

# Built Environment Testing

## EUROFINS RESERVOIRS ENVIRONMENTAL INC. TERMS AND CONDITIONS OF SALE (Short Form)

When a purchaser ("Client") places an order for laboratory, consulting or sampling services from Eurofins Reservoirs Environmental, Inc. ("Eurofins Built"), a Colorado corporation, Eurofins Built shall provide the ordered services pursuant to these Terms and Conditions and the related Quotation or Price Schedule, or as agreed in a negotiated contract. In the absence of a written agreement to the contrary, a client order constitutes an acceptance by the Client of Eurofins Built's offer to do business under these Terms and Conditions, and an agreement to be bound by these Terms and Conditions. Receipt of a Client's samples at an Eurofins Built laboratory constitutes acceptance of these Terms and Conditions (in the absence of any other negotiated contract). No contrary or additional terms and conditions expressed in a Client's document shall be deemed to become a part of the contract created upon acceptance of these Terms and Conditions, unless accepted by Eurofins Built in writing.

### 1. ORDERS AND RECEIPT OF SAMPLES

1.1 A Client may place an order (i.e., specify a Scope of Work) either by submitting a purchase order to Eurofins Built in writing or by telephone subsequently confirmed in writing, or by negotiated contract. Whichever option the Client selects for placing an order, the order shall not be valid unless it contains sufficient specification to enable Eurofins Built to carry out the Client's requirements. In particular, samples must be accompanied by: a) adequate instruction on type of analysis requested, and b) complete written disclosure of the known or suspected presence of any hazardous substances, as defined by applicable federal or state law. If a Client fails to provide these required disclosures accompanying the submission of samples, and such failure results in an interruption in the lab's ability to process work due to contamination of instruments or work areas, the Client will be responsible for the costs of clean-up and recovery.

1.2 The Client shall provide one week's advance notice of the sample delivery schedule, or any changes to the schedule, whenever possible. Upon timely delivery of samples, Eurofins Built will use its best efforts to meet mutually agreed turnaround times. All turnaround times will be calculated from the point in time when Eurofins Built has determined that it can proceed with defined work following receipt, inspection of samples, and resolution of any discrepancies in Chain-of-Custody forms and project guidance regarding work to be done (Sample Delivery Acceptance). Rush turnaround times not requested in advance of the delivery of samples and specifically agreed to by the lab are not guaranteed. If the Client changes the sample delivery schedule prior to Sample Delivery Acceptance, Eurofins Built reserves its rights to modify its turnaround time commitment, change the date upon which Eurofins Built will accept samples, or refuse Sample Delivery Acceptance for the affected samples.

1.3 Eurofins Built reserves the right, exercisable at any time, to refuse or revoke Sample Delivery Acceptance for any sample which in the sole judgment of Eurofins Built: a) is of unsuitable volume; b) may pose a risk or become unsuitable for handling, transport, or processing for any health, safety, environmental or other reason, whether or not due to the presence of any hazardous substance in the sample and whether or not such presence has been disclosed to Eurofins Built by the Client; or c) holding times cannot be met, due to passage of more than 48 hours from the time of sampling or 1/2 the holding time for the requested test, whichever is less.

1.4 Prior to Sample Delivery Acceptance, the entire risk of loss or damage to samples remains with the Client, except where Eurofins Built provides courier services. In no event will Eurofins Built have any responsibility or liability for the action or inaction of any carrier shipping or delivering any sample to or from Eurofins Built's premises. Client is responsible for assuring that any sample that contains or may contain any hazardous substance to be delivered to Eurofins Built's premises is properly packaged, labeled, transported and delivered, all in accordance with applicable laws.

1.5 Eurofins Built reserves the right to begin processing samples upon receipt, unless the Client specifically notifies Eurofins Built in writing prior to sample receipt that the samples are to be held without preparation or other processing or pending receipt of a purchase order. Eurofins Built shall under no circumstances be responsible for missed holding times or turnaround times or for re-sampling costs if samples are released from hold with less than 48 hours or 1/2 the holding time for the requested test remaining, whichever is less.

