



## **Engineering Terms of Service**

**1. Proprietary Information.** This guarantee includes information that shall not be disclosed outside the intended customer and shall not be duplicated, used or disclosed – in whole or in part without permission of Queen City Engineering & Design, PLLC. This document or electronic file contains Queen City Engineering & Design, PLLC confidential information, which is exempt from disclosure under the Freedom of Information Act (5 USC 552).

**2. Work Product Ownership.** Any works, ideas, discoveries, inventions, patents, products, improvements, creations, or other information developed by Queen City Engineering & Design, PLLC that are legally protectable or legally recognized as forms of property will be the exclusive property of the Client upon completion of the provisions herein, at which time Queen City Engineering & Design, PLLC agrees to assign, convey, and otherwise transfer all rights of the Work Product to the Client, whether the work product is conceived of either individually by Queen City Engineering & Design, PLLC or jointly between Queen City Engineering & Design, PLLC and the Client.

**3. Disclosures.** All information made available to Queen City Engineering & Design, PLLC that is proprietary to the Client or produced by Queen City Engineering & Design, PLLC during the term of this agreement, shall be considered the proprietary information of the Client and shall not be used for any other purpose without the prior written permission of the Client. This does not pertain to information that is not specific to the Client's products or business interests. It also does not include any processes or methods developed by Queen City Engineering & Design, PLLC Design that are used by the firm to carry out design services.

**4. Confidentiality** Queen City Engineering & Design, PLLC, and its employees, agents, or representatives will not at any time divulge, disclose, or communicate in any manner, any information that is proprietary to the Client. Queen City Engineering & Design PLLC and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Agreement. Any oral or written waiver by Client, which allows Queen City Engineering & Design, PLLC to disclose Client's confidential information to a third party will be limited to the specific information allowed, and the confidentiality clause will continue to be in effect for all other occurrences. Upon termination of this Agreement and upon request, Queen City Engineering & Design, PLLC will return or destroy all records, notes, documentation and other items that were used, created, or controlled by Queen City Engineering & Design, PLLC during the term of this Agreement.



**5. Relationship.** Queen City Engineering & Design, PLLC is an independent contractor for the Client. This agreement shall not be deemed to create a partnership, joint enterprise or employment between the parties.

**6. Patents, Trademarks, and Copyrights.** Client shall maintain responsibility for investigation of all patent, trademark and copyright issues pertaining to work covered by this Agreement. In the event Client uses patented, trademarked, or copyrighted material without first obtaining permission, and a claim is made by the owner against Queen City Engineering & Design, PLLC as a result, Client shall reimburse Queen City Engineering & Design, PLLC for expenses incurred by Queen City Engineering & Design, PLLC in defense of such claim.

**7. Use of Namesake.** Neither Queen City Engineering & Design, PLLC nor the Client may use either party's name in reference to advertising materials without written consent from Queen City Engineering & Design, PLLC. Use of Queen City Engineering & Design, PLLC without permission shall be considered a trademark infringement.

**8. Interpretation of Agreement.** This agreement may not be changed except in writing and signed by both parties. Queen City Engineering & Design, PLLC is acting as an independent agent for Client. Queen City Engineering & Design, PLLC will make all reasonable efforts to meet target delivery dates established during the project; however Queen City Engineering & Design, PLLC shall not be liable to the Client for any losses including loss of revenue, anticipated profits or claims. Client is responsible for verifying all designs and layouts in final engineering documentation or artwork. Documentation will be submitted to Client for final approval before release for model making, parts fabrication or tooling production. Documentation released for fabrication at the request of the Client will be the sole responsibility of the Client. In any case, Client agrees to indemnify and hold Queen City Engineering and Design harmless for any claims resulting from errors or omissions in engineering work product, documentation or artwork.

**9. Purchase Orders.** Client's submission of any payment or purchase order shall constitute Client's acceptance of this Agreement. If any payment or purchase order submitted by Client purports to vary or supplement this Agreement, this Agreement shall nonetheless remain applicable, and no provision of such.



**10. Payments.** Payment schedule is detailed on the approved estimate prior to project initiation. Payments must be made per the estimate to avoid suspension of the project. **Payments made via credit card will be assessed a 3% credit card processing fee.** Invoices not paid when due may be charged a late fee of \$100.00. In addition, invoices not fully paid within 30 days may also be charged an interest rate on all overdue amounts at 2 percent (2%) per month retroactive to the invoice date. Client shall pay all costs of collection, including without limitation, reasonable attorney fees. If Client fails to pay for the Services when due, Queen City Engineering & Design, PLLC has the option to treat such failure to pay as a material breach of this Agreement.

