

# **Eurofins Assurance Audit and Certification Services US, LLC and Eurofins Food Chemistry Testing Madison, Inc. General Terms & Conditions for Product Certification Services**

## **1. Area of Application.**

All orders for product certification services (“Product Certification Services”) accepted by Eurofins Food Chemistry Testing Madison, Inc. (“Partner”) and Eurofins Assurance Audit and Certification Services US, LLC (“Certification Body”) from the customer stated in the order (“Customer”) will be governed by these General Terms & Conditions for Certification Services, together with the Eurofins Policies and Procedures for Good Manufacturing Practices (GMPs) and Management Systems Certification, or the Eurofins Policies and Procedures for Product Certification, as applicable (collectively, the “Terms”). A contract with the Terms comes into being when an order is accepted by Partner and Certification Body in writing. All Certification Services provided by Partner and Certification Body are expressly limited to, and will only be provided on the basis of, the Terms, to the exclusion of all other terms and conditions, including any terms or conditions which a party may purport to impose, or which appear on, any web site, purchase order, purchasing document, quotation, sales document, invoice, order confirmation, correspondence or other document or communication provided by a party, irrespective of their date of communication.

## **2. Entire Agreement.**

The Terms, together with any proposal for Product Certification Services provided by Partner or Certification Body, set forth the entire agreement between the parties, and supersede all prior and contemporaneous negotiations, agreements, representations, understandings, and commitments with respect thereto. The parties agree that Customer’s standard terms, conditions, and pre-printed provisions on any purchase order, acknowledgment, release or other purchasing document purporting to address the same subject matter as the Terms shall be null and void and of no force or effect, whether such terms conflict with or purport to add terms to the Terms. Partner and Certification Body hereby rejects any offer made by Customer to purchase services, and objects to and rejects any additional or different terms proposed by Customer with respect to the subject matter of the Terms, including, but not limited to, warranties of suitability, fitness or non-infringement, and requirements for Partner or Certification Body to indemnify Customer, pay damages that are unlimited in amount or pay indirect damages of any kind (including, but not limited to, consequential, incidental, punitive or special damages, and damages for lost profits or revenue, loss of use, business interruption, loss of information or for the procurement of substitute services).

## **3. Fees.**

- a) Time requirements are estimated and are based on the information provided by Customer in the application form, including the number of product manufacturing and packing locations, and the similarity or dissimilarity of products. The time required to complete the product assessment(s) may need to be adjusted by the Certification Body if the size or complexity of the certification project exceeds the information provided.
- b) Fees do not include any federal, provincial, territorial, county, municipal, local or foreign sales or use taxes, excise taxes, goods and services tax, value added tax, country-specific business or professional services tax or similar tax on international services or foreign entities providing services, consumption taxes, packaging or shipping charges. Customer shall assume and shall be solely responsible for any such applicable taxes. Applicable taxes are those in force at the date of invoicing.



#### 4. Terms of Payment.

- a) The Product Certification Services covered by these Terms will be invoiced to Customer by Partner. Invoicing milestones will be indicated in the applicable proposal.
- b) Payment of all invoices is due strictly within thirty (30) days of the invoice date, other than amounts being disputed in good faith which shall require written notice to be given to Partner on or before the due date of the invoice, specifying in reasonable detail the nature of the dispute. Customer agrees to pay all undisputed amounts as provided above. The challenge of an analytical or certification result will not entitle Customer to defer payment. Customer acknowledges that failure to pay when due any amount owing to Partner pursuant to these Terms may result in administrative, collection and other costs to Partner, which costs are estimated to be Seventy-Five Dollars (\$75) for each failure to pay. Customer agrees to pay such estimated amount (in addition to the payment of the overdue amount) as reimbursement for such costs of Partner as liquidated damages and not as a penalty. The acceptance of any payment of such estimated amount will not be construed as a waiver by Partner of its rights in respect of the default giving rise to such payment. All late payments may also carry interest at the rate of one percent (1%) per month (12% per annum).
- c) The invoice settlement method is check, bank transfer or direct debit. Any other method of payment must receive prior agreement from Partner. Customer undertakes to provide bank account and remittance details.
- d) Partner is entitled to require prepayment in accordance with the conditions set forth in Section 5.
- e) Even if Partner and Certification Body have accepted and begun to fulfill an order for Product Certification Services, Partner and Certification Body have the right at any time to stop performing Product Certification Services if Customer's account is overdue for that order or for any other order for Product Certification Services.
- f) Customer shall pay all collection costs, including attorney's fees and related costs, incurred by Partner.