### 2. PAYMENT TERMS

2.1 Services performed by Eurofins Built will be in accordance with prices quoted and later confirmed in writing or as stated in the Price Schedule. Quoted prices do not include sales tax. Applicable sales tax will be added to invoices where required by law.

2.2 Invoices may be submitted to Client upon completion of any sample delivery group. Billing corrections must be requested within 30 days of invoice date. Payment in advance is required for all clients except those whose credit has been established with Eurofins Built. For clients with approved credit, payment terms are net 30 days from the date of invoice by Eurofins Built, unless alternative terms have been agreed in a separate written agreement. Payment shall be made without retainage and shall not be contingent upon the receipt of funds from third parties. All overdue payments are subject to an additional interest and service charge of one- and one-half percent (1.5%) (or the maximum rate permissible by law, whichever is less) per month or portion thereof from the due date until the date of payment. All fees are charged or billed directly to the Client. The billing of a third party will not be accepted without a statement, signed by the third party, acknowledging, and accepting payment responsibility in accordance with these payment terms.

2.3 If Client fails to make timely payment of its invoices, Eurofins Built reserves the right to pursue all appropriate remedies, including withdrawing certifications, suspending work, and withholding delivery of data under this order without recourse. Client shall be responsible for all reasonable fees, expenses, and costs of collection including but not limited to arbitrator's and attorney's fees. Eurofins Built reserves the right to refuse to proceed with work at any time based upon an unfavorable Client credit report.

### 3. CHANGE ORDERS, TERMINATION

3.1 Changes to the Scope of Work, price, or result delivery date may be initiated by Eurofins Built after Sample Delivery Acceptance due to any condition which conflicts with analytical, QA or other protocols warranted in these Terms and Conditions. Eurofins Built will not proceed with such changes until an agreement with the Client is reached on the amount of any cost, schedule change or technical change to the Scope of Work, and such agreement is documented in writing.

3.2 Changes to the Scope of Work, including but not limited to increasing or decreasing the work, changing test and analysis specification, or acceleration in the performance of the work may be initiated by the Client after Sample Delivery Acceptance. Such change must be documented in writing and may result in a change in cost and turnaround time commitment. Eurofins Built's acceptance of such changes is contingent upon technical feasibility and operational capacity.

3.3 Suspension or termination of all or any part of the work may be initiated by the Client upon thirty (30) days written notice to Eurofins Built. Eurofins Built will be compensated consistent with Section 2 of these Terms and Conditions. Eurofins Built will complete all work in progress and be paid in full for all work completed, including all costs incurred and reasonable profit margin, even if Eurofins Built does not issue a final or partial report.

### 4. WARRANTIES AND LIABILITY

4.1 Where applicable, Eurofins Built will use appropriate and approved analytical test methods. Eurofins Built has referenced these methods in its Laboratory Quality Manuals and has documented them in Standard Operating Procedures. Eurofins Built reserves the right based on its reasonable judgment to deviate from these methodologies as necessary or appropriate to the extent required by the nature or composition of the sample, which deviations, if any, will be made on a basis consistent with recognized standards of the industry and/or Eurofins Built's Laboratory Quality Manuals. Client may request that Eurofins Built perform according to a mutually agreed Quality Assurance Project Plan (QAPP). If samples arrive prior to agreement on a QAPP, Eurofins Built will proceed with analyses under its standard Quality Manuals then in effect. Eurofins Built will not be responsible for any resampling or other charges if work must be repeated to comply with a subsequently finalized QAPP.

4.2 Eurofins Built shall start preparation and/or analysis within holding times provided that Sample Delivery Acceptance occurs within 48 hours of sampling or 1/2 of the holding time for the test, whichever is less,

unless the Client has specifically requested that Eurofins Built hold the samples without preparation or other processing or pending receipt of a purchase order. Where resolution of inconsistencies leading to Sample Delivery Acceptance does not occur within this period, Eurofins Built will use its best efforts to meet holding times and will proceed with the work provided that, in Eurofins Built's judgment, the chain-of-custody or definition of the Scope of Work provide sufficient guidance. Reanalysis of samples to comply with Eurofins Built's Quality Manuals will be deemed to have met holding times provided the initial analysis was performed within the applicable holding time. Where reanalysis demonstrates that sample matrix interference is the cause of failure to meet any Quality Manual requirements, the warranty will be deemed to have been met.

4.3 Eurofins Built warrants that it possesses and maintains all licenses and certifications that are required to perform services under these Terms and Conditions provided that such requirements are specified in writing to Eurofins Built prior to Sample Delivery Acceptance. Eurofins Built will notify the Client in writing of any decertification or revocation of any license, or notice of either, that affects work in progress.

4.4 The warranty obligations set forth in Sections 4.1, 4.2 and 4.3 are the sole and exclusive warranties given by Eurofins Built in connection with any services performed by Eurofins Built or any results generated from such services, and Eurofins Built gives and makes NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. No representative of Eurofins Built is authorized to give or make any other representation or warranty or modify this warranty in any way.

4.5 Client's sole and exclusive remedy for breach of warranty in connection with any services performed by Eurofins Built will be limited to repeating any services performed, contingent on the Client's providing, at the request of Eurofins Built and at the Client's expense, additional sample(s) if necessary. Any reanalysis requested by the Client generating results consistent with the original results will be at the Client's expense. If resampling is necessary, Eurofins Built's liability for resampling costs will be limited to actual cost or one hundred and fifty dollars (\$150) per sample, whichever is less.

4.6 Eurofins Built's liability for any and all causes of action arising hereunder, whether based in contract, tort, warranty, negligence or otherwise, shall be limited to the lesser amount of compensation for the services performed or \$100,000. All claims, including those for negligence, shall be deemed waived unless suit thereon is filed within one year after Eurofins Built's completion of the services. Under no circumstances, whether arising in contract, tort (including negligence), or otherwise, shall Eurofins Built be responsible for loss of use, loss of profits, or for any special, indirect, incidental or consequential damages occasioned by the services performed or by application or use of the reports prepared.

4.7 In no event shall Eurofins Built have any responsibility or liability to the Client for any failure or delay in performance by Eurofins Built that results, directly or indirectly, in whole or in part, from any cause or circumstance beyond the reasonable control of Eurofins Built. Such causes and circumstances include, but are not limited to, acts of God, acts of Client, acts or orders of any governmental authority, strikes or other labor disputes, natural disasters, accidents, wars, civil disturbances, equipment breakdown, matrix interference or unknown highly contaminated samples that impact instrument operation, unavailability of supplies from usual suppliers, difficulties or delays in transportation, mail or delivery services, or any other cause beyond Eurofins Built's reasonable control.

## 5. RESULTS, WORK PRODUCT

5.1 Data or information provided to Eurofins Built or generated by services performed under this agreement shall only become the property of the Client upon receipt in full by Eurofins Built of payment for the entire order. Ownership of any analytical method, QA/QC protocols, software programs or equipment developed by Eurofins Built for performance of work will be retained by Eurofins Built. Client shall not disclose such information to any third party without Eurofins Built's express prior consent.

5.2 Data and sample materials provided by Client or at Client's request, and the result obtained by Eurofins Built shall be held in confidence

(unless such information is generally available to the public or is in the public domain or Client has failed to pay Eurofins Built for all services rendered or is otherwise in breach of these Terms and Conditions), subject to any disclosure required by law or legal process.

5.3 Should the results delivered by Eurofins Built be used by the Client or Client's client, even though subsequently determined not to meet the warranties described in these Terms and Conditions, then the compensation will be adjusted based upon mutual agreement. In no case shall the Client unreasonably withhold Eurofins Built's right to independently defend its data.

