

TERMS OF SERVICE

page 1

These Terms of Service contain the terms and conditions under which Advanced Laboratories®, Inc., a Utah corporation ("Advanced Laboratories®") provides laboratory and other services ("Services") to its customers (each a "Customer"). Customer's submission of an account application or custody form or delivery of any sample(s) to Advanced Laboratories® constitutes Customer's acceptance of these Terms of Service. It is Customer's responsibility to check the Terms of Service for any future changes. Customer's submission of a custody form or delivery of any sample(s) to Advanced Laboratories® after any changes constitutes Customer's acceptance of the changes. No additional or contradictory terms contained in any Customer document will become a part of the parties' contract for the Services or otherwise supplement or replace these Terms of Service. If Advanced Laboratories® and Customer have executed a different written contract covering the Services, however, that contract will control during its term.

1. Fees for Services: Advanced Laboratories® will perform the Services for the fees stated in a written quotation that Advanced Laboratories® provides to the Customer or, absent a written quotation, for the fees stated in Advanced Laboratories®' price list in effect at the time the Customer places the order. Customer may place an order by submitting a sample with a custody form or by submitting a purchase order (the "Order"). Advanced Laboratories® will notify the Customer of any problems or delays that materially affect performance of the Services.

2. Sample Selection: Customer has the responsibility to select samples that are representative of its product both in the nature of the product and in the packaging. Customer also has the responsibility to adhere to U.S. Food and Drug Administration ("FDA") and/or U.S. Department of Agriculture ("USDA") sampling guidelines, where applicable. If Customer wants a sample tested for both microbiology and chemistry, Customer may send two samples, which reduces the risk of cross-contamination and may speed up the turnaround time. Customer must provide all samples to Advanced Laboratories® in air/leak-proof containers. For chemical testing, Customer should also ship the sample in a protective container.

3. Sample Submission: For each sample, Customer must submit a complete, accurate custody form that contains the following information: Customer name, address, telephone and fax numbers, contact person, purchase order number, complete, unique sample description and lot number (which will be included on Customer's Test Certificate), a detailed list of all tests that Customer wants Advanced Laboratories® to perform on the sample, and the estimated analysis level(s) (if known). Customer may ask Advanced Laboratories® to pick samples up from Customer in some geographic areas. Customer may call Advanced Laboratories® for current pick-up availability, times, and pricing.

4. Sample Acceptance and Retention: Advanced Laboratories® will be deemed to have accepted a sample only when Advanced Laboratories® has received and inspected the sample, has received a custody form (or equivalent) containing all correct, required information, and has determined that it can perform the requested Services ("Acceptance"). Without limiting its discretion to decline Acceptance for another reason, Advanced Laboratories® reserves the right to refuse or reject any sample that it considers to be: (a) unsuitable in volume; (b) an unacceptable health, safety, environmental, or other risk; (c) unsuitable for testing because of the inability to meet required hold times; or (d) unviable due to delivery times or shipping conditions. Samples are normally retained for fourteen (14) days from the time they arrive at the testing laboratory. If the sample is perishable, however, it will be discarded immediately after testing is completed. If Advanced Laboratories® refuses Acceptance, or Customer cancels the Services after Acceptance, Advanced Laboratories® will return the sample to Customer, if reasonably possible, at Customer's written request and expense. Any such Customer cancellation shall be subject to paragraph 10.

5. Risk of Loss: Until Acceptance, the entire risk of loss or damage to a sample remains with Customer, except where Advanced Laboratories® has agreed to provide pick-up Services. Advanced Laboratories® will have no responsibility or liability for any action or inaction of any carrier shipping or delivering any sample to or from Advanced Laboratories®. Customer is solely responsible for taking all actions

necessary to ensure the sample is packaged, labeled, transported, and delivered properly, and in accordance with all federal, state, and local laws and industry standards. Where Advanced Laboratories® agrees to provide pick-up service, risk of loss or damage passes to Advanced Laboratories® on pick-up, except that Advanced Laboratories® will have no responsibility for any loss or damage resulting from Customer's failure to package or label the sample in compliance with all applicable laws and industry standards. Customer's exclusive remedy for any such loss or damage that is the responsibility of Advanced Laboratories® shall be Advanced Laboratories®' pick-up of the replacement sample(s) or, if the applicable Order is cancelled, a credit for the pick-up charges that Advanced Laboratories® has been paid.

6. Hazardous Materials: Customer must disclose to Advanced Laboratories® in writing all known or suspected hazardous substances contained in any sample. Hazardous substances are those defined as such by federal, state, and local law. Customer shall be liable for and pay all costs and damages arising from or relating to (a) Customer's failure to disclose that a sample contained or was suspected to contain a hazardous substance; (b) Customer's failure to comply with any federal, state, or local law regarding the sample; or (c) any other action or inaction on the part of Customer that results in any contamination of any equipment or work space, necessitates any clean-up or recovery efforts, or interrupts Advanced Laboratories®' or its subcontractor's ability to process work of Customer or any third party.

7. Turnaround Times: Microbiology test results are normally reported to Customer within 3-5 business days after Acceptance, and chemistry test results are normally reported to Customer within 3-7 business days after Acceptance. Some tests require longer hold times and will be reported to Customer accordingly. Customer may call Advanced Laboratories® anytime during Advanced Laboratories®' normal business hours for information about specific samples.

8. Rush Testing: Rush testing is available (subject to laboratory capacity) for an additional surcharge, as specified on Advanced Laboratories®' then-current price list. If Customer desires rush testing, Customer must call Advanced Laboratories® in advance and must also specify "rush" on the associated custody form.

9. Repeat Testing: Advanced Laboratories® will repeat testing at Customer's request, if the sample contains sufficient remaining volume. Advanced Laboratories® invoices Customer for repeat testing ONLY if it confirms the initial test results. If the test results are statistically different from the initial testing, a Corrective Action form will be filled out and supplied to Customer.

10. Changes in Services: Advanced Laboratories® will make reasonable efforts to accommodate a Customer's written request for a change in the Services after Acceptance of a sample, such as adding or deleting tests or accelerating the testing, but a change request may require a change in pricing and/or turnaround times. Customer is responsible for any resulting changes in such pricing and/or turnaround times and should contact Advanced Laboratories® in advance for information. Customer may also request in writing that Advanced Laboratories® stop or suspend the Services after Acceptance of the sample, but Customer will remain obligated to pay Advanced Laboratories® on a pro rata basis for Services already performed before Advanced Laboratories® received the request. Advanced Laboratories® may request a change in the Services after Acceptance to address any problems or conflicts with the Order or requested Services but will not make any such change without Customer's oral or written consent.

11. Testing Methods: Unless Customer is notified otherwise, all testing will be performed according to AOAC, USP, FDA, USDA, or EPA testing procedures or such other procedures as Advanced Laboratories® deems applicable to Customer's sample. On written request, Advanced Laboratories® will perform custom testing Services. Customer should call in advance for custom testing pricing. Customer must provide Advanced Laboratories® prior written notice of all licenses and certifications, if any, that Customer requires Advanced Laboratories® to have before performing the requested Services, and Advanced Laboratories® will notify Customer if it lacks any such licenses or certifications or if any such licenses or certifications are revoked.

TERMS OF SERVICE

Advanced Laboratories® will perform all Services in accordance with its then-existing standard quality assurance plan for testing, unless Customer and Advanced Laboratories® agree in writing to a custom quality assurance plan prior to Acceptance of the sample. For clarity, any custom quality assurance plan agreed between Customer and Advanced Laboratories® only involves quality assurance with respect to testing Services and in no way provides any different or additional warranties or otherwise modifies the warranties or disclaimers contained herein.

12. Test Reports: After testing, Advanced Laboratories® will send Customer a Test Certificate by e-mail. On request, Advanced Laboratories® will provide test results by telephone. Advanced Laboratories® will not release test results to any third party without Customer's prior written consent, nor will Advanced Laboratories® fax or telephone test results to a telephone number other than the ones shown on the custody form, without Customer's written consent. If Customer needs test results sent to anyone other than Customer or to several different locations, Customer must request it in writing (email is acceptable). Advanced Laboratories® will retain Customer's Test Certificates in electronic form for a period of three (3) years after the testing, unless the parties mutually agree in writing to a longer period, for which a service fee may apply.

