



**Terms of Service**

**Customer:** \_\_\_\_\_ **Accounts Payable Contact:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_ **Accounts Payable Phone:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_ **Accounts Payable Email:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

Customer (“**Customer**”, “**you**”, or “**your**”) hereby agrees with and authorizes Stratosphere Quality, LLC, Stratosphere Quality, Inc., and each of their affiliates (collectively, “**Stratosphere Quality**”), as applicable, to perform services on Customer’s behalf. Stratosphere Quality agrees to provide services to Customer subject to the terms and conditions below.

**1. Pricing.** All pricing for services performed by Stratosphere Quality for Customer shall be set forth in pricing plans made available to Customer through Stratosphere Quality’s Customer Service Department. The pricing for the services may include Inspector Hours. “**Inspector Hours**” as used in this Terms of Service (this “**Agreement**”) shall include, but not be limited to, travel time to the Customer’s off-site inspection location; all time during which an inspector is assigned to Customer’s job, including down time waiting for parts, materials, or instructions; and any administrative time incurred by Stratosphere Quality to set up the sort, inspection, rework and/or containment and collect, analyze and report on sort data. Customer may be invoiced for management work performed by location supervisors as required by ISO 9001 processes. All off-site work will be invoiced from departure from the dispatch location to return to that dispatch location.

**2. Payment Terms.** Subject to Customer’s credit limit established from time to time by Stratosphere Quality in its sole discretion, payment for services is due to Stratosphere Quality no later than thirty (30) calendar days from the date of invoice. In the event that Customer’s outstanding account balance exceeds Customer’s credit limit, Stratosphere Quality may notify Customer that it requires payment to reduce the outstanding balance to the credit limit and such payment shall be made within the time period specified in the notice which shall be no less than five (5) business days from the date of notice. In the event such payment is not received by Stratosphere Quality within the time period specified, in addition to any other remedies Stratosphere Quality may have, it shall have the right to withhold further services without notice until such payment is made. All charges are invoiced in the currency specified on the pricing summary. A service charge of 1½% per month (18% per annum) may be assessed on the unpaid balance of all invoices not paid when due. Late payments shall constitute a material breach of this Agreement. If Customer believes that an invoice is incorrect, Customer agrees to pay what it believes to be the correct amount within the stated payment terms while the disputed amount is being investigated. A service charge will be assessed at the time of processing of any payment made by credit card equal to the credit card processing fees incurred by Stratosphere Quality in connection with such payment.

**3. Agreements of Customer.** The Customer expressly agrees: (1) that this Agreement shall apply to all services performed by Stratosphere Quality for the benefit of Customer or its subsidiaries, divisions, affiliates, or parent, regardless of where those services are performed; (2) that it agrees to pay for all services performed for the benefit of Customer, its subsidiaries, divisions, affiliates, or parent; (3) that the undersigned representative of Customer has authority to order the work described herein on behalf of Customer; (4) the Customer has read, understands and fully agrees to Stratosphere Quality’s Disclaimer and Limitation of Liability contained in paragraph 5; (5) that if Stratosphere Quality commences any action to enforce this Agreement, any invoice, claim for non-payment, or any legal action relating to work performed by Stratosphere Quality, it shall be entitled, in addition to all legal and equitable remedies, to collect from Customer all costs and expenses incurred by Stratosphere Quality in taking such action, including, but not limited to Stratosphere Quality’s costs of collection, which includes reasonable attorneys’ fees and costs of litigation.

For services performed in the United States, Customer agrees that (a) this Agreement shall be governed by the laws of the State of Indiana regardless of Indiana’s choice of law principles, and (b) Customer will be subject to the exclusive



jurisdiction of the state and federal courts of Indiana regardless of Customer's legal domicile, the place of the services being provided or the principal place of business of the Customer.

For services performed in Canada, Customer agrees that (a) this Agreement is made pursuant to and shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and (b) Customer hereby agrees to the exclusive jurisdiction of the courts of Ontario in respect of all matters arising under this Agreement, regardless of Ontario's or any other jurisdiction's choice of law principles.

