

CONDITIONS OF PRODUCT ENGINEERING EVALUATION

ATS (Asian Technical Sourcing Ltd), herein as the ("Company"), will conduct at the request of the Submitter ("Client"), the required Engineering Evaluation specified on the reverse side of this Engineering Evaluation Request Form in accordance with, and subject to, the following terms and conditions:

1. All orders for Engineering Evaluations are subject to acceptance by the Company, and no order will constitute a binding commitment of the Company unless and until such order is accepted by it, as evidenced by the issuance of a written report ("Engineering Evaluation Report") by the Company. The Engineering Evaluation Report is issued solely by the Company, is intended for the exclusive use of Client and shall not be published, used for advertising purposes, copied or replicated for distribution to any other person or entity or otherwise publicly disclosed without the prior written consent of the Company. The Company shall not be liable for any loss or damage whatsoever resulting from the failure of the Company to provide its services within any time period for completion estimated by the Company. If Client anticipates using the Engineering Evaluation Report in any legal proceeding, arbitration, dispute resolution forum or other proceeding, it shall so notify the Company prior to submitting the sample for Engineering Evaluation.
2. The names, service marks, trademarks and copyrights of the Company are and shall remain the sole property of the Company or its affiliates and shall not be used by Client except solely to the extent that Client obtains the prior written approval of the Company and then only in the manner prescribed by the Company. Client shall not contest the validity of the Engineering Evaluation Reports or take any action that might impair the value or goodwill associated with the Engineering Evaluation Reports or the image or reputation of the Company.
3. The Engineering Evaluation Report will set forth the findings of the Company solely with respect to the Engineering Evaluation samples identified therein and, unless specifically and expressly indicated in the Engineering Evaluation Report, the results set forth in such Engineering Evaluation Report will not be indicative or representative of the quality or characteristics of the lot from which a Engineering Evaluation sample will be taken. The Engineering Evaluation Report will reflect the findings of the Company at the time of Engineering Evaluation only, and the Company shall have no obligation to update the Engineering Evaluation Report after its issuance. The Engineering Evaluation Report will set forth the results of the Engineering Evaluations performed by the Company based upon the written information provided to the Company as set forth in, or attached to, this Engineering Evaluation Request Form. The Engineering Evaluation Report will represent the entire understanding of the parties hereto with respect to the subject matter of the Engineering Evaluation Report and no modification; variance, extrapolation or conclusion with respect thereto shall be permitted without the prior written consent of the Company.
4. The Company may, in its sole discretion, destroy samples which have been furnished to the Company for Engineering Evaluation and which have not been destroyed in the course of Engineering Evaluation. The Company may delegate the performance of all or a portion of the services contemplated hereunder to an affiliate, agent or subcontractor of the Company, and Client consents to such delegation.
5. Unless a shorter period is provided for on the reverse side of this Engineering Evaluation Request Form, payment in full shall be due 30 days after the date of invoice. Client shall pay interest on any overdue amount from the due date until paid at an interest rate of 1.5% per month or, if less, the maximum rate permitted by law. The Company reserves the right, at any time and from time to time, to revoke any credit extended to Client. Client shall reimburse the Company for any costs it incurs in collecting past due amounts, including court costs and fees and expenses of attorneys and collection agencies. The Engineering Evaluation Report may not be used or relied upon by Client if and for so long as Client fails to pay when due any invoice issued by the Company or any affiliate of it to Client or any affiliate or subsidiary of Client together with interest and penalties, if any, accrued thereon.
6. The Company may, from time to time, permit Client to access this Engineering Evaluation Request Form, the Engineering Evaluation Report and other communications by means of e-mail transmissions with the Company. Client acknowledges that any such transmission will not be encrypted and, hence, will not be confidential, that such transmissions may be read and intercepted by third parties and that the electronic version of a Engineering Evaluation Request Form, Engineering Evaluation Report or other communication could be modified inadvertently. The Company disclaims any and all responsibility or liability arising out of or in connection with e-mail transmissions of such information.
