

# Terms and Conditions

CERMAK PETERKA PETERSEN

UPDATED: 01 JULY 2023

PLEASE CAREFULLY READ THE TERMS & CONDITIONS BELOW.  
YOU MUST ACCEPT THESE TERMS & CONDITIONS BEFORE USING  
CERMAK PETERKA PETERSEN'S SERVICES.

- 1. TERMS OF OFFER AND CONDITIONS OF USE:** The provision of services by CERMAK PETERKA PETERSEN WIND ENGINEERING CONSULTANTS, LTD. ("Cermak Peterka Petersen") to Client, Client's use of the application programming interface ("API"), and any other services, interaction, and business (collectively, inclusive of the API, the "Services") between Cermak Peterka Petersen and Client (collectively, the "parties") are subject to the Terms and Conditions (the "Terms") set forth herein. Cermak Peterka Petersen may, in its sole and absolute discretion, change or modify these Terms at any time, and will use reasonable efforts to publish on Cermak Peterka Petersen's website each change or modification before such change or modification becomes effective and advise when such changes or modifications shall become effective. Client is responsible for regularly reviewing the Cermak Peterka Petersen website to obtain timely notice of such amendments. Your use of the Services after such changes or modifications become effective shall constitute your acceptance of the Terms as last revised. If you do not agree to be bound by the Terms and any such limitations as last revised, do not continue to use the Services. If you do not agree to be bound by the Terms and any such limitations as last revised, you do not have any rights to use the Services.

In case of a direct and unavoidable conflict between the provisions of these Terms and those of a written proposal, contract or agreement executed by an authorized representative of Cermak Peterka Petersen (with all attachments or enclosures, the "Binding Documents"), the provisions of the Binding Documents will prevail over the provisions of these Terms. All offers and proposals made by Cermak Peterka Petersen are valid for 90 days from issuance unless otherwise specified in writing.

These Terms, together with any Binding Documents are collectively referred to herein as the "Agreement."

- 2. PRICES:** Client shall pay Cermak Peterka Petersen for the Services in one of the two following methods:
  - a. Fixed Price.** For any portion (or all) of the scope of the Services, which is proposed by Cermak Peterka Petersen for a fixed price, the Client shall pay Cermak Peterka Petersen that fixed price for that portion (or all) of the scope of the Services proposed.
  - b. Time and Materials.** For any portion (or all) of the proposed scope of the Services, which is not proposed by Cermak Peterka Petersen for a fixed price, the Client shall pay Cermak Peterka Petersen for the Services provided on a time-and-materials basis at the rates specified in Cermak Peterka Petersen's current Standard Price Schedule.

Cermak Peterka Petersen may review and revise its standard rates from time to time and the Standard Price Schedules shall reflect any changes, including the addition or removal of employee categories or equipment categories. Cermak Peterka Petersen reserves the right to increase or decrease the rates charged to Client as necessary to reflect changes in its standard rates. If the payment terms under this Agreement include time-and-materials charges, Cermak Peterka Petersen shall provide notice to Client of any changes to the standard rates. The effective date for such changes shall be 30 days following notice to Client.

**Not-To-Exceed Amounts.** Although Cermak Peterka Petersen prepares budget estimates for the time-and-materials portions of the scope of the Services in good faith, the unpredictable nature of the work can result in actual charges to Client that may be greater than or less than the estimated budget amount. Not-to-exceed amounts are set by contract and modified by mutual consent to establish a budget limit, which shall not be exceeded without prior consent of Client. Client shall not be liable for charges exceeding the not-to-

exceed amount agreed to by the parties. Cermak Peterka Petersen shall not be liable for performance of Services that would result in charges exceeding the not-to-exceed amount agreed to by the parties.

