

TERMS AND CONDITIONS

American Testing Services, Ltd. is referred to as "Seller" and the entity or person who is purchasing services (the "Services") is referred to as "Buyer." These terms and conditions, together with the document to which it is attached and all documents referenced herein or therein, are collectively referred to as this "Agreement."

1. **Applicability.** These terms and conditions apply to all Services provided by Seller to Buyer, and, without limiting the foregoing, are incorporated by reference into any quotation, invoice, or any other sales document issued by Seller. Any additional or different terms or conditions proposed by Buyer are objected to and are hereby rejected. Buyer hereby assents to and shall be bound by each and every term and condition set forth herein, notwithstanding and irrespective of any terms and conditions in Buyer's purchase order or other purchase documents (whenever issued) which may be different than or inconsistent with those stated herein. This Agreement contains the entire understanding governing the business relations that exist between Buyer and Seller with respect to the Services and, except as expressly provided herein, these terms and conditions may not be modified or altered except in a writing duly executed by each of the parties.

2. **Payment.** Sales tax and any customary miscellaneous charges may be added to the price of the Services. Payments shall be made within 30 days of the date of the invoice. Interest at a rate of 1 ½% per month will be charged on any unpaid balance or invoice. Notwithstanding anything in this Agreement, Buyer shall be obligated to pay Seller for all Services and the full purchase price shall be paid by Buyer regardless of any disputes or controversies and Buyer is not permitted to withhold payment or offset any payment against claims of Buyer which are disputed by Seller. Any check or remittance received from or for the account of Buyer may be accepted and applied by Seller against any indebtedness or obligation owed by Buyer, without prejudice to discharge or accord and satisfaction of the remainder of any such indebtedness or obligation, regardless of any condition, provision, statement, legend, notation, document or writing appearing on, referring to or accompanying such check or remittance.

3. **Reports; Ownership.** All laboratory reports, notes, data and similar documents prepared by Seller are the property of Seller but shall be provided to Buyer as instruments of service for Buyer's exclusive use as related to the "Project" described in this Agreement. Utilization of such documentation by Buyer for any other purpose or distribution to third parties without the prior written consent of Seller is prohibited. Any use of Seller's name and/or seal is strictly prohibited without the prior written permission of Seller. Reports set forth the findings of Seller solely with respect to the sample(s) identified therein and the results of testing are not indicative or representative of the quality or characteristics of the lot from which the sample(s) has been taken. Reports reflect the findings of Seller at the time of testing based on the items and information provided or made available to Seller. Reports represent the entire understanding of the parties with respect to the subject matter of such report and no modification, variance, extrapolation or conclusion with respect thereto shall be permitted without the prior written consent of Seller.

4. **Samples.** Seller may, in its sole discretion, destroy samples which have been submitted to Seller for testing and which have not been destroyed in the course of testing. Foreign Buyers shipping samples into the United States must comply with any laws governing the exportation and importation of materials into the United States. Failure to comply with any such laws may result in shipments being delayed, returned or confiscated.

5. **Warranty.** Seller warrants that the Services will be performed in accordance with industry standards with that degree of care employed by professional engineer and independent inspection and testing laboratories in performing the same or similar services and under similar circumstances. Seller may delegate the performance of all or a portion of the testing services to an affiliate, agent or subcontractor, and Buyer consents to such delegation. If Buyer desires to assert a claim for breach of the foregoing warranty, it must submit a claim to Seller within 60 days after the date of issuance of the report to Buyer in a writing that sets forth with particularity the basis for such claim. If Seller determines that the claim is timely and that a breach of the foregoing warranty has occurred, then Seller's obligation under this Section 5 is limited to, at Seller's election: (i) re-performing the deficient test, without charge to Buyer, or (b) refunding to Buyer (or crediting Buyer with), without interest, the fee paid to Seller for such Services (or portion thereof). Buyer waives any and all claims for breach of the foregoing warranty, including, without limitation, claims that the report is inaccurate, incomplete or misleading or that additional or different testing is required, unless and then only to the extent that Buyer submits a written claim to Seller within such 60-day period.