7. The Company represents and warrants solely to Client that the Engineering Evaluation Report will be free of any material error or omission caused by the negligence of the Company. If Client desires to assert a claim for breach of the foregoing warranty, it must submit a claim to the Company within 60 days after the date of issuance of the Engineering Evaluation Report to Client in a writing that sets forth with particularity the basis for such claim. If the Company determines that the claim is timely and that a breach of the foregoing warranty has occurred, then the Company, at its option, may either (a) re-perform the deficient Engineering Evaluation, without charge to Client, or (b) refund to Client, without interest, the fee paid to the Company for such Engineering Evaluation Report. Client waives any and all claims for breach of the foregoing warranty, including, without limitation, claims that the Engineering Evaluation Report is inaccurate, incomplete or misleading or that additional or different Engineering Evaluation is required, unless and then only to the extent that Client submits a written claim to the Company within such 60-day period.
8. The Company shall, to the extent of the limitation of liability set forth in Section 9, indemnify Client against third party claims asserting a loss arising exclusively from the negligence of the Company, but only if Client (a) notifies the Company of the assertion of such claim immediately upon its being notified and (b) provides to the Company the option to assume the defense of such claim or participate in such defense.
9. EXCEPT TO THE EXTENT OF THE LIMITED WARRANTY SET FORTH IN SECTION 7 OR AS MAY OTHERWISE BE AGREED TO IN WRITING BY THE COMPANY AND NOTWITHSTANDING ANY PROVISION TO THE CONTRARY CONTAINED HEREIN OR IN ANY ENGINEERING EVALUATION REPORT, NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, IS MADE. IN NO EVENT WHATSOEVER SHALL THE COMPANY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE SERVICES PROVIDED BY THE COMPANY HEREUNDER, INCLUDING WITHOUT LIMITATION LOSS OF OR DAMAGE TO PROPERTY, LOSS OF INCOME, PROFIT OR USE, OR CLAIMS OR DEMANDS MADE AGAINST CLIENT OR ANY OTHER PERSON BY ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THE SERVICES PROVIDED BY THE COMPANY HEREUNDER. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY CONTAINED HEREIN, UNDER NO CIRCUMSTANCES WHATSOEVER SHALL THE LIABILITY OF THE COMPANY IN RESPECT OF ANY CLAIM FOR LOSS, DAMAGE OR EXPENSE, OF WHATEVER NATURE OR MAGNITUDE, AND HOWEVER ARISING, EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF THE FEES PAID TO THE COMPANY FOR THE SPECIFIC SERVICES WHICH GAVE RISE TO SUCH CLAIM.
10. The Company shall not be liable for any loss or damage resulting from any delay or failure in performance of its obligations hereunder resulting directly or indirectly from any cause that is beyond the control of the Company, including, but not limited to, fire, flood, tornado, hurricane or other acts of God, war, casualty, accident, embargo, governmental actions, orders of courts or tribunals, non-performance of third parties, strike, lock-out, or other difficulties with employees, inability timely to obtain labor, material, equipment or services through the Company's usual sources or delays of carriers. If any such event occurs, the Company may immediately cancel or suspend its performance hereunder without incurring any liability whatsoever to Client.
11. These Conditions of Engineering Evaluation shall be governed by, and construed in accordance with, the local laws of the country where the Company performs the Engineering Evaluations; Client waives the right to interpose any counterclaim or setoffs of any nature in any litigation arising hereunder. Any proceeding related to the subject matter hereof shall be brought, if at all, in the courts of the country where the Company performs the Engineering Evaluations.
12. These Conditions of Engineering Evaluation are available at the website www.ATS-engineeringinspection.com. If there is a discrepancy between the terms and conditions set forth in these Conditions of Engineering Evaluation and the terms and conditions set forth (a) at such website; (b) in the Engineering Evaluation Report, (c) on the reverse side of this Engineering Evaluation Request Form or (d) in any other writing other than a master agreement which expressly (i) provides that its terms and conditions shall take precedence over these Conditions of Engineering Evaluation and (ii) cross-references this Section 12 or the equivalent section at such website, the Conditions of Engineering Evaluation set forth at such website shall govern and any inconsistent provision of this Engineering Evaluation Request Form or other writing, as applicable, shall be disregarded. If no Conditions of Engineering Evaluation are set forth at such website, then the Conditions of Engineering Evaluation set forth herein shall govern.