submitting an Order, the Customer agrees to this Agreement. Special terms related to hardware maintenance, software maintenance, and time-and-material services, set out at the end of this Agreement, are incorporated into and form a part of this Agreement. The Services will be performed during the period and at the premises as agreed between the Parties (the "**Premises**"). Absent agreement to the contrary, Customer will not be obligated to use a minimum level of the Services and may terminate this Agreement as set out in Section 5 or change the amount or level of Services it uses hereunder, at any time, in accordance with Section 4.
3. **Fees.** Customer agrees to pay the fee for the Services according to the contract documents described in Section 1. Fees are exclusive of shipping, duties, or taxes, which Customer agrees to pay in the absence of a valid exemption. Any exemption must be provided to CMMXYZ before commencement of the Services. Unless otherwise stated in an addendum or quotation from CMMXYZ, Customer will pay invoices monthly. Customer will pay interest on any overdue balance at 1.5% per month or the highest rate of interest permissible under applicable law, whichever is less. Customer will pay costs of collection, including reasonable attorneys' fees and costs, in connection with Customer's failure to pay invoices when due.
4. **Change Order.** If Customer wishes to change the scope, scheduling or performance of Services, it will promptly (but, in any event at least two weeks before such changes are to take effect) submit details of the requested change to CMMXYZ in writing. CMMXYZ will, within a reasonable time after such request, provide a written estimate to Customer of:
 - (a) the likely time required to implement the change;
 - (b) any necessary variations to the fees and other charges for the Services arising from the change;
 - (c) the likely effect of the change on the Services; and
 - (d) any other impact the change might have on the performance of this Agreement.Promptly after receipt of the written estimate, the parties will negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither party will be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 19.
5. **Term.** This Agreement will commence as of the Effective Date and will continue thereafter until the completion of the Services, unless sooner terminated pursuant to this Section 5.

Termination without Cause of time-and-materials Agreement. If, and only if, the Services are to be paid on a timely and-materials basis, rather than a fixed-fee basis, Customer may, in its sole discretion, terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to CMMXYZ.

Termination for Cause. Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party:

(a) materially breaches this Agreement; or

(b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within five business days or is not dismissed or vacated within 45 days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (h) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

Upon expiration or termination of this Agreement for any reason:

(a) CMMXYZ will (i) promptly deliver to Customer any part programs (whether complete or incomplete) for which Customer has paid, all Customer equipment and, upon request, all Customer Materials, and (ii) promptly remove any CMMXYZ equipment located at Customer's premises. "**Customer Materials**" means any documents, data know-how, methodologies, software and other materials provided to CMMXYZ by Customer and required to perform the Services (excluding materials to be provided by CMMXYZ as set out in CMMXYZ's quotation);

(b) Customer will pay CMMXYZ's fees pursuant to Section 3 arising out of performance by CMMXYZ up to and including the date of termination; and

(c) Each party will return to the other party or destroy Confidential Information pursuant to Section 13.

The rights and obligations of the parties set forth in this Section 5 as well as Sections 1, 3, 7, 9 through 15 and 17 through 19, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

6. **Right to Suspend Performance.** If Customer (i) delays paying or fails to pay any invoice when due or (ii) otherwise materially breaches this Agreement, CMMXYZ may suspend performance of the Services until Customer cures such breach. In addition to the foregoing, CMMXYZ may suspend performance if it has reasonable grounds for insecurity concerning Customer's performance.

7. **Conversion Fee and Covenant not to Solicit or Hire.** Customer agrees to pay a conversion fee if Customer or its affiliates hires an CMMXYZ professional who performed Services for Customer in the year previous to such hire. (Hereinafter in this Section 7, "**CMMXYZ professional**" refers to persons employed directly by CMMXYZ as well as independent contractors or agents, whether employed full-time or on a temporary or part-time basis.)

The conversion fee is fifty per cent (50%) of the annual base salary or annualized hourly wage. The conversion fee is based on the full-time equivalent salary. The conversion fee will be owed upon Customer's hiring of an CMMXYZ professional.

