

CAPE/IMMI TERMS OF SERVICE

1. **Acceptance:** Buyer's acceptance of this quotation/offer is expressly limited to the Center for Advanced Product Evaluation division of Indiana Mills and Manufacturing, Inc.'s ("CAPE/IMMI") terms contained herein. CAPE/IMMI hereby objects to and rejects any proposal by Buyer for additional or different terms. If this quotation/offer is deemed an acceptance of Buyer's prior offer, CAPE/IMMI's acceptance is expressly conditional on Buyer's assent to CAPE/IMMI's terms of service.
2. **Agreement:** CAPE/IMMI and Buyer agree that, notwithstanding the prior or subsequent use by Buyer of any order form, invoice, or other document containing printed terms or conditions, they are contracting solely on the basis of this quotation/offer, which contains the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof. This Agreement supersedes all prior agreements, statements, or offers, whether written or oral. No modification, amendment, extension, renewal, rescission, discharge abandonment, waiver or other charge or alteration shall be valid, enforceable or binding on CAPE/IMMI unless agreed to in writing by CAPE/IMMI. A provision contained in any order form, invoice, or other document used by Buyer (whether prior or subsequent to the date of this quotation/offer) which is inconsistent with this paragraph will have no force or effect and will not be binding on CAPE/IMMI.
3. **Service Date:** Service date/project timeline is CAPE/IMMI's best estimate based on resource availability and facility backlog at the time of the quotation/offer. Normally CAPE/IMMI would expect to complete the services in the timeframe indicated in the quotation/offer. Reschedules will be considered by CAPE/IMMI. In all cases, the reschedule must have the prior approval of CAPE/IMMI. If the service is stopped or delayed prior to completion, CAPE will invoice accordingly for labor and materials invested in the project. In the event of a delay for more than sixty (60) days due to the request or default of the Buyer, CAPE/IMMI reserves the right to amend the quotation/offer to reflect current pricing at the time the project is activated.
4. **Warranties:** CAPE/IMMI MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The services conducted under this quotation/offer are solely advisory and are intended to assist the Buyer in determining the appropriateness of any future action and is not to be considered a warranty or guarantee of a product's performance for any specific purpose. The Buyer agrees that it has the sole responsibility for the proper use of the data. The report generated will contain data that is confidential and is the sole property of the Buyer. The results are not in any way an endorsement or certification of the products tested. Additionally, the names Indiana Mills and Manufacturing, Inc., CAPE/IMMI, or CAPE are not to be utilized in any public documents of advertising material associated with the service provided without written authorization from CAPE/IMMI.
5. **Disclaimer and Limitation of Liability:** UNDER NO CIRCUMSTANCES, WHETHER BASED ON A THEORY OF TORT, CONTRACT, EQUITY, OR ANY OTHER LEGAL THEORY, SHALL CAPE/IMMI BE LIABLE TO BUYER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS, LOSS OF BUSINESS OR LOSS OF DATA, ARISING OUT OF THIS AGREEMENT, CAPE/IMMI'S SERVICES, THE FAILURE OF ANY TESTED PRODUCT, OR ERRORS IN PRODUCED DATA OR OTHER WORK PRODUCT. This limitation of liability applies regardless of whether CAPE/IMMI was advised, had other reason to know, or in fact knew of the possibility of any damages. Moreover, CAPE/IMMI will not be liable to any third-party, nor will CAPE/IMMI be liable for, or otherwise indemnify Buyer, for any damages asserted against Buyer by any third-party on account of providing the services or goods. The maximum liability, if any, of CAPE/IMMI for all direct damages, including without limitation contract damages and damages for injuries to persons or property, whether arising from CAPE/IMMI's breach of this agreement, breach of warranty, indemnity, negligence, strict liability, or other tort or equitable theory, or otherwise with respect to CAPE/IMMI's services, is limited to an amount not to exceed the amount Buyer paid to CAPE/IMMI for the services provided under this agreement.
6. **Limitation of Liability for Test Assets:** Buyer expressly agrees that CAPE/IMMI is not liable for any test asset replacement costs or damages. Buyer also agrees that physical testing that requires the design or fabrication of additional components or accessories can create uncertainty and unknown outcomes for the testing. While CAPE/IMMI agrees to use its best efforts, Buyer agrees that design and fabrication services and the physical testing associated with those design and fabrication services are non-refundable regardless of the service outcome or CAPE/IMMI's inability to produce usable data or reports.
7. **Indemnification:** CAPE/IMMI does not agree to indemnify or hold Buyer harmless against liabilities, judgments, claims or demands for injuries or damage to any person or property arising in any way out of the purchased services described herein or the performance of CAPE/IMMI's obligations hereunder. Buyer will indemnify and hold CAPE/IMMI, its officers, employees, agents, and representatives harmless from any expense (including attorneys' fees), liability, loss, claim, or damage arising out of, or in connection with, the use of, or reliance in any fashion on, the services and any work product produced in whole or in part by CAPE/IMMI, without regard to whether CAPE/IMMI was at fault or negligent except to the extent caused by CAPE/IMMI'S sole negligence. This indemnity will survive delivery and acceptance of the services or goods and will apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, other tort, or equity.
8. **Test Procedures:** When the scope of the services provided by CAPE/IMMI include physical testing, all tests will be conducted with materials supplied or specified by or agreed to by the Buyer. The objective of the test will be to obtain data in accordance with CAPE/IMMI standard test procedures unless otherwise specified by the Buyer. These procedures are available for review at any time by request. It should be noted that the procedures are uncontrolled documents and based on our policy of Continuous Improvement, are subject to enhancement at any time without notice.