3. **INVOICING AND PAYMENT:** Invoices shall be based on the milestones listed in the Invoicing Schedule and are payable in Canadian dollars within thirty (30) days of receipt. Charges for Services contracted on a fixed-price basis shall be invoiced in proportion to the percentage of the work complete as certified by Cermak Peterka Petersen. Charges for Services contracted on a time-and-materials basis shall be invoiced as accrued through the end of the accounting period being invoiced in accordance with the current Standard Price Schedule. Fees paid to Cermak Peterka Petersen are non-refundable.
4. **LATE PAYMENTS:** If any payment is not paid by Client within thirty (30) days of the date of invoice, it shall be deemed to be delinquent, and the unpaid balance shall accrue interest at one and one-half percent (1.5%) per month until paid (this is an effective annual rate of 18 percent). Where this interest exceeds the maximum allowable by law, the maximum allowable by law shall prevail. Cermak Peterka Petersen may, without penalty, stop work on accounts that are deemed to be delinquent and will provide a 10-day notice prior to stopping work. In such case, Client shall remain responsible for payment (in accordance with the provisions of these Terms, unless other conditions have been defined in the body of the proposal) for all work performed by Cermak Peterka Petersen through the time the work stops.
5. **NON-CANADIAN ACCOUNTS:** Unless the parties have agreed mutually to other arrangements, if Client is located outside Canada, Client shall provide either of the following:
  1. 50% deposit on the project received prior to the beginning of work or the providing of Services. Such deposit will be credited to the beginning of the project. Additionally, final payment must be received by Cermak Peterka Petersen prior to issuance of final report and/or data.
  - Or
  2. an irrevocable standby letter of credit for the value of the project issued by a Canadian Federally Regulated Financial Institution regulated under the Bank Act. The letter of credit must be in force and acceptable to Cermak Peterka Petersen prior to the beginning of work or the providing of Services.
6. **TAXES AND DUTIES:** All customs, duties, fees for permits, taxes, and similar charges applicable to the Services delivered to Client are excluded in prices quoted by Cermak Peterka Petersen and shall be paid by Client directly to the relevant authorities. However, if Cermak Peterka Petersen is obligated by law and pays such charges, Cermak Peterka Petersen shall have the right to recover such charges from Client in accordance with Sections 3 and 4 above.
7. **SCHEDULING REQUIREMENTS:** Cermak Peterka Petersen schedules the necessary project resources (which include, but are not limited to, drafting time, model fabrication time and materials, tunnel schedule and staffing, and engineering personnel) on a first come, first served basis. Before such resources are scheduled or reserved for Client's project, Client shall provide to Cermak Peterka Petersen:
  1. written authorization to proceed on a project,
  - and
  2. a sufficiently complete and accurate set of data, drawings, and information, as determined by Cermak Peterka Petersen, required to perform the work.Cermak Peterka Petersen shall not initiate the project schedule until Cermak Peterka Petersen affirms that it has received items 1 and 2 above.

To enable Cermak Peterka Petersen to meet the schedule, milestones or delivery dates specified within this Agreement, Client shall complete all necessary reviews of information or drawings and shall inform Cermak Peterka Petersen of the results of such review, within one (1) business day following the delivery by Cermak Peterka Petersen of such information or drawings for review, unless otherwise specified by Cermak Peterka Petersen's project manager or project director. Client shall respond to any questions or requests for information from Cermak Peterka Petersen within one (1) business day following such inquiry or request, unless otherwise specified by Cermak Peterka Petersen's project manager or project director. Failure of Client to meet the conditions in this section shall release Cermak Peterka Petersen from the requirements of the project schedule and any related milestones or delivery dates. For avoidance of doubt, the performance of Client in providing timely, accurate, and complete drawings, reviews, answers, and information is prerequisite to Cermak Peterka Petersen's obligation to meet the agreed project schedule.

Within the above requirements, Cermak Peterka Petersen will act in good faith to perform the work as expeditiously as is consistent with professional skill and care and the orderly progress of the project. No other warranty of timeliness is valid unless agreed to in writing and signed by an authorized representative of Cermak Peterka Petersen.

8. **CORRECT INFORMATION:** Cermak Peterka Petersen shall not be liable for losses or delays that result from late, outdated, incomplete or inaccurate data, drawings, or information received from the Client, the Client's agents, representatives, or other subcontractors. Client warrants that all items furnished to Cermak Peterka Petersen regarding the project are current, complete and accurate for the purposes of this work, as defined in the proposal, and agrees to hold Cermak Peterka Petersen harmless in the event the information, data, and materials are not current, complete and accurate. If Client requires Cermak Peterka Petersen to perform additional work or rework due to late, outdated, incomplete or inaccurate data, drawings, or information, such work shall be deemed additional services, and Cermak Peterka Petersen shall be entitled to additional compensation, consistent with Section 10, below.
9. **UNFORESEEN CIRCUMSTANCES:** Cermak Peterka Petersen shall not be in default of its obligations to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to natural disasters, acts of God, delays in delivery by vendors, strikes or other labor disturbances, acts of war, cybersecurity incidents, public health crises or pandemics, quarantines, terrorism, or actions of a belligerent party.
10. **CHANGES AND ADDITIONAL SERVICES:** Changes or additions to the Services, as defined under this Agreement, shall require consent by both parties and written approval from Client. Additional services provided under this Section shall entitle Cermak Peterka Petersen to additional or modified compensation. Cermak Peterka Petersen shall disclose to Client any requested additions or modifications to compensation for additional services under this Section. Client's authorization of additional or modified compensation shall be a precondition Cermak Peterka Petersen's performance of additional services under this Section.

