

Terms and Conditions

This document sets forth the terms and conditions under which TESTAMERICA ENVIRONMENTAL MICROBIOLOGY LABORATORY, INC., a California corporation, or AEROTECH LABORATORIES, INC., an Arizona corporation, or P & K MICROBIOLOGY SERVICES, INC., a Delaware corporation, or as indicated on the face of this Chain-of-Custody form, (hereinafter collectively referred to as "EMLab P&K"), provides laboratory, consulting and sampling services to Customers. In the absence of a written agreement to the contrary, any order or delivery of samples using this Chain-of-Custody form constitutes an acceptance by the Customer of EMLab P&K's offer to do business under these Terms and Conditions, and an agreement to be bound by these Terms and Conditions. No contrary or additional terms and conditions expressed in a Customer's document shall be deemed to become a part of the contract created upon acceptance of these Terms and Conditions.

- 1. Fees For Professional Services.** All services provided by EMLab P&K shall be performed in accordance with the written Quotation provided by EMLab P&K to the Customer. An agreement by EMLab P&K and the Customer to proceed absent the issuance of a written Quotation shall be performed and billed in accordance with EMLab P&K's published price schedule in effect at the time of the agreement of the parties to proceed. Customers may order services (specify a "Scope of Work") by submitting a written purchase order or a written request for analysis or by placing a telephone order. All telephone orders must be subsequently confirmed in writing by the Customer. EMLab P&K will provide the Customer with information concerning the progress of the work EMLab P&K is performing for the Customer and will notify the Customer of any changes, concerns, problems or delays materially affecting performance.
- 2. Samples.** Customers must provide, together with the submission of their samples, a completed and signed Chain of Custody form with adequate instructions describing the type of analysis requested and a complete and thorough written disclosure of the known or suspected presence of any hazardous substances. Hazardous substances are those defined as such by local, state and federal law. Customers shall be liable and shall pay all costs and damages resulting from i) a Customer's failure to disclose to EMLab P&K that a sample contained or was suspected to contain a hazardous substance; or ii) a Customer's failure to comply with any local, state or federal law regarding the sample; or iii) any action on the part of the Customer which interrupts EMLab P&K's ability to process work, contaminates EMLab P&K's instruments or work areas or necessitates any clean-up or recovery on the part of EMLab P&K.
- 3. Sample Delivery Acceptance.** Sample Delivery Acceptance is defined as the point in time after which EMLab P&K has received and inspected the samples and received project guidance regarding the work to be done and resolved any discrepancies in the Chain of Custody Forms and made a determination that it can proceed with the defined work. EMLab P&K reserves the right to refuse or reject Sample Delivery Acceptance for any sample that it deems to be: (i) of unsuitable volume; (ii) a health, safety, environmental or other risk; (iii) a sample that will fail to meet holding times either due to the passage of more than 48 hours from the time of sampling or the passage of half the holding time for the requested test, whichever is less; or (iv) the passage of time prior to delivery, such that sample viability is not maintained.
- 4. Risk of Loss.** Prior to Sample Delivery Acceptance, the entire risk of loss or damage to samples remains with the Customer, except where EMLab P&K provides courier services. In no event will EMLab P&K have any responsibility or liability for the action or inaction of any carrier shipping or delivering any sample to or from EMLab P&K's premises. Customer is responsible for determining whether or not the sample it is shipping contains a hazardous substance as defined by law, and for taking all actions necessary to ensure the sample it ships is packaged, labeled, transported and delivered properly and in accordance with all local, state and federal laws.
- 5. Invoices And Payment Terms.** EMLab P&K will issue an invoice, based upon the written Quotation or Price Schedule, whichever is applicable, upon completion of a sample project. Prices quoted do not include sales tax, and any applicable sales tax will be added to the invoice. Payment terms are net 30 days from the date of the invoice, upon approval of a credit account. 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 lesser) per month or portion thereof from the due date until the date of payment. EMLab P&K may suspend work under this order at any time in the event Customer fails to make timely payment of its invoices. EMLab P&K reserves the right to refuse to proceed with work at any time based upon an unfavorable Customer credit report. Delinquent accounts (those with outstanding invoices over 90 days old) may be referred to an outside collection agency and/or attorney. All collection expenses, including attorney's fees and court costs are the responsibility of the customer.
- 6. Confidentiality.** EMLab P&K will exercise all reasonable efforts to maintain the Customer's confidentiality with regard to business or technical information it receives in connection with its performance for the Customer. EMLab P&K will use the information it receives about Customers solely for the purpose of providing services to the Customer.