**4. Changes to Scope of Work.** From time to time, when Stratosphere Quality is working on site with your customers on your parts, your customers may mandate certain operating procedures that Stratosphere Quality must follow. These operating procedures are often imposed to protect the production process from quality issues, and to enhance the overall safety, and efficiency of manufacturing. Customer understands and agrees that Stratosphere Quality will charge you for time and materials necessary to meet these requirements. In addition, your customers may request changes in the sort criteria and other aspects of the project. Stratosphere Quality will honor your customer's requests, and Customer will be responsible for the costs of services related to such requests, unless and until both (a) the activity is no longer a mandatory activity imposed by your customer, and (b) Stratosphere Quality is notified in writing of Customer's objection to such requests.

**5. Disclaimer and Limitation of Liability.** Stratosphere Quality provides sorting, inspection, rework, containment and related engineering services to customers who may already be experiencing quality problems. Stratosphere Quality is neither the manufacturer nor supplier of parts, supplies or equipment that may be handled, assembled, sorted, inspected, contained and/or reworked by Stratosphere Quality. Because delivery schedules, sort criteria, and defect rates change frequently, Stratosphere Quality cannot and does not guarantee the number of parts handled per hour on a particular engagement. Stratosphere Quality encourages Customer to discuss methods of improving coordination, increasing parts handled per hour, and reducing costs. While Stratosphere Quality focuses on quality improvements, it cannot and does not guarantee that all defects will be detected and corrected. Customer is responsible for promptly notifying Stratosphere Quality of any suspected defect in workmanship or service and agrees to provide Stratosphere Quality with a sample of the defective part and information necessary to allow tracing of the suspected defect including, but not limited to, part, serial, lot numbers, and manufacturing date. Providing Stratosphere Quality with physical access to additional parts shall be deemed final acceptance of our work on previously-completed parts.

**EXCEPT AS PROVIDED IN THIS PARAGRAPH, STRATOSPHERE QUALITY MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, WHETHER BASED ON A THEORY OF TORT, CONTRACT, OR ANY OTHER LEGAL THEORY, SHALL STRATOSPHERE QUALITY BE RESPONSIBLE FOR INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND LOSSES CAUSED BY BUSINESS INTERRUPTION) ARISING FROM OR IN CONNECTION WITH THE USE OR INABILITY TO USE ANY OF THE PARTS, SUPPLIES, OR EQUIPMENT SERVICED OR HANDLED BY STRATOSPHERE QUALITY. THE SOLE OBLIGATION OF STRATOSPHERE QUALITY SHALL BE TO CORRECT ANY DEFECTS IN WORKMANSHIP OR SERVICE OF STRATOSPHERE QUALITY BY CONDUCTING A REPEAT SORT OF THE CONTAINER IN WHICH THE DEFECTIVE PARTS WERE FOUND, USING STRATOSPHERE QUALITY PERSONNEL AT THE SOLE COST AND EXPENSE OF STRATOSPHERE QUALITY. CUSTOMER UNDERSTANDS AND AGREES THAT THE OBLIGATION OF STRATOSPHERE QUALITY TO CONDUCT A REPEAT SORT IS VOID IF CERTIFIED PARTS ARE HANDLED (OTHER THAN UNPACKING) BETWEEN STRATOSPHERE QUALITY'S SHIPMENT OF CERTIFIED PARTS AND THE DISCOVERY OF DAMAGED, DEFECTIVE, OR NONCONFORMING PARTS. IN NO EVENT SHALL STRATOSPHERE QUALITY'S CUMULATIVE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT (WHETHER IN TORT, CONTRACT, OR OTHERWISE) EXCEED FIFTY THOUSAND DOLLARS (\$50,000.00).**

**6. Safety Standards.** For all services to be performed on Customer's premises, Customer agrees: (1) to comply with all applicable laws, regulations and by-laws relating to health and safety, including but not limited to all state, local, federal, provincial, territorial and municipal enactments related to occupational health and safety and workplace safety, and agrees and undertakes to provide any safety equipment, clothing or devices necessary or required by law, (2) to indemnify, defend, and hold harmless, including attorneys' and other legal fees and costs of litigation (on a substantial indemnity basis),



Stratosphere Quality from all liability, including claims, damages, penalties or fines arising from the violation of all applicable occupational health and safety legislation, and any other applicable laws, regulations, rules or by-laws regarding work places, equipment or supervision by the Customer, and (3) to obtain the prior written consent of Stratosphere Quality's human resources manager before utilizing any Stratosphere Quality employee to operate machinery, equipment or vehicles.

