

**I. SCOPE**

Any orders received by Enthalpy Analytical, LLC or its affiliates (Enthalpy), by a purchaser of laboratory, consulting or sampling services (Client) will be governed by these Standard Terms and Conditions, including orders made by delivery of samples or by phone or in person which have not been confirmed in writing, unless otherwise agreed to in a written contract. In the absence of any written contract between Enthalpy and Client, any order placed by Client constitutes Client's acceptance of Enthalpy's offer to provide services subject to these Standard Terms and Conditions and an agreement to be bound by the terms hereof. No contrary or additional terms and conditions expressed by Client, orally or in writing, shall be deemed to be accepted by Enthalpy or part of the contract created by acceptance of Enthalpy's offer unless accepted by Enthalpy in writing.

**II. ORDERS AND ACCEPTANCE OF SAMPLES**

A Client may order services by submitting a written chain of custody – record/order to Enthalpy or by submitting a purchase order in writing or by telephone or in person and subsequently confirmed in writing (an "Order"). For any Order to be valid, it must contain sufficient specification to enable Enthalpy to fulfil client's requirements. Any requests for additional services on samples that have been accepted by Enthalpy will be treated as a new order and may require changes to pricing and may postpone any estimated delivery dates accordingly. For purposes of these Standard Terms and Conditions, "services" shall mean all work to be performed for Client, including provision of any equipment and/or materials to be furnished by Enthalpy.

**III. COMPENSATION**

Client shall pay Enthalpy in accordance with Enthalpy's applicable price schedule in effect in the area of operations on the date the services were rendered or as otherwise agreed to in any written price quote by Enthalpy. Prices are subject to change at any time without notice.

Payment of all invoices is due within 30 days of the invoice date. Any disputes regarding invoices must be provided to Enthalpy in writing within 30 days of the invoice date. Any invoice which remains outstanding after the due date may be charged a late fee of \$50, in addition to being subject to interest at the lesser of the maximum amount permitted by law or 1.5% per month on the unpaid balance. Client shall be responsible for the reasonable costs of collection (by legal proceeding or collection agency) of any late payments.

In the event Client fails to make timely payment of its invoices, Enthalpy reserves the right to pursue all appropriate remedies, including but not limited to withholding delivery of data, suspension of work or otherwise, without recourse.

Payment is not contingent on payment from any another party.

**IV. CLIENT RESPONSIBILITY; HOLDING TIMES**

Prior to Enthalpy's acceptance of any samples, the entire risk of loss or damage to samples remains with Client, except where Enthalpy provides courier service. In no event will Enthalpy be liable or responsible for the actions or inactions of any carrier shipping or delivering any sample to or from any Enthalpy premises. Client is responsible for the proper packaging, labeling, transportation and delivery of any hazardous materials in accordance with all applicable laws and represents and warrants to Enthalpy that all samples sent to Enthalpy are safe and in stable condition. Client shall be responsible for, and indemnifies Enthalpy against all losses, costs, damages, liabilities and injuries that may be caused or incurred by Enthalpy or its personnel or representatives by Client's sample or sampling site conditions, including damage to persons or property.

All samples/materials delivered to Enthalpy must be in a condition that allows for the preparation of reports and analysis. Enthalpy reserves the right to refuse or revoke acceptance of any sample delivery which, in the sole judgement of Enthalpy is insufficient for sampling purposes, poses any risk of handling, transport or processing for any health, safety or environmental concerns, or which holding times cannot be met based on the deadlines set forth herein (or

as otherwise may be required.)

Samples and all relevant materials must be received by 3 p.m. on weekdays in order to be processed on the date of delivery/receipt. Enthalpy is not responsible for holding times that are exceeded because samples are delivered on weekends, holidays or after 3 p.m. on weekdays without prior notification or acceptance. For holding times of 48 hours or less, same-day delivery is required to guarantee holding times. For samples with short holding times (i.e. 7 days or less), samples must be received by Enthalpy no more than 48 hours after sampling to ensure that holding times can be met. For all other analyses with holding times of 14 days or less, samples must be received by Enthalpy within 96 hours of collection to ensure that holding times can be met.

