

TEM Environmental, Inc. Terms and Conditions

This document sets forth the terms and conditions under which TEM Environmental, Inc. provides laboratory, consulting and sampling services to Clients. The terms and conditions set forth herein, along with TEM Environmental, Inc.'s written acknowledgement of Client's Chain-of-Custody form, constitutes an agreement by TEM Environmental, Inc. and Client with respect to the services specified on the Chain-of-Custody form (hereinafter referred to as the "Agreement"). In the absence of a written agreement to the contrary, any order or delivery of samples using this Chain-of-Custody form constitutes an acceptance of this Agreement. No contrary or additional terms and conditions expressed in a Client's document shall be deemed to become a part of the Agreement. Any acceptance, confirmation, purchase order or the like sent by Client which contains additional or contrary terms, shall be deemed proposals for material modification hereof, to which notice of objection is hereby given. No extraneous terms counter proposed by Client shall become part of this Agreement without TEM Environmental, Inc.'s express written assent thereto.

1. **Fees for Professional Services.** All services provided by TEM Environmental, Inc. shall be performed in accordance with the written Quotation provided by TEM Environmental, Inc. to the Client. An agreement by TEM Environmental, Inc. and the Client to proceed absent the issuance of a written Quotation shall be performed and billed in accordance with TEM Environmental, Inc.'s published price schedule in effect at the time of the agreement of the parties to proceed. Clients may order services (specify a "Scope of Work") by submitting a written purchase order or a written request for analysis or by placing a telephone order. All telephone orders must be subsequently confirmed in writing by the Client. To the extent practical, TEM Environmental, Inc. will provide the Client with information concerning the progress of the work TEM Environmental, Inc. is performing for the Client and will notify the Client of any changes, concerns, problems or delays materially affecting performance.
2. **Samples.** Clients must provide, together with the submission of their samples, a completed and signed Chain of Custody form with adequate instructions describing the type of analysis requested and a complete and thorough written disclosure of the known or suspected presence of any hazardous substances. Hazardous substances are those defined as such by local, state and federal law. Clients shall be liable, and agrees to indemnify and defend TEM Environmental, Inc. from and against all costs and damages resulting from i) a Client's failure to disclose to TEM Environmental, Inc. that a sample contained or was suspected to contain a hazardous substance; or ii) a Client's failure to comply with any local, state or federal law regarding the sample; or iii) any action on the part of the Client which interrupts TEM Environmental, Inc.'s ability to process work, causes injury to a TEM Environmental, Inc. employee, contaminates TEM Environmental, Inc.'s instruments or work areas or necessitates any clean-up or recovery on the part of TEM Environmental, Inc.
3. **Sample Delivery Acceptance.** Sample Delivery Acceptance is defined as the point in time after which TEM Environmental, Inc. has received and inspected the samples and received project guidance regarding the work to be done and resolved any discrepancies in the Chain of Custody Forms and made a determination that it can proceed with the defined work. TEM Environmental, Inc. reserves the right to refuse or reject Sample Delivery Acceptance for any sample that it deems to be: (i) of unsuitable volume; (ii) a health, safety, environmental or other risk; (iii) a sample that will fail to meet holding times either due to the passage of more than 48 hours from the time of sampling or the passage of half the holding time for the requested test, whichever is less; or (iv) the

passage of time prior to delivery, such that sample viability is not maintained. TEM Environmental, Inc. also reserves the right to retain a small portion of the samples for purposes of maintaining its industry accreditation.

