

LABORATORY SERVICES TERMS AND CONDITIONS

1. SCOPE.

These terms and conditions (the "Terms") between Charm Sciences, Inc., 659 Andover St. Lawrence MA 01843 ("Service Provider") and the Client identified below (the "Client") relating to Laboratory Services (as defined below), govern the relationship between Service Provider and Client.

A Service Request Form, Statement of Work or other quote format (collectively a SOW) is any document or communication that requests laboratory services to be provided to Client by Service Provider (the "Services"). Client agrees that when Client signs or submits a SOW or otherwise indicates acceptance of services (e.g. by submitting materials) these Terms exclusively apply.

2. SERVICE PROVIDER'S RESPONSIBILITIES.

Service Provider shall perform the Services in a professional manner, consistent with applicable industry practices, laws and regulations. Service Provider shall provide Client with the results of the Services performed ("Test Results") with Service Provider's discretion as to format, or in an agreed upon format (a "Test Report"). Test Results and any Test Reports will be based solely upon the information and materials Client supplies to Service Provider. The Test Results and Test Reports are for use by persons having sufficient professional skill and training in the interpretation of such information. Test Result or Test Report interpretation is Client's sole responsibility.

3. CLIENT'S RESPONSIBILITIES.

Client is solely responsible for determining whether the Services will achieve the results Client is seeking. Client represents and warrants that it has sufficient and reasonable commercial knowledge and experience with respect to applicable laws and regulations related to its products and business. Client assumes all responsibility for and shall independently confirm its compliance with applicable laws. Product withdrawal or recall based on the Test Results, including interim or preliminary Results, is: Client's sole decision; sole regulatory, legal, and financial responsibility; and at Client's sole risk.

4. RECORD RETENTION AND SAMPLE MANAGEMENT.

Client's service request forms must include: analyses requested; name and address to which the results are to be sent; telephone number to call for troubleshooting; name and address for invoicing; any special instructions; sample description; if required by Client accounting, purchase order or authorization number. Incomplete information may delay results.

Service Provider shall retain all relevant records relating to the Services for five (5) years from the date performed, or as otherwise required by law (the "Retention Period"). After the Retention Period, Service Provider may destroy or otherwise dispose of any Service records. Client will pay all reasonable expenses incurred by Service Provider in transferring records to Client.

5. FEES AND PAYMENTS.

Unless otherwise stated in the SOW, all prices are in US dollars and are exclusive of tax. Client shall pay for the Services, and all related expenses, within thirty (30) days of the date of invoice. Any overdue balance remaining may be subject to a service charge of 1.5% per month, but in no event shall such charge exceed the rate permitted by applicable law. If legal action or collection proceedings are necessary to enforce Client's payment obligations, then Client shall be liable for costs relating to invoice collection including: court costs, filing fees and attorney's fees. Service Provider reserves the right to require satisfactory security from Client, including prepayment.

6. CONFIDENTIALITY AND INTELLECTUAL PROPERTY.

Unless required by law, neither party may disclose the other party's confidential information, including these Terms, without prior written consent of the disclosing party. "Confidential Information" means all information or items (including information, data and materials relating to current or prospective products and processes) made available to a party or its affiliates or subcontractors, employees, agents and other representatives, by or on behalf of the other party, relating to the business, operations, products, affairs, technologies, test methods, know-how, software, plans and strategies of such other party, whether observed or provided orally, in written, graphic or electronic form, or in the form of samples, and whether or not marked, labeled or otherwise identified as "confidential" or "proprietary."

Any Test Report, Deliverable or Test Result is furnished solely for Client's benefit and the contents thereof are Client's confidential property. Notwithstanding anything to the contrary in this Agreement, Service Provider reserves the right to utilize the Confidential Information of Client for the Services and for its internal business purposes.

Except to the extent specifically set forth in these Terms, no license, either express or implied, is granted under any copyright, trade secret, trademark, trademark application, patent, patent application, or any other proprietary right now or hereafter owned or controlled by either party.

