



These Standard Terms (Terms) govern all services that Pace Analytical® Services, LLC (“Lab”) will perform on behalf of [REDACTED] (“Client”), and supersede any other written provisions (including purchase/work orders) related to the services, as well as all prior discussions, courses of dealing, and/or performance, unless another executed agreement for the same or similar services already exists between the Lab and Client (collectively, “the Parties”), or the Parties subsequently agree to terminate or amend these Terms, as allowed in Sections 10 and 12, respectively.

## 1. Definitions:

**Chain of Custody (COC):** A document evidencing the collection, handling, delivery, etc. of a sample or Sample Delivery Group.

**Holding Time:** The maximum amount of time a sample may be stored before being analyzed.

**Sample Delivery Acceptance (SDA):** The date and time when Lab officially receives a sample or Sample Delivery Group, as evidenced by either a notation on the Chain of Custody or an entry in the Lab’s information management system (LIMS).

**Sample Delivery Group (SDG):** A set of samples normally shipped and reported to the Lab as a group.

**Turnaround Time (TAT):** The maximum allowable period within which Lab must report out its analytical results to Client, calculated from the date of SDA.

## 2. Client’s Obligations:

- a. To initiate Lab’s services, Client must reference a quotation number (if applicable) and complete one of the following steps:
  - i. Submit a completed purchase order by:
    1. Hand (i.e., in person)
    2. mail, or
    3. e-mail; or
  - ii. Place an order by:
    1. telephone
    2. e-mail, or
    3. delivering a sample (or SDG) to Lab and completing the COC
- b. Subject to occasional, mutually agreed-upon exceptions, Client must give five (5) days’ prior notice for each sample delivery and provide the following information:
  - i. Name of the responsible project manager
  - ii. Name of the person submitting the sample
  - iii. Name/location of the collection site
  - iv. Date and time of collection
  - v. Shipping details, including method and expected delivery date
  - vi. Specific testing being requested, and
  - vii. Sufficient details about reporting requirement(s).
- c. Client shall also:



- i. Remain liable for any loss of, or damage to, sample(s) or supplies until SDA (including that which may occur as a result of third-party shipping delays)
- ii. Pay all invoices in full on a net 30 basis or as otherwise agreed in writing
- iii. Notify Lab about any disputed charges or analytical results within 30 days of receiving applicable invoice
- iv. Reimburse Lab for any collection costs\* related to delinquent payments
- v. Demonstrate its (or, if applicable, the Prime Client's) credit worthiness by accessing the following link: <https://www.pacelabs.com/my-account.html> and clicking on "Client Profile Information." (Note: Client must pre-pay for services pending completion of this process and Lab's approval of a credit line.)
- vi. Pay for any additional service it orders on any already analyzed sample
- vii. Obtain Lab's written consent before assigning billing or payment of Lab services to any third party (failure to do so means Client remains responsible for any outstanding balance)
- viii. Refrain from using any of Lab's supplies (e.g., containers) in connection with any non-Lab work
- ix. Ensure that any sample(s) containing any known hazardous substance is (are) labeled, packaged, manifested, transported, and delivered to Lab in accordance with all applicable regulations
- x. Obtain Lab's written consent before publishing Lab's name and/or any data
- xi. Reimburse Lab for any out-of-scope services and related expenses (e.g., defending its analytical results or responding to a subpoena for documents and/or testimony)
- xii. Excuse Lab for any failure or delay in its performance that is caused by someone or something outside its control, e.g., a third party or "Force Majeure" event or circumstance, such as a natural disaster or government shutdown; and
- xiii. Accept responsibility for any claims, damages, losses, expenses,\* etc. to the extent caused by Client's breach of these Terms, negligence or willful misconduct (including Client's use of Lab data for anything other than the specific purpose for which it was intended), or violation of applicable laws.

### **3. Lab's Obligations:**

Lab shall:

- a. Perform its services in accordance with generally accepted analytical practices and professionally recognized standards.
- b. Identify on quotation if services will be sent to another Lab location or to a third party .
- c. Promptly notify Client of any:
  - i. Missing or otherwise compromised sample(s)
  - ii. Significant delays or other issues affecting Lab's services, or
  - iii. Subpoena or similar demand for Lab compliance.
- d. Maintain high-quality services.
- e. Prepare and keep accurate records.
- f. Obtain/maintain any necessary permit(s), license(s), or certification(s).
- g. Charge its fees on a net 30 basis (unless otherwise agreed).



- h. Impose a one and a half percent (1.5%) per month late charge on any unpaid balances.
- i. Assess a two and a half percent (2.5%) surcharge on any payments made by credit card. (Client can avoid this surcharge by paying with a debit card, an e-check/check by phone, a wire transfer, or an ACH payment.)
- j. Invoice Client for each sample or SDG as reported.
- k. Assume risk of loss or damage to any Client sample(s) upon SDA.
- l. Initiate analysis within established holding times – so long as SDA occurred within 48 hours of collection or the first half of the maximum allowed holding time.
- m. Indemnify Client for any claims, damages, losses, expenses,\* etc. to the extent they were caused by Lab's breach of these Terms, negligence or willful misconduct, or the negligence and willful misconduct of persons for whom Lab is legally responsible.
- n. Warrant the results, with the express understanding that this warranty is exclusive and does not extend to any merchantability or fitness for a particular purpose.

