

Eurofins Assurance Audit and Certification Services US, LLC

General Terms & Conditions for Certification Services

1.1 Area of Application.

All orders accepted by Eurofins Assurance Audit and Certification Services US, LLC (“Eurofins”) will be governed by these General Terms & Conditions, 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”), including orders placed by telephone, electronic message, electronic ordering systems, or Eurofins-approved purchase orders. A contract with the Terms comes into being with Eurofins when an order that has been placed with Eurofins is accepted by Eurofins. An order placed with Eurofins is considered accepted by Eurofins when (a) Eurofins proceeds to fulfill that order, or (b) Eurofins accepts the order in writing. All services provided by Eurofins 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 customer may purport to impose, or which appear on, any web site, quotation, sales document, invoice, order confirmation, correspondence or other document or communication provided by customer, irrespective of their date of communication.

1.2 Entire Agreement.

The Terms, together with any proposal provided by Eurofins, set forth the entire agreement between Eurofins and customer, 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. Eurofins 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 Eurofins 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).

1.3 Fees.

- a) Time requirements are estimated and are based on the information provided in the Service Request Form including the size and complexity of the facility. The time required to complete the audit may need to be adjusted by Eurofins at the request of the auditor if the size or complexity of the facility exceeds the information provided.
- b) Auditor Daily rates include a minimum of 7 hours and a maximum of 9 hours, comprised of approximately 70% audit and 30% report preparation.
- c) Times included for Document Review and/or Corrective Action Resolution can be either onsite or remote as warranted and are estimates. Corrective Action Resolution in excess of 4 hours will be billed at \$150.00 per hour.

- d) Fees exclude travel fares & accommodation which are charged at cost. Mileage is billed at IRS rate, unless otherwise stipulated.
- e) Auditor travel time in excess of 4 hours one way will be charged at \$125.00 per hour up to a maximum of \$750.00.

1.4 Pre-Billing.

Eurofins 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 execution of the service including (1) Audit Cost; (2) Estimated travel expenses; (3) Travel Time, if applicable; and (4) other known certification expenses. Payment of the prebilling invoice is required before the audit will be executed. Within thirty (30) days following the completion of the audit, the prebilling invoice will be adjusted, if necessary, according to the following conditions. To the extent the actual audit costs exceed 105% of the prebilling amount, Eurofins 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 standard payment terms below. To the extent the actual audit costs are less than 98% of the estimate, Eurofins 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 audit.

1.5 Cancellations or Postponements.

A postponement or cancellation can be made up to 30 days prior to the audit without penalty. For postponement or cancellation within 8 to 29 days of the confirmed audit date a fee equal to 75% of the total audit fee and any associated travel expenses will be incurred. For postponement or cancellation within 7 days or less of the confirmed audit date a fee equal to 100% of the total audit fee. Any associated travel expenses will be incurred regardless of timeframe.

1.6 Aborted Audits.

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

1.7 Other Certification Program Owner (CPO) Registration.

For those certification services that require registration in a CPO database, if customer does not complete such registration 30 days prior to the audit, customer permits Eurofins to register the site to permit the effective scheduling of the audit. This will result in the site being charged the applicable fee from the CPO along with a 30% convenience fee.

1.8 Annual Increases.

Eurofins retains the right to increase without prior notice the fees outlined in the proposal on an annual basis, at the greater of (i) 2.5% per year, or (ii) the percentage increase for the previous twelve (12) month period, using the index that is three (3) full months prior to the anniversary month, in the Consumer Price Index for All Urban Customers, U.C. City Average, all items, as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"). If the CPI is not published for any month pertinent to such calculation, the percentage adjustment shall be calculated with reference to the most recent month for which the CPI has been published. If annual certification fees will change other than as described in the Terms, Eurofins will provide an updated quote prior to delivery of annual certification services.

1.9 Term; Termination.

- a) The initial term of this Agreement will continue in force 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, this Agreement may be terminated in accordance with the following provisions:
 - i. Either party hereto may terminate this Agreement 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.
 - ii. By mutual written consent of the parties.
- c) In the event of termination or expiration of this Agreement for any reason, the parties will have the following rights and obligations:
 - i. Termination of this Agreement will not release Customer from the obligation to make payment of all amounts then or thereafter due and payable to Eurofins;
 - ii. Eurofins will have the right to immediately cease providing any or all Services; and
 - iii. The obligations and terms of Section 9(c) will survive termination of this Agreement.

1.10 Confidentiality.

Eurofins shall be responsible for the management of all information obtained or created during the performance of certification activities. Except for information that the client makes publicly available, or when agreed between Eurofins and the client (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. Eurofins shall inform the client, in advance, of the information it intends to place in the public domain. Eurofins 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 Eurofins shall use commercially reasonable efforts to keep such data confidential, in compliance with applicable law.

To the extent Eurofins is required by law to disclose confidential client information, Eurofins shall inform the client of the information to be disclosed, except where prohibited by law.

1.11 Customer Acknowledgements.

In accepting Eurofins' proposal, Customer (i) authorizes Eurofins to submit a report when required by a CPO, where applicable; and (ii) has read, understands, and agrees to comply with the Certification Policies and Procedures which, together with these Terms and Conditions, collectively constitute the Certification Agreement. The customer also agrees and understands that the Certification Policies and Procedures will be updated from time to time, and upon notification by Eurofins of these changes, the Customer agrees to implement and comply with the Agreement as amended. The Customer furthermore agrees to the following:

- a) Customer understands that certificates for external CPOs will be issued by Eurofins.

- b) Customer agrees to adhere to all additional requirements or standards as set forth by CPOs other than Eurofins.
- c) Customer agrees to comply with all applicable state and national laws and regulations.
- d) Customer agrees that accounts which are due will be paid within 30 days of receipt of invoice.

1.12 Disclaimer of Warranties.

EXCEPT AS EXPRESSLY SET FORTH IN THE TERMS, EUROFINS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, IN CONNECTION WITH ITS PERFORMANCE OF SERVICES AND, TO THE FULLEST EXTENT PERMITTED BY LAW, EUROFINS SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

1.13 Indemnification.

- a) Customer agrees to indemnify, defend, and hold harmless Eurofins, its affiliates and their respective officers, directors, owners, managers, employees, agents and other representatives (“Representatives”) 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 by Eurofins of the services outlined in Eurofins’ proposal. This indemnification liability will be reduced to the extent Eurofins’ 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 Eurofins’ breach of the Terms.
- b) Eurofins shall 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, arising out of or in connection with a breach of the Terms by Eurofins to the extent arising out of the gross negligence or willful misconduct of Eurofins; provided, however, that Eurofins shall not be liable for any damages, losses, costs or expenses to the extent attributable to the negligence or willful misconduct of customer.

1.14 Exclusive Remedy for Deficient Services.

In the event that any services are improperly or inadequately performed by Eurofins, customer’s sole remedy, and Eurofins’ sole obligation, with respect to such deficient services shall be for Eurofins, 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 to Eurofins for such improperly or inadequately performed services.

1.15 Limitations of Liability.

- a) Notwithstanding any provision of this Agreement to the contrary, in no event shall Eurofins 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 this Agreement to the contrary, in no event shall Eurofins be liable pursuant to this Agreement for any amount that exceeds, in the aggregate, the lesser of (i) amount of fees paid under the applicable Work Order in the 12 month period immediately preceding the date of the event giving rise to the claim or (ii) \$50,000.

1.16 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 Eurofins as of the date hereof, or that is developed, conceived or reduced to practice outside of the performance of the proposal by Eurofins, and all modifications or improvements thereto, shall vest in, be the property of, and shall be owned solely and exclusively by, Eurofins (“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 Eurofins in the performance of the services outlined in Eurofins’ proposal, and that is (i) within the field of the Eurofins Background IP, (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, Eurofins.

1.17 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.

1.18 Governing Law.

The construction, validity and performance of the Terms shall be governed by the laws and the courts of the State of Delaware, which shall have exclusive jurisdiction.

1.19 Force Majeure.

Eurofins shall not be liable for any failure to perform its obligations under the Terms caused by events or circumstances which are beyond Eurofins’ reasonable control, or which result from compliance with governmental requests, laws and regulations.

1.20 No Waiver.

Failure by either party to exercise their rights under the Terms shall not constitute a waiver or forfeiture of such rights.