4. **Risk of Loss.** Prior to Sample Delivery Acceptance, the entire risk of loss or damage to samples remains with the Client, except where TEM Environmental, Inc. provides courier services. In no event will TEM Environmental, Inc. have any responsibility or liability for the action or inaction of any carrier shipping or delivering any sample to or from TEM Environmental, Inc.'s premises. Client is responsible for determining whether or not the sample it is shipping contains a hazardous substance as defined by law, and for taking all actions necessary to ensure the sample it ships is packaged, labeled, transported and delivered properly and in accordance with all local, state and federal laws.
5. **Invoices And Payment Terms.** TEM Environmental, Inc. will issue an invoice, based upon the written Quotation or Price Schedule, whichever is applicable, upon completion of a sample project. All TEM Environmental, Inc. pricing is in US dollars except where specified otherwise by contract with the Client. Prices quoted do not include sales tax, and any applicable sales tax will be added to the invoice. Payment terms are net 30 days from the date of the invoice, upon approval of a credit account. All overdue payments are subject to an additional interest and service charge of one and one-half percent (1.5%) (or the maximum rate permissible by law, whichever is lesser) per month or portion thereof from the due date until the date of payment. TEM Environmental, Inc. may suspend work under this order at any time in the event Client fails to make timely payment of its invoices. TEM Environmental, Inc. reserves the right to refuse to proceed with work at any time based upon an unfavorable Client credit report. Delinquent accounts (those with outstanding invoices over 90 days old) may be referred to an outside collection agency and/or attorney. All collection expenses, including attorney's fees and court costs are the responsibility of the Client.
6. **Confidentiality.** TEM Environmental, Inc. will exercise all reasonable efforts to maintain the Client's confidentiality with regard to business or technical information it receives in connection with its performance for the Client. TEM Environmental, Inc. will use the information it receives about Clients solely for the purpose of providing services to the Client. The Client shall treat all information and data it receives about TEM Environmental, Inc. as proprietary and confidential. The Client shall maintain in strict confidence all such information, including but not limited to information concerning technology, procedures, and methods used by TEM Environmental, Inc., formulas, trade secrets, ideas, computer programs and inventions. The Client shall not disclose, and shall prevent disclosure of, confidential information to any third party without express written permission being granted by TEM Environmental, Inc. This provision does not prevent either party from disclosing and/or using information or data (i) known to the receiving party before being obtained or derived from the transmitting party; (ii) that is available to the public without the receiving party's fault at any time before or after it is acquired by the transmitting party; (iii) that is obtained or acquired in good faith by the receiving party from a third party who has the same information in good faith and who is not under obligation to the receiving party with respect thereto; (iv) where a written release is obtained by the receiving party from the transmitting party; (v) after five (5) years from the receipt of such information; or (vi) when required by process of law; provided, however, upon service of such process, the recipient thereof shall notify the other party and afford it an opportunity to resist such process.
7. **Record Retention.** TEM Environmental, Inc. will retain records pertaining to the work performed for the Client for a period of two (2) years following the issuance of a work

report. Should Client desire TEM Environmental, Inc. maintain the records in excess of two (2) years, the Client must notify TEM Environmental, Inc. in writing.