#### **4. Lab Discretionary Actions:**

Lab may:

- a. Cease all services, including any release of data, if Client does not pay as agreed.
- b. Reject or rescind any SDA if Lab decides sample poses a risk.
- c. Charge or bill Client directly for:
  - i. Any supplies (including containers) that are not used or returned
  - ii. Expedited outbound/return shipping for any sample that is not time-sensitive)
  - iii. Disposal of any air sample not reclaimed within seven (7) days of Lab's SDA thereof
  - iv. Disposal of any other sample not reclaimed within 21 days of Lab's SDA thereof, or as otherwise required
  - v. A minimum fee for invoicing and/or handling any sample
  - vi. A sample that underwent SDA, but was not analyzed, at Client's direction
  - vii. Additional shipping and handling as deemed necessary
  - viii. Change in scope and/or rescheduling fees
  - ix. Minimum fees or additional surcharges as necessary
  - x. Reasonable attorneys' fees
  - xi. Resampling costs related to missed deliveries, etc.
  - xii. Off cycle pricing increases dictated by the market, and
  - xiii. Any request for re-analysis following release of the report if the results are within the variability of the method (or acceptable parameters).
- d. Return unused portions of samples found or suspected to be hazardous to Client, at Client's cost.
- e. Retain Client's unreleased data and/or cancel Client's web portal access pending payment in full.
- f. Increase prices on an annual basis to support market-driven cost increases.

- 5. **Multiple Dilutions:** Lab will report a single value for each analyte based on the most appropriate analysis or dilution for that analyte. Based on general screening where appropriate, samples will be reported on a dilution-only basis due to concentrations of target analytes present. Lab may attempt a 10-fold more concentrated analysis if practicable. Client may also request and pay for additional dilutions if practicable.



6. **Dry Weight Correction / Percent (%) Moisture:** Consistent with all applicable reporting methods, Lab will automatically analyze any solid sample (soil) for % moisture to allow for dry weight correction and charge accordingly. If “wet weight” reporting is requested by the client or the regulatory agency, Lab will maintain the charge for dry weight correction even if the results were not corrected for the applicable reporting criteria.
7. **Confidentiality:** The Parties agree that they will take all reasonable precautions to prevent the unauthorized disclosure of any proprietary or confidential information of each other and that they will not disclose such information except to those employees, subcontractors, or agents who have expressly agreed to maintain confidentiality.
8. **Governing Law:** These Terms shall be construed and interpreted pursuant to the laws of the State of Minnesota without giving effect to the principles of conflicts of law thereof.
9. **Term:** Lab and Client shall perform the services identified in the applicable purchase order or other agreement until completed or terminated in accordance with Section 10 below.
10. **Termination:**
  - a. Either party may terminate these Terms upon 30 days’ prior written notice.
  - b. Lab may immediately terminate for any breach by Client, including its failure to pay within 60 days of Lab’s dated invoice.
11. **Limitation of Liability:**
  - a. If a court of competent jurisdiction finds that Lab failed to meet applicable standards and if Client suffers damages as a result, Lab’s aggregate liability for its negligence or unintentional breach of contract shall not exceed the total fee paid for its services.
  - b. This limitation shall not apply to any Client losses arising from Lab’s negligence or willful misconduct, so long as Client:
    - i. Notifies Lab of any issue within thirty (30) days of receiving applicable invoice, and
    - ii. Allows Lab to defend its data, even to a regulatory agency that may have previously rejected same.
  - c. Notwithstanding the foregoing, neither Lab nor Client shall be liable to the other for special, incidental, consequential, or punitive damages.
12. **Amendment/Change Order:** Any attempt to modify, vary, supplement, or clarify any provision of these Terms is of no effect unless reduced to writing and signed by both Parties.
13. **Storage of Data:** Following final report issuance, Lab will retain back-up data and final test reports for ten (10) years in a format from which the data and/or test report can be reproduced.



**14. Intellectual Property:** Lab shall retain sole ownership of any new method, procedure, or equipment it develops or discovers while performing services for Client pursuant to these Terms. Lab may, however, grant a license to the Client for its use of same.

**15. Non-competition:** Client shall not solicit or recruit any Lab personnel for at least 12 months following the termination of the services governed by these Terms.

**16. Non-assignment:** Neither party may assign or transfer any right or obligation existing hereunder without prior written notice to the other party, except that Lab may freely transfer the services to another Lab location or, with Client’s permission, subcontract the services to a third party.

**17. Insurance:** Lab carries insurance with the limits of coverage as indicated below and will, upon Client’s request, submit certificates of insurance showing same.

- a. General Liability - \$1,000,000 each occurrence; \$2,000,000 general aggregate;
- b. Personal and Advertising Injury - \$1,000,000;
- c. Automobile Liability - \$1,000,000 combined single limit;
- d. Excess Liability Umbrella - \$5,000,000 aggregate; \$5,000,000 each occurrence;
- e. Worker’s Compensation Insurance - statutory limits; and
- f. Professional Liability \$5,000,000 aggregate, \$5,000,000 per claim.

**18. Miscellaneous Provisions:**

- a. In the absence of an executed agreement between the Parties, SDA will constitute acceptance of these Terms by Client.
- b. The Parties may use and rely upon electronic signatures and documents for the execution and delivery of these Terms and any amendments, notices, records, disclosures, or other documents of any type sent or received in accordance with these Terms.
- c. The Parties are at all times acting and performing as independent contractors; neither one shall ever be considered an agent, servant, employee, or partner of the other.
- d. These Terms shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.
- e. Lab’s compliance with a subpoena or other order shall not violate any requirement for confidentiality between the Parties.
- f. If any Term herein is invalidated or deemed unenforceable, it shall not affect the validity or enforceability of the other Terms.

**IN WITNESS WHEREOF,** Client and Lab have executed this Agreement as of the last date below:

[Client] \_\_\_\_\_

Pace Analytical Services, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\* May include reasonable attorneys’ fees