If Client or Client's subcontractors, consultants, agents, clients, or representatives make material changes to the relevant project drawings, designs, data, or information after Cermak Peterka Petersen has initiated work, Cermak Peterka Petersen shall submit a change order to Client, which may include additional compensation and/or modifications to the project schedule or milestones.

11. **ANNOUNCEMENTS:** Client's use of Cermak Peterka Petersen's name in any variation, its logo(s), trademarks, services marks, or other representations in any form for announcements concerning the project for which Cermak Peterka Petersen's services are performed, for promotional or advertising purposes, or in litigation with third parties shall require Cermak Peterka Petersen's prior written approval.

## 12. TERMINATION

1. **Termination for Convenience:** Either party may terminate this Agreement in whole or in part at any time by delivering written notice of Termination for Convenience to the other party in accordance with the notice provisions in the Agreement. The effective date of such Termination for Convenience shall be seven (7) days following acknowledged receipt of such notice by the party receiving such notice. In the event of a Termination for Convenience by either party, Cermak Peterka Petersen shall be paid in accordance with this Agreement for Services rendered and expenses incurred or obligated before and including the date of termination. In addition, Client shall compensate Cermak Peterka Petersen in accordance with this Agreement on a time-and-materials basis for Services deemed by Cermak Peterka Petersen to be required 1) to adequately document and protect the data gathered and other results of the work performed, 2) to store or dispose of the wind tunnel model or other tangible products of the work, 3) to compensate Cermak Peterka Petersen for the costs of resources purchased for, reserved for, or committed to the project at the time of termination, and 4) to generally bring the work to an organized conclusion.
  2. **Termination for Cause:** Either party, by written notice, may terminate this Agreement for cause, in whole or in part, if the other party fails to comply with any of the material terms of this Agreement or files or has filed against it a petition in bankruptcy. The non-terminating party shall have ten (10) days (unless the terminating party authorizes a longer period in writing) after receipt of notice of Termination for Cause to cure any failure to comply with material terms of this Agreement. In the event of a Termination for Cause, Cermak Peterka Petersen shall be paid all undisputed compensation in accordance with this Agreement for Services rendered and expenses incurred or obligated before and including the date of termination. Client shall compensate Cermak Peterka Petersen in accordance with this Agreement on a time-and-materials basis for Services deemed by Cermak Peterka Petersen to be required 1) to adequately document and protect the data gathered and other results of the work performed, 2) to store or dispose of the wind tunnel model or other tangible products of the work, 3) to compensate Cermak Peterka Petersen for the costs of resources purchased for, reserved for, or committed to the project at the time of termination, and 4) to generally bring the work to an organized conclusion.
  3. **Client's Obligations Post-Termination:** Upon any termination or expiration of this Agreement or discontinuation of Client's access to the API, Client must immediately cease all use of the API, immediately delete all copies thereof, and immediately delete all information obtained through the API.
13. **ATTORNEY FEES AND COSTS:** If Client defaults under this Agreement, including, but not limited to, a breach of any representation or warranty contained in these Terms, Client shall pay all costs and expenses, and provide full indemnification for attorneys' fees incurred by Cermak Peterka Petersen in relation to the default, in addition to any other amounts due.
14. **RIGHTS IN WORK PRODUCT:** Each party shall retain all proprietary rights in their respective products, devices, instruments, computer software, patents, trademarks, trade names, processes and methods involved in or relating to performance of the work under this Agreement, except that the Client shall have the limited right to use, duplicate, disclose or otherwise dispose of all project data and reports created or compiled by Cermak Peterka Petersen under this Agreement.
15. **TEST MODEL:** Any physical test model constructed in the course of work for the Client (e.g., wind tunnel models) which embodies Cermak Peterka Petersen's Intellectual Property ("IP") shall remain the exclusive property of Cermak Peterka Petersen. Following the completion of work, Cermak Peterka Petersen will store the test model for at least 60 days. Upon request or at the discretion of Cermak Peterka Petersen, an estimation of costs will be provided for 1.) title transfer, or 2.) storage of wind tunnel models more than 60 days following completion of the work, or 3) packing, transportation, or delivery costs for shipment of the model(s). Such services shall be agreed upon between Cermak Peterka Petersen and Client prior to action being taken.

