

## **1. Area of Application**

1.1 All Orders accepted by any of the Eurofins Environmental Companies (including Eurofins Lancaster Laboratories Environmental, LLC, Eurofins Air Toxics, Inc., Eurofins Eaton Analytical, Inc., Eurofins Frontier Global Sciences, Inc., and Eurofins Calscience, Inc. or any of their subsidiaries or affiliates" (collectively, "Eurofins") will be governed by these General Terms and Conditions of Sale (the "Terms and Conditions"), including orders placed by telephone which have not been confirmed in writing and orders made by delivery of samples. A contract with these Terms and Conditions comes into being when an order that has been placed with Eurofins is accepted by Eurofins. An order placed with Eurofins is considered as accepted by Eurofins when (a) Eurofins proceeds to fulfill that order, without need for any written confirmation from Eurofins or (b) Eurofins accepts the order in writing.

If Eurofins and Customer have an existing Services Agreement in place (i.e. Master Service Agreement, Laboratory Service Agreement or Environmental Service Agreement), that Agreement will supersede these Terms and Conditions, and will constitute the entire agreement between the parties. Any additional or conflicting terms and conditions are null and void.

1.2 These Terms and Conditions supersede and replace all prior verbal or written price quotations and agreements between the parties and, unless specifically indicated otherwise therein, take precedence over all conflicting or inconsistent provisions of subsequent written agreements between the parties. Only the chairman or president (collectively, "officer") has the authority to alter or waive any of these Terms and Conditions or to make any representation which conflicts with or purports to override any of these Terms and Conditions; and no such alteration, waiver or representation shall be binding upon Eurofins, unless it is in writing and signed by an officer of Eurofins.

## **2. Placement of Order**

2.1 A customer's order will be valid only if it is sent by mail or fax or other electronic message on letterhead of the customer or by using Eurofins approved sample dispatch sheets, Chain-of-Custody forms or electronic order forms and the commercial aspects of the order which are not specifically set out in these Terms and Conditions (including price, estimated turnaround times and delivery date) must be agreed at the time of the order. The customer must confirm in writing orders given by telephone immediately after they are made and will be deemed to have placed an order if the customer sends samples to Eurofins quoting the customer reference. Eurofins is not obligated to start any analytical work unless the order is clear and all required information has been provided.

2.2 Unless specifically accepted in writing and signed by an officer of Eurofins, any terms proposed or submitted by a customer at any time (including, but not limited to, terms or provisions in the customer's purchase order, instructions or other document) which differ from these Terms and Conditions are rejected as a material alteration of these Terms and Conditions and shall be of no force or effect. Furthermore, special terms or conditions of prior orders, including special pricing, will not automatically apply to subsequent orders. Each order accepted by Eurofins will be treated as a separate contract between Eurofins and the customer.

2.3 A request for additional services on samples that have entered the laboratory will be treated as a new order and may postpone estimated delivery date accordingly.

## **3. Price and Terms of Payment**

3.1 If the acknowledgment of an order does not state otherwise, Eurofins prices apply. Any additional cost or disbursement (e.g. incurred by Eurofins in connection with the order) must be paid by the customer.

3.2. Prices are exclusive of all applicable taxes (including sales, use and VAT) and are based on tariffs in force at the day of the transmittal of the offer to the customer. Applicable taxes are those in force at the date of invoicing.

3.3 Unless specifically agreed otherwise by Eurofins in its acceptance of an order, payment of all invoices is due strictly within 30 days of the invoice date. Any dispute about invoices must be raised within 30 days of the invoice date. The challenge of an analytical result will not entitle a customer to defer payment. Any invoice which remains outstanding after due date, may be additionally charged with an administrative penalty of Seventy Five Dollars (\$75) and may carry interest at the rate of one percent (1%) per month or the maximum interest rate permitted by applicable law, whichever is lower.

