



These Standard Terms (Terms) govern all services that Pace Analytical \_\_\_\_\_ ("Lab") will perform on behalf of \_\_\_\_\_ ("Client"), and supersede any other written provisions (including purchase/work orders) related to the services, as well as all prior discussions, courses of dealing, and/or performance, unless a separate, executed agreement for the same or similar services already exists between the Lab and Client (collectively "the Parties), or the Parties subsequently agree to terminate or amend these Terms, as allowed in Sections 8 and 10, respectively.

## **1. Definitions:**

**Holding Time:** The maximum amount of time a sample may be stored before being analyzed.

**Sample Delivery Acceptance (SDA):** The date and time when Lab officially receives a sample or Sample Delivery Group, as evidenced by either a notation on the Chain of Custody or an entry in the Lab's information management system (LIMS).

**Sample Delivery Group (SDG):** A set of samples normally shipped and reported to the Lab as a group.

**Turnaround Time (TAT):** The maximum allowable period within which Lab must report out its analytical testing results to Client, calculated from the date of SDA.

## **2. Client's Obligations:**

a. Client must complete one (1) of the following steps to initiate Lab's services:

- i. submit a completed (hard-copy) purchase order
- ii. place a telephone order
- iii. email a request
- iv. attach a completed purchase order to an email
- v. approve Lab's quotation, or
- vi. place an order for Lab's supplies via Lab's website.

b. Subject to occasional, mutually agreed-upon exceptions, Client must, for each sample delivered to Lab, provide all of the following information:

- i. a minimum of five (5) days' prior notice
- ii. the name of the responsible project manager
- iii. the name of the person submitting the sample
- iv. the specific collection site
- v. the date and time of collection
- vi. the specific testing being requested, and
- vii. sufficient details about reporting requirement(s).

c. Client shall also:

- i. remain liable for any loss or damage to sample(s) until SDA
- ii. pay all invoices in full on a net 30 basis or as otherwise agreed in writing
- iii. notify Lab about any disputed charges or results within 30 days of receiving applicable invoice
- iv. reimburse Lab for any costs, including attorneys' fees, required to collect delinquent payments
- v. pay for any services it orders on any sample(s) already analyzed by Lab.
- vi. obtain Lab's prior written consent before assigning billing or payment of Lab services to any credit-worthy third party, (failure to do so shall mean Client remains responsible for the payment of any outstanding balance)
- vii. refrain from using any of Lab's supplies (e.g., sample containers) in connection with any non-Lab services
- viii. ensure that any sample(s) containing any known hazardous substance is (are) labeled, packaged, manifested, transported, and delivered to Lab in accordance with all applicable regulations
- ix. obtain Lab's prior written consent before publishing Lab's name and/or any data
- x. reimburse Lab for any out-of-scope services and related expenses (e.g., defending its analytical results or responding to a subpoena for documents and/or expert testimony)
- xi. excuse Lab for any failure or delay in its performance caused by Client, a person for whom Client is responsible, or other "Force Majeure" event or circumstance beyond Lab's control, such as government shutdowns, natural disasters, labor strikes, or acts of God; and



xii. accept responsibility for any claims, damages, losses, expenses, etc. (including reasonable attorneys' fees) to the extent they were caused by Client's: breach of these Terms; negligence or willful misconduct (which expressly includes Client's use of Lab's name and/or data for anything other than the specific purpose for which it was intended); or violation of applicable laws.

### **3. Lab's Obligations:**

Lab shall:

- a. Perform its services in accordance with generally accepted analytical and environmental laboratory practices and professionally recognized standards.
- b. Promptly notify Client of any:
  - i. missing sample(s) and/or sample(s) received in damaged, contaminated, improperly preserved condition, or
  - ii. subpoena or similar legal/administrative order requiring action by Lab so that Client might also take appropriate action.
- c. Assume responsibility for the quality of its services.
- d. Prepare and maintain accurate records.
- e. Obtain or maintain any permit(s), license(s), or certification(s) as necessary for the performance of its services.
- f. Charge its fees on a net 30 basis (unless otherwise agreed), including a one and a half percent (1.5 %) per month late charge on any unpaid balances.
- g. Invoice Client for each sample or SDG as reported.
- h. Assume risk of loss or damage to any Client sample(s) upon SDA.
- i. Initiate analysis within established holding times – so long as SDA occurred within 48 hours of collection or the first half of the maximum allowed holding time.
- j. Indemnify Client for any claims, damages, losses, expenses, etc. (including reasonable attorneys' fees) to the extent they were caused by Lab's: breach of these Terms; negligence or willful misconduct; or the negligence and willful misconduct of persons for whom Lab is legally responsible.
- k. Warrant the results, with the express understanding that this warranty is exclusive and does not extend to any merchantability or fitness for a particular purpose.