7. LIMITATION OF LIABILITY.

EXCEPT TO THE EXTENT SET FORTH IN THIS SECTION, AND NOTWITHSTANDING ANY PROVISION TO THE CONTRARY CONTAINED HEREIN OR IN ANY, SOW, TEST REPORT, TEST RESULT, DELIVERABLE OR OTHER STATEMENT, SERVICE PROVIDER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, DATA ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE.

UNLESS OTHERWISE AGREED, SERVICE PROVIDER'S LIABILITY TO CLIENT FOR BREACH OF THESE TERMS, ANY TERM OF AN SOW, OR OF ANY IMPLIED WARRANTIES, OR FOR ANY GROSS NEGLIGENCE OR OTHER WRONGDOING IN THE PERFORMANCE OF SERVICES OR OTHERWISE RELATED HERETO, IS LIMITED AT CLIENT'S OPTION, TO EITHER RE-PERFORMING THE SERVICE OR REFUNDING THE TOTAL FEE PAID IN RESPECT OF THAT PART OF THE SERVICE. SERVICE PROVIDER IS NOT LIABLE UNDER ANY CIRCUMSTANCES TO CLIENT OR ITS REPRESENTATIVES FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE (INCLUDING WITHOUT LIMITATION, DAMAGES RELATED TO LOSS OF USE, INACCURATE TEST RESULTS, LOST DATA OR LOST PROFITS) IN ANY WAY ARISING FROM THE SERVICES, USE OF THE TEST RESULTS, ANY OTHER REPORT OR DATA PROVIDED OR OTHERWISE RELATED HERETO INCLUDING FOR ANY CLAIM FOR ANY AMOUNT THAT EXCEEDS THE CHARGES PAID FOR THE SERVICES AT ISSUE.

SERVICE PROVIDER DOES NOT GUARANTEE, EITHER EXPRESS OR IMPLIED, THAT THE TEST RESULTS WILL MEET THE ACCEPTANCE OR OTHER CRITERIA OR EXPECTATIONS OF THE CLIENT, AND SERVICE PROVIDER DOES NOT ACCEPT RESPONSIBILITY FOR FAILURE TO MEET ANY ACCEPTANCE OR OTHER CRITERIA.

8. INDEMNITY.

Service Provider agrees to defend, indemnify and hold harmless Client, its directors, officers, representatives, agents, employees and contractors from and against any and all claims, demands, costs, (including but not limited to reasonable attorneys' fees) or other cause of action (collectively "Claims") which is the proven direct result of Service Provider's gross negligence or fraud in connection with the performance of the Services provided, however, that no indemnity shall apply if the alleged infringement arises from Service Provider following the designs, specifications or written instructions of Client. Client agrees to defend, indemnify and hold harmless Service Provider, its affiliates and their respective officers, directors, agents, employees, representatives, advisors, and contractors from and against any and all Claims arising out of or relating to (except to the extent of any required indemnity of Client by Service Provider pursuant to this Section): (i) the performance of the Services in accordance with these Terms or any SOW; (ii) Client's use of any products reviewed or analyzed by Service Provider; (iii) the use of the Test Results, Deliverables or Test Reports or any other data or analysis provided.

9. GENERAL CONDITIONS.

Any dispute between the parties relating to any SOW, these Terms, or a breach thereof shall be governed by Massachusetts laws, without regard to its choice-of-law principles, and venue for any action hereunder shall be in Massachusetts. These Terms and any SOW may be terminated by Service Provider in the event of any Client default or material breach. If either party for any reason terminates, Service Provider shall be paid in full for all Services performed and expenses incurred through the termination date, and the Client shall be provided with a report of Services conducted prior to termination.

Client may not assign or transfer its obligations or interest in these Terms or any SOW without Service Provider's prior written consent. Service Provider shall not be liable for delays or other problems caused by unforeseen circumstances, compliance with governmental requests, laws, regulations, failure of equipment or testing instruments or other media, or any other event beyond its reasonable control. Service Provider is Client's independent contractor. No partnership, joint venture or agency is created through the provision of the Services.