8. **Customer Responsibilities.** Except as otherwise agreed in writing, Customer agrees to provide or obtain for CMMXYZ such access to Customer's **Premises**, and such office accommodation and other facilities as may reasonably be requested by CMMXYZ, for the purposes of performing the Services, including use of adequate quality testing space including testing equipment, adequate furnished office space, storage space, and lockers on the Premises (such use to include water, sewer, electricity, heat, and business-related telephone service, without cost to CMMXYZ);

(a) any right or license to use and access to equipment, software, drawings, models, information or tools for performing the Services, including metrology software, existing part programs, prints and/or CAD models and Customer Materials ("**Prerequisites**");

(b) without limiting the foregoing all necessary licenses and consents to comply with all applicable law in relation to the Services to the extent that such licenses, consents and law relate to Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start; and

(c) without limiting the foregoing, complete information related to restrictions on technical data, including export restrictions, that may impact CMMXYZ's selection of personnel to perform the Services.

9. **Customer's Representations and Warranties.** Customer represents and warrants that it has the right to grant CMMXYZ the right to use and access Prerequisites.

Customer warrants that any Customer equipment or tool is in good repair and has been maintained according to its respective manufacturer's instructions. Customer will, at its expense, maintain any equipment provided for particular Services (excluding equipment that CMMXYZ will maintain or repair as part of the Services), and will replace it if CMMXYZ deems necessary, in its sole but reasonable discretion.

10. **CMMXYZ's Warranties.** CMMXYZ represents, warrants, and covenants that in connection with the Services (other than in connection with providing leased products): (i) it is in the business of performing the Services; and (ii) it is experienced in performing such Services, and it possesses the professional and technical skills required to perform the Services. CMMXYZ represents and warrants that replacement or repaired parts will be free from defects in material or workmanship for ninety (90) days after completion of the Services ("**Warranty Period**"). CMMXYZ will repair or replace such parts during the Warranty Period. Within thirty (30) days of completion of the Services, CMMXYZ will correct or re-perform Services that are defective by virtue of breach of this warranty. If CMMXYZ fails to commence good-faith efforts to correct or re-perform Services or replace or repair defective replacement or repaired parts as provided in this Section, within a reasonable time, CMMXYZ will refund the cost of the defective Services actually paid by Customer to CMMXYZ.

For clarity, and without affecting the scope of the foregoing warranty, the following conditions are excluded from the foregoing warranty:

- (a) Damage caused by failure to continuously provide a suitable installation environment as prescribed by the manufacturer's installation manual or recommendations including, but not limited to, the failure to provide, or the failure of, adequate electrical power, air conditioning or humidity control, or vibration isolation;
- (b) Damage caused by uses other than those purposes for which it was designed;
- (c) Damage caused by accident or disaster, which shall include but is not limited to, fire, flood, water transportation, wind and lightning, neglect or misuse, or alterations which shall include any deviation from manufacturer's design; and
- (d) Damage caused by performance of maintenance or repair work not done by CMMXYZ.

CMMXYZ MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING ANY WARRANTY AS TO MERCHANT ABILITY OR FITNESS FOR PARTICULAR OR SPECIAL PURPOSES.

THE REMEDIES SET OUT IN THIS SECTION 10 ARE THE EXCLUSIVE REMEDY OF CUSTOMER FOR BREACH OF WARRANTY.

11. Limited Liability and Limitation of Action

IN NO EVENT WILL CMMXYZ BE LIABLE FOR ANY LOSS OF USE OR DOWNTIME OR LOST PRODUCTION, REVENUE OR PROFIT, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES WITH RESPECT TO THE PERFORMANCE OF SERVICES, WHETHER SUCH LIABILITY IS BASED UPON CONTRACT {INCLUDING BREACH OF A REPRESENTATION OR WARRANTY), TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHER LEGAL THEORY WHATSOEVER, EVEN IF CMMXYZ HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY WARRANTY OR REMEDY IS HELD TO HAVE FAILED IN ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL IN NO CIRCUMSTANCES EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO CMMXYZ FOR THE SERVICES OUT OF WHICH THE LIABILITY IS CLAIMED TO ARISE.