8. **Change Orders.** Changes to the Scope of Work, including but not limited to increasing or decreasing the work, changing test and analysis specification, or acceleration in the performance of the work may be initiated by the Client after Sample Delivery Acceptance. Such a change will be documented in writing and may result in a change in cost and turnaround time commitment, which equitable adjustment will be made upon agreement by Client. TEM Environmental, Inc.'s acceptance of such changes is contingent upon technical feasibility and operational capacity. Changes to the Scope of Work, price, or result delivery date may be initiated by TEM Environmental, Inc. after Sample Delivery Acceptance due to any condition which conflicts with analytical, QA or other protocols warranted in these Terms and Conditions. TEM Environmental, Inc. will not proceed with such changes until an agreement with the Client is reached on the amount of any cost, schedule change or technical change to the Scope of Work, and such agreement is documented in writing. The Client may direct TEM Environmental, Inc. to suspend a portion or all of the work to be performed. In such case, the Client will remain responsible for all work performed up until the time TEM Environmental, Inc. became aware of Client's desire to discontinue the services. Any uncompleted analysis will be billed on a prorated basis, as determined by TEM Environmental, Inc. All directions by Client to suspend work must be issued to TEM Environmental, Inc. in writing.
9. **Professional Practice.** TEM Environmental, Inc. will perform its services in accordance with accepted industry practice and standards. TEM Environmental, Inc. seeks to insure that all services will be performed in a timely and professional manner and that all findings are technically valid. TEM Environmental, Inc. shall not be deemed in default of its obligations under this Agreement unless the Client has delivered a written notice of default specifying the alleged default, and TEM Environmental, Inc. fails to cure such default within thirty (30) days of receipt of such notice. TEM Environmental, Inc. will endeavor to correct any claimed default in performance within the above cure period, provided such failure was a direct result of acts or omissions by TEM Environmental, Inc. concerning factors deemed to be in TEM Environmental, Inc.'s scope of work pursuant to this Agreement and under TEM Environmental, Inc.'s exclusive control.
10. **Methods.** Where the services to be provided by TEM Environmental, Inc. require the use of analytical methodologies, TEM Environmental, Inc. will use those analytical methodologies which conform with methodologies set by the U.S. Environmental Protection Agency (EPA), America Industrial Hygiene Association (AIHA-LAP LLC), American Society for Testing and Materials (ASTM), TEM Environmental, Inc. may deviate from these methodologies where, in TEM Environmental, Inc.'s judgment, it is necessary or appropriate to do so. The nature or compositions of a sample are examples of factors that may require TEM Environmental, Inc. to deviate from these methodologies. Any deviations from the analytical methodologies set forth above will be made in accordance with recognized industry standards, Quality Assurance Plans and/or referenced Standard Operating Procedures.
11. **Licenses and Certifications.** The Client shall provide TEM Environmental, Inc. with notice in writing, prior to Sample Delivery Acceptance, of all licenses and certifications that it will require TEM Environmental, Inc. to hold during performance of services by TEM Environmental, Inc. for the Client. TEM Environmental, Inc. will notify the Client of any revocation of a required license or certification.

12. **Warranties.** The warranty obligations set forth in Sections 9, 10 and 11 are the sole and exclusive warranties given by TEM Environmental, Inc. in connection with any services performed by TEM Environmental, Inc. or any Results generated from such services, and TEM Environmental, Inc. gives and makes NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. No representative of TEM Environmental, Inc. is authorized to give or make any other representation or warranty or modify this warranty in any way.
13. **LIMITED WARRANTY; DISCLAIMER OF OTHER WARRANTIES:** TEM Environmental, Inc. warrants to Client that the services performed by TEM Environmental, Inc. shall comply with the specifications stated in Client's request for services. Client must make claims for breach of warranty in writing within one year of the date of delivery and within 10 days after discovery of breach. Client's failure to make such claim within such time frames shall constitute Client's irrevocable acceptance of TEM Environmental, Inc.'s services. In the event Client delivers written notice claiming that TEM Environmental, Inc. has not met its warranty obligations hereunder, TEM Environmental, Inc.'s sole obligation shall be, at its option, either to retest Client's samples or to refund to Buyer any of the payment received by TEM Environmental, Inc. for such services. Such warranty shall not apply in cases of damage in transit, negligence, abuse, failure to follow TEM Environmental, Inc.'s instructions for chain of custody, improper storage, accident, misuse, neglect or alteration by any party other than TEM Environmental, Inc. or by physical environment. TEM Environmental, Inc.'s AGGREGATE LIABILITY WITH RESPECT TO THIS AGREEMENT SHALL BE LIMITED TO THE REMEDIES SET FORTH IN SECTION 14 HEREOF. TEM Environmental, Inc. MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING THE SERVICES RENDERED INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL TEM Environmental Inc. BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER FOR BREACH OF ANY WARRANTY, FOR BREACH OR REPUDIATION OF ANY OTHER TERM OR CONDITION OF SALE, OR FOR LIABILITY ON THE BASIS OF NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SELLER SHALL HAVE BEEN ADVISED IN ADVANCE OF THE LIKELIHOOD THEREOF.
14. **Remedy.** Client's sole and exclusive remedy for the breach of warranty in connection with any services performed by TEM Environmental, Inc., will be limited to repeating any services performed, contingent on the Client's providing, at the request of TEM Environmental, Inc. and at the Client's expense, additional sample(s) if necessary. Any reanalysis requested by the Client generating Results consistent with the original Results will be at the Client's expense. In the case of any finding of liability, by a court of competent jurisdiction, on the part of TEM Environmental, Inc. for damages incurred by Client, Client agrees, to the maximum extent permitted by law, to limit an award for damages, to one hundred dollars (\$100.00) or to the fee charged to the Client by TEM Environmental, Inc. for the relevant services, whichever is greater. This limitation applies regardless of the cause of action or legal theory pled or asserted. All claims, including those for negligence, shall be deemed waived unless suit thereon is filed within one year after TEM Environmental, Inc.'s completion of the services. Under no circumstances, whether arising in contract, tort (including negligence), or otherwise, shall TEM Environmental, Inc. be responsible for loss of use, loss of profits, or for any special, indirect, incidental or consequential damages occasioned by the services

