

Nautilus Environmental, Inc.

STANDARD TERMS AND CONDITIONS

I. SCOPE

Any orders received by Nautilus Environmental, Inc. or its affiliates (“Nautilus”), by a purchaser of laboratory, consulting or sampling services (“Client”) will be governed by these Standard Terms and Conditions, including orders made by delivery of samples or by phone or in person which have not been confirmed in writing, unless otherwise agreed to in a written contract. In the absence of any written contract between Nautilus and Client (together the “Parties”), any order placed by Client constitutes Client’s acceptance of Nautilus’ offer to provide services subject to these Standard Terms and Conditions and an agreement to be bound by the terms hereof. No contrary or additional terms and conditions expressed by Client, orally or in writing, shall be deemed to be accepted by Nautilus or part of the contract created by acceptance of Nautilus’ offer unless accepted by Nautilus in writing.

II. ORDERS AND ACCEPTANCE OF SAMPLES

A Client may order services by submitting a written chain of custody – record/order to Nautilus and submitting a purchase order in writing or by telephone or in person and subsequently confirmed in writing (an “Order”). For any Order to be valid, it must contain sufficient specification to enable Nautilus to fulfil Client’s requirements, including a schedule for sample collections and submittal. Any requests for additional services on samples that have been accepted by Nautilus or any changes to the collection and submittal schedule will be treated as a new Order and may require changes to pricing and may postpone any estimated delivery dates accordingly. In addition, if sample aging occurs due to delays not in sample collection that are not caused by Nautilus, any additional assays or analytical testing required as a result of such delay shall be conducted at Client’s sole expense. For purposes of these Standard Terms and Conditions, “services” shall mean all work to be performed for Client, including provision of any equipment and/or materials to be furnished by Nautilus.

III. COMPENSATION

Client shall pay Nautilus in accordance with Nautilus’ applicable price schedule in effect in the area of operations on the date the services were rendered or as otherwise agreed to in any written price quote by Nautilus. Prices are subject to change at any time without notice.

Payment of all invoices is due within 30 days of the invoice date. Contingent payments are not accepted. Any invoice which remains outstanding after the due date is subject to interest at the lesser of the maximum amount permitted by law or 1% per month on the unpaid balance. Client shall be responsible for the reasonable costs of collection (by legal proceeding or collection agency) of any late payments.

In the event Client fails to make timely payment of its invoices, Nautilus reserves the right to pursue all appropriate remedies, including but not limited to withholding delivery of data, suspension of work or otherwise, without recourse.

IV. CLIENT RESPONSIBILITY; HOLDING TIMES

Prior to Nautilus’ acceptance of any samples, the entire risk of loss or damage to samples remains with Client, except where Nautilus provides courier service. In no event will Nautilus be liable or responsible for the actions or inactions of any carrier shipping or delivering any sample to or from Nautilus premises. Client is responsible for the proper handling, packaging, labeling, transportation and delivery of any hazardous materials in

accordance with all applicable laws and represents and warrants to Nautilus that all samples sent to Nautilus are safe and in stable condition. Client shall be responsible for, and indemnifies Nautilus against all losses, costs, damages, liabilities and injuries that may be caused or incurred by Nautilus or its personnel or representatives by Client’s sample or sampling site conditions, including damage to persons or property.

All samples/materials delivered to Nautilus must be in a condition that allows for the preparation of reports and analysis. Nautilus reserves the right to refuse or revoke acceptance of any sample delivery which, in the sole judgement of Nautilus is insufficient for testing purposes, poses any risk of handling, transport or processing for any health, safety or environmental concerns, or which holding times cannot be met based on the deadlines set forth herein (or as otherwise may be required.)

Client shall be responsible for the repair or replacement cost, as applicable, of any sample collection containers rented or loaned to Client by Nautilus in the event of damage, loss or delay in the timely return of such containers.

V. CHANGE ORDERS; CANCELLATION

Changes to any Order (including scope of work, specifications and timelines) may be initiated by Client after sample delivery acceptance. Any such changes will be documented in writing and may result in a change of cost and turnaround time commitment. Nautilus’ acceptance of any such requested changes is contingent upon operational capacity and technical feasibility. Client shall be responsible for payment for all services performed prior to receipt of any such change to an Order even if the change does not require such services be performed.

Client may suspend or cancel any Order for services or supplies at any time; provided, however, that in the event of any such cancellation, Client shall remain responsible for payment for all services or supplies rendered and any out-of-pocket expenses incurred by Nautilus in accordance with Article III hereof, each through the date of cancellation or suspension.

VI. SAMPLE RETENTION

Unless otherwise agreed to in writing by Nautilus, all samples shall be retained for a period of at least 30 days after analysis is complete. Pre-arranged long term storage will be subject to additional charges. All samples may be discarded or destroyed at the expiration of the 30 day period (or such other date as agreed to in writing between Nautilus and Client) without further notice. Client may request the return of unneeded sample materials prior to the scheduled destruction and such samples shall be returned to Client at Client’s sole expense and risk. In addition, if Client’s samples require special handling and disposal practices due to sample constituents outside of Nautilus’ existing, defined waste stream profiles, Nautilus reserves the right to return the samples to the Client or assess additional disposal costs.

