

<p>1. DEFINITIONS</p> <p>1.1 "Acceptance of a sample" means the determination of AALI to proceed with work following receipt and inspection of such sample.</p> <p>1.2 "Customer" means the individual or entity who may request laboratory, consulting, or sampling services, and his or its heirs, successors, assigns, and representatives.</p> <p>1.3 "AALI" means Assaigai Analytical Laboratories, Incorporated, its employees, servants, agents, and representatives.</p> <p>1.4 "Price Schedule" means AALI's standard price schedule, as such, document may be amended from time to time by AALI.</p> <p>1.5 "Results" means either data generated by AALI from the analysis of one or more samples or the work product generated by AALI in the performance of consulting services.</p> <p>1.6 "Terms and Conditions" means these Terms and Conditions of Sale, including the Price Schedule, and any additions or amendments hereto which are agreed to in writing by AALI as provided in Section 7.1.</p> <p>2. ORDERS</p> <p>2.1 The Customer may order services by submitting a written purchase order to AALI, by placing a telephone order which will subsequently be confirmed in writing, or by negotiated contract. Any such order constitutes: a) an acceptance by the Customer of AALI's offer to do business with the Customer under these Terms and Conditions, and b) and agreement to be bound by these Terms and Conditions. The Customer's delivery of samples to AALI or initiation of consulting services constitutes the Customer's express assent to be governed by these Terms and Conditions. AALI reserves the right to refuse to proceed with work at any time based upon an unfavorable Customer credit report.</p> <p>2.2 Any order placed by the Customer under Section 2.1 is subject to a minimum cancellation charge of \$250.</p> <p>3. PAYMENT TERMS</p> <p>3.1 Services performed by AALI will be in accordance with prices quoted and later confirmed in writing or as stated on the Price Schedule, which prices are subject to change periodically without notice. The Customer should confirm with AALI the current price prior to placing an order for work.</p> <p>3.2 Payment terms are net 30 days from the date of invoice by AALI. All overdue payments are subject to an additional interest and service charge of one and one-half percent (1.5%) per month or portion thereof from the due date until the date of payment. All payments shall be made in United States currency.</p> <p>3.3 The prices stated on the Price Schedule do not include any sales, use or other taxes unless specifically stated. Such taxes will be added to invoice prices when required.</p> <p>4. RECEIPT OF SAMPLES AND DELIVERY OF SERVICES</p> <p>4.1 Prior to AALI's Acceptance of any sample (or after any revocation of Acceptance), the entire risk of loss of or damage to such sample will remain with the Customer. In no event will AALI have any responsibility or liability for the action or inaction of any carrier shipping or delivering any sample to or from AALI's premises.</p> <p>4.2 AALI reserves the absolute right, exercisable at any time, to refuse to receive delivery of, refuse to Accept, or revoke Acceptance of, any sample which in the sole judgement of AALI: a) is of unsuitable volume, b) unsuitable containers as required for the requested analyses, c) may be or become unsuitable for, or may pose a risk in, handling, transport or processing for any health, safety, environmental, or other reason, whether or not due to the presence in the sample of any hazardous substance and whether or not such presence has been disclosed to AALI by the Customer.</p> <p>4.3 Where applicable, AALI will use analytical methodologies, which are in substantial conformity with the U.S. Environmental Protection Agency (EPA), state agency, American Society for Testing and Materials (ASTM), Association of Official Analytical Chemists (AOAC), Standard Methods for the Examination of Water and Wastewater, or other recognized methodologies. AALI reserves the right to deviate from these methodologies, if necessary or appropriate due to the nature or composition of the sample or otherwise based on the reasonable judgement of AALI, which deviations, if any, will be made on a basis</p>	<p>4.3 consistent with recognized standards of the industry and/or AALI's Standard Operating Procedures.</p> <p>4.4 Upon timely delivery of samples, AALI will use its best efforts to comply with storage, processing and analytical holding time limits as set forth in applicable EPA or state guidelines or otherwise requested by the Customer or set forth on the Price Schedule. However, unless specifically made a part of a written agreement between AALI and the Customer, such time limits cannot be guaranteed. Unless specifically indicated on the Price Schedule or expressly made a part of a written agreement between AALI and the Customer, analytical turnaround times are not guaranteed.</p> <p>4.5 At AALI's sole discretion, verbal results may be given in advance of the written report of Results. Such verbal results are TENTATIVE RESULTS ONLY, subject to confirmation or change based on AALI's standard quality assurance review procedures.</p> <p>5. WARRANTIES, LIABILITY AND INDEMNIFICATION</p> <p>5.1 AALI warrants only that its services will fulfill obligations set forth in Section 4.3 and 4.4 hereof. This warranty is the sole and exclusive warranty given by AALI in connection with any such services, and AALI gives and makes no other representation or warranty of any kind, express or implied. No representative of AALI is authorized to give or make any other representation or warranty or modify the warranty in any way.</p> <p>5.2 The liability and obligations of AALI, and the remedies of the Customer in connection with any services performed by AALI will be limited to repeating the services performed or, at the sole option of AALI, refunding in full or in part, the fees paid by the Customer for such services. AALI's obligation to repeat any services with respect to any sample will be contingent upon the Customer's providing, at the request of AALI and at the Customer's expense, and additional sample if necessary. Any reanalysis generating Results consistent with the Original Results will be at the Customer's expense. Except as otherwise specifically provided herein. AALI shall have no liability, obligation or responsibility of any kind for any losses, costs, expenses or other damages (including but not limited to any special, indirect, incidental or consequential damages) for any representation or warranty of any kind with respect to AALI's services or Results.