**16. INDEMNIFICATION:** Client agrees to indemnify and hold harmless Cermak Peterka Petersen, its subsidiaries, affiliates, directors, officers, agents, representatives, consultants, partners, and employees from and against all claims, taxes, losses, damages (including actual, direct, indirect, consequential, punitive, nominal, and any other kind), liabilities, costs and expenses, including reasonable attorneys' fees and other legal expenses, related to any third-party claim, suit, investigation, or judgment arising directly or indirectly from or in any way related to:

- i. any negligent, reckless or intentionally wrongful act or omission of Client or its employees, assistants, subcontractors, agents, or representatives, including, but not limited to, any failure to independently validate any results of the API or information obtained from the Services;
- ii. any failure of Client to perform any requirements of this Agreement or its own services in accordance with all applicable laws, rules, codes, regulations, and industry standards;
- iii. Client's breach of this Agreement;
- iv. Client's misuse or misapplication of Cermak Peterka Petersen's work product under this Agreement for any purpose other than its intended application in accordance with applicable law, as defined in this Agreement.
- v. any personal injury or property damage arising from or relating to Client's use of the API or information obtained from the Services, or any authorized or unauthorized use of the API or the Services;
- vi. Client's use, handling, or loss of customer data;
- vii. any infringement, misappropriation, or other violation of any intellectual or proprietary right, right of privacy, right of publicity or other right by Client or any third party; and
- viii. any violation of listing or certification requirements, law, rule, or regulation by Client's use of the API or the Services by Client or any third party.

**17. CLIENT REPRESENTATIONS, WARRANTIES, AND ACKNOWLEDGMENTS:** Client hereby represents, warrants, and acknowledges that it is solely responsible for independently validating any and all API results and other information obtained from the Services, and that its failure to do so entitles Cermak Peterka Petersen to full indemnification under Section 16 of these Terms, regardless of the API's results or the other information obtained from the Services. Client further represents, warrants, and acknowledges that it is solely responsible for ensuring that its own services and products comply with all applicable laws, rules, codes, regulations, and industry standards, and that its failure to do so entitles Cermak Peterka Petersen to full indemnification under Section 16 of these terms, regardless of the API's results or the other information obtained from the Services.

**18. GOVERNING LAW:** Interpretation, construction, and enforcement of this Agreement shall be governed by and are to be construed and interpreted in accordance with the laws of the Province of Ontario and laws of Canada applicable in the Province of Ontario, without giving effect to principles of conflict of laws. The parties exclude the application of the **United Nations Convention on Contracts for the International Sale of Goods** and the **International Sales Conventions Act (Ontario)** and **Sale of Goods Act (Ontario)**. Each of the parties irrevocably submits to the exclusive jurisdiction of the courts of the Province of Ontario.

**19. DISCLAIMER OF WARRANTIES:**

- a. CLIENT'S USE OF THE SERVICES ARE AT ITS SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. CERMAK PETERKA PETERSEN EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- b. CERMAK PETERKA PETERSEN MAKES NO WARRANTY THAT (i) THE SERVICES WILL MEET CLIENT'S REQUIREMENTS, (ii) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, AND/OR THAT (iii) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.
- c. ANY INFORMATION DERIVED, DOWNLOADED, OR OTHERWISE OBTAINED THROUGH THE SERVICES IS DONE AT CLIENT'S OWN DISCRETION AND RISK. CLIENT WILL BE SOLELY RESPONSIBLE FOR ANY

DAMAGE TO ITS COMPUTER SYSTEM/NETWORK OR ANY LOSS OF DATA THAT MAY RESULT FROM THE DOWNLOAD OF ANY SUCH MATERIAL OR THE USE OF THE SERVICES.