6. **Limitation of Warranty; Disclaimer.** THE FOREGOING WARRANTY IN SECTION 5 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY SELLER. IN NO EVENT SHALL SELLER BE LIABLE FOR

BUYER'S OR ANY OTHER PERSONS' CONSEQUENTIAL OR INCIDENTAL DAMAGES RESULTING FROM SELLER'S PERFORMANCE UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY DAMAGES THAT RESULT IN ANY WAY FROM BUYER'S OR ANY OTHER PERSONS' RELIANCE OR USE OF ANY SERVICES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE COMPENSATION PAID BY BUYER UNDER THIS AGREEMENT FOR EACH SPECIFIC PROJECT. SELLER'S LIABILITY SHALL CEASE UPON FURTHER PROCESSING, ASSEMBLING OR OTHER WORK UNDERTAKEN AND PERFORMED ON ANY MATERIAL INSPECTED BY SELLER.

7. **Indemnification.** Subject to the other applicable provisions in this Agreement, Buyer hereby agrees to indemnify, defend and hold harmless Seller and its member, managers officers, employees, and agents from and against any liability or expense arising from (i) any product liability or similar claims asserted by any party attributable to the design, use, sale, distribution, marketing or promotion of any item that is the subject of a Service; (ii) any claims for death, personal injury or related property damage attributable to the design, use, sale, distribution, marketing or promotion of any item that is the subject of a Service; and (iii) the default by Buyer of its representations, warranties or covenants hereunder.

8. **Confidential Information; Intellectual Property Rights.** "Buyer Confidential Information" means any and all oral or written or tangible proprietary or confidential information, data, materials or the like owned or controlled by Buyer and disclosed by or on behalf of Buyer to Seller from time to time in connection with this Agreement, which is marked "Confidential" or "Proprietary", or, if initially communicated verbally, is reduced to a writing thus marked within thirty (30) days thereof. "Seller Confidential Information" means any information, process, technique, technical data or know-how of a proprietary, confidential and/or trade secret nature owned by Seller, in whatever form, including, but not limited to, such generated by Seller with respect to the provision of the Services to Buyer and any knowledge or information which Seller shall have disclosed, or may hereafter disclose, to Buyer incident to the performance of Seller's duties under this Agreement. All Buyer Confidential Information shall remain the property of Buyer, and all Seller Confidential Information shall remain the property of Seller. Neither party shall disclose the other party's confidential information without its prior written consent. Unless otherwise agreed to, all intellectual property rights in the Services sold, including, but not limited to, copyrights, trademarks, trade secret rights, design rights, and patent rights, shall remain the exclusive property of Seller. If any of those rights as aforesaid can be acquired only by registration, Seller shall have the sole and exclusive power to effectuate such registration.

9. **Force Majeure.** Seller shall not be held responsible for any delay or failure of performance hereunder caused by acts of God, war, riot, terrorism, fire, explosion, flood, strike, lock-out, injunction, governmental law or regulations, or any other cause beyond the control of Seller.

10. **Default.** In the event of bankruptcy or insolvency proceedings involving Buyer, in the event of the appointment of an assignee for the benefit of creditors or of a receiver, or if Buyer is insolvent or fails to perform any obligation arising from the sale of Services or the terms and conditions contained herein, including, but not limited to, default of payment, Seller may, without any liability whatsoever and without prejudice to any other rights or remedies which Seller may have at law or in equity, immediately terminate in whole or in part, further performance by Seller of its obligations under this Agreement.

11. **Collection.** Buyer agrees to reimburse any sums expended by Seller, including but not limited to, attorneys' fees, collection fees and any other expenses incurred by Seller in collection of payment for any amount due to Seller under this Agreement.

12. **Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to conflict of laws principles. The parties hereby consent to the exclusive jurisdiction and venue of the courts located in Montgomery County, Ohio. In the event any provision of this Agreement shall be deemed to be invalid or unenforceable by a court of competent jurisdiction, the court is authorized to reform said provision to be enforceable and the remainder of this Agreement shall continue in full force and effect. The headings contained in these terms and conditions are inserted for convenience only and in no way define, limit, or extend the scope or intent of any provision herein. Failure of either party to insist on performance of any provision of this Agreement shall not be construed as a waiver of such and shall not affect the right of either party thereafter to enforce each and every term, condition or requirement hereof.