

## General Terms & Conditions of Sale

### 1. Area of Application

1.1 All Orders accepted by Eurofins Scientific, Inc., Eurofins Analytical Laboratories, Inc., Eurofins Microbiology Laboratories, Inc., Eurofins DQCI, LLC, Eurofins Craft Technologies, Inc. and Eurofins SF Analytical Laboratories, Inc., which includes the additional business lines of Eurofins Nutritional Analysis Center, Eurofins Supplement Analysis Center, Eurofins Food Safety Systems, Eurofins Grain Testing, Eurofins Central Analytical Laboratories and Eurofins Genescan, or any of their subsidiaries or Affiliates (as hereinafter defined) (each, individually, a "Member" and all Members hereinafter collectively referred to as the "US Food Entity") from the undersigned ("Client") will be governed by these General Terms and Conditions of Sale (the "Terms"), including orders placed by telephone which have not been confirmed in writing and orders made by delivery of samples. A contract with these Terms comes into being when an order that has been placed with any Member of the US Food Entity, and the order is accepted by such Member of US Food Entity. An order placed with a Member of US Food Entity is considered as accepted by such Member of US Food Entity when (a) the Member proceeds to fulfil that order, without need for any written confirmation from the Member or (b) the Member accepts the order in writing.

1.2 These Terms 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. No employee, agent or subcontractor, other than the authorized officer(s) of the Members, has the authority to alter or waive any of these Terms or to make any representation which conflicts with or purports to override any of these Terms; and no such alteration, waiver or representation shall be binding upon any Member, unless it is in writing and signed by an authorized officer of the Member.

1.3 For the purpose of the foregoing, "Affiliate" shall mean any corporation or other business entity directly or indirectly controlled by, controlling, or under common control with any Member of US Food Entity and/or Client. The term "control" (including, with correlative meaning, the terms "controlled by," "controlling" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities, by contract or otherwise, or such other relationship as, in fact, constitutes actual control.

1.4 US Food Entity is not a separate and distinct entity, but rather a group of independent affiliated laboratories that perform food and feed testing services for the purpose of providing safety, composition, authenticity, origin, traceability and purity of food (the "Services"). The Members and their respective Affiliates, and Client and its Affiliates, are separate and distinct legal entities. In no event shall any Member or its Affiliates, be jointly and severally liable with any other Member or any other Affiliates of any Member, in any respect under this Agreement, nor be deemed to have any obligation with respect to any other Member's or Affiliate's performance or non-performance of any obligation under this Agreement.

### 2. Placement of Order

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

2.2 Unless specifically accepted in writing and signed by an authorized officer of the Member, any terms proposed or submitted by a Client at any time (including, but not limited to, terms or provisions in the Client's purchase order, instructions or other document) which differ from these Terms are rejected as a material alteration of these Terms 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 a Member will be treated as a separate and independent contract between such Member and the Client.

2.3 The Member is entitled to charge management and administrative fees of up to Twenty-Five Dollars (\$25) in connection with the request for additional services to an existing order. 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.

2.4 Any logistic service off-site of the laboratory must be paid in full, unless it has been cancelled or modified by the Client at least forty-eight hours (48) in advance for collection services, ninety-six (96) hours in advance for sampling services and one (1) week in advance for auditing services.

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

3.1 If the acknowledgment of an order does not state otherwise, the Member's prices apply "ex works", excluding packaging, which is charged separately. Any additional cost or disbursement (e.g. Incurred by the Member in connection with the order) must be paid by the Client.

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 remittance of the offer to the Client. Applicable taxes are those in force at the date of invoicing.

3.3 Unless specifically agreed otherwise by the Member 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, by providing written notice to Member with reasonable detail of the dispute. The challenge of an analytical result will not entitle the Client 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 Invoices are subject to a minimum invoice charge of one hundred Dollars (\$100). The Member 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 the Member. The Client undertakes to provide bank account details.

3.6 The Member is entitled to require pre-payment of up to 100% of the quoted order price as a condition of acceptance.

3.7 Notwithstanding any provision of this Agreement to the contrary, charges for analytical services shall be paid in full, unless (i) such analytical services are cancelled or modified by the Client before the initiation of testing, or (ii) a change in rush status was instituted by the laboratory.

### **4. Duties of Client 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. The Member 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 Client 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 Client or are degraded – the Member shall be entitled to terminate or interrupt the order and the Client shall bear costs incurred by the Member to that point.

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

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

5.1 All samples become the property of the Member to the extent necessary for the performance of the order. Unless the Client pays for storage, the Member shall have no obligation or liability for samples sent to the Member for storage, including samples requiring refrigeration. If the Client pays for storage, the Member will take commercially reasonable steps to store the samples, according to professional practice.

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

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

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

6.1 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 Client in the order, promptly after the analysis is completed.

## **7. Transfer of Property and Intellectual Property Rights**

7.1 Title in any analysis results, products, equipment, software or similar supplied by the Member to the Client will remain with the Member until all invoices in respect thereof have been paid by the Client in full, and until such full payment, the Client shall have no property rights or other rights to use them. In addition,

even if the Member has accepted and begun to fulfil an order, the Member has the right at any time stop processing that order and to stop doing any work for a Client if that Client is late in paying any amount due to the Member, whether for that or any other order.