Client shall be responsible for the repair or replacement cost, as applicable, of any sample collection containers rented or loaned to Client by Enthalpy in the event of damage, loss or delay in the timely return of such containers.

**V. CHANGE ORDERS; CANCELLATION**

Changes to any Order (including scope of work, specifications and timelines) may be initiated by Client after sample delivery acceptance. Any such changes will be documented in writing and may result in a change of cost and turnaround time commitment. Enthalpy's acceptance of any such requested changes is contingent upon operational capacity and technical feasibility.

Client may suspend or cancel any order for services or supplies at any time; provided, however, that in the event of any such cancellation, Client shall remain responsible for payment for all services or supplies rendered and any out-of-pocket expenses incurred by Enthalpy in accordance with Article III hereof, each through the date of cancellation or suspension.

**VI. SAMPLE RETENTION**

Unless otherwise agreed to in writing by Enthalpy, all samples shall be retained for a period of at least thirty (30) days after analysis and/or reporting is complete, except for gas-phase and short hold (<7 day analysis window) samples which will be retained for a period of ten (10) days after analysis and/or reporting is complete. Pre-arranged long term storage will be subject to additional charges. Samples may be discarded or destroyed at the expiration of the applicable retention period (or such other date as agreed to in writing between Enthalpy and Client) without further notice. Client may request the return of unused sample materials prior to the scheduled disposal, and such samples shall be returned to the Client at Client's sole expense and risk, furthermore the lab may impose additional fees for surplus sample disposal or returning samples to the Client. In addition, if Client's samples require special handling and disposal practices due to sample constituents outside of Enthalpy's existing, defined waste stream profiles, Enthalpy reserves the right to return the samples to the Client or assess additional disposal costs.

**VII. DELIVERY DATES; RUSH ANALYSIS**

To the extent provided by Enthalpy, delivery dates and turn-around times are estimates which may be changed as reasonably necessary and do not constitute a commitment by Enthalpy. If and when estimated delivery dates are provided by Enthalpy, Enthalpy shall use commercially reasonable efforts to meet such estimated deadlines.

Rush analyses may be available for certain services for an additional charge and must be arranged in advanced. If, as a result of unforeseen circumstances, the rush turnaround times cannot be met, normal pricing will apply.

**VIII. LIMITED WARRANTIES AND LIMITATION OF LIABILITY**

Enthalpy represents and warrants to Client that:

- (a) Analyses, interpretations and conclusions are prepared with a commercially reasonable degree of care, but cannot be guaranteed as correct or absolute;
- (b) it holds all licenses and certifications required to perform services; provided, however, that any requirements specific to Client's requested services are provided to Enthalpy prior to acceptance of

samples; and

- (c) it will use analytical methodologies in substantial conformity with published test methods. Enthalpy has implemented such methods in its Quality Manuals and standard operating procedures, as required. Enthalpy reserves the right to deviate from any such methodologies as necessary or appropriate, based on Enthalpy's reasonable judgment, which deviations, if any, will be made on a basis consistent with recognized industry standards and/or Enthalpy's quality manuals.

Client's sole and exclusive remedy for the breach of warranty in connection with any services performed by Enthalpy will be limited to repeating any services performed; provided, however, that Client shall be responsible for providing any additional samples necessary to repeating such services. If resampling is necessary, Enthalpy's liability for resampling costs will be limited to the lesser of \$5,000 and the actual cost of resampling. Enthalpy purchases supplies from vendors that are provided to customers for the collection of laboratory samples, Enthalpy is not responsible for their malfunction or substandard performance.

Enthalpy (together with its employees, representatives, officers, directors, agents and affiliates) shall be liable only for the proven direct and immediate damage caused by Enthalpy's gross negligence or willful misconduct in connection with the performance of services in connection with an order; provided, that, unless otherwise provided under applicable law, Enthalpy must receive written notice of any claims of such losses within six (6) months of the date of Client's knowledge of relevant claims. Enthalpy's liability for any and all causes of action arising hereunder (whether based in contract, tort, negligence, strict liability or otherwise), shall be limited to the lesser of (a) the amount paid by Client for the services and (b) \$25,000. Under no circumstances shall Enthalpy be liable for any indirect, consequential, special, incidental or punitive damages, including loss of use, lost profits or otherwise.

