



Steel Racks

Cantilevered Racks
Platform Connections

Welded-Wire Decking
R-Mark Submittals

Steel Shelving
Material Strengths

Boltless Shelving

Licensed in 50 States

Testing Terms and Conditions

Standard Terms and Conditions

1. Proposals. All proposals or samples submitted (the "Proposal(s)") for testing and/or consulting services (the "Services") are subject to acceptance by Structural testing for Material Handling Engineered products (SMHE), Inc. in writing. Unless otherwise specified, the Services specified in the Proposal shall be performed by SMHE or the designated subcontractor selected by SMHE in its sole discretion, within a reasonable period of time (following receipt of Client's samples and initial deposit) in accordance with SMHE's customary practices. The Proposal and these Standard Terms and Conditions (with the latter controlling in the event of any inconsistencies with the Proposal) constitute the entire agreement between the parties (the "Agreement") and unless expressly assented to in writing by SMHE, terms and conditions different, therefore, are expressly rejected. No course of dealing between the parties hereto shall be deemed to affect or to modify, amend or discharge any provision or term of the Agreement.

2. Specifications. All testing or consulting services rendered by SMHE or its designated subcontractor shall be conducted according to the specific test conditions, consulting parameters and specifications (the Specifications") set forth on the Proposal and in the Report. Ultimately, it is the customer's responsibility to supply SMHE with all applicable specifications or third party documents related to the work effort requested that are not included in SMHE's controlled specification / code / standards library. All received samples submitted for analysis may be destroyed or altered for purposes of performing normal testing protocols. If samples cannot be destroyed or altered it is the responsibility of the customer to notify SMHE in writing prior to processing.

3. Report/Results. Client may use and distribute copies of the full Report for the purpose of securing process or product approval from governmental authorities, businesses and industry, traders, architects, engineers, and customers or from accredited standardizing committees and organizations. All other reproductions, distributions, or disclosures, in any form, in whole or in part, of any portion of the data, observations, or Report, oral or written, require prior written consent of SMHE. Test results and consultant findings (the "Results") shall only apply to the specific sample tested or consultant service rendered by SMHE or its designated subcontractor under the Specifications.

4. Payment. All payments for the Services are due without regard to the Results and notwithstanding any early termination of the Agreement by the Client. The Client further agrees to pay SMHE its then customary charge for work performed by SMHE or its designated subcontractor at the request of the Client and not included on any Proposal, and for any work performed in connection with any legal proceeding respecting the Client or its products.

5. Consulting Services. Client hereby engages SMHE as an independent contractor, and not as an employee or agent of Client in connection with the rendering of any consulting Services to the Client. Client hereby acknowledges that it, and not SMHE or SMHE's designated subcontractor, shall be responsible for all final decisions based on the application of the Results or the findings expressed in the Report.

6. Right To Cure. SMHE shall have the right to issue revised documents to correct typographical, clerical or any other errors.

7. Right Of Refusal. We have the right to refuse any customer order or request without prejudice or justification.

8. Customer Witness. All testing performed may be witnessed by the customer at any point of processing; however, an arrangement must be made 2 weeks in advance and is subject to an added fee as interruptions to other test projects in progress is unavoidable. Visitors and suppliers are required to conform to SMHE's Safety Policies. Note that standard photographic evidences of test samples are included in the report; additional views may be requested prior to testing.

9. Data Transfer. All test reports and certificates of analysis will be reported in an electronic format (e-mail, data transfer, etc.) or as otherwise agreed upon. Additional fees may be incurred for a hardcopy report.

10. Samples. Client will provide samples for testing (at Client's expense). SMHE will maintain unused portions of samples for 14 days after the Report has been issued. After 14 days, SMHE will return or dispose of unused portions of samples at Client's expense. Client shall abide by all applicable regulations when shipping samples to SMHE or its designated subcontractor. SMHE or its designated subcontractor has the right to refuse receipt and/or testing of any shipment that, in SMHE's or its designated subcontractor's sole discretion, is hazardous, unsafe, unlawful or has been shipped improperly. Client shall bear associated costs including, but not limited to, identification of sample content, damage incurred by SMHE or its designated subcontractor as a result of improper packaging, labeling or omission of documents, return or disposal of materials. Material stored at the request of customer may be charged a storage fee.

11. Confidential Information. The confidential information, observations and data relating to the businesses and products of SMHE, its designated subcontractor and the Client are the property of the respective parties. The parties will not use for their own purposes or disclose to any third party any of such information, observations or data obtained regarding the other party's business or products without the prior written consent of that party, unless such matters become publicly known other than as a result of the acts of the party seeking to use or disclose such matters; provided, however, that SMHE shall be entitled to share any confidential information concerning Client or Client's product or business with SMHE's designated subcontractor, which information shall remain confidential and shall not be used or disclosed by the subcontractor except as provided herein. SMHE is entitled to disclose the name of the Client to its Parent Companies and in its customer listing.