VII. DELIVERY DATES; RUSH ANALYSIS

To the extent provided by Nautilus, delivery dates and turn-around times are estimates which may be changed as reasonably necessary and do not constitute a commitment by Nautilus. If and when estimated delivery dates are provided by Nautilus, Nautilus shall use commercially reasonable efforts to meet such estimated deadlines. Nautilus may provide preliminary interim results to Client prior to the final data being delivered in a report. Any such preliminary

results are for informational purposes only and shall not be relied upon by Client in any manner. Final results will be reported and subject to all required Quality Control elements.

Rush analyses may be available for certain services for an additional charge and must be arranged in advance. If, as a result of unforeseen circumstances, the rush turnaround times cannot be met, normal pricing will apply.

VIII. LIMITED WARRANTIES AND LIMITATION OF LIABILITY

Nautilus represents and warrants to Client that

- (a) Nautilus shall exercise the knowledge and skill of a member in the same profession in good standing in the same or similar location and at the time such services and testing are performed. Client acknowledges that complex services, such as those developed by Nautilus, are rarely free of defects or errors and Nautilus does not warrant the same. Nautilus shall not be liable for lost profits, damage to goodwill or any incidental, special, or consequential loss or punitive damage whether raised in contract, tort, or other legal theory;
- (b) it holds all licenses and certifications required to perform services; provided, however, that any requirements specific to Client's requested services are provided to Nautilus prior to acceptance of samples; and
- (c) it will use analytical methodologies in substantial conformity with published test methods. Nautilus has implemented such methods in its Quality Manuals and standard operating procedures, as required. Nautilus reserves the right to deviate from any such methodologies as necessary or appropriate, based on Nautilus' reasonable judgment, which deviations, if any, will be made on a basis consistent with recognized industry standards and/or Nautilus' quality manuals.

Client's sole and exclusive remedy for the breach of warranty in connection with any services performed by Nautilus will be limited to repeating any services performed; provided, however, that Client shall be responsible for providing any additional samples necessary to repeating such services. If resampling is necessary, Nautilus' liability for resampling costs will be limited to the lesser of \$5,000 or the actual cost of resampling.

NAUTILUS (TOGETHER WITH ITS EMPLOYEES, REPRESENTATIVES, OF FICERS, DIRECTORS, AGENTS AND AFFILIATES) SHALL BE LIABLE ONLY FOR THE PROVEN DIRECT AND IMMEDIATE DAMAGE CAUSED BY NAUTILUS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN CONNECTION WITH THE PERFORMANCE OF SERVICES IN CONNECTION WITH AN ORDER; PROVIDED, THAT, UNLESS OTHERWISE PROVIDED UNDER APPLICABLE LAW, NAUTILUS MUST RECEIVE WRITTEN NOTICE OF ANY CLAIMS OF SUCH LOSSES WITHIN TEN (10) DAYS OF THE DATE OF CLIENT'S KNOWLEDGE OF RELEVANT CLAIMS. NAUTILUS' LIABILITY FOR ANY AND ALL CAUSES OF ACTION ARISING HEREUNDER (WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), SHALL BE LIMITED TO THE LESSER OF A) THE AMOUNT PAID BY CLIENT FOR THE SERVICES; OR, \$25,000. UNDER NO CIRCUMSTANCES SHALL NAUTILUS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE, LOST PROFITS OR OTHERWISE. FURTHERMORE, UNDER NO CIRCUMSTANCES SHALL NAUTILUS BE LIABLE FOR ANY LOSSES ARISING OUT OF PRELIMINARY DATA PROVIDED TO CLIENT AS CONTEMPLATED IN SECTION VII HEREOF.

IX. REPEATED ANALYSIS/CONFIRMATIONS

If Client requests a reanalysis for analyses that are deemed valid by Nautilus pursuant to its Quality Manual any reanalysis shall be at Client's sole cost and expense. Under such circumstances, Client will be required to pay all costs, including sampling, transportation, analytical and disposal costs incurred in connection with repeated analysis.

X. CONFIDENTIALITY

Any reports, data and information provided by Nautilus to Client is for the exclusive use of Client.

The Parties acknowledge that in the course of performing services and testing, each party may be exposed to or acquire information which is proprietary to or confidential to the other party, its suppliers or clients. "Confidential Information" shall include, but is not limited to, project proposals and employee rosters, trade secrets, inventions, ideas, patent applications, methods, processes, formulas, data programs, other works of authorship, compounds, cell lines, genetic sequences, know-how protocols and assays, improvements, discoveries, developments, test results and data relating to any research project, designs and techniques, information regarding plans for research development, present and future products, marketing and selling, business plans or budgets whether disclosed in oral, written, graphic, electronic or other form of communication. Any and all such information of one party in any form obtained by the other party or its employees, agents, or representatives in the performance of services shall be deemed confidential and proprietary information of such party. The Parties agree to hold such information in strict confidence, to only permit use of such information by its employees and agents having a need to know in connection with performance under the Agreement, and not to copy, reproduce, sell, assign, license, market, transfer, give or otherwise disclose the Confidential Information for any purpose whatsoever, without the express written permission of the other party and to advise each of their employees, agents and representatives of their obligations to keep such information confidential. Both Parties acknowledge, understand and agree that disclosure, distribution or use of Confidential Information may cause irreparable harm for which the remedies available at law for damages of any breach or threat of breach to this Section IX will be inadequate. The Parties understand that damages are not readily ascertainable or susceptible to being measured in monetary terms. Therefore, in addition to any other legal or equitable remedy available, the non-breaching party shall have the right to apply for injunctive relief, temporary and/or permanent in nature to protect such Confidential Information.