#### **IX. REPEATED ANALYSIS/CONFIRMATIONS**

Client may provide objections to any test results within thirty (30) days of Client's receipt of results. Any reanalysis requested by Client which generates results consistent with the original results shall be at Client's sole cost and expense. A repeated analysis will only be possible if Enthalpy has sufficient quantities of original samples available when the Client objection is received. To the extent original samples are not available or are not sufficient in quantity for reanalysis, Client will be required to pay all costs, including sampling, transportation, analytical and disposal costs incurred in connection with repeated analysis.

#### **X. CONFIDENTIALITY; REPORTS**

Any reports, data and information provided by Enthalpy to Client is for the exclusive use of Client. Enthalpy will not disclose client data to any third party (including regulatory agencies, unless required by law) without notification of and consent from client.

All original computations, reports, and other documents and plans prepared pursuant to these Standard Terms and Conditions are and remain the property of Enthalpy as instruments of service; provided however, that reproducible copies will be provided to Client upon a written request from Client. Such reports shall not be reproduced, except in full, without the written approval of Enthalpy. Client agrees it will not use any such documents or materials for any other than their original intended purpose without the prior written approval of Enthalpy.

#### **XI. FORCE MAJEURE**

Enthalpy shall not be responsible in any way for errors, damage, delay or failure to perform any services due to unforeseen circumstances or causes beyond its control, or which result from compliance with any governmental requests or laws and/or regulations.

#### **XII. INSURANCE**

At all times during the performance of services, Enthalpy shall maintain the following minimum insurance:

1. Commercial general liability including bodily injury, property damage, owners and contractors protective, products/completed operations, contractual and personal injury. The combined single limit for bodily injury and property damage shall not be less than \$1,000,000.
2. Automobile bodily injury and property damage liability insurance covering owned, non-owned, and hired cars. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.
3. Statutory worker's compensation and employers' liability insurance as required by state law.
4. Professional liability insurance with limits of not less than \$1,000,000.

#### **XIII. NO BENEFIT FOR THIRD PARTIES; NO RIGHT OF RELIANCE**

Enthalpy shall not be responsible or liable for Client's use of or reliance on the data, information or reports furnished by Enthalpy. No right or benefit is conferred on, nor any contractual relationship intended or established with any other person or entity. No such person or entity shall be entitled to rely on Enthalpy's performance of its services hereunder.

#### **XIV. INDEPENDENT CONTRACTOR**

The relationship between the parties is that of independent contractors. Nothing contained in these Standard Terms and Conditions shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

#### **XV. MISCELLANEOUS PROVISIONS**

These Standard Terms and Conditions are binding on the heirs, successors, and assigns of the parties hereto.

These Standard Terms and Conditions represent the entire understanding of Client and Enthalpy as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. These Standard Terms and Conditions may not be modified or altered except in writing signed by both parties.

These Standard Terms and Conditions shall be administered and interpreted under the laws of the state in which the Enthalpy office primarily performing the services is located. Jurisdiction of litigation arising from these Standard Terms and Conditions shall be in that state.

The Client acknowledges that any litigation between Client, or its client, and third parties may require Enthalpy to spend time responding to discovery requests. Client agrees to pay Enthalpy for time and expenses at a rate of \$200 per hour incurred in discovery relating to such litigation including, without limitation, depositions, the production of documents, and consultations with Client's counsel.

If any part of these Standard Terms and Conditions is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of these Terms and Conditions shall be in full force and effect.

These Standard Terms and Conditions may be modified at any time by Enthalpy, without prior notice to Client. Any order placed by Client constitutes Client's acceptance of Enthalpy's offer to provide services subject to these (or subsequently issued) Standard Terms and Conditions and an agreement to be bound by the terms hereof or thereof.