



Terms and Conditions of Quotation and Sale

1. Agreement: Oneida Research Services, Inc. (**ORS**) will provide the Services described in the accompanying **Purchase Order (PO)**, quotation, letter, fax, email or current ORS Sample Submission Form, which together with these Terms and Conditions, constitute the entire agreement (**Agreement**) between ORS and Client (the **Parties**). This Agreement will be binding on the Parties upon acceptance of Client's Purchase Order and the acceptance of samples (**Materials**) for analysis. Terms and conditions that the Parties mutually agreed upon in writing that are inconsistent with these terms and conditions shall control.

2. Provision of Services: ORS shall perform all Services and deliver all goods and Reports in strict conformity with all requirements set forth in the Agreement. Client agrees that ORS may delegate the performance of some or all of its services to an agent or subcontractor. ORS reserves its right to review, update or supplement any ORS Report. ORS, in its sole discretion, reserves the right to reject any request to test product in an unsafe or unethical manner or to test product for the purpose of unethical uses of the test data.

3. Report Use: The Client agrees not to reproduce, publish or distribute extracts of data or supporting information from a report in a manner that would misrepresent the conclusions of the report by virtue of excluding portions of the entire report. If Client chooses to disclose the Report to a third Party, Client agrees to supply the third party with a copy of the entire ORS Report, including ORS' disclaimer notice. Any disclosure of the Report shall be subject to terms outlined in this Agreement.

4. Fees and Payment: Payment terms are Net 30 days from the date of invoice, unless the Parties agree otherwise in writing. All prices quoted by ORS are exclusive of general sales tax (or other value added tax if relevant) unless stated otherwise. All fees due and payable after the Due Date (Outstanding Amounts) will be subject to the payment of interest at a rate of 1.5% of the Outstanding Amount from the Due Date up to and including the date of payment, compounded monthly, unless ORS and the Client otherwise agree in writing.

ORS reserves the right to change its prices at any time if significant changes to ORS' costs are incurred that are beyond ORS' control. Such changes may include, but are not limited to, changes in Regulatory requirements, Client requested variations to methodologies, protocols and procedures, sample quantities, analysis requested, retest requests, delivery date, or reporting requirements. If Client requests changes after the originally requested testing has been initiated or completed, Client shall pay ORS for increased costs that ORS incurred as a result of Client's changes. ORS shall have no liability to Client for holding times that are exceeded due to such changes or to delays by Client in responding to requests for information or samples by ORS.

5. Client Obligations: Client agrees that it is the Client's sole responsibility to make its own assessment of the suitability of ORS services in regard to detection limits, and confidence intervals of ORS' standard testing methodology and the specific compliance requirements. If the Client requires a specific test method, or requires detection limits and/or confidence intervals different from ORS' standard testing methodology, then the Client must inform ORS of such a variation, in writing, prior to ORS performing its services.

The Client will ensure that all personnel, information, Materials, assistance, records and documentation needed by ORS to perform the Services, are available when reasonably required by ORS. Client shall take all necessary steps to remove or remedy any known safety or health hazards

prior to delivering Materials to ORS. Client shall give written notice to ORS of all remaining safety or health hazards and special procedures applicable to: (1) the performance of ORS services, and the safe handling, testing, storage, transport and disposal of Materials submitted to ORS (including whether or not the disposal of Materials may cause contamination) or (2) the Client's facilities or infrastructure in which ORS is partly or wholly performing the Services.

6. ORS Obligations: ORS will advise the Client of Materials that are missing or received in damaged, contaminated, or improperly preserved conditions, or if the documentation is inaccurate as described between the sample label and the accompanying paper work. The samples will be returned via UPS Ground or the carrier of choice. ORS will either prepay shipping expenses and add them at time of billing or will utilize your carrier account number, if provided.

Test samples and residual portions of test samples remain the property of the Client at all times. Client acknowledges that certain test methods are destructive tests. ORS makes every effort to avoid excessive damage during such tests, but makes no guarantee that test samples will be usable following testing. We recommend that Client supply additional devices when the Materials will be destructively tested. Unless otherwise agreed, Materials disposal is the responsibility of the Client. Client may collect Materials within 90 days of receiving the ORS Report. Materials uncollected after 90 days may incur a storage or disposal charge. Except as provided in Section 9.b), ORS may return to Client, at Client's expense, the unused portions of Materials found or suspected to be hazardous according to state or federal guidelines upon completion of the analytical work.

