



# EP Laboratories, Inc.

Experience Excellence Precision Professionalism

## TERMS AND CONDITIONS

The following terms and conditions apply to services provided by EP Laboratories, Inc. ("EP Laboratories") to the Customer ("Customer").

- 1. Services.** EP Laboratories agrees to provide the services ("Services") specified on any Order Form(s) (collectively, "Order Form") agreed to by the parties from time to time. Each Order Form executed by Customer shall be governed by the terms of this agreement and shall reference these terms and conditions by name.
- 2. Service Commitment.** Standard turnaround time is five (5) business days, and expedited service is subject to availability and agreement by EP Laboratories. Turnaround times are estimates only, and are calculated from the time EP Laboratories receives a sample from Customer. Turnaround times which are listed as "days" or "hours" shall mean business days and business hours.
- 3. Payment Terms.** Charges for Services are as specified in the Quotation. All payments must be made in U.S. dollars and shall be paid by check or credit card. Payment information must be received before Customer will be provided test results. A \$25 NSF (non sufficient funds) fee will be charged for any returned checks. Customer is also responsible for costs of collection, including payment of reasonable attorney fees if such expense is incurred. Customer is responsible for and shall pay all federal, state and local taxes (including, but not limited to, all excise, sales and use taxes) based upon or arising out of the Services.
- 4. Reporting and Interpretation of Test Results.** Test samples are provided by Customer, and accordingly, Customer shall have sole responsibility for the quality and integrity of the test samples ("Test Samples"). EP Laboratories will provide Customer with a report showing the results of tests carried out on each Test Sample ("Results"). EP Laboratories assumes no liability whatsoever relating to Customer's interpretation or use of the Results. In the event of an unexpected or invalid result due to the condition of the test sample, Customer remains responsible for payment of all fees. In the event of an invalid result due to EP Laboratories' error, Customer's sole and exclusive remedy shall be, at EP Laboratories' sole discretion: (a) a retest of the Test Sample or (b) a refund of any fees paid by Customer relating to the affected Test Sample.
- 5. Return of Sample.** EP Laboratories will retain Customer's Test Sample for sixty (60) days following the conclusion of testing. If Customer requests the return of the Test Sample, applicable shipping charges will apply. If Customer does not request the return of the Test Sample within the sixty day period, Customer's Test Sample will automatically be discarded. EP Laboratories reserves the right to withhold and/or discard Customer's Test Sample without notice for any breach, including, without limitation, Customer's non-payment.
- 6. DISCLAIMER OF WARRANTY.** THE SERVICES AND RESULTS ARE PROVIDED "AS IS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT ARE DISCLAIMED.
- 7. Customer Warranty and Indemnification.** Customer warrants that no law, rule or ordinance of the United States, any state or any other governmental agency has been violated in providing the Test Sample to EP Laboratories. Customer agrees to defend, indemnify, and hold EP Laboratories, its officers, directors, employees, and agents harmless from and against any claims, actions or demands, liabilities and settlements including without limitation, reasonable legal and accounting fees, resulting from, or alleged to result from: (i) Customer's breach of any of its obligations, representations, warranties or covenants under these terms and conditions; (ii) EP Laboratories' possession or testing of the Test Samples; or (iii) Customer's publication, distribution, interpretation or other use of the Results.
- 8. LIMITATION OF LIABILITY.** IN NO EVENT WILL EP LABORATORIES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THESE TERMS AND CONDITIONS, THE SERVICES OR THE RESULTS, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOST PROFITS, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN NO EVENT WILL EP LABORATORIES BE LIABLE FOR ANY AMOUNTS IN EXCESS OF THE AGGREGATE FEES PAID TO EP LABORATORIES HEREUNDER FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.
- 9. Miscellaneous.** These terms and conditions are governed by the laws of the State of California, without regard to principles of conflicts of laws. Any legal action or proceeding relating to these terms and conditions shall be instituted in a state or federal court in Orange County, California, and each party hereby submits to the personal jurisdiction of such courts. These terms and conditions, any Order Form executed pursuant hereto, shall supersede any and all prior agreements between the parties hereto and constitutes the entire agreement between Customer and EP Laboratories with respect to the subject matter hereof. The failure of EP Laboratories to exercise or enforce any right conferred upon it by these terms and conditions shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter. These terms and conditions shall be binding upon, and shall inure to the benefit of, the parties and their respective administrators, legal representatives, successors, and permitted assigns. If any provision hereof is held by a court of competent jurisdiction to be contrary to law, void or otherwise unenforceable, such provision shall be enforced to the extent possible in order to affect the intention of the parties the remainder of this agreement shall remain in full force and effect.
- 10. Service Contracts (as applicable).** Three (3) month minimum service term is required. Customer must provide prior written notice of termination, which notice must be received prior to the end of the current service term. Customer shall remain liable for Services rendered through the date of termination. Tests requested in excess of the monthly allotment will result in additional fees. Unused monthly allotments cannot be carried over to following months. One test allotment shall mean one "testing service" performed on one Test Sample. EP Laboratories will invoice Customer on a bi-monthly basis, payment of which is due within fifteen (15) days of the date of invoice.
- 11. Ownership of Data/Ownership of EP Laboratories Protocols, Methods, etc.** Data or information provided to EP Laboratories by the Client shall remain the Client's property. Upon full payment to EP Laboratories for all services provided by EP Laboratories, data or information generated by EP Laboratories for the Client shall become the Client's property. EP Laboratories shall at all times retain exclusive ownership of any and all analytical and testing methods, QA/QC protocols, and equipment developed by EP Laboratories for performance of work by EP Laboratories. (V090621)

ALL SERVICES PROVIDED HEREUNDER ARE SUBJECT TO EP LABORATORIES' STANDARD TERMS AND CONDITIONS OF SERVICE WHICH FORM AN INTEGRAL PART OF THIS AGREEMENT