3.4 Eurofins has the right to charge an administrative fee of up to Fifteen Dollars (\$15) to re-issue an invoice.

3.5 The invoice settlement method is check, bank transfer or direct debit. Any other method of payment must receive prior agreement from Eurofins. The customer undertakes to provide bank account details, as necessary.

3.6 Eurofins is entitled to require payment of up to 100% of the quoted order price as a condition of acceptance.

## **4. Duties of Customer in Delivering Samples or Materials**

4.1 The samples or materials must be in a condition that makes the preparation of reports/analyses or the production of ordered products possible without difficulty. Eurofins is entitled to conduct an initial examination of the samples or materials to check their condition before processing the samples, drawing up a report or using them in production. The customer shall bear the costs of this initial examination, if the samples or materials do not comply with the requirements described in this clause 4.1. If the result of the initial examination is that an analysis or production is impossible or is possible only under more difficult conditions than originally anticipated – for example, because the samples or materials have been interspersed with foreign materials or substances that were not reported by the customer or are degraded - Eurofins shall be entitled to terminate or interrupt the order and the customer shall bear costs incurred by Eurofins to that point.

4.2 The customer must ensure, and hereby warrants, that no sample poses any danger, including on its site, during transportation, in the laboratory or otherwise to Eurofins premises, instruments, personnel or representatives. It is the customer's responsibility to insure compliance with hazardous waste regulations, including regarding information, transportation and disposal and to inform Eurofins personnel or representatives about sample health and safety concerns, including any known or suspected toxic or other contaminant that may be present in the sample and its likely level of contamination as well as the risks to Eurofins premises, instruments, personnel and representatives related to the contamination. The customer shall be responsible for, and indemnifies Eurofins against, all costs, damages, liabilities and injuries that may be caused to or incurred by Eurofins or its personnel or representatives including on the sampling site, during the transportation or in the laboratory by the customer's sample or by sampling site conditions. The customer shall bear all extraordinary costs for adequate disposal of hazardous waste resulting from the sample, whether or not described as hazardous waste. At Eurofins' request, the customer must provide Eurofins with the exact composition of the samples.

## **5. Property Rights on Sample Material and Sample Storage**

5.1 All samples become the property of Eurofins to the extent necessary for the performance of the order.

5.2 Eurofins can dispose of or destroy samples immediately after the analysis has been performed, unless Eurofins and the customer have agreed in writing on the terms of Eurofins' retention of the sample. Eurofins also can dispose of or destroy the samples after the agreed upon retention period, without further notice and at customer's cost, should an extra cost for Eurofins arise to comply with any regulation (for example, with respect to disposal of hazardous waste). If the customer requests the return of unneeded sample material, Eurofins will return them to the customer, at the customer's cost and risk.

## **6. Delivery Dates, Turnaround Time**

6.1 Delivery dates and turnaround times are estimates and do not constitute a commitment by Eurofins. Nevertheless, Eurofins shall make commercially reasonable efforts to meet its estimated deadlines.

6.2 Results are generally sent by email and/or by USPS mail, or via other electronic means, to the attention of the persons indicated by the customer in the order, promptly after the analysis is completed.

## **7. Transfer of Property**

7.1 Title in any analysis results, products, equipment, software or similar material supplied by Eurofins to the customer will remain with Eurofins until all invoices in respect thereof have been paid by the customer in full, and until such full payment, the customer shall have no property rights or other rights to use them. In addition, even if Eurofins has accepted and begun to fulfill an order, Eurofins has the right at any time stop processing that order and to stop doing any work for a customer if that customer is late in paying any amount due to Eurofins, whether for that or any other order.

## 8. Limited Warranties and Responsibilities

8.1 Orders are handled in the conditions available to Eurofins in accordance with the current state of technology and methods developed and generally applied by Eurofins, as contained in Eurofins' Laboratory Quality Manuals and related Standard Operating Procedures. This limited warranty expires six months after the delivery date of the samples, if the acknowledgement of the order does not specifically state otherwise. In all cases, the customer must independently verify the validity of any results, interpretations, assessments and conclusions supplied by Eurofins, if it wishes to rely on the same in respect of matters of importance and shall do so at its own risk.

