



WHA INTERNATIONAL TERMS AND CONDITIONS

DEFINITIONS: In these Terms and Conditions ("Terms"), WHA INTERNATIONAL, 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 "Customer." WHA's effort on behalf of its Customer will be called the "Project." WHA and Customer may be referred to individually as "Party" or collectively as "Parties." The cost estimate, rate schedule, invoice or other documents, together with Terms, will be referred to as the "Agreement."

ACCEPTANCE: WHA provides professional consulting services, acting as an independent consultant during the performance of Services. No term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship. Unless otherwise negotiated, Customer's acceptance of WHA's offer to provide Services is limited to the Terms contained herein and by entering this Agreement, Customer accepts and assents to WHA Terms. To the extent that WHA Terms conflict with agreements, contracts, purchase orders, forms, and other documents utilized or to be utilized by Customer, WHA Terms control unless otherwise explicitly stated. During the term of Agreements between Parties and for one year thereafter, each Party agrees they shall not directly or indirectly hire or solicit to be hired, as an employee or independent contractor or in any other capacity, an individual who is an employee or consultant of the other Party.

IMPARTIALITY: WHA is committed to impartiality in all its business dealings and has established procedures to safeguard impartiality in its services and processes.

STANDARD OF CARE AND SCHEDULE: WHA shall provide Services in accordance with Project schedule, which may be modified by mutual agreement of the Parties. WHA shall perform Services consistent with the professional skill and care ordinarily provided by consultants practicing under the same or similar circumstances. WHA shall perform Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. WHA's information, advice, recommendations, findings, and conclusions will be made to the best of WHA's knowledge, opinion and belief, based on the data and information made available to WHA at the time of review. A change in any of the factors upon which the review is based may change or affect the information, advice, recommendations, findings, and conclusions expressed by WHA. Upon delivery to Customer, application of Services and implementation of the recommendations provided by WHA are the sole responsibility of Customer. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified. No warranties or guarantees are expressed or implied under this Agreement or otherwise in connection with WHA's Services.

FEES AND INVOICING: Customer agrees to pay WHA for Services in accordance with the rates set forth in Cost Estimate or Retention Letter provided. Service fees based on mutually defined objectives and costs may be quoted at a fixed-price or may be quoted on a time and expense basis that will be established by the Cost Estimate or Retention Letter terms. WHA requires a Customer Purchase Order or signed Retention Letter prior to initiating work. A retainer may be required if specified by the Cost Estimate or Retention Letter. For short duration Services (30 days or less), WHA submits a final and total billing at the end of Services. For Services extending beyond 30 days, WHA sends Customer invoices monthly for Services rendered during the preceding monthly period, or according to work phases established between Parties.

PAYMENT: WHA's **payment term is 3%/15 Net 30** from date of invoice (WHA will give a 3% discount on the invoice total if payment is received within 15 days from invoice date). Invoices become past due after 30 days from invoice date. Past due invoices may incur a late fee. In the event late fees are charged, they are assessed on the first day of the month after 30 days from the invoice date. On the first day of each month thereafter, late fees may be assessed until all fees are paid in full. Alternative payment arrangements may be agreed between WHA and Customer.

DISPUTES: Customer agrees to examine and accept both the work product and subsequent invoices upon delivery or receipt. Customer agrees to promptly notify WHA in the event of work product or fee dispute and agrees that implicit approval will be assumed by WHA unless notification of dispute is given within fifteen (15) days of the invoice date. Parties shall attempt to resolve the dispute promptly. To maintain uninterrupted services by WHA, Customer shall make timely payment. **WHA reserves the right to discontinue work on any Customer account that is over 90 days past due.**

CONFIDENTIALITY AND INTELLECTUAL PROPERTY: Each Party agrees to keep all Confidential Information, materials and disclosures (CI) under this and all Agreements between Parties strictly confidential until such time, if ever, CI becomes available to the public. Parties agree to first provide notice to Disclosing Party, as permitted by law, if disclosure of the other Party's CI becomes required under valid court order. Documents prepared or furnished by each Party, including published works, are instruments of the originating Party. Each Party's background Intellectual Property, or that proprietary information, expertise or technology that is confidential to each Party, that is in their possession prior to the commencement of the Project or generated after commencement of the Project but independent of the Project, shall remain the property of the originating Party. WHA retains rights to its work undertaken under Agreements between Parties. Works undertaken during Agreements between Parties shall not be published without written permission. The "WHA" trademark 3798820 is registered and owned by WHA International, Inc.