5.4 Eurofins Built reserves the right to perform the services at any laboratory in the Eurofins Built network. If a Client has requested a particular location for the work, Eurofins Built will inform the Client when operational constraints require the work to be performed at another Eurofins Built location. In addition, Eurofins Built reserves the right to subcontract services ordered by the Client to another laboratory or laboratories, if, in Eurofins Built's sole judgment, it is reasonably necessary, appropriate or advisable to do so. Eurofins Built will in no way be liable for any subcontracted services (outside the Eurofins Built network) except for work performed at laboratories which have been audited and approved by Eurofins Built.

5.5 Eurofins Built will dispose of non-hazardous samples, sample extracts and digestates 30 days after the final analytical report is issued, unless instructed to store them for an alternate period of time or to return such samples to the Client, in a manner consistent with U.S. Environmental Protection Agency regulations or other applicable federal, state or local requirements. Charges for disposal will be billed to the client. Alternatively, samples can be returned to the client for disposal. Cost of return shipping will be billable to the client. Air samples in Summa canisters and tedlar bags are used and the containers cleaned immediately after testing, such that those samples are not retained. Longer storage periods may be requested and may be accommodated if space allows, and for an additional charge. Any samples for projects that are canceled or not accepted, or for which return was requested, will be returned to the Client at its own expense. Eurofins Built reserves the right to return to the Client any sample or unused portion of a sample that is not within Eurofins Built's permitted capability or the capabilities of Eurofins Built's designated waste disposal vendor(s). ALL DIOXIN, MIXED WASTE, AND RADIOACTIVE SAMPLES WILL BE RETURNED TO THE CLIENT, unless prior arrangements for disposal are made.

5.6 Unless a different time period is agreed to in an order under these Terms and Conditions, Eurofins Built agrees to retain all records for five (5) years.

5.7 If Eurofins Built is required to respond to legal process related to services for Client, Client agrees to reimburse Eurofins Built for hourly charges for personnel involved in the response and attorney's fees reasonably incurred in obtaining advice concerning the response, preparation to testify, and appearances related to the legal process, travel and all reasonable expenses associated with the litigation. Additional consulting beyond that normally associated with lab reports will be billed at Eurofins Built's current published rates.

## 6. INSURANCE

6.1 During the performance of services under these Terms and Conditions, Eurofins Built shall maintain in force Workers' Compensation and Employer's Liability Insurance in accordance with the laws of the states having jurisdiction over Eurofins Built's employees who are engaged in the performance of the work. Eurofins Built shall also maintain during such period Comprehensive General and Contractual Liability (limit of \$1,000,000 per occurrence; \$2,000,000 aggregate), Comprehensive Automobile Liability, owned and hired (\$1,000,000 combined single limit), Professional Liability Insurance (limit of \$5,000,000 per claim/aggregate), and Pollution Liability Insurance (limit of \$1,000,000 per claim/aggregate).

## 7. MISCELLANEOUS PROVISIONS

7.1 These Terms and Conditions, together with any additions or revisions which may be agreed to in writing by Eurofins Built, embody the whole agreement of the parties and provide the only remedies available. There are no promises, terms, conditions, understandings, obligations or

agreements other than those contained herein, and these Terms and Conditions shall supersede all previous communications, representations, or agreements, either verbal or written, between the Client and Eurofins Built. These Terms and Conditions, and any transactions or agreements to which they apply, shall be governed both as to interpretation and performance by the laws of the state where Eurofins Built's services are performed.

7.2 The invalidity or unenforceability, in whole or in part, of any provision, term or condition hereof shall not affect in any way the validity or enforceability of the remainder of these Terms and Conditions, the intent of the parties being that the provisions be severable. The section headings of these Terms and Conditions are intended solely for convenient reference and shall not define, limit or affect in any way these Terms and Conditions or their interpretations. No waiver by either party of any provision, term or condition hereof or of any obligation of the other party hereunder shall constitute a waiver of any subsequent breach or other obligation.

7.3 The obligations, liabilities, and remedies of the parties, as provided herein, are exclusive and in lieu of any others available at law or in equity. Indemnifications, releases from liability and limitations of liability shall apply, notwithstanding the fault, negligence or strict liability of the party to be indemnified, released, or whose liability is limited, except to the extent of sole negligence or willful misconduct.