7.2 Even after payment in full by the Client, the Member shall retain the right to store, use and publish all analysis results in an anonymous form which does not identify the Client.

## **8. Limited Warranties and Responsibilities**

8.1 Samples are analyzed by the Member in the condition in which the Member received the sample and in accordance with the current state of technology and methods developed and generally applied by the Member. As such, the results of Member's analyses may not always be 100% exact and/or relevant. Analyses, interpretations, assessments, consulting work and conclusions are prepared with a commercially reasonable degree of care but the Member cannot guarantee that results will always be correct or absolute. 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 Client must independently verify the validity of any results, interpretations, assessments and conclusions supplied by the Member, 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 the Member. If the Member 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 should be analyzed) and the definition of the precise range of analysis to be performed or if the Client has not followed the Member's recommendations, the Member 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 Client is responsible for the proper delivery of samples sent to the Member for examination/analyses or materials sent for production. Unless otherwise specifically agreed in writing by the Member, the Member 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 Client 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 the Member. The Member will use commercially reasonable care in handling and storing samples, but the Member shall not be held responsible for any loss or destruction of samples even after their receipt at its laboratories.

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

## **9. Indemnification and Limitation of Liability**

9.1 Except to the extent that such limitations are not permitted or void under applicable law, where a Member performs Services for Client, and those Services result in a third party claim arising out of the gross negligence or willful misconduct of the Member providing the Services (a "Claim"), that Member shall indemnify, defend and hold harmless Client from and against those liabilities, costs, damages, suits, actions, debts, charges and expenses (including reasonable attorneys' fees, court costs and any amounts paid in settlement) that the Client shall at any time sustain as a direct result of the Claim.; provided, however, that the Member shall not be liable for any damages, losses, costs or expenses to the extent attributable to the negligence or willful misconduct of the Client.

9.2 The Client shall defend, indemnify and hold harmless the Member and its employees, officers, successors, agents, representatives, successors and assigns from and against any losses, injuries, claims and costs which Member shall at any time suffer as a result of or arising from or in any way connected with its negligence, willful misconduct, or by the Client's sample or sampling site conditions, and by placing an order, the Client agrees to provide that indemnification.

9.3 In no event shall either party be responsible for any indirect, consequential, incidental, punitive or special damages (including without limitation damages for lost profits or revenue, loss of use, business interruption, loss of information, or for the procurement of substitute services) of the other party or of any third party, even if such party has been advised of the potential for such damages and whether such damages arise in contract, negligence, tort, under statute, in equity, at law or otherwise. In all cases, the Member's liability for any damages of the other party or of any third party shall be limited to the amount of fees paid by Client for the Services to which the claim or dispute relates.

## **10. Remedy for Deficient Services and Repeated Analysis**

10.1 In the event that any services are improperly or inadequately performed by a Member, Client's sole remedy, and the Member's sole obligation, with respect to such deficient services shall be for Client to either: (i) require the Member to re-perform such improper or deficient services, subject to the provisions of Section 10.2 below, or (ii) request a refund of all amounts paid to the Member for such improperly or inadequately performed services.

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

## **11. Force Majeure**

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

## **12. Quality Statement**

12.1 Where statements of conformity to a specification or standard for a test are included on an analytical report (e.g. pass/fail, in tolerance/out-of-tolerance), this decision shall be made based on the numerical result without consideration of the uncertainty of the result unless otherwise agreed to in writing by the Member and the Client, and set forth in an addendum to these Terms.

## **12. Confidentiality & Processing of Client Data**

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

12.2 The Member shall use commercially reasonable efforts to keep all analysis results and service reports confidential, subject to the Member' rights set forth in clause 7.2 and 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 Client and should not be divulged to a third party for any purposes without the prior written agreement of the Member. In addition, the Client is required to maintain secrecy concerning all services provided by the Member and their results as well as the composition of products and software delivered by the Member. Analysis results are not to be publicly disclosed or exploited without the prior written consent of the Member. Even if such written consent is given by the Member, the Client (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 Member against any liability which the Member may incur as a result of such divulgence or any such third party reliance.

### **13. Disclaimer and Miscellaneous**

13.1 EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, THE MEMBER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH ITS PERFORMANCE OF SERVICES AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MEMBER SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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

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

13.4 Failure by either the Member or the Client to exercise the rights under these Terms shall not constitute a waiver or forfeiture of such rights.

### **14. Governing Law/ Jurisdiction**

The construction, validity and performance of these Terms shall be governed by the laws and the commercial courts of the State in which the registered office of the Member which accepted the order in question is located (including in cases involving multiple counsels for the defense or third party respondents), which shall have exclusive jurisdiction.

### 15. Comments and Exceptions

List any comments or mutually agreeable exceptions to the General Terms and Conditions of Sale:

[INSERT COMMENTS AND EXCEPTIONS HERE, IF ANY]

#### **Eurofins Approval of Exceptions (Only necessary if exceptions have been made)**

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

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

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

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

#### **CLIENT (Initial Each Page & Sign Below)**

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

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

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

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