12. Intellectual Property. Intellectual Property. All testing equipment, methods, designs, concepts, inventions, processes, trade secrets, proprietary information and know-how, uses, and/or applications used or useful in the delivery of the Services, whether patentable or not, are the property of SMHE ("SMHE Intellectual Property"). Client may not use or register any name, trademark or service mark of SMHE or any of their affiliates for any promotion or other purpose, except as provided in paragraph 3, above.

13. Disclaimer of Warranties. SMHE has relied on information supplied by the Client in rendering the Services. The Results assume the accuracy of such information and that the Client is entitled to share such information with SMHE and its designated subcontractor. Any information provided by SMHE in the Report or in connection with the Services is for the benefit of the Client only and no third party shall be entitled to rely thereon without the prior written consent of SMHE. SMHE warrants only that it and its designated subcontractor shall conform the Services to the specifications set forth in the relevant Proposal. **Because of numerous factors affecting results, SMHE makes no other warranty of any kind with regard to the Services or the results set forth in the Report, either express or implied.** Statements made in the Report or in connection with the Agreement shall not be construed as representations or warranties or as inducements to violate any law, safety code or insurance regulation.

14. Limitation on Liability. Client's right to recover damages caused by the negligence or breach of SMHE or its designated subcontractor with respect to any testing or consulting Services shall not exceed the amount actually paid by Client to SMHE. SMHE or its designated subcontractor will not be liable for any other damages whatsoever arising from or in any way connected to the Services or the Report for any purpose whatsoever. In no event shall SMHE or its designated subcontractor be liable for any special, indirect, or incidental or consequential damages of any kind, including without limitation any damages with respect to loss of income, compensation or prospective profits, any expenditures, investments or commitments of the Client, any loss with respect to business reputation or good will, or arising from the claims of third parties (including, without limitation, product liability claims). Client further agrees to indemnify, hold harmless and defend SMHE, its officers, directors, agents, representatives and employees from any and all claims, liabilities, damages, and expenses on account of death or injury to any person or damage to any property, including without limitation, loss of earnings or profits, arising from or in connection with the testing services to be performed hereunder, any omissions in connection with such services or any defect related to a manufactured product where a sample of such product was tested hereunder.

15. Litigation Services. Client shall notify SMHE in writing if any Services to be performed are in support of pending or contemplated litigation and shall further advise SMHE of the parties involved in such litigation prior to SMHE commencing the requested Services. In the event employees or contractors of SMHE are subpoenaed to testify before any tribunal, panel, official, or judicial officer by the Client or by another litigant in connection with the Services, Client shall be responsible to pay SMHE its costs plus the usual customary hourly rate for SMHE consulting for the time spent to travel, attend and appear to so testify.

16. Non solicitation of Employees. Client agrees not to solicit any employees of SMHE, any of its affiliates or its designated subcontractor for employment or hire unless SMHE and/or such affiliate or designated subcontractor shall have first consented to such solicitation in writing.

17. Delay; Excused Nonperformance. Performance of the Services by SMHE and/or its designated subcontractor may be delayed or excused when such performance is commercially impossible or impracticable as a result of war, strikes, shortages, weather events, or other causes beyond their reasonable control.

18. Indemnification/Hold Harmless. The Client shall indemnify and hold SMHE and its designated subcontractor harmless to the fullest extent permitted by law from any and all damages, expenses, fines, judgments, liabilities, losses and costs, including reasonable attorneys' fees incurred by SMHE or its designated subcontractor (a) in connection with or arising from any breach by the Client of the terms of this Agreement, and (b) as a result of any claims, causes of action, suits or legal proceedings brought against SMHE and arising out of its delivery of the Services and preparation of the Report contemplated hereunder; provided that the Client shall not be required to indemnify SMHE or its designated subcontractor for any claim or cause of action resulting from the gross negligence or willful misconduct of SMHE or its designated subcontractor.

19. Dispute Resolution. Any dispute between the parties relating to this Agreement or the breach thereof shall be resolved by binding arbitration before a single arbitrator in Covina, CA pursuant to the Commercial Arbitration Rules then obtaining of the American Arbitration Association. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall apply the substantive law of New York except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator shall not award either party punitive damages, and the parties shall be deemed to have waived any right to such damages. The proceedings shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard both parties' confidential information. The prevailing party in any proceeding brought hereunder shall be entitled to recover its costs and reasonable attorney's fees, except that the fees of the arbitrator shall be split equally between the parties.

20. Governing Law. These terms and conditions (and any agreement into which they are incorporated) shall be construed, interpreted and enforced under and laws of the State of California. Purchaser agrees to exercise any right or remedy in connection with these terms and conditions exclusively in, and hereby submits to the jurisdiction of the United States District Court for the Central District of California.

I hereby acknowledge that I have read and understood the terms and conditions above; Furthermore, acceptance of proposed SMHE testing project(s) indicates that you agree to this standard SMHE terms and conditions.

Acknowledge By:

Date: