

# ENVIRONMENTAL CONSERVATION LABORATORIES, INC.

## TERMS AND CONDITIONS

When a Client places an Order for any work to be done by Environmental Conservation Laboratories, Inc. ("ENCO"), the Order constitutes an acceptance by the Client of ENCO'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 Client's document shall be deemed to become a part of the contract created upon acceptance of these Terms and Conditions, unless accepted by ENCO in writing. A written agreement signed by both ENCO and Client may supersede some or all of these Terms and Conditions.

### 1. Orders, Samples, Services

The Client may place an Order by specifying a Scope of Work in writing or by telephone subsequently confirmed in writing. The Order shall not be valid unless it contains sufficient specification to enable ENCO, in its sole discretion, to carry out the Client's requirements. Samples must be accompanied by: a) adequate instruction on type of analysis requested, and b) complete written disclosure of any known or suspected presence of any hazardous substances, as defined by applicable federal or state law. If any samples not accompanied by adequate disclosure cause interruption in ENCO's ability to process work due to contamination, the Client will be responsible for all costs associated with the contamination, including, but not limited to, clean-up and restoration of equipment and premises, and costs associated with ENCO's business interruption. All turnaround times must be mutually agreed upon and will be calculated from Sample Delivery Acceptance, which is the point in time when ENCO has determined that it can proceed with the defined work following receipt, inspection of samples, and resolution of any discrepancies in Chain of Custody forms and project guidance regarding work to be done. Sample delivery alone does not constitute acceptance by ENCO. Prior to Sample Delivery Acceptance at ENCO, the entire risk of loss of or damage to samples remains with the Client. In no event will ENCO have any responsibility or liability for the action or inaction of any carrier shipping or delivering any sample to or from ENCO's premises. Client is responsible to ensure that sample shipments comply with all applicable material shipping and labeling laws and regulations. ENCO reserves the right to refuse or revoke Sample Delivery Acceptance for any sample which in ENCO's sole discretion: a) may pose a risk in handling, transport or processing; b) is of unsuitable volume; or c) holding times cannot be met. Unless otherwise specified by the Client and agreed to in writing by ENCO, sample materials will be held for 30 days following the date of the invoice for the work. After thirty days, any remaining materials will, in ENCO's sole discretion, be returned to the Client at the Client's expense or disposed of by ENCO.

### 2. Payment Terms

Services performed by ENCO will be in accordance with prices quoted and later confirmed in writing or as stated in its most recent Price List. Prices are subject to change periodically without notice. The prices quoted or stated in the Price List do not include any sales, use or other taxes unless specifically stated. All payment shall be made in currency of the United States of America. Checks drawn on foreign banking institutions are not accepted. Payment in advance is required for all Clients except those whose credit has been established with ENCO. For Clients with approved credit, payment terms are net 30 days from the date of invoicing by ENCO. All late 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 less) per month or portion thereof from the due date until the date of payment. All fees are the responsibility of the Client. ENCO will not bill a third party without a statement signed by the third party that acknowledges and accepts payment responsibility. Client remains responsible for payment of services billed to a third party. ENCO may suspend work and withhold delivery of data at any time in the event: a) Client fails to make timely payment of

any of its invoices; or b) ENCO receives an unfavorable credit report on Client. Client shall be responsible for all costs and expenses of collection, including reasonable attorneys' fees. Client is responsible for work done prior to suspension of work.

### 3. Change Orders, Termination

Changes to the Scope of Work, price or result delivery date may be initiated by ENCO after Sample Delivery Acceptance due to any condition which conflicts with analytical or other protocols warranted in these Terms and Conditions. Changes to the Scope of Work may be initiated by the Client after Sample Delivery Acceptance. Such a change must be documented in writing and may result in a change in cost and turnaround time commitment. ENCO may in its sole discretion refuse to accept such changes, and ENCO's acceptance of such changes is contingent upon technical feasibility and operational capacity. Suspension or termination of all or any part of the work may be initiated by the Client. ENCO will complete all work in progress and Client is responsible for payment in full pursuant to these Terms and Conditions for all work completed.

### 4. Warranties, Liabilities, and Indemnification

Where applicable, ENCO will use analytical methodologies which are in substantial conformity with published test methods. ENCO has implemented these methods in its Laboratory Quality Manuals and referenced Standard Operating Procedures. Where, in ENCO's sole discretion, the nature or composition of the samples requires it, ENCO reserves the right to deviate from these methodologies to the extent necessary or appropriate, in ENCO's sole discretion. Client may request that ENCO perform according to a mutually agreed written Quality Assurance Project Plan (QAPP). In the event that samples arrive prior to agreement on a QAPP, ENCO will proceed with analyses under its standard Quality Manuals then in effect, and ENCO will not be responsible for any resampling or other charges if work must be repeated to comply with a subsequently finalized QAPP. ENCO shall start preparation and/or analysis within method-specified holding times provided that Sample Delivery Acceptance occurs within 48 hours of sampling or within ½ of the holding time for the test, whichever is less. Where resolution of inconsistencies leading to Sample Delivery Acceptance does not occur within this period, ENCO will use its best efforts to meet holding times and will proceed with the work provided that, in ENCO's judgment, the chain of custody or definition of the Scope of Work provide sufficient guidance. Reanalysis of samples to comply with ENCO's Quality Manuals will be deemed to have met holding times provided the initial analysis was performed within the applicable holding time. Where reanalysis demonstrates that sample matrix interference is the cause of failure to meet any Quality Manual requirements, the warranty will be deemed to have been met. These warranty obligations are the sole and exclusive warranties given by ENCO in connection with any services performed by ENCO or any Results generated from such services, and ENCO gives and makes **NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED**. No representative of ENCO is authorized to give or make any other representation or warranty or modify this warranty in any way. Client's sole and exclusive remedy for the breach of warranty in connection with any services performed by ENCO, will be limited to repeating any services performed, contingent on the Client's providing at the request of ENCO and at the Client's expense, additional sample(s) if necessary. Any reanalysis requested by the Client generating Results consistent with the original Results will be at the Client's expense.

ENCO's liability for any and all causes of action arising out of or related to this agreement or in connection with provision of services, whether based in contract, tort, warranty, negligence or otherwise, shall be limited to the lesser amount of

compensation for the service performed or \$1,000. Under no circumstances, whether arising in contract, tort (including negligence), or otherwise, shall ENCO be responsible for loss of use, loss of profits, or for any special, indirect, incidental or consequential damages occasioned by the services performed or not performed or by application or use of the reports prepared. Client agrees that these limitations appropriately reflect the business risk and are not unconscionable. In no event shall ENCO have any responsibility or liability to the Client for any failure or delay in performance by ENCO which results, directly or indirectly, in whole or in part, from any cause or circumstance beyond the reasonable control of ENCO. Such causes and circumstances shall include, but not be limited to, acts of God, acts of Client, acts or orders of any governmental authority, strikes or other labor disputes, natural disasters, accidents, wars, civil disturbances, equipment breakdown, matrix interference or unknown contaminated samples that impact instrument operation, unavailability of supplies from usual suppliers, difficulties or delays in transportation, mail or delivery services, or any other cause beyond ENCO's reasonable control. The Client hereby agrees to indemnify and defend ENCO from any and all claims by any third party arising out of or related to that party's reliance upon the Results provided by ENCO, irrespective of ENCO's negligence or its failure to comply with its warranties or other obligations hereunder. Notwithstanding the Client's duty to indemnify and defend ENCO, the Client may not unreasonably withhold ENCO's right to defend its data.

### 5. Results, Work Product

Data or information provided to ENCO or generated by services performed under this agreement shall become the property of Client only upon receipt in full by ENCO of payment for the entire Order. Ownership of any analytical method, QA/QC protocols, software programs or equipment developed by ENCO for performance of work will be retained by ENCO, and Client shall not disclose such information to any third party. In the event that ENCO is required to respond to legal process related to services for Client, Client agrees to reimburse ENCO for hourly charges for personnel involved in the response and attorneys' fees reasonably incurred associated with the litigation and ENCO's response.

### 6. Miscellaneous Provisions

These Terms and Conditions, together with any additions or revisions which may be agreed to in writing and signed by ENCO, represent the entire agreement between the parties and provide the only remedies available. These Terms and Conditions shall supersede any previous communication, representations or agreements, either verbal or written, between the Client and ENCO. The invalidity or unenforceability, in whole or in any part, of any provision, term or condition hereof shall not affect the validity or enforceability of the remainder of these terms and conditions or their interpretations. No waiver by ENCO of any provision, term or condition hereof or of any obligation of the Client shall constitute a waiver of any subsequent breach or other obligation. These Terms and Conditions and any transactions or agreements to which they apply as well as any dispute between ENCO and the Client, whatever its basis, shall be governed by the laws of the State of Florida. The Client waives any defense of personal jurisdiction or forum non conveniens (inconvenient forum) and agrees to submit to personal jurisdiction of the courts of the State of Florida. The Client agrees that the sole and exclusive venue for any action filed in connection with any dispute arising between Client and ENCO shall be in a court of competent jurisdiction in Orange County Florida. **THE CLIENT EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY SUCH ACTION.**