8.2 Each analytical report relates exclusively to the sample analyzed by Eurofins. If Eurofins has not expressly been mandated and paid for the definition of the sampling plan (including which samples of which raw materials and finished products and at which frequency each should be analyzed) and the definition of the precise range of analysis to be performed or if the customer has not followed Eurofins recommendations, Eurofins shall not bear any responsibility if the sampling plan and/or the range of analysis to be performed prove to be insufficient or inappropriate.

8.3 The customer is responsible for the proper delivery of samples sent to Eurofins for examination/analyses or materials sent for production. Unless otherwise specifically agreed in writing by Eurofins, Eurofins accepts no responsibility for any loss or damage, which may occur to any sample in transit or to any facility or site where logistics services are being delivered. The customer will at all times be liable for the security, packaging and insurance of the sample from its dispatch until it is delivered to the offices or the laboratories of Eurofins. Eurofins will use commercially reasonable care in handling and storing samples, but Eurofins shall not be held responsible for any loss or destruction of samples even after their receipt at its laboratories.

8.4 The customer warrants and represents to Eurofins that all samples sent to Eurofins for analysis are safe and in a stable condition and undertakes to indemnify Eurofins for any losses, injuries, claims and costs which Eurofins, or its personnel, may suffer as a result of any sample not being in a safe or stable condition, notwithstanding that the customer may have given an indication on the sample or any order form of any perceived problem with the sample. The customer must always inform Eurofins in writing prior to shipment and label the packaging, samples and/ or containers appropriately, if the samples are dangerous or otherwise of a hazardous nature, in accordance with applicable laws.

8.5 Unless explicitly agreed in writing by all parties, the contractual relationship shall be exclusively between the customer and Eurofins. There shall be no third party beneficiary or collateral warranty relating to any order and the customer shall indemnify and hold Eurofins harmless from and against any and all third party claims in any way relating to the customer or to the order by the customer.

## 9. Limitation of Liability

9.1 Except as expressly set forth in these Terms & Conditions, Eurofins makes no express warranties, guarantees or representations and none are to be implied, regarding the services to be performed by Eurofins, the suitability of the results for any purpose, or any sampling equipment provided. Client's sole remedy for any breach by Eurofins of any warranty, representation, product, service, or any other matter in connection with any service performed or to be performed by Eurofins or arising under these Terms & Conditions shall be limited to Eurofins repeating the services to be performed. Any reanalysis requested by Client generating results reasonably consistent with the original results will be at Client's sole expense. If resampling is necessary, Eurofins' liability for resampling costs will be limited to the actual, direct cost of resampling. Eurofins' total liability to Client and any other party arising hereunder or relating hereto, whether based in contract, tort, warranty, negligence, public policy, statute, or otherwise, shall be limited to the lesser of: (1) the amount of compensation Client has actually paid Eurofins for the services performed; or (2) one hundred thousand dollars (\$100,000). Notwithstanding any terms contained herein to the contrary, under no circumstances, howsoever arising (including, without limitation, whether arising in contract, tort warranty, negligence, public policy, statute, or otherwise), shall Eurofins be responsible for any loss of use, loss of profits, or for any special, indirect, incidental, or consequential damages occasioned by the services performed, use of sampling equipment, or use of any reports, correspondence, or any other communication prepared by Eurofins (whether oral or written) or any lack or absence of any such report or correspondence (whether oral or written). Except to the extent that such limitations are not permitted or void under applicable law: (a) Eurofins (together with its workers, office clerks, employees, representatives, managers, officers, directors, agents and consultants and all Eurofins partners and affiliates, the "Eurofins Indemnifying Parties") shall be liable only for the proven direct and immediate damage caused by the Eurofins Indemnifying Party's willful misconduct in connection with the performance of an order and then, only if Eurofins has

received written notice thereof not later than six (6) months after the date of the customer's knowledge of the relevant claim (unless any longer period is prescribed under applicable law and cannot be contractually limited).