#### 5. Pre-Billing.

Partner reserves the right to bill for services prior to performance of the services. In cases where prepayment is required, a prebilling invoice will be issued approximately 35 days prior to the initiation of the service including (1) professional services; (2) review fees; (3) testing fees, if applicable; and (4) other known certification expenses. Payment of the prebilling invoice is required before the certification services will be initiated. Within thirty (30) days following the completion of the final evaluation report, the prebilling invoice will be adjusted, if necessary, according to the following conditions. To the extent the actual costs exceed 105% of the prebilling amount, Partner will issue a second invoice for the difference between actual costs and the prebilled costs, and such invoice will be due and payable consistent with the payment terms set forth in Section 4. To the extent the actual costs are less than 98% of the estimate, Partner will provide a credit for the difference between the actual audit costs and the prepayment amount, with such credit to be applicable for a future certification expense.

#### 6. Cancellations or Postponements.

A postponement or cancellation can be made up to 30 days prior to a monitoring audit or product testing without penalty, provided, any analytical costs incurred, and any non-cancellable travel expenses will be charged to Customer. For postponement or cancellation within 8 to 29 days of a confirmed audit date, a charge equal to 75% of the total fee and any associated travel expenses will be invoiced to Customer. For postponement or cancellation within 7 days or less of the confirmed audit date, a charge equal to 100% of the total fee and any associated travel expenses will be invoiced to Customer.

#### 7. Aborted Audits.

Audits aborted by Certification Body for cause, such as lack of preparedness, refusal of access, failure to cooperate, or harassment or intimidation, shall incur a charge equal to 100% of the total fee including all associated travel expenses.



## 8. Annual Fee Increases.

Partner and Certification Body each retain the right to increase, at its discretion and without prior notice, the fees outlined in the proposal at the beginning of each calendar year.

## 9. Term; Termination.

- a) These Terms will continue in full force and effect until terminated by either party on not less than thirty (30) days prior written notice to the other party.
- b) Notwithstanding the provisions of paragraph (a) above, these Terms may be terminated in accordance with the following provisions:
  - i. either party hereto may terminate these Terms at any time by giving notice in writing to the other party, which notice will be effective upon delivery, should the other party file a petition under federal or state bankruptcy laws, be declared bankrupt, become insolvent, make an assignment for the benefit of creditors, go into liquidation or receivership, or be unable to pay its debts as they become due; or
  - ii. by mutual written consent of the parties.
- c) In the event of termination or expiration of these Terms for any reason, the parties will have the following rights and obligations:
  - i. termination of these Terms will not release Customer from the obligation to make payment of all amounts then or thereafter due and payable to Partner;
  - ii. Partner and Certification Body will have the right to immediately cease providing any or all Product Certification Services; and
  - iii. the obligations, promises, or covenants set forth herein that by their nature are meant to extend beyond the term including, without limitation, Sections 11 (Confidentiality), 18 (Indemnification), 20 (Limitations of Liability), and 21 (Intellectual Property Ownership). The provisions of this Section together with any other section which is necessary for the interpretation or enforcement of these Terms shall survive the expiry or termination of these Terms howsoever arising.

## 10. Confidentiality.

Certification Body and Partner, on an individual basis, shall be responsible for the management of all information obtained or created by it during the performance of its certification activities under these Terms. Except for information that the Customer makes publicly available, or when agreed between Certification Body and the Customer (e.g. for the purpose of responding to complaints or information for a public directory), all other information is considered proprietary information and shall be regarded as confidential. Certification Body shall inform the Customer, in advance, of the information it intends to place in the public domain. Partner and Certification Body shall be entitled to save and process Customer's data in any way, no matter whether such data stem from the Customer directly or from a third party, and Partner and Certification Body shall use commercially reasonable efforts to keep such data confidential, in compliance with applicable law.