**11. Liability.** Client agrees to indemnify and hold harmless Queen City Engineering & Design, PLLC from any and all claims asserted resulting from injury or damage by the use or operation of the products, methods, or other results of this engagement. In the event any claim is brought against Queen City Engineering & Design, PLLC relating to services performed within the scope of this Agreement, Client will be held responsible for any legal fees incurred in connection with the claim. Knowledge, implementation, and certification of any and all international, federal, and state regulations affecting the design, safety, functionality, or use of services performed is the responsibility of Client.

**12. Releases.** Queen City Engineering & Design, PLLC agrees that upon payment in full Client shall have sole ownership and title to all rights and legal interest in; 1) All data, drawings, designs, analyses, reports, products, and physical property created custom for this project, and; 2) All inventions, discoveries and improvements which are conceived or reduced to practice during the term of this agreement.

**13. Cancellation.** Either party may terminate this agreement with 4 weeks written notice, though it may be immediately terminated for breach or fraud by either party. In the event that either party terminates the agreement, Queen City Engineering and Design PLLC shall retain ownership of all materials produced and any copyrights, licenses or patents for work created by Queen City Engineering and Design PLLC until full payment for services performed to date has been received.

**14. Disputes.** In the event either party brings suit to enforce any provisions of this agreement, the prevailing party shall be entitled, in addition to any awards damages, reasonable attorney's fees, deposition expenses and other court costs in connection with the suit. Any award or judgment entered in favor of Queen City Engineering & Design, PLLC shall draw 2% interest per month compounded monthly. In no instance will the liability of Queen City Engineering and Design exceed the total of fees-for-services paid to Queen City Engineering & Design, PLLC by the Client during the term of this agreement. The venue of such a decision shall be in the state of North Carolina.



**15. Remedies.** If a party defaults by failing to substantially perform any provision, term or condition of this Agreement, the other party may terminate the Agreement by providing written notice to the defaulting party. The party receiving such notice shall have 30 days from the effective date of such notice to cure the default(s). The failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.

**16. Force Majeure.** If any obligation under this Agreement is interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party is unable to carry out its obligations and gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lockouts, work stoppages, or other labor disputes, or supplier failures. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.

**17. Default.** Any of the following shall constitute a material default under this Agreement:

- a. The failure to make a required Payment when due.
- b. The insolvency or bankruptcy of either party.
- c. The subjection of any of either party's property to any creditor or government agency.

**18. Severability.** If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable.

**19. Estimates.** Upon request, Queen City Engineering & Design, PLLC may provide a cost estimate for the benefit of the client's budget, however, due to the ever-changing dynamics of the design and manufacturing process we do not provide services on a firm fixed price basis.

**20. Billing.** Actual labor hours worked shall include time required to compose and respond to emails, phone calls, meetings, research, assembly, testing, travel, and computer time. In addition, any purchases for parts and materials made through Queen City Engineering & Design, PLLC will be subject to a 20% markup.



**21. Online Marketing of the Product.** Clients may be asked to allow Queen City Engineering & Design, PLLC to display their project [www.queencityeng.com](http://www.queencityeng.com) or other advertising media. Queen City Engineering and Design, PLLC will not disclose or display any client product on Queen City Engineering & Design, PLLC's website or other advertising media without expressed written permission.

**22. Amendment.** This Agreement may be modified or amended in writing by mutual agreement between the parties

**23. Waiver of Right.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**24. Warranty.** Queen City Engineering & Design, PLLC. represents and warrants that, to the best of its information and belief after reasonable inquiry, the designs, prototypes, and other work product that will be delivered by Queen City Engineering and Design, PLLC will be original (or duly licensed or acquired from a third party) creations of Queen City Engineering and Design, PLLC. No other warranty exists.

On a regular basis clients will be engaged by Queen City Engineering & Design, PLLC engineers and designers in order to keep Client engaged and involved in the overall decision-making processes. Therefore, and due to the dynamic and unpredictable nature of product development, Queen City Engineering & Design, PLLC does not warranty the quality or acceptability of the work product or any prototype or production model.

**25. Indemnify.** Each party agrees to defend, indemnify, and hold harmless the other party and its officers, directors, agents, affiliates, distributors, representatives, and employees from any and all third-party claims, demands, liabilities, costs and expenses, including reasonable attorney's fees, costs and expenses resulting from the indemnifying party's material breach of any duty, representation, or warranty under this Agreement.

**26. Governing Law.** The laws of the state of North Carolina shall govern the validity, performance, construction and effect of this agreement.



ENG-TOS-1006  
Rev Date: 10/06/2021  
Process Owner: Rex Carriker  
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**27. Entire Agreement.** This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Agreement. This Agreement supersedes any prior written or oral agreements between the parties. Any form of payment including issuance of a purchase order for services of Queen City Engineering & Design, PLLC constitutes an agreement to these terms and conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.