13. Confidentiality: Advanced Laboratories® will make all reasonable efforts to protect the confidentiality of Customer's product and business information that Advanced Laboratories® receives pursuant to these Terms of Service and will use such information only to provide the Services. Customer will treat all information it receives about Advanced Laboratories®, including without limitation information about its operations, facilities, methods, processes, protocols, procedures, pricing, and business as the confidential information of Advanced Laboratories® and will not disclose or allow the disclosure of any such information to any third party without Advanced Laboratories®' prior written approval. The requirements of this paragraph shall not apply to any information that the receiving party can show from contemporaneous records: (a) was publicly available at the time of the disclosure or subsequently became publicly available through no fault of the receiving party; (b) was already in the receiving party's possession before being received or derived from the disclosing party; (c) was independently developed by the receiving party without breaching this paragraph; (d) is obtained from a third party having no obligation to the disclosing party to maintain its confidentiality; or (e) is produced to comply with a subpoena or other legal process, provided that the receiving party first promptly notifies the disclosing party to enable the disclosing party to seek a protective order.

14. Ownership of Information: All information that Customer provides to Advanced Laboratories® will remain the property of Customer. All Test Certificates and test results provided by Advanced Laboratories® to Customer shall become Customer's property upon full payment to Advanced Laboratories® for the related Services, except that Customer acknowledges and agrees that all Test Certificates and test results are provided solely for Customer's benefit and subject to all of these Terms of Service. All methods, processes, protocols, procedures, pricing, and other confidential information of Advanced Laboratories® or its subcontractors, and all equipment developed by Advanced Laboratories® and/or its subcontractors to perform any Services, shall belong exclusively to Advanced Laboratories® and/or its subcontractors.

15. Subcontracting: Advanced Laboratories® may subcontract Services to third-party laboratories, to provide all of Customer's testing needs with one-stop sample shipping. Unless Customer has timely specified the location where Customer desires the Services to be performed, and Advanced Laboratories® has accepted that location, Advanced Laboratories® may perform or have performed the Services for the Customer at any laboratory that has the same licenses and certifications and the same testing capacity as Advanced Laboratories®. All warranty disclaimers, limitations of liability, and other restrictions in this agreement shall apply to any subcontractor test results and other Services, the same as if they were those of Advanced Laboratories®.

16. Invoices and Payment: Advanced Laboratories® will issue an invoice to Customer upon completion of the Services for the sample(s). All prices quoted or otherwise specified by Advanced Laboratories® are exclusive of taxes. If Advanced Laboratories® is required to collect any taxes from Customer with respect to the Services, such amounts will be added to the invoice. Payment terms are net 30 days from the date of the invoice. Customer shall pay Advanced Laboratories® in a timely manner, without offset or deduction, even if Customer challenges any of the test results or other Services or claims that they breach the Limited Warranty or any other provision of these Terms of Service. If Customer does not have an approved credit account, or if Customer's credit status changes after approval, payment may be required by Advanced Laboratories® in advance of providing the Services. Advanced Laboratories® may suspend work on any pending Services if Customer fails to make timely payment of its invoices. Advanced Laboratories® also reserves the right to refuse to proceed with any Services based on an unfavorable credit report regarding Customer. Advanced Laboratories® may charge interest on past due amounts at the rate of one and one-half percent (1½%) per month or the maximum rate allowed by law, whichever is less. Delinquent accounts (those with unpaid invoices over 90 days old) may be referred to an outside collection agency and/or attorney, and Customer shall pay all associated collection expenses, including agency fees, attorneys' fees, and court costs.

17. Limited Warranty and Exclusive Remedy: Subject to the terms and conditions of these Terms of Service, including without limitation the disclaimers and limitations set forth below, Advanced Laboratories® will perform the Services in accordance with the testing methods described in paragraph 11 (the "Limited Warranty"). Customer's sole and exclusive remedy for any breach by Advanced Laboratories® of the Limited Warranty will be to re-perform the affected Services, provided that Customer provides Advanced Laboratories®, at Customer's expense, any additional samples as are necessary to re-perform the affected Services. Customer shall have thirty (30) days from receipt of the Test Certificate to inform Advanced Laboratories® in writing of any claim that the Services fail to comply with the Limited Warranty. Before any Services are re-performed, however, Customer shall provide Advanced Laboratories® the opportunity to defend any Services claimed not to be in compliance with the Limited Warranty. Absent such opportunity, Advanced Laboratories® shall have no obligation to re-perform any Services.