**7. Indemnification.** Customer agrees to defend and indemnify Stratosphere Quality and its officers, directors, employees, shareholders, and agents from and against all claims, liabilities, suits, actions, damages, losses and expenses (including, without limitation, attorneys' and other legal fees and costs of litigation) arising from or relating to work performed by Stratosphere Quality, its employees, agents, and/or subcontractors under the terms of this Agreement, specifically including, but not limited to, claims, liabilities, suits, actions, damages, losses and expenses that include allegations of contributory or sole negligence, strict liability, or other wrongdoing by Stratosphere Quality, its employees, agents, and/or subcontractors. Customer agrees to pay or reimburse all costs and expenses that may be incurred by Stratosphere Quality in enforcing this indemnity, including attorneys' and other legal fees.

**8. Non-Solicitation.**

(a) While this Agreement is in effect and for twelve (12) months thereafter, Customer shall not for any reason, directly or indirectly, employ, solicit to employ or entice away anyone who is an employee, consultant or subcontractor of Stratosphere Quality **including, without limitation, any employee, temporary employee or contractor of a subcontractor performing services for or on behalf of Stratosphere Quality**, without the express written permission of Stratosphere Quality. Customer is hereby advised that many Stratosphere Quality employees have signed agreements with Stratosphere Quality prohibiting their employment with customers of Stratosphere Quality and that attempts to hire Stratosphere Quality's employees could constitute **interference with Stratosphere Quality's contract rights**. To the extent Customer engages in any solicitation, hiring, or utilization of the services of anyone who is an employee, consultant or subcontractor of Stratosphere Quality **including, without limitation, any employee, temporary employee or contractor of a subcontractor performing services for or on behalf of Stratosphere Quality**, without the express written permission of Stratosphere Quality, whether directly or indirectly, or whether such actions of Customer are successful or a mere attempt, Customer shall pay to Stratosphere Quality the amount of Twenty-Five Thousand Dollars (\$25,000.00), as liquidated damages for such breach of this Agreement. Customer acknowledges and agrees that (a) Stratosphere Quality has a legitimate business interest justifying the restrictions contained in this Section 8(a), (b) that the nature of such restrictions and the amount of liquidated damages are reasonable and necessary to protect such legitimate business interests and do not constitute a penalty, and (c) that a breach of this Section 8(a) would cause irreparable damage to Stratosphere Quality that is incapable of precise measurement and for which there is no adequate remedy at law. Accordingly, the parties agree that this Section 8(a) shall be enforced to the maximum extent allowed by law. Customer acknowledges that Stratosphere Quality will suffer irreparable harm should Customer breach or threaten to breach the covenants or obligations under this Section 8(a) and Section 14 below, and, in the event of such breach or threatened breach, Customer acknowledges that monetary damages would be impossible to quantify and inadequate to compensate Stratosphere Quality for such a breach or threatened breach. Accordingly, Customer agrees that Stratosphere Quality shall be entitled to obtain an interim, interlocutory or permanent injunction without having to establish the inadequacy of damages, in addition to any other relief available to it in law or in equity, in the event of a breach or threatened breach by Customer of any of the provisions of Sections 8(a) and Section 14. Further, Stratosphere Quality shall also be entitled to all of its costs and expenses incurred to obtain such injunctive or other relief on a substantial indemnity basis, including reasonable attorneys' and other legal fees. Stratosphere Quality shall be entitled to set off any damages or potential damages suffered by Stratosphere Quality against any amounts owing to Customer under the terms of this Agreement.

(b) The following provision shall apply to Customers in Canada only: While this Agreement is in effect and for twelve (12) months thereafter, Customer shall not for any reason, directly or indirectly, solicit to employ or entice away anyone who is an employee, consultant or subcontractor of Stratosphere Quality **including, without limitation, any employee, temporary employee or contractor of a subcontractor performing services for or on behalf of Stratosphere Quality**, without the express written permission of Stratosphere Quality. Customer acknowledges and agrees that (a) Stratosphere Quality has a legitimate business interest justifying the restrictions contained in this Section 8(b), and (b) that the nature of such restrictions are reasonable and necessary to protect such legitimate business interests. Customer acknowledges that Stratosphere Quality will suffer irreparable harm should Customer breach or threaten to breach the covenants or obligations under this Section 8(b) and Section 14 below, and, in the event of such breach or threatened