performed or by application or use of the reports prepared. Indemnification, releases from liability and limitations of liability shall apply, not withstanding the fault, negligence, or strict liability of the party to be indemnified, released or whose liability is limited, except to the extent that there is willful misconduct. In the event either party shall be successful in any suit for damages for breach of this Agreement, including nonpayment of invoices, or to enforce this Agreement or to enjoin the other party from violating this Agreement, such party shall be entitled to recover as part of its damages its reasonable legal costs and expenses for bringing and maintaining any such action.

15. **Force Majeure.** If TEM Environmental, Inc. is delayed at any time in performing Services by an act, failure to act or neglect of Client or Client's employees or any third parties; by changes in the scope of work; by unforeseen circumstances including acts of force majeure, including, but not limited to, acts of God, acts of Client, acts or orders of any governmental authority, strikes or other labor disputes, natural disasters, accidents, wars, civil disturbances, equipment breakdown, unavailability of supplies from usual suppliers, difficulties or delays in transportation, mail or delivery services, or any other cause beyond TEM Environmental, Inc.'s reasonable control; by delay authorized by Client and agreed to by TEM Environmental, Inc., then the time for completion of such Services shall be extended based upon the impact of the delay. TEM Environmental, Inc. shall receive an equitable compensation adjustment if the delays caused by any of the above result in changes, require additional Services, or result in additional costs to TEM Environmental, Inc.
16. **Ownership of Data.** Data or information provided to TEM Environmental, Inc. by the Client shall remain the Client's property. Upon full payment to TEM Environmental, Inc. for all services provided by TEM Environmental, Inc., data or information generated by TEM Environmental, Inc. for the Client shall become the Client's property. TEM Environmental, Inc. will retain exclusive ownership of any and all analytical methods, QA/QC protocols, and equipment developed by TEM Environmental, Inc. for performance of work by TEM Environmental, Inc.
17. **Challenge to results.** The Client shall pay TEM Environmental, Inc. for all services performed on their behalf and for all results utilized by the Client or the Client's Client, regardless of any allegation on the part of the Client or Client's Client that the results issued by TEM Environmental, Inc. did not conform with TEM Environmental, Inc.'s responsibilities as set forth in these terms and conditions. In every instance, TEM Environmental, Inc. shall be given the opportunity to defend its data directly with any person or entity challenging its results. Should TEM Environmental, Inc. be prohibited or hindered from directly defending its data, all sums owed to TEM Environmental, Inc. by the Client shall be immediately due and payable and no refund for sums paid by the Client will be issued by TEM Environmental, Inc.
18. **Sample Disposal.** Where samples are not consumed in the analytical process, TEM Environmental, Inc. shall dispose of the Client's samples per TEM Environmental, Inc.'s Standard Operating Procedures after the analytical report is issued, unless instructed to store them for an alternate period of time, in a manner consistent with U.S. Environmental Protection Agency regulations or other applicable federal, state or local requirements. Any samples for projects that are canceled or not accepted, will be returned to the Client at his own expense.
19. **Litigation Services.** The Client will be required to pay and/or reimburse TEM Environmental, Inc. for all costs incurred, including the time spent by TEM Environmental, Inc. employees and officers, should TEM Environmental, Inc. be required to respond to legal process related to services it has provided to the Client or should the Client request file searches, additional reporting, or a consultation that is