18. Disclaimers and Limitations:

a. EXCEPT AS EXPRESSLY PROVIDED IN THE LIMITED WARRANTY IN PARAGRAPH 17, Advanced Laboratories® PROVIDES ALL TEST RESULTS AND OTHER SERVICES "AS IS" AND WITHOUT WARRANTY OF ANY KIND. ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF Advanced Laboratories® KNOWS OF SUCH PURPOSE) ARE HEREBY DISCLAIMED AND EXCLUDED.

b. Without limiting the generality of subparagraph 18.a. above, Customer acknowledges and agrees that none of the test results or other Services rendered pursuant to this agreement provide or are intended to provide any other warranty to Customer or any warranty whatsoever to Customer's customers, to consumers, or to any other third party about Customer's products, whether as to quality, efficaciousness, fitness for use or consumption, packaging or bottling, labeling, safety, absence of defects, or otherwise. Customer further acknowledges and agrees that all test results and other Services rendered pursuant to this agreement are also subject to all disclaimers contained in the Test Certificates, and that no employee or other representative of Advanced Laboratories® and no subcontractor has any right or ability to add to, delete from, or otherwise change any of the warranties, remedies, disclaimers, limitations, or restrictions set forth in these Terms of Service. Customer further acknowledges and agrees that Advanced Laboratories® does not participate in any way in the design, production, manufacture, bottling, packaging, or certification of any Customer product or service or provide any safety or quality assurance testing or other Services with respect to any Customer product or service.

TERMS OF SERVICE

c. In no event shall Advanced Laboratories® be liable or otherwise responsible to Customer or any third party for any consequential, indirect, special, or incidental damages, including but not limited to lost profits or loss of business, regardless of the form of action or theory of liability. Furthermore, the maximum liability of Advanced Laboratories® arising out of or relating to these Terms of Service, whether arising from any claim(s) based on breach of contract, tort, products liability, strict liability, warranty, or otherwise, shall in no case exceed the actual fees paid to Advanced Laboratories® for the affected Services or \$100, whichever amount is greater. Moreover, all of the limitations, disclaimers, and restrictions contained in paragraphs 17 and 18 shall be enforced even if they cause any remedy to fail of its essential purpose. Those limitations, disclaimers, and restrictions are a material part of the consideration bargained-for by the parties, and Advanced Laboratories® prices reflect that bargain.

19. Litigation Costs: Customer shall reimburse Advanced Laboratories® for all costs incurred by Advanced Laboratories® and/or its subcontractors, including without limitation time spent by personnel of Advanced Laboratories® and/or its subcontractors, in responding to any subpoena or any other legal process relating to the test results or other Services provided to Customer. Costs for time spent shall be calculated based on the hourly rate schedules for such employees, officers, or contractors or, absent such schedule, a reasonable hourly rate.

20. Indemnity and Insurance.

a. Customer agrees to defend, indemnify, and hold harmless Advanced Laboratories®, its affiliates, its subcontractors, their respective successors and permitted assigns, and all of their respective directors, officers, shareholders, members, employees, representatives, and agents (collectively, the "Indemnitees") from and against any and all claims, actions, suits, proceedings, demands, losses, fines, damages, costs, (including, without limitation, reasonable attorneys' fees, expert witness fees, and court costs), and other remedies of any kind or nature (whether based on tort, contract, warranty, products liability, strict liability, trade, regulatory, or other law) arising from or otherwise relating to any Customer product or service, including without limitation any claim or allegation that any Customer product or service was or is dangerous; defective in design, ingredients, manufacture, production, bottling, packaging, or otherwise; unsafe; unfit for consumption or use; otherwise unfit; defectively or otherwise improperly labeled, packaged, shipped, or otherwise transported; negligently, fraudulently, or otherwise improperly advertised, marketed, or promoted; or otherwise injured, harmed, or damaged any person or property in any way (individually a "Claim" and collectively "Claims"). Advanced Laboratories® agrees to (i) provide Customer notice of a Claim within ten (10) days after being formally served therewith; (ii) provide Customer the opportunity to defend and settle the Claim, except that Customer shall not settle the Claim without the prior written consent of Advanced Laboratories®, and (iii) provide reasonable assistance to Customer, at Customer's request and expense, to defend against the Claim. Advanced Laboratories® shall have the right, in its sole discretion, to participate in the defense of the Claim, at its own expense, through counsel of its own choosing.