### **4. Lab's Discretionary Actions:**

Lab may:

- a. Cease all services, including any release of data, if Client does not pay as agreed
- b. Reject or rescind any SDA if Lab decides sample poses a risk
- c. Charge or bill Client directly for:
  - i. reasonable attorneys' fees
  - ii. any supplies (including containers) that are not used or returned
  - iii. outbound/return shipping
  - iv. disposal of any air samples that have not been reclaimed within seven (7) days of Lab's SDA thereof
  - v. disposal of any other samples that have not been reclaimed within 30 days of Lab's SDA thereof, or as otherwise required
  - vi. a minimum fee for invoicing and/or handling samples, and
  - vii. any sample that underwent SDA, but was subsequently, at Client's direction, not analyzed.
- d. Return unused portions of samples found or suspected to be hazardous to Client, at Client's cost.
- e. Retain Client's unreleased data and/or cancel Client's web portal access pending payment in full

**5. Confidentiality:** The Parties agree that they will take all reasonable precautions to prevent the unauthorized disclosure of any proprietary or confidential information of each other and that they will not disclose such information except to those employees, subcontractors, or agents who have expressly agreed to maintain confidentiality.

**6. Governing Law:** These Terms shall be construed and interpreted pursuant to the laws of the State of Minnesota without giving effect to the principles of conflicts of law thereof.



**7. Term:** The Parties shall perform the services identified in the applicable purchase order or other agreement until completed or terminated in accordance with Section 8. below

**8. Termination:**

- a. Either party may terminate these Terms upon 30 days' prior written notice.
- b. Lab may immediately terminate for any breach by Client, including its failure to pay within 60 days of Lab's dated invoice.

**9. Limitation of Liability:**

- a. If a court of competent jurisdiction finds that Lab failed to meet applicable standards and if Client suffers damages as a result, Lab's aggregate liability for its negligence or unintentional breach of contract shall not exceed the total fee paid for its services.
- b. This limitation shall not apply to any Client losses arising from Lab's negligence or willful misconduct, so long as Client:
  - i. Notifies Lab of any issue within thirty (30) days of receiving applicable invoice, and
  - ii. Allows Lab to defend its data, even to a regulatory agency that may have previously rejected same.
- c. Notwithstanding the foregoing, neither Lab nor Client shall be liable to the other for special, incidental, consequential, or punitive damages.

**10. Amendment/Change Order:** Any attempt to modify, vary, supplement, or clarify any provision of these Terms is of no effect unless reduced to writing and signed by both Parties.

**11. Storage of Data:** Following final report issuance, Lab will retain back-up data for up to three (3) years and final reports for up to five (5) years depending upon the applicable requirements.

**12. Intellectual Property:** Lab shall retain sole ownership of any new method, procedure, or equipment it develops or discovers while performing services for Client pursuant to these Terms. Lab may, however, grant a license to the Client for its use of same.

**13. Non-competition:** Client shall not solicit or recruit any Lab personnel for at least 12 months following the termination of the services governed by these Terms.

**14. Non-assignment:** Neither party may assign or transfer any right or obligation existing under these Terms without prior written notice to the other party, except that Lab may freely transfer the services to another Lab location or, with Client's permission, subcontract the services to a third-party.

**15. Insurance:** Lab carries insurance with the limits of coverage as indicated below and will, upon Client's request, submit certificates of insurance showing same.

- a. General Liability - \$1,000,000 each occurrence; \$2,000,000 general aggregate;
- b. Personal and Advertising Injury - \$1,000,000;
- c. Automobile Liability - \$1,000,000 combined single limit;
- d. Excess Liability Umbrella - \$5,000,000 aggregate; \$5,000,000 each occurrence;
- e. Worker's Compensation Insurance - statutory limits; and
- f. Professional Liability \$5,000,000 aggregate, \$5,000,000 per claim.

**16. Miscellaneous Provisions:**

- a. In the absence of an executed agreement between the Parties, the SDA will constitute acceptance of these Terms by Client.
- b. The Parties may use and rely upon electronic signatures and documents for the execution and delivery of these Terms and any amendments, notices, records, disclosures, or other documents of any type sent or received in accordance with these Terms.
- c. The Parties are at all times acting and performing as independent contractors; neither one shall ever be considered an agent, servant, employee, or partner of the other.
- d. These Terms shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.



- e. Lab's compliance with a subpoena or other order shall not violate any requirement for confidentiality between the Parties.
- f. If any Term herein is invalidated or deemed unenforceable, it shall not affect the validity or enforceability of the other Terms.

**IN WITNESS WHEREOF**, Client and Lab have executed this Agreement through their duly authorized representatives as of the last date below:

[Client] \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Pace Analytical

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_