9.2 The Eurofins Indemnifying Parties shall not be liable for any indirect, direct or consequential loss or damage (including, but not limited to, loss of business, profits, goodwill, business opportunities or similar) incurred by the customer or by any third party.

9.3 It is a condition of Eurofins's acceptance of an order that the customer indemnifies the Eurofins Indemnifying Parties for any losses, injuries, claims and costs which the Eurofins Indemnifying Parties may suffer as a result of, arising from or in any way connected with its role under or services or products or software provided pursuant to these Terms and Conditions, except to the extent that the Eurofins Indemnifying Parties are required to bear them according to these Terms and Conditions, and by placing an order the customer agrees to provide that indemnification.

## 10. Repeated Analysis

Objections to test results can be made within thirty (30) days after the customer receives the results. However, unless it would appear that the results of the repeated analysis do not substantially match those of the first one, the customer shall bear the costs of the repeat testing or review. Furthermore, a repeated analysis will be possible only if Eurofins has a sufficient amount of the original sample on hand when it receives the customer's objection. Otherwise the customer will be required to pay all costs, including sampling, transportation, analytical and disposal costs for the repeat analysis.

## 11. Force Majeure

Eurofins cannot be held liable for delays, errors, damages or other problems caused by events or circumstances which are unforeseen or beyond Eurofins' reasonable control, or which result from compliance with governmental requests, laws and regulations.

## 12. Confidentiality & Processing of Customer Data

12.1 Eurofins shall be entitled to save and process personal or commercial data received from the customer in any way, no matter whether such data stem from the customer directly or from a third party and shall use commercially reasonable efforts to keep such data confidential, in compliance with applicable law.

12.2 Eurofins shall use commercially reasonable efforts to keep all analysis results and service reports confidential, however, Eurofins has the right to use them in order to demonstrate its entitlement to payment for services rendered.

12.3 Analysis results are prepared and supplied exclusively for the use of the customer and The customer (a) remains responsible for any consequences due to the divulgence of such results to a third party and any reliance of such third party on such results and (b) hereby agrees to indemnify the Eurofins Indemnified Parties against any liability which the Eurofins Indemnified Parties may incur as a result of such divulgence or any such third party reliance.

## 13. Disclaimer and Miscellaneous

13.1 **ALL TERMS, CONDITIONS AND WARRANTIES (INCLUDING ANY IMPLIED WARRANTY AS TO MERCHANTABLE QUALITY OR FITNESS FOR A PARTICULAR PURPOSE) AS TO THE MANNER, QUALITY AND TIMING OF THE TESTING SERVICE AND RESULTS, EQUIPMENT, PRODUCTS OR SOFTWARE SUPPLIED BY EUROFINS ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF EUROFINS CONTAINED IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE.**

13.2 These Terms and Conditions may be modified in writing from time to time by Eurofins and orders will be governed by the most recent version of these Terms and Conditions that is in effect at the time Eurofins accepts the order.

13.3 Should a court waive, limit or hold to be invalid, illegal or unenforceable any part of these Terms and Conditions, all other parts shall still apply to the greatest extent possible.

13.4 Failure by either Eurofins or the customer to exercise the rights under these Terms and Conditions shall not constitute a waiver or forfeiture of such rights.

## 14. Governing Law/ Jurisdiction

14.1 The construction, validity and performance of these Terms and Conditions shall be governed by the laws and the commercial courts of the state in which is located the Eurofins facility performing the order (including in cases involving multiple counsels for the defense or third-party respondents), which shall have exclusive jurisdiction.