above and beyond that usually offered in the normal course of business. Client will pay for all time expended by TEM Environmental, Inc. employees and officers in accordance with their hourly rate as set forth on the fee schedule published and in effect at the relevant time. In addition to the above enumerated charges, Client will pay all legal costs incurred by TEM Environmental, Inc. in obtaining legal advice, preparing a response and issuing a legal response to the legal process, and in preparing and issuing legal testimony, whether oral or in writing. Client's agreement to pay and/or reimburse TEM Environmental, Inc. for the litigation services and costs referenced above shall remain in full force and effect for 10 years from the last date that TEM Environmental, Inc. completes providing services for the Client.

20. **Insurance.** TEM Environmental, Inc. shall maintain in force during the performance of services under these Terms and Conditions, Workers' Compensation and Employer's Liability Insurance in accordance with the laws of the states having jurisdiction over TEM Environmental, Inc.'s employees who are engaged in the performance of the work. TEM Environmental, Inc. shall also maintain during such period, Comprehensive General and Contractual Liability, Comprehensive Automobile Liability, and Professional Liability Insurance. An Insurance certificate can be furnished on request.
21. **Entire Agreement.** These Terms and Conditions, together with any duly authorized and executed addendum, embody the whole agreement of the parties and provide the only remedies available to the Client. These Terms and Conditions supersede all previous communications, representations, or agreements, either verbal or written, between the Client and TEM Environmental, Inc.. These Terms and Conditions, and any transactions or agreements to which they apply, shall be governed both as to interpretation and performance by the laws of the state where TEM Environmental, Inc.'s services are performed. No modification or waiver of any provision of these Terms and Conditions shall be binding on either party unless made in writing and executed by the Client and TEM Environmental, Inc.
22. **Governing Law and Jurisdiction.** The laws of the State of Illinois shall govern the rights and obligations of the parties hereunder without regard to conflict of laws principles. Any cause of action, claim, suit or demand by either party shall be brought in a state or federal court situated in the counties of Cook or DuPage in the State of Illinois. Both parties irrevocably admit themselves to and consent to the jurisdiction of said court. This Agreement shall be governed by and subject to the laws of the State of Illinois, without regard to the conflicts of law principles thereof. The parties agree that venue for the purposes of any litigation shall be proper if brought in a court of competent jurisdiction located in Cook or DuPage County, Illinois.
23. **Severability.** The invalidity or unenforceability, in whole or in part of any provision, term or condition hereof shall not affect in any way the validity or enforceability of the remainder to these Terms and Conditions, the intent of the parties being that the provisions be severable. The section headings of these Terms and Conditions are intended solely for convenient reference and shall not define, limit or affect in any way these Terms and Conditions or their interpretations.
24. **Waiver.** No waiver by either party of any provision, term or condition hereof or of any obligation of the other party hereunder shall constitute a waiver of any subsequent breach or other obligation. All waivers must be in writing.
25. **Compliance with Laws.** TEM Environmental, Inc. and the Client agree to comply with all applicable laws, ordinances, codes and regulations.
26. **Sample Representation.** When conducting sample analysis, TEM Environmental, Inc. processes the material provided in the sample submitted and is in no way responsible for Sample Collection Protocol used by the Client when collecting the sample. TEM

Environmental, Inc. does not warrant that the sample submitted is a representative of the overall material sampled as this is the Clients responsibility.

27. **Miscellaneous.** No change, modification or amendment of this Agreement shall be binding upon the parties unless the same shall be in writing and signed by or on behalf of the parties hereto. Client shall not assign this Agreement without the prior written consent of TEM Environmental, Inc. This Agreement shall bind and inure to the benefit of TEM Environmental, Inc. and the Client and their respective successors and assigns. These Terms and Conditions, along with any quotation or proposal signed by both TEM Environmental, Inc. and the Client constitutes the final written expression of the terms between the parties and is a complete and exclusive statement of those terms.