b. Without limiting the generality of subparagraph 20.a. above, Customer represents and warrants to Advanced Laboratories® that (i) Customer has and will maintain products liability insurance with an A.M. Best A+ or better rated carrier providing protection (at a minimum, \$1,500,000 per occurrence and \$3,000,000 annual aggregate) with respect to any and all claims, liabilities, damages, costs, and expenses arising out of or otherwise relating to any defects or alleged defects in Customer's products; (ii) such products liability insurance includes coverage for additional insureds that include the Indemnitees; and (iii) Customer will notify Advanced Laboratories® within ten (10) days of any cancellation, modification, or reduction of such insurance coverage. In addition to any other remedies available, Advanced Laboratories® reserves the right to terminate any and all Services for Customer in the event of any breach of the foregoing warranties or for the cancellation of any such insurance coverage or any gap in such coverage.

21. General Provisions:

a. **Assignment.** Neither party may assign this agreement without the other party's written consent, which shall not be unreasonably withheld. This agreement shall be binding on and inure to the benefit of each of the parties' successors and permitted assigns, if any. Customer shall inform Advanced Laboratories® of any change of ownership or control of Customer, whether by merger, stock sale, or otherwise, and Advanced Laboratories® shall have the right, in its sole discretion, to terminate this agreement or revoke Customer's credit account.

b. **Relationship of the Parties.** The relationship of the parties established by this agreement is that of independent contractors, and nothing contained in this agreement shall be construed (a) to give either party the power to direct and control the day-to-day activities of the other, (b) to constitute the parties as partners, joint venturers, co-owners, or participants in any joint or common undertaking, or (c) to allow either party to act as an agent of the other or otherwise to create or assume any obligation on behalf of the other party.

c. **Notices.** Notices shall be made in writing, shall be sent by email, facsimile, certified mail, hand delivery, or express carrier, and will be effective upon receipt.

d. **Compliance with Laws.** Each party agrees to comply with all federal, state, and local laws applicable to its performance of this agreement.

e. **Non-Waiver.** Any failure or delay by either party to exercise or partially exercise any right, power or privilege under this agreement shall not be deemed a waiver of thereof.

f. **Severability.** If a court of competent jurisdiction finds any provision of this agreement to be void, invalid, illegal or unenforceable, the provision will be limited, modified, or if necessary severed, to the extent necessary to eliminate its violability, invalidity, illegality, or unenforceability, and the other provisions hereof shall remain unaffected. Any void, invalid, illegal, or unenforceable provision will be replaced by the parties by a legal and enforceable closest in operation and effect to the void, invalid, illegal, or unenforceable provision.

g. **Force Majeure.** A party's failure to perform in timely fashion shall not be a breach of this agreement if such failure to perform results from circumstances beyond the party's reasonable control, including, but not limited to, labor disputes, civil disturbances, acts or non-actions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather, fire, earthquakes, Internet outage, Acts of God, or default of a common carrier. This provision shall not apply, however, to Customer's payment obligations to Advanced Laboratories®.

h. **Governing Law.** This agreement shall be governed by and interpreted in accordance with the laws of the State of Utah, excluding its conflicts of law rules. Exclusive jurisdiction and venue for any disputes arising or relating to this agreement shall be in the federal and state courts sitting in Salt Lake County, Utah, and each party irrevocably consents to such jurisdiction and venue. The party that substantially prevails in any action or proceeding brought with respect to this agreement shall be entitled to recover, in addition to any other relief, its costs and reasonable attorneys' fees. Each party irrevocably waives the right to a trial by jury in any and all actions or proceedings brought under or with respect to this agreement.

i. **Survival of Terms.** The provisions of the agreement that by their nature extend beyond the termination of this agreement will survive and remain in effect until all obligations are satisfied, including without limitation paragraphs 1, 6, 13, 14, and 16 through 21.

j. **Entire Agreement.** This agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all prior written and oral communications, agreements, representations, warranties, statements, negotiations, understandings, and proposals, with respect to such subject matters.