9. Risk of Loss: Risk of loss in shipment of data, reports and tested components shall pass to the Buyer upon CAPE/IMMI's delivery to the carrier.
10. Credit Period: The credit period indicated shall run from the date of each invoice.
11. Cost of Collections: Buyer agrees to pay CAPE/IMMI's reasonable expenses, including attorney fees, incurred in enforcing the terms herein.
12. Governing Law, Jurisdiction, and Venue: This Agreement shall be governed by the laws of the State of Indiana, regardless of any applicable choice of law principles. Buyer expressly agrees to be subject to the exclusive jurisdiction of the state and federal courts of Indiana regardless of Buyer's legal domicile, the place of the transaction, or the principal place of business of the Buyer. Buyer agrees that any action will be venued in the circuit or superior court of Hamilton County in the State of Indiana or the United States District Court for the Southern District of Indiana, Indianapolis Division. Buyer agrees to waive its rights to a change of judge, change of venue, or removal.
13. Severability of Clauses: The invalidity or unenforceability of any of the clauses or terms herein shall not affect the validity of enforceability of any other clauses or terms hereof.
14. Disposition of Test Assets: After 30 days from the reporting/invoice date or 30 days from notification in writing that a specific phase of a service has been completed, CAPE/IMMI reserves the right to dispose of test fixtures and assets unless other arrangements have been made with the Buyer.
15. Limitation of Action: Buyer must commence any legal action relating to this Agreement, CAPE/IMMI's services or performance, and/or CAPE/IMMI's work product within 12 months from the date any such cause of action accrues. This limitations period applies to all claims regardless of the substantive legal theory, specifically including but not limited to contract, tort, and equity.
16. Confidentiality: The Buyer agrees that it will treat all information of which it obtains knowledge concerning activities at CAPE/IMMI, which are not released to the Buyer for its use under the terms of the Agreement, as strictly confidential and shall not disclose the information to any third party without the prior written consent of the CAPE General Manager or pursuant to court order. CAPE/IMMI agrees that it will treat all information, drawings and other documents passed to it by the Buyer during the continuance of the Agreement as strictly confidential and shall not disclose the information to any third party without the prior written consent of the Buyer or pursuant to court order.