The foregoing paragraph will not apply to:

- (a) death or bodily injury or damage to real or tangible personal property resulting from a party's negligent acts or omissions;
- (b) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under Section 13 (Confidential Information); and
- (c) damages or other liabilities arising out of or relating to a party's gross negligence, willful misconduct or intentional acts.

In the event any provision of this Section is unenforceable for violating the public policy or laws of a jurisdiction in which suit may be maintained related to the Services, Customer agrees that CMMXYZ's liability under or relating to this Agreement for any injury or damage arising out of this Agreement for the performance or non-

performance of Services, including damages for breach of warranty, negligence, strict liability in tort or otherwise, regardless of the form of action, will be limited to Customer's direct damages, and in no event will CMMXYZ be liable to Customer for any incidental, indirect, special or consequential damages.

12. **Repair or Damage.** Except for any loss or damage caused by CMMXYZ's negligent acts or omissions, Customer will be liable for any loss or damage to any materials, equipment, or other property (i) contained in or constituting a part of any Premises (ii) used for or in relation to performance of Services, or (iii) owned, leased or hired by either party in connection with this Agreement.
13. **Confidential Information.** Either party may disclose to the other business and technical information that it considers to be confidential ("**Confidential Information**"). Confidential Information includes all business or technical information disclosed by a disclosing party to a receiving party, directly or indirectly, in writing, orally or visually, except information that: (a) was already in the receiving party's possession prior to its receipt from the disclosing party, without restriction on its use or disclosure; (b) is or becomes available to the general public through no act or fault of the receiving party; (c) is rightfully disclosed to the receiving party by a third party without restriction on its use or disclosure; or (d) is independently developed by the receiving party. Confidential Information will be: (a) used solely to conduct business with and for the benefit of the disclosing party; and (b) disclosed to a third party only to the extent necessary to conduct business with or for the benefit of the disclosing party. The receiving party will take all necessary steps to protect any Confidential information with at least the same degree of care that it uses to protect its own confidential and proprietary information of like kind, but in no event less than reasonable care. Notwithstanding what is set forth above in this Section, Confidential information may be disclosed (a) if required by law, rule, regulation or court order, or (b) if reasonably required in order to enforce rights under this Agreement. The receiving party will, at the request of the disclosing party or upon termination or expiration of this Agreement, whichever is sooner, return or destroy any documents (whether electronic or physical) containing any Confidential information (other than backup copies which will remain subject to the confidentiality obligations of this Agreement).
14. **Intellectual Property.** CMMXYZ hereby assigns all its right, title and interest in and to (i) part programs and data developed or created by or for CMMXYZ in performance of the Services and (ii) derivatives of intellectual property owned by Customer and developed or created by or for CMMXYZ in performance of the Services. CMMXYZ retains all other right, title to, and interest in any intellectual property related to the Services.
15. **Additional Terms Applicable to Leased Products.** In addition to other applicable terms in this Agreement, the following terms apply to leasing any equipment, products, parts or accessories.

Customer will not affix or attach any leased product to real property or any improvements. The parties intend that each leased product remains at all times personal property and not a fixture under applicable law, even if the leased product, or any part thereof, may be or becomes affixed or attached to real property or any improvements.

Customer, at its own expense, will provide and maintain, for each leased product, insurance against loss, theft and damage ("**Property Insurance**") in: (a) an insured amount at least as high as the greater of any stipulated value or full replacement value of such product; and (b) a form, and with insurance companies, reasonably satisfactory to CMMXYZ. Customer will name CMMXYZ (or will cause CMMXYZ to be named) as loss payee on the Property Insurance.

In addition, Customer will bear all risk of loss, damage, destruction, theft and condemnation to or of such leased products from any cause whatsoever.

ALL LEASED PRODUCTS ARE DELIVERED AS-IS WITH NO WARRANTY. CMMXYZ DISCLAIMS ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTY AS TO FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MERCHANTABILITY.