breach, Customer acknowledges that monetary damages would be impossible to quantify and inadequate to compensate Stratosphere Quality for such a breach or threatened breach. Accordingly, Customer agrees that Stratosphere Quality shall be entitled to obtain an interim, interlocutory or permanent injunction without having to establish the inadequacy of damages, in addition to any other relief available to it in law or in equity, in the event of a breach or threatened breach by Customer of any of the provisions of Sections 8(b) and Section 14. Further, Stratosphere Quality shall also be entitled to all of its costs and expenses incurred to obtain such injunctive or other relief on a substantial indemnity basis, including reasonable legal fees. Stratosphere Quality shall be entitled to set off any damages or potential damages suffered by Stratosphere Quality against any amounts owing to Customer under the terms of this Agreement.

**9. Risk of Loss.** Customer understands and agrees that Customer (and not Stratosphere Quality) bears all risk of loss of parts while those parts are in transit to and from Stratosphere Quality or in the possession of Stratosphere Quality. For certainty, title remains with the Customer at all times and does not pass to Stratosphere Quality at any point during the services being performed. Customer should maintain appropriate insurance coverages to protect itself from risk of loss, in accordance with Section 10.

**10. Insurance.** During the period of time this Agreement is in place, Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than One Million Dollars (\$1,000,000.00) per occurrence and general aggregate of Two Million Dollars (\$2,000,000.00) with financially sound and reputable insurers in the applicable jurisdiction. Upon Stratosphere Quality's request, Customer shall provide Stratosphere Quality with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name Stratosphere Quality as an additional insured.

**11. Taxes.** Customer expressly agrees to pay any and all applicable sales, use, goods and services, transaction, excise, value added or similar or other taxes and any federal, provincial, state, local fees or charges (collectively "**Taxes**") imposed on, or in respect of or otherwise associated with the services and any tangible or intangible personal property provided to Customer by Stratosphere Quality. Customer further agrees to reimburse Stratosphere Quality within ten (10) days following receipt of invoice for any such Taxes, interest thereon and penalties imposed as a result thereof paid by Stratosphere Quality to any taxing authority in connection therewith. Each party is separately responsible for any and all other taxes that may be associated with the services or any tangible personal property provided.

**12. Third Parties.** The services provided by Stratosphere Quality are provided for the sole benefit of Customer, and not for the benefit of any third parties, including customers of Customer.

**13. Entire Agreement.** This Agreement is the complete and exclusive statement of the agreement of the parties with respect to the services authorized hereunder and supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. No supplement, modification, or amendment of any provision of this Agreement shall be binding unless executed in writing by both parties to this Agreement. Customer is hereby notified of Stratosphere Quality's objection to and rejection of any additional terms in Customer's proposal, acknowledgment, purchase order, or other documents.

**14. Confidentiality.** This Agreement between Stratosphere Quality and Customer and the terms and conditions hereof are strictly confidential. Customer agrees that any information shared in the course of Stratosphere Quality providing its services, including but not limited to its trade secrets, methods of doing business, and other confidential information and material disclosed in connection with this Agreement shall be kept secret and confidential.

**15. Termination.** This Agreement between Customer and Stratosphere Quality shall remain in effect until canceled in writing by either party. Notwithstanding the foregoing, the parties agree that certain provisions of this Agreement are by their nature intended to and shall survive the termination of this Agreement, including those contained in Section 7 (indemnification), Section 8 (non-solicitation), and Section 14 (confidentiality).



**16. Severability.** In the event that any provision of this Agreement or any part thereof is determined by a court of competent jurisdiction to be unenforceable, such provision, or part thereof, shall be deemed to be severed from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect and shall be binding upon the parties hereto as though such severed provision had not formed part of this Agreement.

**17. Amendments.** This Agreement may not be amended except by agreement in writing executed by both parties.

**18. Compliance with Laws.** Customer has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

***“Stratosphere Quality”***

***“Customer”***

\_\_\_\_\_  
Signature/Authorized Representative

\_\_\_\_\_  
Signature/Authorized Representative

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**PLEASE RETURN ALL PAGES TO: [customerservice@stratospherequality.com](mailto:customerservice@stratospherequality.com)**