Notwithstanding the obligations set forth in herein, the confidentiality obligations of Nautilus and Client shall not extend to information that is: (i) in the public domain now, or hereafter, through no act or omission to act on the part of the receiving party; (ii) known by the receiving party prior to disclosure by the disclosing party as evidenced by written documentation and provided that any direct or indirect source of such information was not known by the receiving party to be bound by a confidentiality agreement or other legal or fiduciary obligation of confidentiality; (iii) disclosed to the receiving party by a third party having a bona fide right without restriction on disclosure of such information; or (iv) is the subject of a written permission to disclose provided by the disclosing party and remains within the scope and limitations of such information. In the event that a receiving party is required to disclose certain Confidential Information of a disclosing party pursuant to a court order or other governmental agency with the statutory authority to compel the production of such information, the receiving party shall provide reasonable notice to the disclosing party prior to such disclosure and shall cooperate with the disclosing party to obtain a protective order or other appropriate remedy and/or

waive compliance with the provisions of this Section IX. In the event that such protective order is not obtained for whatever reason, or that such other party waives compliance with this Section IX, such compelled party shall furnish only that portion of the Confidential Information that such party is legally required to disclose.

In the event of an unauthorized disclosure or loss of, or inability to account for, Confidential Information of a disclosing party, the receiving party will notify the disclosing party and will take all available steps to terminate the unauthorized use or further unauthorized use of the Confidential Information of such disclosing party.

Nothing contained herein nor the delivery of information shall be construed as granting to Client any right or license to any real, personal or intellectual property including but not limited to, patents, patent applications, trademarks or secrets, any know-how or invention of Nautilus or other Confidential Information as defined herein.

XI. FORCE MAJEURE

Nautilus shall not be responsible in any way for errors, damage, delay or failure to perform any services due to unforeseen circumstances or causes beyond its control, or which result from compliance with any governmental requests or laws and/or regulations.

XII. INSURANCE

At all times during the performance of services, Nautilus shall maintain the following minimum insurance: (1) Commercial general liability including bodily injury, property damage, owners and contractors protective, products/completed operations, contractual and personal injury. The combined single limit for bodily injury and property damage shall not be less than \$1,000,000; (2) Automobile bodily injury and property damage liability insurance covering owned, non-owned, and hired cars. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000; (3) Statutory worker's compensation and employers' liability insurance as required by state law; (4) Professional liability insurance with limits of not less than \$1,000,000.

XIII. NO BENEFIT FOR THIRD PARTIES; NO RIGHT OF RELIANCE

Nautilus shall not be responsible or liable for Client's use of or reliance on the data, information or reports furnished by Nautilus. No right or benefit is conferred on, nor any contractual relationship intended or established with any other person or entity. No such person or entity shall be entitled to rely on Nautilus performance of its services hereunder.

XIV. INDEPENDENT CONTRACTOR

The relationship between the parties is that of independent contractors. Nothing contained in these Standard Terms and Conditions shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

XV. MISCELLANEOUS PROVISIONS

These Standard Terms and Conditions are binding on the heirs, successors, and assigns of the parties hereto.

These Standard Terms and Conditions represent the entire understanding of Client and Nautilus as to those matters contained

herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. These Standard Terms and Conditions may not be modified or altered except in writing signed by both parties.

Client further agrees that Client will refrain from directly or indirectly soliciting or attempting to solicit or otherwise engage in negotiations with those certain Nautilus employees whom Client has dealt with, or directly worked with during the course of Nautilus providing services to Client for the purpose of entering into a separate employment relationship or independent contractor relationship during the course of Nautilus providing services to Client and for at least twelve (12) months after Nautilus is no longer performing services for Client. Notwithstanding the foregoing, this restriction shall not apply in the event that Nautilus consents to the proposed employment/contractor relationship.

These Standard Terms and Conditions shall be administered and interpreted under the laws of the State of Washington. A suit between the Parties arising out of or related to the Agreement, or these Standard Terms and Conditions, shall be exclusively in the county courts of King County, Washington or the federal courts of the Western District of Washington State.

If any part of these Standard Terms and Conditions is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of these Terms and Conditions shall be in full force and effect.

These Standard Terms and Conditions may be modified at any time by Nautilus, without prior notice to Client. Any order placed by Client constitutes Client's acceptance of Nautilus' offer to provide services subject to these (or subsequently issued) Standard Terms and Conditions and an agreement to be bound by the terms hereof or thereof.