The Customer shall treat all information and data it receives about EMLab P&K as proprietary and confidential. The Customer shall maintain in strict confidence all such information, including but not limited to information concerning technology, procedures, and methods used by EMLab P&K, formulas, trade secrets, ideas, computer programs and inventions. The Customer shall not disclose, and shall prevent disclosure of, confidential information to any third party without express written permission being granted by EMLab P&K.

This provision does not prevent either party from disclosing and/or using information or data (i) known to the receiving party before being obtained or derived from the transmitting party; (ii) that is available to the public without the receiving party's fault at any time before or after it is acquired by the transmitting party; (iii) that is obtained or acquired in good faith by the receiving party from a third party who has the same information in good faith and who is not under obligation to the receiving party with respect thereto; (iv) where a written release is obtained by the receiving party from the transmitting party; (v) after five (5) years from the receipt of such information; or (vi) when required by process of law; provided, however, upon service of such process, the recipient thereof shall notify the other party and afford it an opportunity to resist such process.

- 7. Record Retention.** EMLab P&K will retain records pertaining to the work performed for the Customer for a period of five (5) years following the issuance of a work report. Should Customer desire EMLab P&K maintain the records in excess of five (5) years, the Customer must notify EMLab P&K in writing. The Customer, in accordance with EMLab P&K's fee schedule, will owe an additional record retention charge in effect at the time of the request.
- 8. Change Orders.** 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 Customer after Sample Delivery Acceptance. Such a change will be documented in writing and may result in a change in cost and turnaround time commitment, which equitable adjustment will be made upon agreement by Customer. EMLab P&K's acceptance of such changes is contingent upon technical feasibility and operational capacity.

Changes to the Scope of Work, price, or result delivery date may be initiated by EMLab P&K after Sample Delivery Acceptance due to any condition which conflicts with analytical, QA or other protocols warranted in these Terms and Conditions. EMLab P&K will not proceed with such changes until an agreement with the Customer 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.

The Customer may direct EMLab P&K to suspend a portion or all of the work to be performed. In such case, the Customer will remain responsible for all work performed up until the time EMLab P&K became aware of Customer's desire to discontinue the services. Any uncompleted analysis will be billed on a prorated basis, as determined by EMLab P&K. All directions by Customer to suspend work must be issued to EMLab P&K in writing.

- 9. Professional Practice.** EMLab P&K employees will perform in accordance with accepted industry practice and to accepted industry standards. EMLab P&K seeks to insure that all services will be performed in a timely and professional manner and that all findings are technically valid. Any failure on the part of EMLab P&K to perform in accordance with industry standards will be corrected, provided such failure was a direct result of acts or omissions by EMLab P&K concerning factors deemed to be in EMLab P&K's scope of work pursuant to this Agreement and under EMLab P&K's exclusive control.
- 10. Methods.** Where the services to be provided by EMLab P&K require the use of analytical methodologies, EMLab P&K will use those analytical methodologies which conform with methodologies set by the U.S. Environmental Protection Agency (EPA), America Industrial Hygiene Association (AIHA), American Society for Testing and Materials (ASTM), Association of Official Analytical Chemists (AOAC), Standard Methods for the Examination of Water and Wastewater, or other such appropriate methodologies. EMLab P&K may deviate from these methodologies where, in EMLab P&K's judgment, it is necessary or appropriate to do so. The nature or compositions of a sample are examples of factors that may require EMLab P&K to deviate from these methodologies. Any deviations from the analytical methodologies set forth above will be made in accordance with recognized industry standards, Quality Assurance Plans and/or referenced Standard Operating Procedures.
- 11. Reports of Results.** EMLab P&K offers the Customer several reporting formats to meet their intended needs. By request, the Customer may decide to receive results with or without EMLab P&K's cover page. Opting out of receiving the cover page will result in the Customer not receiving a complete report as described by the AIHA. EMLab P&K recommends that Customers use the default setting and accept the cover page.
- 12. QAPjPs.** Should the Customer want EMLab P&K to perform in accordance with a mutually agreed upon Quality Assurance Project Plan (QAPjP), the Customer must seek agreement with EMLab P&K on such a plan before EMLab P&K receives the samples. Samples arriving prior to an agreement upon a QAPjP will be analyzed under EMLab P&K's standard Quality Assurance Plan then in effect. EMLab P&K will not be responsible for resampling or other costs for work that must be completed in order to comply with a QAPjP that is finalized subsequent to EMLab P&K receiving samples.