</p> <p>5.3 In no event shall AALI have any responsibility or liability to the Customer for any failure or delay in performance by AALI which results, directly or indirectly, in whole or in part, from any cause or circumstances shall include, but not be limited to, acts of God, acts of Customer, acts or orders from any government authority, strikes or any other labor disputes, natural disasters, accidents, wars, civil disturbances, difficulties or delays in transportation, mail or delivery services, inability to obtain from AALI's usual sources sufficient services or supplies, or any other cause beyond AALI's reasonable control.</p> <p>5.4 All results provided by AALI are strictly for the use of its Customers, and AALI is in no way responsible for the use of such Results by Customers or third parties. All results should be considered in their entirety, and AALI is in no way responsible for the separation, detachment, or any portion of the Results.</p> <p>5.5 The Customer represents and warrants that any sample delivered to AALI will be preceded or accompanied by complete written disclosure of the presence of any hazardous substances known or suspected by the Customer. The Customer further warrants that any sample containing hazardous substance which is to be delivered to AALI's premises will be packaged, labeled, transported and delivered properly in accordance with applicable laws.</p> <p>5.6 It is understood and agreed that all samples and cuttings of materials containing hazardous contaminants are the property and responsibility of the Customer. Removal of cuttings from the project site will remain the obligation of the Customer. All contaminated samples and laboratory by-products will be returned to the Customer for disposal. It is understood and agreed that AALI is not, and has no responsibility as a generator, treater, storer, or disposer of hazardous or toxic substances found or identified at a site, and the Customer agrees to assume responsibility for the foregoing.</p> <p>5.7 The Customer shall indemnify and hold harmless AALI from and against any and all claims, suits, judgements, damages, losses, liabilities, expenses, payments, taxes, duties, fines and/or any other costs (including but not limited to liability to a third party) arising out of a) the presence of hazardous substances in any sample the Customer regardless if the Customer's compliance with Section 5.5 hereof, b) accidents occurring during the transport of any sample of the Customer, c) events or delays caused by the Customer or otherwise beyond AALI's control, or d) negligence by the Customer in the use, evaluation, or application of Results provided by AALI.</p> <p>Should the Customer sample, due to its matrix or constituents of its matrix, cause the operation of any AALI instrumentation to be reduced, stopped, or</p>	<p>5.8 altered, AALI is entitled to compensation by the Customer for any loss of revenue due to the instrument's downtime, and/or the parts and labor necessary to bring the instrument back to its former operating condition. The amount of compensation is negotiable upon acceptance of these Terms and Conditions and the individual circumstances warranting the reimbursement.</p> <p>6. ENTIRE AGREEMENT: SEVERABILITY</p> <p>6.1 These Terms and Conditions, together with any additions or revisions which may be agreed to in writing by AALI as provided in Section 7.1, embodies the whole agreement of the parties. There are no promises, terms, conditions, understandings, obligations or agreements other than those contained herein, unless made in accordance with Section 7.1; and these Terms and Conditions shall supersede all previous communications, representations, or agreements, either verbal or written, between the Customer and AALI. AALI specifically rejects all additional, inconsistent or conflicting terms, whether printed or otherwise set forth in any purchase order or other communication from the Customer to AALI.</p> <p>6.2 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 of the Terms and Condition, the intent of the parties being that the provisions be severable.</p> <p>7. AMENDMENTS</p> <p>7.1 AALI shall not be subject or bound by any provision, term, or condition which is in addition to or inconsistent or conflicting with these Terms and Conditions. AALI shall not be deemed to have amended or waived any provision, term or condition, or have given any required consent or approval, or have waived any breach by the Customer of any of these Terms and Conditions unless specifically set forth in writing and executed on behalf of AALI by a duly authorized officer. No other employee, servant, agent or representative of AALI has any authority whatsoever to add to, delete, alter or vary any or these Terms and Conditions in any manner, or to give any consent, approval, or waiver, and AALI shall not be bound by any such purported addition, deletion, alteration, variation, consent, approval or waiver.</p> <p>7.2 No waiver by AALI of any provision, term or condition hereof or of any breach by or obligation of the Customer hereunder shall constitute a waiver of such provision, term or condition on any other occasion or a waiver of any other breach by or obligation of the Customer.</p> <p>8. SAMPLE STORAGE</p> <p>8.1 Bulk samples will be retained for at least thirty (30) days after the analytical report has been issued unless alternate arrangements have been made in advance. Storage of samples or extracts for longer periods is by request only. Sample storage charges depend upon storage requirements and duration. Nominally, a sample storage fee of \$5.00 per sample, per month will be billed monthly unless other arrangements are made. If requested, unused sample materials may be returned at the client's expense. Materials which are identified as hazardous waste are billed at the rate of \$25.00 per sample. AALI reserves the right to return all dibenzodioxins/dibenzofurans to the Customer.</p> <p>9. SECTION HEADING</p> <p>9.1 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.</p> <p>10. GOVERNING LAWS</p> <p>10.1 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 of New Mexico.</p>
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