- 20. LIMITATION OF LIABILITY:** To the maximum extent permitted by law, Cermak Peterka Petersen, and its subsidiaries, affiliates, officers, directors, employees, and agents, will not be liable to Client for any lost profits, revenues, financial losses, or any indirect, special, consequential, exemplary, or punitive damages of any kind. To the maximum extent permitted by law, the total liability of Cermak Peterka Petersen, and its subsidiaries, affiliates, officers, directors, employees, and agents, for any claim, cost, damage, or loss arising out of or relating to Cermak Peterka Petersen's services, the Services, or the Agreement, including for any warranties that may not be excluded, shall not exceed the amount Client paid for the Services during the twelve months prior to the event giving rise to the liability or \$10.00, whichever is greater (the "Liability Cap"). The parties agree that the Liability Cap shall include all forms of damages.
- 21. OWNERSHIP AND LICENSE:** Client does not acquire ownership in the API by its use of the Services. Client agrees that the API is protected by applicable intellectual property laws, including without limitation copyright laws, and international treaty provisions. Client will not remove or alter any proprietary notices or marks on the API. Client shall not reverse engineer or attempt to extract the source code from the API, or any related software, except to the extent that this restriction is expressly prohibited by applicable law and then in such case, the information derived will be maintained in strict confidence. Client also shall not sublicense, lease, rent, loan, distribute, sell, transfer or make available the API to any third party except as specifically permitted by this Agreement. The API is licensed and not sold. Cermak Peterka Petersen reserves all rights not expressly granted in this Agreement.
- If Cermak Peterka Petersen receives any feedback, suggestions, ideas, reports, or other information relating to the API or the Services, Cermak Peterka Petersen and its subsidiaries and affiliates may use such information without obligation to Client. Cermak Peterka Petersen reserves the right to modify or update the API at any time, for any reason, and without notice to Client, though Cermak Peterka Petersen will try to provide prior notice in the event that such modifications or updates materially alter or affect the provided Services. Cermak Peterka Petersen may add or remove functionalities or features at its discretion.
- 22. INDEPENDENT DEVELOPMENT:** Provided there is no infringement of Client's intellectual property rights, this Agreement does not impair the rights of Cermak Peterka Petersen or its subsidiaries and affiliates to develop, manufacture, purchase, use or market, directly or indirectly, alone or with others, products or services competitive with those offered by Client.
- 23. CONFIDENTIAL INFORMATION:** Cermak Peterka Petersen's communications to Client and information provided to the Client through the Services may contain Cermak Peterka Petersen confidential information. Client hereby agrees to keep strictly confidential any documents, files, materials or communications that are marked confidential, relating to or concerning the customers, products, technology, trade secrets, systems or operations, property, business or affairs of Cermak Peterka Petersen, and shall not disclose any such confidential information to any third party without Cermak Peterka Petersen's prior written consent. Client may disclose Cermak Peterka Petersen's confidential information when compelled to do so by law if Client provides Cermak Peterka Petersen with reasonable prior notice unless a court orders otherwise. Each of the parties acknowledge that disclosure of any information in contravention of this section may cause significant harm to Cermak Peterka Petersen and that remedies at law may be inadequate to protect against a breach of this section. Accordingly, the parties acknowledge that Cermak Peterka Petersen is entitled, in addition to any other relief available to it, to the granting of injunctive relief without proof of actual damages or the requirement to establish the inadequacy of any of the other remedies available to it. The parties covenant not to assert any defence in proceedings regarding the granting of an injunction or specific performance based on the availability to the Cermak Peterka Petersen of any other remedy.
- 24. AUTHORITY:** The signer of the Agreement represents that s/he is a duly authorized representative of Client and has full power and authority to bind Client to all provisions of this Agreement.
- 25. ENTIRE AGREEMENT:** The Agreement (for clarity, these Terms, together with any Binding Documents) constitutes the entire final Agreement between the parties and supersedes all prior understandings, proposals, and agreements.

26. **LEGAL STATUS OF PARTIES:** The Agreement does not make either party the agent, partner, employee, or legal representative of the other party for any purpose whatsoever.
27. **WAIVER OF BREACH:** No waiver of any breach of the Agreement shall constitute a waiver of any other or subsequent breach.
28. **NO MERGER:** All covenants, agreements, indemnities, warranties, and representations made by the parties shall survive completion by Cermak Peterka Petersen of the work and payment by Client for such work.
29. **BINDING EFFECT:** The Agreement is binding upon, and shall inure to the benefit of the parties, their successors, assigns and legal representatives.
30. **STATUTE OF LIMITATIONS:** The parties that any cause of action or claim Client may have arising out of or relating to this Agreement must be commenced within two (2) years after the cause of action accrues, otherwise, such cause of action or claim shall be permanently barred and shall be deemed waived, and agree to vary any applicable statutory, civil or common law provision so that this two-year limitation applies.
31. **INVALID PROVISIONS:** If any term or provision of this Agreement is held to any extent invalid or unenforceable, the remaining terms and provisions shall be valid and enforceable to the fullest extent permitted by law.