To the extent Partner or Certification Body is required by law to disclose confidential Customer information, Partner or Certification Body, as the case may be, shall inform the Customer of the information to be disclosed, except where prohibited by law.

## 11. Customer Acknowledgements.

In accepting the proposal issued by Partner or Certification Body, Customer authorizes Certification Body to submit a report when required by an accreditation body, where applicable. The Customer also attests it has read, understands, and agrees to

comply with the Eurofins Assurance Product Certification Policies and Procedures, together with these Terms and Conditions, constitutes the Product Certification Contract. The Customer also agrees and understands that the Certification Policies and Procedures will be updated from time to time, and upon notification by Certification Body of these changes, the Customer agrees to implement and comply with the amended Certification Policies and Procedures. The Customer further agrees to the following:

- a) Customer understands that their certificate will be issued by Certification Body.
- b) Customer agrees to comply with all applicable state and national laws and regulations.

## 12. Duties of Customer in Delivering Samples.

- a) Customer, or its designee, shall provide Partner with sufficient amounts of all samples or materials to be tested (the "Samples") together with all other information necessary for Partner to perform the Product Certification Services including information relating to the storage and safety requirements of the Samples.
- b) Customer hereby warrants to Partner that all Samples provided to Partner by Customer for analysis are, to the best of Customer's knowledge: (i) organized and ready for analysis; (ii) free of foreign materials or substances that were not previously reported by Customer; (iii) safe and in a stable condition for and during transportation, storage under normal conditions, and use in connection with instruments and by personnel or representatives; (iv) labeled appropriately if they contain dangerous or hazardous materials; (v) labeled appropriately if refrigerated or frozen storage is required; (vi) accompanied by any relevant occupational health and safety information known by Customer; and (vii) delivered to Partner free of any third party intellectual property restrictions that would impact the provision of the Product Certification Services by Partner or may cause Partner to infringe or contribute to infringement of the intellectual property rights of any third party. Customer shall bear all extraordinary costs for adequate disposal of hazardous waste resulting from the Samples, whether or not described as hazardous waste. At Partner's request, Customer must provide Partner with the exact composition of the Samples if Samples are believed to be hazardous.
- c) Partner will conduct an initial examination of the Samples to check their condition before any analysis is performed. If the Samples do not comply with the requirements described in these Terms or any order, then Partner will notify Customer regarding the non-compliance. With Customer's approval, Partner may: (i) prepare the Samples for use as set forth in these Terms which may result in an additional charge to Customer for such preparation and a delay to the order which will be documented via a written modification to the order; (ii) terminate the order if the result of the initial examination indicates that an analysis or production is impossible or is possible only under more difficult conditions than originally anticipated, and Customer shall pay to Partner all expenses incurred before the effective date of termination of the order; or (iii) modify the order in writing as agreed upon by the parties to facilitate completion of the order based upon correction of the non-compliance.
- d) Customer is responsible for the proper delivery of Samples sent to Partner for the performance of the Product Certification Services. Unless otherwise specifically agreed in writing by Partner, Partner accepts no responsibility for any loss or damage which may occur to any Samples in transit or to any facility or site where logistics services are being delivered. Customer will at all times be liable for the security, packaging and insurance of the Samples from its dispatch until it is delivered to Partner's facility.

## 13. Property Rights on Samples and Sample Storage.

- a) Customer hereby grants Partner a license and right to use the Samples solely to the extent necessary for the performance of the Product Certification Services.
- b) Partner shall take commercially reasonable steps to store the Samples according to professional practice; however, Partner will have no obligation or liability for Samples sent to Partner for storage, including Samples requiring

refrigeration. Partner shall not be held responsible for any loss or destruction of Samples, unless such loss or destruction is caused by its gross negligence or willful misconduct.

- c) Partner can dispose of or destroy Samples immediately after the services have been performed, unless Partner and Customer have agreed in writing on the terms and associated costs of Partner's retention of the Samples. Partner also can dispose of or destroy the Samples after the agreed upon retention period, without further notice and at Customer's cost, should an extra cost for Partner arise to comply with any regulation (for example, with respect to disposal of hazardous waste). If Customer requests the return of Samples, Partner will return them to Customer, at Customer's sole cost and risk.

#### 14. Report Terms.

- a) Any data analyses and reports will be prepared in Partner's standard format and in accordance with Partner's standard operating procedures, unless otherwise agreed in writing. Customer shall notify Partner in writing before the commencement of any of the services if there are any specific documentation requirements related to the testing. Additional fees may apply for Customer specific documentation requirements.
- b) Where statements of conformity to a specification or standard for a test are included on an analytical report (e.g. pass/fail, in tolerance/out-of-tolerance), this decision shall be made in accordance with the respective statute/regulation. Where statute/regulation is absent, this decision shall be based on the numerical result without consideration of the uncertainty of the result unless otherwise agreed to in writing by Partner and Customer and set forth in an amendment to the relevant order.

#### 15. Estimated Delivery Dates and Turnaround Times.

- a) Delivery dates and turnaround times stated in any order are estimates. Nevertheless, Partner or Certification Body, as applicable, shall make commercially reasonable efforts to meet the estimated delivery dates and turnaround times as stated in each order.
- b) Partner and Certification Body shall not be responsible for any delays in the timely progression of the Product Certification Services to the extent any such delay is attributable to Customer's action or inaction. During the performance of the Product Certification Services, Customer shall use commercially reasonable efforts to provide any required information or approvals to Partner or Certification Body in a timely manner.

#### 16. Disclaimer of Warranties.

**EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, NEITHER PARTNER NOR CERTIFICATION BODY MAKES OR GIVES ANY WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH ITS PERFORMANCE OF SERVICES AND, TO THE FULLEST EXTENT PERMITTED BY LAW, PARTNER AND CERTIFICATION BODY SPECIFICALLY DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF SUITABILITY, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.**

#### 17. Indemnification.

- a) Customer shall indemnify, defend, and hold harmless Partner and Certification Body, their affiliates and their respective employees, officers, directors, shareholders, agents, representatives, successors and assigns, from and against any and all third party claims, liabilities, costs, damages, suits, actions, debts, charges and expenses (including reasonable attorneys' fees, court costs and any amount paid in settlement) resulting from or related to the performance of the Product Certification Services. This indemnification liability will be reduced to the extent Partner's or Certification Body's negligence, or breach contributed to or enlarged such third-party claim, unless such negligence or breach has already been compensated by the award of damages to Customer for Partner's or Certification Body's breach of the Terms.

- b) Partner and Certification Body shall individually, and not jointly, defend, indemnify and hold harmless Customer and its employees, officers, directors, shareholders, agents, representatives, successors and assigns, from and against any and all third party claims, liabilities, costs, damages, suits, actions, debts, charges and expenses (including reasonable attorneys' fees, court costs and any amounts paid in settlement) that Customer shall or at any time may sustain as a direct result of the gross negligence or willful misconduct of Partner or Certification Body, as the case may be; provided, however, that Partner or Certification Body shall not be liable for any damages, losses, costs or expenses to the extent attributable to the negligence or willful misconduct of Customer.

### **18. Exclusive Remedy for Deficient Services.**

In the event that any Product Certification Services are improperly or inadequately performed by Partner or Certification Body, Customer's sole remedy, and Partner's or Certification Body's sole obligation, with respect to such deficient services shall be for Partner or Certification Body, as applicable, at its option, to either: (i) re-perform such improper or deficient services, at no additional charge to Customer, or (ii) refund all amounts paid by Customer for such improperly or inadequately performed services.

### **19. Limitations of Liability.**

- a) Notwithstanding any provision of these Terms to the contrary, in no event shall Partner or Certification Body be responsible for any indirect, consequential, incidental, punitive, non-compensatory or special damages (including, without limitation, damages for lost profits or revenue, loss of use, business interruption, loss of information, or for the procurement of substitute services) of Customer or of any third party, even if it has been advised of the potential for such damages and whether such damages arise in contract, negligence, tort (including death or personal injury), under statute, in equity, at law or otherwise.
- b) Notwithstanding any provision of these Terms to the contrary, in no event shall Partner or Certification Body, as a group, be liable pursuant to these Terms for any amount that exceeds, in the aggregate, the lesser of (i) the amount of fees paid under the applicable proposal in the twelve (12) month period immediately preceding the date of the event giving rise to the claim, or (ii) \$50,000.

### **20. Intellectual Property Ownership.**

- a) Customer hereby acknowledges and agrees that any and all inventions, discoveries, trade secrets, know-how, improvements, methods, systems, software programs, practices, procedures and processes, and proprietary materials including, but not limited to, structural and functional information and other data repository, formulations and techniques, whether or not patentable or copyrightable ("Intellectual Property"), that is owned or controlled by Partner or Certification Body as of the date hereof, or that is developed, conceived or reduced to practice outside of the performance of the proposal by Partner or Certification Body, and all modifications or improvements thereto, shall vest in, be the property of, and shall be owned solely and exclusively by, Partner or Certification Body, as applicable, ("Eurofins Background IP").
- b) Customer hereby acknowledges and agrees that any and all Intellectual Property that is developed, conceived or reduced to practice during the term by representatives of Partner or Certification Body in the performance of the services outlined in the proposal, and that is (i) within the field of the Eurofins Background IP, and (ii) does not rely on or incorporate Customer materials or confidential information, is not part of the work product or deliverables, and shall vest in and be the sole and exclusive property of, Partner or Certification Body, as the case may be.

### **21. Affiliates.**

In no event shall a party or any of its Affiliates be jointly and severally liable with one another in any respect, and a party and its Affiliates shall not be deemed to have any obligation with respect to one another's performance or non-performance of any obligation. For purposes of the foregoing, "Affiliate" shall mean, with respect to the party in question, any corporation

or other business entity directly or indirectly controlled by, controlling, or under common control with such party. The term “control” (including, with correlative meaning, the terms “controlled by,” “controlling” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities, by contract or otherwise, or such other relationship as, in fact, constitutes actual control.

## 22. Governing Law.

These Terms shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of law provisions. It is the intention of the parties that in the event disputes should arise over the interpretation and application of these Terms, the parties will first attempt to settle such disputes by negotiation and consultation between the senior executives of the parties. In the event that any such dispute is not settled amicably by the parties, such dispute shall be submitted to the exclusive jurisdiction of the state courts of Delaware.

## 23. Force Majeure.

No party shall be liable for any failure to perform its obligations under the Terms caused by events or circumstances which are beyond such party’s reasonable control, or which result from compliance with governmental requests, laws and regulations.

## 24. Subcontracting; Assignment.

- a) Partner is hereby authorized to subcontract any or all Product Certification Services requested by Customer to any of its Affiliates or to a third party.
- b) No party shall assign these Terms to any other person or entity without the prior written consent of the other party, and any attempt to assign these Terms without such consent shall be void; provided, however, that a party may assign these Terms without such consent to an Affiliate or to a purchaser of all or substantially all of the stock or assets of such party or to an entity into which such party is merged. These Terms shall be binding upon the parties, their successors and their permitted assigns.

## 25. Waiver.

A waiver of any term, provision or condition of these Terms shall be effective only if it is in writing and no waiver, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver or estoppel of any such term, provision or condition or any other term of these Terms. No failure or delay by a party in exercising any right or remedy under these Terms shall constitute a waiver of such right, nor shall it prevent or restrict its further exercise.

## 26. Severability.

If a final judicial determination is made that any provision of these Terms is an unenforceable restriction against a party, the provisions hereof will be rendered void only to the extent that such judicial determination finds such provisions unenforceable; and, to the extent possible, such unenforceable provisions shall be deemed replaced by provisions that are valid and enforceable and that come closest to expressing the intention of such invalid or unenforceable provisions. A judicial determination that any provision of these Terms is unenforceable will not render the entire Terms unenforceable, but rather these Terms will continue in full force and effect absent any unenforceable provision to the maximum extent permitted by law.