If any breach of this Agreement ("**Event of Default**") occurs, CMMXYZ may, in its sole discretion, exercise one or more of the following remedies: (a) take possession of, or render unusable, any leased product wherever it may be located, without demand or notice without any court order or other process of law and without liability to Customer for any damages occasioned by such action; (b) require Customer to deliver any leased product at a location designated by CMMXYZ; (c) proceed by court action to enforce performance by Customer of this Agreement and/or to recover all damages and expenses incurred by CMMXYZ by reason of any Event of Default; and (d) exercise any other right or remedy available to CMMXYZ at law or in equity, or elsewhere in this Agreement. For each day that Customer fails to return any leased product when due, CMMXYZ may demand an amount equal to the fees prorated on the basis of a thirty-day month, in effect immediately prior to such Event of Default, plus administrative fees, legal fees and costs, and any incidental costs and interest.

Customer will, at its expense, no later than the expiration of the term of the Agreement or Order: (a) de-install, inspect and properly pack each leased product; and (b) return each leased product, freight prepaid, to CMMXYZ's premises as specified in the quotation or otherwise as CMMXYZ may direct.

The term of the lease will not exceed six (6) months absent a signed written agreement to the contrary.

Customer will cause any leased product returned under this Agreement to be in the same condition as when delivered to Customer, ordinary wear and tear excepted. Customer will not hypothecate, grant a security interest in or otherwise encumber the leased products.

Customer will permit CMMXYZ (through any of its officers, employees, or agents) on reasonable notice to inspect the leased products during regular business hours. Except in the presence of an uncured Event of Default, Customer has no obligation to permit CMMXYZ to conduct more than one inspection every month for each leased product.

16. **Rules and Regulations.** CMMXYZ, CMMXYZ's agents, and its and their employees will comply with all applicable Customer health and safety requirements and procedures while performing the Services on Customer's Premises. CMMXYZ will comply with all Customer rules, policies and regulations Customer applies to its own employees and suppliers on the Premises that are not inconsistent with this Agreement. All regulations and rules of Customer which may be in effect regarding passes, badges, smoking, fire prevention, business ethical conduct and conduct on the respective Premises will be observed by CMMXYZ and its agents; provided, however, such regulations and rules have been provided to CMMXYZ. CMMXYZ will at all times enforce discipline and good order among CMMXYZ employees and agents and will not employ for performance of the Services any unfit person or anyone not skilled in the work assigned. CMMXYZ will not take photographs of the Premises or on the Premises without prior written authorization of Customer.
17. **Severability.** Invalidation of any of the provisions contained herein, or the application of such invalidation thereof to any person, by legislation, judgment or court orders, will in no way affect any of the other provisions hereof or the application thereof to any other person, and the same will remain in full force and effect, unless enforcement as so modified would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.
18. **Force Majeure.** No party will be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to CMMXYZ), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire or explosion; (c) war, invasion, riot or other civil unrest; (d) actions, embargoes or blockades in effect on or after the date of this Agreement; (e) national or regional emergency; (f) strikes labor stoppages or slowdowns or other industrial disturbances; (g) compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; or (h) any other event which is beyond the reasonable control of such party (each of the foregoing, a "**Force Majeure Event**"). A party whose performance is affected by a Force Majeure Event will give notice to the other party, stating the period of time the occurrence is expected to continue and will use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.
19. **Other Conditions.** This Agreement constitutes the entire understanding and agreement between the Parties relating to the Services and supersedes and replaces any and all prior agreements, whether written or oral, that may exist between them with respect thereto. This Agreement may be amended only by an instrument in writing signed by both Parties.

Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed; provided, that, upon prior written notice to the other party, either party may assign the Agreement to an Affiliate of such party or to a successor of all or substantially all of the assets of such party through merger, reorganization, consolidation or acquisition. No assignment will relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing will be null and void.

without regard to the conflict of laws provisions thereof. The Parties hereby waive all rights to trial by jury.

This Agreement does not govern the sales involving primarily the sale of goods or licensing of software between the Parties.