7. Confidential Information: Confidential Information means all proprietary information that a disclosing Party chooses to disclose to the other Party. Said Confidential Information arises out of or relates to the Disclosing Party's business, operations, products, processes, Clients, or contractors which is or might reasonably be considered by the Disclosing Party to be confidential, including all technical data, formulae, specifications, diagrams, plans, drawings, sketches, designs, business plans and reports, business methods and systems, business records, production information, unpublished financial accounts and reports, discount and supply agreements, subcontractor lists, and Client lists, except to the extent that such information is lawfully in the public domain. ORS and the Client will only use Confidential Information for the purposes of performing their obligations under this Agreement. The Parties will retain Client data and Confidential Information for ten (10) years from date of the final Report.

8. Intellectual Property

- a. Pre-Existing Intellectual Property of ORS: Any routines, methodologies, processes, libraries, tools or technologies created, adapted or used by ORS in its business generally, including all associated intellectual property rights, shall be and remain the property of ORS, and Client shall have no interest or claim to such property except as necessary to exercise its rights to the Report under Section 6 above. In addition, ORS shall be free to use any ideas, concepts or know-how developed or acquired by ORS during the performance of this Agreement, and to the extent obtained and retained by ORS' personnel as impression and general learning, nothing in this Agreement shall be construed to preclude ORS from using such knowledge and experience for the benefit of ORS.
- b. Pre-Existing Intellectual Property of Client: Title to all Intellectual Property (as defined below) furnished to ORS by or on behalf of Client and all Intellectual Property Rights as defined below shall at all times remain with the Client. ORS acknowledges the propriety and confidential nature of Client's Pre-Existing Intellectual Property. ORS shall use Client's Pre-Existing Intellectual Property only in connection with this order and engagement and, without the prior written approval of the Client, shall not disclose any of the Client's Pre-Existing Intellectual Property to any person, firm, corporation or other entity, other than Client's or ORS' employees, subcontractors or government inspectors, provided that, in the case of ORS' employees or subcontractors, each such employee or subcontractor has signed a written confidentiality agreement that is at least as protective of the applicable Pre-Existing Intellectual Property as this Agreement.
- c. New Intellectual Property: If ORS is engaged by Client under this Agreement to perform Services, then any Intellectual Property furnished to Client by or on behalf of ORS under such PO ("New Intellectual Property") constitutes "works made for hire" as that phrase is defined in the Copyright Act of 1976 (Title 17, United States Code), and Client will be considered the author and will be the

owner of the New Intellectual Property. If any New Intellectual Property does not qualify for treatment as "works made for hire," ORS shall assign and transfer to Client all ownership and interest in such New Intellectual Property. ORS agrees, at the cost and expense of Client, to cooperate fully with Client, both during and after the Services engagement, with respect to the procurement, maintenance and enforcement of Intellectual Property Rights in or related to New Intellectual Property.

9. Termination: ORS may suspend or terminate its obligations under this Agreement if (a) monies payable to ORS by the Client are outstanding 60 days or more after the date of invoice, (b) Client breaches its obligations under the Agreement, which breach is not remedied within 15 days of written notice from ORS, or (c) ORS gives the Client 60 days written notice of ORS' intention to terminate, or ORS determines after diligent attempts to perform the requested testing that the testing cannot be performed on the samples per the specified requirements. The Client may terminate its obligations under this Agreement in the event of a substantial breach by ORS of its obligations under the Agreement, which breach has not been remedied within 30 days of written notice of the breach from the Client to ORS. If ORS, acting reasonably, suspects that the Client is insolvent or is having difficulties paying its debts as and when they become due, or the Client is insolvent, ORS may give written notice to the Client of ORS' intention to immediately suspend or terminate its work and obligations under this Agreement unless it receives payment within 10 days. In the event of termination, ORS is entitled to be paid for all work performed prior to the date of termination and for any unavoidable commitments with agents or Material supplies related to services entered into by ORS before the date of termination.

10. Force Majeure

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without fault or negligence. **Force Majeure Events** include without limitation any act of God, strike, boycott, lockout or other industrial disturbance, default of ORS' agents or subcontractors, lightning, fire, storm, flood, earthquake, prolonged power outage, pandemic, act of war (declared or undeclared), blockade, insurrection, riot or other civil disturbance, inability to obtain equipment, labor or essential materials, or the act of any government or authority, including refusal or delay in obtaining any necessary consent, approval or license. If one of the Parties is prevented in whole or in part from performing its obligations by a Force Majeure Event, the affected party may suspend performance of these obligations for the duration of the Force Majeure Event by giving written notice to the other party. Any non-performance or delay in performance resulting from the Force Majeure Event will not be deemed to be a breach of this Agreement. If a suspension under this Section exceeds 90 days, either party may immediately terminate the Agreement by written notice. In the event of termination, Client shall pay ORS for all work performed before the date of termination and for any unavoidable commitments entered into by ORS before the date of termination.