13. **Holding Times.** EMLab P&K will initiate preparation and/or analysis within holding times, provided Sample Delivery Acceptance occurs within forty- eight (48) hours of sampling or one-half (1/2) of the holding time for the test, whichever is less. For analyses which do not have holding time requirements, EMLab P&K shall use its best efforts to process samples as soon as practicable, while the sample is viable. In cases where Sample Delivery Acceptance is not made within these time periods, EMLab P&K will use their best efforts to meet the holding times. The holding time commitment shall be satisfied if an initial analysis is performed within the holding time and reanalysis, to comply with Quality Assurance Requirements, is performed outside the holding time. EMLab P&K will remedy any failure to meet a holding time commitment where such failure is due to EMLab P&K's negligence. EMLab P&K shall not be responsible where sample viability is reduced due to shipping time or conditions in transit.
14. **Licenses and Certifications.** The Customer shall provide EMLab P&K with notice in writing, prior to Sample Delivery Acceptance, of all licenses and certifications that it will require EMLab P&K to hold during performance of services by EMLab P&K for the Customer. EMLab P&K will notify the Customer of any revocation of a required license or certification.
15. **Warranties.** The warranty obligations set forth in Sections 10, 11, and 13 are the sole and exclusive warranties given by EMLab P&K in connection with any services performed by EMLab P&K or any Results generated from such services, and EMLab P&K gives and makes NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. No representative of EMLab P&K is authorized to give or make any other representation or warranty or modify this warranty in any way.
16. **Remedy.** Customer's sole and exclusive remedy for the breach of warranty in connection with any services performed by EMLab P&K, will be limited to repeating any services performed, contingent on the Customer's providing, at the request of EMLab P&K and at the Customer's expense, additional sample(s) if necessary. Any reanalysis requested by the Customer generating Results consistent with the original Results will be at the Customer's expense.

In the case of any finding of liability, by a court of competent jurisdiction, on the part of EMLab P&K for damages incurred by Customer, Customer agrees, to the maximum extent permitted by law, to limit an award for damages, to one hundred dollars (\$100.00) or to the fee charged to the Customer by EMLab P&K for the relevant services, whichever is greater. This limitation applies regardless of the cause of action or legal theory pled or asserted. All claims, including those for negligence, shall be deemed waived unless suit thereon is filed within one year after EMLab P&K's completion of the services. Under no circumstances, whether arising in contract, tort (including negligence), or otherwise, shall EMLab P&K 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. Indemnification, releases from liability and limitations of liability shall apply, not withstanding the fault, negligence, or strict liability of the party to be indemnified, released or whose liability is limited, except to the extent that there is willful misconduct. In the event either party shall be successful in any suit for damages for breach of this Agreement, including nonpayment of invoices, or to enforce this Agreement or to enjoin the other party from violating this Agreement, such party shall be entitled to recover as part of its damages its reasonable legal costs and expenses for bringing and maintaining any such action.

17. **Force Majeure.** If EMLab P&K is delayed at any time in performing Services by an act, failure to act or neglect of Customer or Customer's employees or any third parties; by changes in the scope of work; by unforeseen circumstances including acts of force majeure, including, but not limited to, acts of God, acts of Customer, acts or orders of any governmental authority, strikes or other labor disputes, natural disasters, accidents, wars, civil disturbances, equipment breakdown, unavailability of supplies from usual suppliers, difficulties or delays in transportation, mail or delivery services, or any other cause beyond EMLab P&K's reasonable control; by delay authorized by Customer and agreed to by EMLab P&K, then the time for completion of such Services shall be extended based upon the impact of the delay. EMLab P&K shall receive an equitable compensation adjustment if the delays caused by any of the above result in changes, require additional Services, or result in additional costs to EMLab P&K.
18. **Ownership of Data.** Data or information provided to EMLab P&K by the Customer shall remain the Customer's property. Upon full payment to EMLab P&K for all services provided by EMLab P&K, data or information generated by EMLab P&K for the Customer shall become the Customer's property. EMLab P&K will retain exclusive ownership of any and all analytical methods, QA/QC protocols, and equipment developed by EMLab P&K for performance of work by EMLab P&K.
19. **Challenge to results.** The Customer shall pay EMLab P&K for all services performed on their behalf and for all results utilized by the Customer or the Customer's Customer, regardless of any allegation on the part of the Customer or Customer's Customer that the results issued by EMLab P&K did not conform with EMLab P&K's responsibilities as set forth in these terms and conditions. In every instance, EMLab P&K shall be given the opportunity to defend its data directly with any person or entity challenging its results. Should EMLab P&K be prohibited or hindered from directly defending its data, all sums owed to EMLab P&K by the Customer shall be immediately due and payable and no refund for sums paid by the Customer will be issued by EMLab P&K.
20. **Choice of Laboratory.** Unless the Customer has specified, in a timely manner, a particular location where EMLab P&K is to perform its services for the Customer, EMLab P&K may perform services for the Customer at any laboratory in its network provided that for the samples being subcontracted, the subcontract lab has the same requested services on its Scope of Accreditation as the lab to which the samples were originally sent. EMLab P&K retains the right, at its discretion, to subcontract services ordered by the Customer to another laboratory or other laboratories within the EMLab P&K network. If EMLab P&K intends to use subcontract services to a laboratory outside the EMLab P&K network, EMLab P&K shall attempt to first obtain written consent from the Customer.
21. **Sample Disposal.** Where samples are not consumed in the analytical process, EMLab P&K shall dispose of the Customer's samples 14 days after the analytical report is issued, unless instructed to store them for an alternate period of time, in a manner consistent with U.S. Environmental Protection Agency regulations or other applicable federal, state or local requirements. Any samples for projects that are canceled or not accepted, will be returned to the Customer at his own expense.
22. **Litigation Services.** The Customer will be required to pay and/or reimburse EMLab P&K for all costs incurred, including the time spent by EMLab P&K employees and officers, should EMLab P&K be required to respond to legal process related to services it has provided to the Customer or should the Customer request file searches, additional reporting, or a consultation that is above and beyond that usually offered in the normal course of business. Customer will pay for all time expended by EMLab P&K employees and officers in accordance with their hourly rate as set forth on the fee schedule published and in effect at the relevant time. In addition to the above enumerated charges, Customer will pay all legal costs incurred by EMLab P&K in obtaining legal advice, preparing a response and issuing a legal response to the legal process, and in preparing and issuing legal testimony, whether oral or in writing. Customer's agreement to pay and/or reimburse EMLab P&K for the litigation services and costs referenced above shall remain in full force and effect for 10 years from the last date that EMLab P&K completes providing services for the Customer.
23. **Insurance.** EMLab P&K shall maintain in force during the performance of services under these Terms and Conditions, Workers' Compensation and Employer's Liability Insurance in accordance with the laws of the states having jurisdiction over EMLab P&K's employees who are engaged in the performance of the work. EMLab P&K shall also maintain during such period, Comprehensive General and Contractual Liability, Comprehensive Automobile Liability, owned and hired, and Professional Liability Insurance. An Insurance certificate can be furnished on request.
24. **Entire Agreement.** These Terms and Conditions, together with any duly authorized and executed addendum, embody the whole agreement of the parties and provide the only remedies available to the Customer. These Terms and Conditions supersede all previous communications, representations, or agreements, either verbal or written, between the Customer and EMLab P&K. 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 EMLab P&K's services are performed. No modification or waiver of any provision of these Terms and Conditions shall be binding on either party unless made in writing and executed by the Customer and EMLab P&K.
25. **Severability.** 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 to 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.
26. **Waiver.** 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. All waivers must be in writing.
27. **Compliance with Laws.** EMLab P&K and the Customer agree to comply with all applicable laws, ordinances, codes and regulations.