

STANDARD TERMS AND CONDITIONS

1. **TERMS OF AGREEMENT.** These terms and conditions are the terms and conditions under which HECO PREDICTIVE SERVICES GROUP, LLC ("HECO PSG") will provide services ("services") or the equipment, parts or other goods ("goods") to Buyer, and all terms and conditions contained herein shall be deemed part of the contract entered into for the services and goods. Any acceptance of HECO PSG's offer to provide services or goods must be strictly in accordance with the terms and conditions contained herein, and such acceptance may not contain, or seek to impose, any additional or contrary terms. Any such additional or contrary terms shall automatically be deemed rejected by HECO PSG. To the extent that any response to Buyer by HECO PSG is construed to be an acceptance of an offer from Buyer, HECO PSG's acceptance is expressly conditioned upon Buyer's assent to the terms and conditions stated herein.
2. **COMPLETE AGREEMENT. NO MODIFICATION.** These standard Terms and Conditions, together with any additional writings signed by HECO PSG shall represent the final, complete and exclusive statement of the agreement between the parties. All prior understandings, representations and warranties, written or oral, express or implied, are merged into said writings. This agreement may not be modified, supplemented, explained or waived by parol evidence, by Buyer's purchase order, by any course of dealing, by HECO PSG's performance or delivery, or by any other means except in writing, signed by an authorized representative of HECO PSG. Advertising, listings, catalogs, circulars and pamphlets of HECO PSG are issued for general information purposes only and shall not be deemed to modify the provisions hereof.
3. **PRICES.** Prices and charges are subject to adjustment for any increase or decrease in exchange rates. Any direct tax, including sales or use tax, imposed by law with respect to the services or goods will be paid by Buyer.
4. **PAYMENT TERMS.** Unless otherwise specified, all invoices are due and payable in full on the 30th day following date of invoice, no cash discount being allowed. Regardless of any credit or payment terms extended to Buyer by HECO PSG, HECO PSG may require tender of payment contemporaneous with, and/or as a condition precedent to, delivery of services or goods if HECO PSG learns of circumstances that cause HECO PSG to question Buyer's ability to satisfy its obligations under the agreement. All past due amounts arising hereunder or otherwise owing to HECO PSG shall bear interest at 18% per annum. Any claims for errors or omissions, shortages or defects or deductions for erroneous charges must be made within 30 days after HECO PSG's performance of services or Buyer's receipt of goods or the same shall be deemed waived.
5. **DELIVERY.** HECO PSG shall not be responsible for any delay or failure to make delivery which is occasioned by causes beyond its control, including but not restricted to: fires; floods; strikes; labor disputes; accidents; embargoes; delays in transportation; vehicle, fuel, material, or labor shortages; failure to obtain delivery from manufacturers or subcontractors; or any ruling, regulation, or law of any governmental bureau or agency. Delays so caused shall not release Buyer from its obligation to accept and pay for services or goods. Except in the event of FOB destination shipments, HECO PSG will not participate in any settlement of claims for concealed or other shipment damage. When shipment has been made on an FOB destination basis, Buyer must unpack immediately and, if damage is discovered, must: (i) not remove the goods from the point of examination; (ii) retain all shipping container and packing material; (iii) promptly notify the carrier in writing of any apparent damage; (iv) promptly notify HECO PSG in writing of any apparent damage; and, (v) send HECO PSG a copy of the carrier's inspection report.
6. **WARRANTIES.**
 - A. **No guarantee of results.** If Buyer requests that HECO PSG run any tests or analyses, provide reports, or provide other services, Buyer understands that HECO PSG does not guarantee any particular result. HECO PSG's sole obligation will be to provide the services pursuant to HECO PSG's standard methodology.
 - B. **No incorporation of specifications.** Any reference by HECO PSG to Buyer's specifications and similar requirements are only to describe the goods and services covered hereby, and no warranties or other terms therein shall have any force or effect.
 - C. **Disclaimer.** BUYER UNDERSTANDS AND AGREES THAT HECO PSG IS NOT PROVIDING ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ITS SERVICES OR GOODS. IN PARTICULAR, THERE IS NO EXPRESS OR IMPLIED WARRANTY BY HECO PSG AS TO THE FITNESS OF SERVICES OR GOODS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, CAPACITY, OR EFFICIENCY OF ANY SERVICES PROVIDED OR GOODS SOLD. THERE ARE NO ORAL OR IMPLIED WARRANTIES MADE IN CONNECTION WITH ANY SERVICES OR ANY SALE OF GOODS.
 - D. **General Warranty Provisions.** No equipment, parts, or other goods shall be returned without the express prior written approval of HECO PSG. Buyer's remedies for non-conforming goods are expressly limited to repair or replacement, at HECO PSG's sole option. HECO PSG, its contractors and suppliers of any tier, shall not, under any circumstances, be liable in contract, in tort (including negligence or strict liability) or otherwise for interruption of business, downtime costs, loss of profits or revenue, loss of use of equipment, cost of capital, additional expenses incurred in using existing facilities, claims of customers of Buyer, or for any special, indirect, incidental or consequential damages whatsoever. The remedies of Buyer set forth herein are exclusive and the total cumulative liability of HECO PSG with respect to this contract, or anything done in connection therewith such as the performance or breach thereof, or from the manufacture, sale, delivery, resale or use of any goods or services covered by or furnished under the contract, whether in contract, in tort (including negligence or strict liability) or otherwise shall not exceed the price of the goods or services on which such liability is based.
7. **HECO PSG'S REMEDIES.** HECO PSG shall have all remedies available at law or in equity for any breach of this agreement by Buyer, or for damages sustained by HECO PSG due to Buyer's negligence or intentional acts. HECO PSG's remedies shall be cumulative. If HECO PSG retains an attorney to enforce any of the terms or conditions stated herein, HECO PSG shall be entitled to be reimbursed by Buyer for all costs associated with pursuing any claims, dispute, action, or litigation, including but not limited to attorney's and expert's fees both at trial and on appeal. HECO PSG's obligation to provide services or goods to the Buyer may be conditioned upon Buyer's payment of all interest and attorney fees payable hereunder.
8. **ASSIGNMENT.** Buyer may not assign any rights under the contract contemplated herein without the express written consent of HECO PSG.
9. **JURISDICTION AND APPLICABLE LAW.** The agreement between HECO PSG and Buyer shall be construed and interpreted in accordance with the laws of the State of Michigan. Any court action between the parties to enforce the provisions of the agreement, or to resolve any dispute related to the agreement, shall be initiated solely and exclusively in the state or federal courts serving Kalamazoo County, MI, and Buyer consents to personal jurisdiction in such courts and waives any right to object based on venue or inconvenient forum.