11. Disputes: Any and all disputes, claims, or controversies between the Parties arising out of or relating to this Agreement that are not resolved by the Parties' mutual agreement shall be submitted to final and binding arbitration, except and excluding a dispute involving a claim by Client for specific performance, in which case all claims at law or in equity may be exclusively filed in the District Court for the City and County of Denver, Colorado. Any arbitration proceedings shall take place in Denver, Colorado, at the offices of the Judicial Arbitrator Group ("JAG") before a single arbitrator selected by agreement of the Parties or, in the absence of agreement, appointed by a District Court Judge with the District Court for the City and County of Denver, Colorado, upon application of a Party. The arbitrator shall be a retired judge and attorney licensed to practice law in the State of Colorado with experience in commercial transactions involving the purchase and sale of forensic testing services. The proceedings shall be governed by the Colorado Arbitration Act. The prevailing Party in any arbitration or litigation arising under or related to this Agreement shall be awarded its reasonable attorney fees and costs incurred in any such proceeding. The Parties shall pay and share equally in the costs of the arbitrator, subject to reimbursement to the prevailing party in the arbitration as provided in this Agreement.

12. Limitation of Liability and Indemnification: ORS shall not be liable to the Client or any other person for any special, indirect or consequential loss arising from the Client's reliance upon a Report, disclosure to a third Party, or any reproduction or publication of any part of any Report. Neither ORS nor any of its officers, employees, agents, or subcontractors will be liable to

the Client or any third Party for any action or inaction of the Client in response to any Report. Client acknowledges that certain test methods, such as the Internal Vapor Analysis (IVA®) test, are destructive tests. ORS shall not be liable to the Client or any third Party for any Client Materials that are altered, lost, damaged or destroyed. Client's Materials are stored at the Client's exclusive risk of loss, damage or delay in shipment, including without limitation, loss, damage or delay caused through (a) any occurrences beyond the reasonable control of ORS, (b) ordinary wear and tear in handling, (c) natural deterioration of packing Material over time, (d) theft, (e) sprinkler or other water damage, or (f) fire. ORS' cumulative liability to the Client whether arising in tort, contract or any other cause of action, is limited to either re-performance of the services, replacement of defective goods, or the refund of the Client's fee for ORS services, at the option of ORS.

The Client hereby indemnifies and holds harmless ORS, its officers, employees and agents from and against all actions, claims, proceedings or demands (actual or threatened) that arise out of or relate to ORS goods, services or Reports, including any fees, costs and expenses incurred in defending ORS, its officers, employees and agents against such claims, except to the extent that the loss, death, injury, illness or damage to persons or property was directly caused by the willful acts or omissions of ORS, its agents or employees. ORS warrants that the Services provided and Reports issued do not infringe any patent, invention, design, trademark or copyright and agrees to indemnify and save harmless the Client from any and all loss, expense, damage, liability or demands for any actual or alleged infringement arising from such Services and/or Reports. The Client will indemnify ORS for any fees incurred by ORS to recover any Outstanding Amounts, including reasonable attorney fees and costs, and collection agency fees.

13. Warranty: ORS WARRANTS THAT IT WILL PERFORM ALL WORK IN ACCORDANCE WITH STANDARD METHODOLOGIES, WITH THE SAME DEGREE OF SKILL, CARE, AND DILIGENCE THAT WOULD BE EXERCISED BY PROFESSIONAL SERVICE PROVIDERS IN SIMILAR CIRCUMSTANCES, AND IN FULL COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS. IN THE EVENT OF ERROR, OMISSION, OR OTHER NEGLIGENCE, OR OF DEFECTIVE GOODS, THE SOLE AND EXCLUSIVE RESPONSIBILITY OF ORS SHALL BE TO RE-PERFORM THE DEFICIENT WORK AT ITS OWN EXPENSE, TO REPLACE THE DEFECTIVE GOODS, OR TO REFUND TO CLIENT ANY SUMS THAT IT PAID FOR GOODS AND/OR SERVICES, AT ORS' OPTION. CLIENT UNDERSTANDS AND AGREES THAT THE LIMITED WARRANTY DESCRIBED HEREIN SHALL BE THE SOLE AND EXCLUSIVE WARRANTY GIVEN TO CLIENT IN CONNECTION WITH THIS TRANSACTION. ORS DISCLAIMS ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY.