

# TERMS AND CONDITIONS OF SALE

## 1. DEFINITIONS

- 1.1. "Calscience" means Calscience Environmental Laboratories, Inc., a wholly-owned subsidiary of Calscience Engineering & Laboratories, Inc., its divisions and its employees, servants, agents and representatives.
- 1.2. "Client" means the individual or entity who may request laboratory, consulting, or sampling services, and his or its heirs, successors, assigns and representatives.
- 1.3. "T/C" means those terms and conditions of sale, including the Fee Schedule and any additions or amendments hereto which are agreed to in writing by Calscience.
- 1.4. "Fee Schedule" means Calscience's standard price schedule as such document may be amended or reissued from time to time by Calscience.
- 1.5. "Sample Receipt" means the point in time when Calscience receives samples at its facility located at 7440 Lincoln Way, Garden Grove, CA 92841-1427.
- 1.6. "Holding Time" means the time between sample collection and the initiation of the preparation and/or analysis as specified in the applicable regulatory method or other authoritative reference.
- 1.7. "Results" means either data generated by Calscience from the analysis of one or more samples or the work product generated by Calscience in the performance of testing services.

## 2. ORDERS

- 2.1. The Client may order services by submitting a written purchase order to Calscience, by completing and submitting a completed chain-of-custody document (COC), or by negotiated contract. Any such order constitutes (1) an acceptance by the Client of Calscience's offer to do business with the Client under the established T/Cs, and (2) an agreement to be bound by the established T/Cs. The Client's relinquishing of samples to Calscience or initiation of testing services constitutes the Client's express assent to be governed by the established T/Cs. Calscience reserves the right to refuse to proceed with work at any time based upon an unfavorable Client credit report.

## 3. PRICES AND PAYMENT TERMS

- 3.1. Services performed by Calscience will be in accordance with prices quoted and later confirmed in writing or as stated in the Fee Schedule. Prices are subject to change periodically without notice. The Client should confirm the current price with Calscience prior to placing an order for work. A minimum order applies as specified in the then current Fee Schedule.
- 3.2. Payment terms are net 30 days from the date of invoice by Calscience unless otherwise specified in writing. 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.

## 4. RECEIPT OF SAMPLES, DELIVERY OF SERVICES, AND DISPOSAL OF SAMPLES AND UNUSED SAMPLE CONTAINERS

- 4.1. Prior to Sample Receipt (at the laboratory facility), the entire risk of loss of, or damage to, such sample(s) will remain with the Client. Consistent with 3<sup>rd</sup> party courier protocol, Calscience couriers are not responsible for checking contents of coolers or accuracy of the COC; this is the responsibility of the client designee signing the COC. In no event will Calscience have any responsibility or liability for the action or inaction of Client's courier or any third party courier for shipping or delivering any sample to or from Calscience's premises, irrespective of who contracted said 3<sup>rd</sup> party courier.
- 4.2. Calscience reserves the absolute right, exercisable at any time, to refuse Sample Receipt for any sample which in the sole judgment of Calscience a) is of unsuitable volume, b) 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 Calscience by the Client, or c) holding times cannot be met.

- 4.3. Where applicable, Calscience will use analytical methodologies which are in substantial conformity with USEPA, state agency, ASTM, Standard Methods for the Examination of Water and Wastewater, or other recognized methodologies. Calscience 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 judgment of Calscience, which deviations, if any, will be made on a basis consistent with recognized standards of the industry and/or Calscience's Quality Systems Manual and referenced SOPs.
- 4.4. Sample receipt by Calscience will be contingent upon resolution of any inconsistencies in the COC, breakage, receipt of sufficient documentation, and project guidance regarding work orders and change orders. Calscience is obligated to initiate preparation and/or analysis within holding times provided that Sample Receipt occurs within 72 hours of sampling or 1/2 of the holding time for the test, whichever is less. Where inconsistencies cannot be resolved within this period, Calscience will use its best efforts to meet holding times and will proceed with the work provided that there are no inconsistencies in the COC or definition of the scope of work. Calscience shall be remitted the full price of the analyses without penalty for missing holding times for samples received after the time period described above.
- 4.5. Upon timely delivery of samples, Calscience will use its best efforts to meet mutually agreed upon turnaround times (TATs). All TATs will be calculated from date and time of Sample Receipt at the Laboratory if said Sample Receipt occurs during normal business hours (0830 – 1730 hours Monday through Friday). If samples are received outside of normal business hours, the TAT shall be calculated from 0830 hours the following business day. Calscience's ability to meet TAT commitments is based upon advance knowledge of the sample delivery schedule.
- 4.6. Calscience reserves the right, unless otherwise specified in writing, to subcontract services ordered by the Client to another laboratory or laboratories if, in Calscience's sole judgment, it is reasonably necessary, appropriate, or advisable to do so. Calscience will, in no way, be liable for any subcontracted services except in the case where Calscience is certified or otherwise qualified to perform the services being subcontracted.
- 4.7. Unless otherwise specified in writing, Calscience maintains all samples under refrigerated conditions for a period of not less than 14 days after Sample Receipt and under ambient conditions for a period of not less than 14 days after removal from refrigerated conditions. If specified in writing, Client samples will be archived beyond 28 days after Sample Receipt at a unit cost as specified in the then current Fee Schedule.
- 4.8. Samples received but not analyzed are subject to a sample disposal fee as specified in the then current Fee Schedule.
- 4.9. Unused sample containers can not be returned to Calscience for reuse. A minimum disposal fee as specified in the then current Fee Schedule will apply to any unused sample containers returned to Calscience for disposal.
- 4.10. Rented sampling equipment that is returned unused will be billed as specified in the then current Fee Schedule or as quoted. The Client will be billed for an additional rental for sampling equipment not returned within two(2) weeks from date of rental. Sampling equipment not returned or returned damaged will be billed at the then current replacement cost.
- 4.11. Where the Client provides Calscience a minimum of one working day written notification of the need for courier services, Calscience will, at no charge, provide courier services within a 50 mile radius of Garden Grove, CA. In the event a Client provides less than one day written notification and/or the pickup/delivery location is

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beyond a 50 mile radius of Garden Grove, CA, at Calscience's sole option, the Client may be billed for said courier services.

- 4.12. At Client request Calscience will provide additional hardcopy or facsimile reports and/or supporting raw data that has previously been provided at a cost of \$25 plus \$0.05 per page.

### 5. CHANGE ORDERS

- 5.1. Changes to the scope of work, including but not limited to increasing or decreasing the work, changing test and analysis specifications, or acceleration in the performance of the work may be initiated by the Client after Sample Receipt. Such a change will be documented in writing and may result in a change in cost and TAT. Calscience's acceptance of such changes is contingent upon technical feasibility and operational capacity.
- 5.2. Suspension or termination of all or any part of the work may be initiated by the Client. Calscience will be compensated consistent with Section 3 of these T/Cs. Calscience will complete all work in progress and be paid in full for all work completed.

### 6. WARRANTIES, LIABILITY AND INDEMNIFICATION

- 6.1. Calscience warrants only the accuracy of the Results for the samples analyzed. Calscience disclaims any other warranty expressed or implied, including the fitness for intended use or merchantability of said Results. Calscience's liability is limited to (1) the retesting of samples if upon re-examination of the Results if, Calscience, in its sole judgement, determines that there is a deficiency in the Results or (2) refunding in full or in part fees paid by the Client for any analyses or other services which do not fulfill obligations set forth in Section 4.4 above. Calscience's obligation to repeat any services with respect to any sample will be contingent on the Client's providing, at the request of Calscience and at the Client's expense, additional sample(s) as necessary. Calscience will not be held liable for consequential or incidental damages in connection with the Results delivered, and Calscience will be indemnified and held harmless against any third party claims made in connection with the Results or its use by the Client, unless such damages or claims result from the negligence of Calscience.
- 6.2. Should the Results delivered by Calscience be used by the Client or Client's client, even though subsequently determined not to meet the warranties described in Section 6.1 above, then the compensation described in Section 3 will be adjusted based upon mutual agreement. In no case shall the Client unreasonable withhold Calscience's right to independently defend its data.
- 6.3. In no event shall Calscience have any responsibility or liability to the Client for any failure or delay in performance by Calscience which results, directly or indirectly, in whole or in part, from any cause or circumstance beyond the reasonable control of Calscience. 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, difficulties or delays in transportation, mail or delivery services, or any other cause beyond Calscience's reasonable control.
- 6.4. Calscience warrants that it possesses and maintains all licenses and certifications which are required to perform services under these T/Cs provided that such requirement is documented in writing to Calscience prior to Sample Receipt. Calscience will notify the Client in writing of any decertification or revocation of any license, or notice of either, which affects work in progress.
- 6.5. All Results provided by Calscience are strictly for the use of its Client, and Calscience is in no way responsible for use of such Results by any third party. All Results should be considered in their entirety, and Calscience is in no way responsible for the separation, detachment, or other use of any portion of the Results.

- 6.6. The Client represents and warrants that any sample delivered to Calscience will be preceded or accompanied by complete written disclosure of the presence of any hazardous substances known or suspected by the Client. The Client further warrants that any sample containing any hazardous substance which is to be delivered to Calscience's premises will be packaged, labeled, transported and delivered properly and in accordance with applicable laws.
- 6.7. Calscience shall indemnify Client against any and all claims or suits for injury to or death of persons or for damage to or destruction of property resulting from any and all negligent acts of Calscience or its employees while at Client's facilities.

### 7. ENTIRE AGREEMENT; SEVERABILITY

- 7.1. These T/Cs, together with any additions or revisions which may be agreed to in writing by Calscience, embody the whole agreement of the parties and provide the only remedies available. There are no promises, terms, conditions, understanding, obligations or agreements other than those contained herein, unless made in accordance with Section 8.1; and these T/Cs shall supersede all previous communications, representations, or agreements, either verbal or written, between the Client and Calscience. Calscience specifically rejects all additional, inconsistent or conflicting terms, whether printed or otherwise set forth in any purchase order or other communication from the Client to Calscience.
- 7.2. 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 these T/Cs, the intent of the parties being that the provisions be severable.
- 7.3. The obligations, liabilities, and remedies of the parties, as provided herein, are exclusive and in lieu of any others available at law or in equity. Indemnifications, releases from liability and limitations of liability shall apply, notwithstanding the fault, negligence or strict liability of the party to be indemnified, released, or whose liability is limited, except to the extent of sole negligence or willful misconduct.

### 8. AMENDMENTS AND WAIVERS

- 8.1. Calscience shall not be deemed to have amended or waived any provision, term or condition, or to have given any required consent or approval, or to have waived any breach by the Client of any of these T/Cs unless specifically set forth in writing and executed on behalf of Calscience by a duly authorized representative. No other employee, servant, agent or representative of Calscience has any authority whatsoever to add to, delete, alter or vary any of these T/Cs in any manner, or to give any consent, approval or waiver, and Calscience shall not be bound by any such purported addition, deletion, alteration, variation, consent, approval or waiver.

### 9. INSURANCE

- 9.1. At a minimum, Calscience shall maintain in force during the performance of services under these T/Cs, Workers' Compensation and Employer's Liability Insurance (limit of \$1,000,000) in accordance with the laws of the State of California. Calscience shall also maintain during such period, Comprehensive General Liability Insurance (limit \$1,000,000), Commercial Automobile Liability Insurance [owned and non-owned] (limit of \$1,000,000), and Professional Liability Insurance (limit of \$1,000,000).

### 10. GOVERNING LAW

- 10.1. These T/Cs, 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 California.

### 11. ATTORNEY'S FEES AND EXTRAORDINARY COSTS

- 11.1. In the event a lawsuit is filed under these terms and conditions, the prevailing party shall recover attorney's fees and extraordinary costs from the non-prevailing party.