INDEMNIFICATION AND LIMITATION OF LIABILITY: WHA does not agree to any Customer indemnification terms without prior written consent, and only to the extent they are caused by the negligent acts or omissions of WHA in the performance of Services under this Agreement. When required, WHA shall indemnify and hold Customer harmless but does not defend from and against damages and/or losses and/or judgments arising from claims by third parties. WHA has no obligation to pay for any of the indemnitees' costs prior to a final litigated determination of liability or to pay any amount that exceeds WHA's finally determined percentage of liability based upon the comparative fault of WHA, and in any event, not to exceed the contracted costs with Customer. WHA shall not be liable to Customer 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 equipment, however caused. No waiver by WHA of any provisions of these Terms or Agreement with Customer is effective unless explicitly set forth in writing and signed by WHA. Nothing in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either Customer or WHA. WHA Services are performed solely for Customer's benefit and no other party or entity shall have any claim against WHA because of this Agreement or the performance or nonperformance of Services. It is intended by the Parties that WHA's services shall not subject WHA's individual employees, officers or owners to any personal legal exposure for risks or liability that may conceivably be associated with any Project undertaken. Therefore, and notwithstanding anything to the contrary contained herein, Customer agrees that as the Customer's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against WHA, a New Mexico Corporation, and not against any of WHA's individual employees, officers or owners.

TESTING SERVICES DISCLAIMER: WHA takes reasonable precautions to safeguard functionality and maintain cleanliness of test articles that are provided to WHA for testing. Best practices for oxygen cleanliness and handling are utilized as test articles are installed on the WHA test system and subjected to testing. However, due to the severity of test conditions required by WHA for performing testing in high-pressure oxygen, WHA disclaims all responsibility for the post-test condition of any test article and does not warrant the post-test condition of test articles for any purpose. The type of testing and analysis work that WHA performs may involve severe conditions. These conditions impose high levels of stress on our equipment, increasing the prospect of equipment failure. WHA designs and procures our equipment, and follows best industry practices, to reduce to sufficiently low levels the probability of failure. However, WHA cannot guarantee that an equipment failure will not occur during or prior to scheduled work. Therefore, any schedule provided by WHA represents a proposal and not a guarantee. WHA will not be liable for any Customer expenses incurred as the result of missing a proposed or published schedule. Furthermore, if a Customer plans to attend and witness the work at WHA facilities, WHA will not be liable for travel or other expenses associated with the visit whether or not an equipment failure delays or postpones the work to an altered schedule from one that may have been proposed.

WHA HAZARD ANALYSIS SERVICES DISCLAIMER: WHA performs hazard analyses and risk assessments on systems and components. Customer must understand that because of their use of pressurized or liquified gases, cryogenic fluids, oxidizers and/or fuels, inherent fire, explosion, and physical hazards exist. WHA performs analyses to assess reasonably foreseeable 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 beyond the scope outlined in Project's statement of work. WHA employees and consultants undertake to reasonably identify hazards associated with the relevant portions of the design and assess the risks of fire, explosion or other failure for the identified hazards. However, due to the inherent uncertainties associated with fires, WHA does not guarantee that all potential hazards will be identified, nor does WHA warrant that the design will be free from the risk of fire, explosion or failure in its foreseeable uses.

WHA TECHNICAL TRAINING SERVICES DISCLAIMER: WHA provides training to educate qualified technical personnel on the reasonably foreseeable risks of oxygen, hydrogen and other hazardous fluids, as well as on industry best practices related to system and component design, cleaning, assembly, operation, ignition and fire consequence mitigation, performing oxygen hazards analyses, or other topics within its expertise. No recommendations are implied in any WHA training courses. All examples are for illustration only, and course attendees are responsible for the application of the principles. WHA does not certify any personnel for any activity nor does it evaluate the performance or capability of any attendee. WHA does not assume any responsibility for the decisions of attendees. The content presented in any WHA training course is owned by or licensed to WHA International Inc, including the text, graphics, photos, videos, trademarks, and logos contained therein. This content is subject to trademark, copyright and other intellectual property right regulations under United States laws, foreign laws and international conventions and agreements with our customers. The presentation and content are provided AS IS for information purposes only and may not be copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any purpose not originally approved by WHA without the prior written consent of WHA or the respective owners.

ALTERNATIVE DISPUTE RESOLUTION. Any controversy or claim arising out of or relating to these Terms and/or Agreements between Parties shall be referred to mediation before the initiation of any arbitration or adjudicative action or proceeding. If Parties are unable to resolve such controversy or claim through mediation, Parties hereby agree that such claim or controversy shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Issues of governing law or jurisdiction shall be decided through Alternative Dispute Resolution. To the extent that Alternative Dispute Resolution provisions are inapplicable to any dispute or action to be taken by Parties, WHA and Customer each hereby waive rights to trial by jury in actions or proceedings arising out of any Terms and/or Agreements between WHA and Customer.