

# Laboratory Services Terms and Conditions

Where a purchaser (Client) places an order for laboratory, consulting or sampling services from Suburban Laboratories, Inc., an Illinois corporation and its affiliates (referred to as "Suburban"), Suburban shall provide the ordered services pursuant to these Terms and Conditions, and the related Quotation or Price Schedule, or as agreed in a negotiated contract. In the absence of a written agreement to the contrary, the work order constitutes an acceptance by the Client of Suburban's offer to do business under these Terms and Conditions, and an agreement to be bound by these Terms and Conditions. No contrary or additional terms and conditions expressed in a Client's document shall be deemed to become a part of the contract created upon acceptance of these Terms and Conditions, unless accepted by Suburban in writing.

## 1. WORK ORDERS AND RECEIPT OF SAMPLES

1.1 The Client may place the work order (i.e., specify a Scope of Work) either by submitting a purchase order to Suburban in writing, by email or by telephone subsequently confirmed in writing, or by negotiated contract. Whichever option the Client selects for placing the work order, the work order shall not be valid unless it contains sufficient specification to enable Suburban to carry out the Client's requirements. In particular, samples must be accompanied by: a) adequate instruction on type and method of analysis requested, and b) complete written disclosure of the known or suspected presence of any hazardous substances, as defined by applicable federal or state law. Where exact methods of analysis are not specified, Suburban will use its professional discretion as to test method selection and Client agrees to hold Suburban harmless from all claims, damages, and expenses arising out of Suburban's discretion. Where any samples which were not accompanied by the required disclosure, cause interruptions in the lab's ability to process work due to contamination of instruments or work areas, the Client will be responsible for the costs of clean up and recovery.

1.2 The Client shall provide one week's advance notice of the sample delivery schedule, or any changes to the schedule, whenever possible. Upon timely delivery of samples, Suburban will use its best efforts to meet mutually agreed turnaround times (TAT). Acceptance of samples from Client does not constitute a Guarantee that results will be available within the TAT requested. In those instances when samples submitted for rush TAT exhibit unexpectedly high concentration of contaminants which may require Suburban to run multiple dilutions to comply with QC requirements, the analysis requested may not be reported within the TAT requested. Rush surcharges would still apply in these instances. All TAT calculations begin the day following receipt of sample or from the point in time when Suburban has determined that it can proceed with defined work following receipt, inspection of samples, and resolution of any discrepancies in Chain-of-Custody forms and project guidance regarding work to be done, whichever is greater. Turnaround time is measured in business days and does not include weekends or holidays unless specifically agreed to in writing. In general, results will be made available by the end of the business day (5:00 PM C.S.T.) on the date due unless otherwise agreed to in writing. In the event of any changes in the sample delivery schedule by the Client, prior to sample delivery, Suburban reserves the right to modify its fees, TAT

commitment, to change the date upon which Suburban will accept samples, or refuse sample delivery for the affected samples.

1.3 Suburban reserves the right, exercisable at any time, to refuse or revoke sample acceptance for any sample which in the sole judgment of Suburban: a) is of unsuitable volume; b) may pose a risk or become unsuitable for handling, transport, or processing for any health, safety, environmental or other reason, whether or not due to the presence in the sample of any hazardous substance and whether or not such presence has been disclosed to Suburban by the Client; or c) samples do not have sufficient holding time remaining. If Suburban elects to accept sample delivery of samples with limited holding time remaining, rush surcharges will apply.

1.5 Prior to sample acceptance, the entire risk of loss or damage to samples remains with the Client, except where Suburban provides courier services. In no event will Suburban have any responsibility or liability for the action or inaction of any carrier shipping or delivering any sample to or from Suburban's premises. Client is responsible to assure that any sample containing any hazardous substance which is to be delivered to Suburban's premises will be packaged, labeled, transported and delivered properly and in accordance with applicable laws.

1.6 Client shall obtain sample containers from Suburban or shall purchase certified pre-cleaned sample containers suitable for the specific test method. Client agrees to hold Suburban harmless from all claims, damages, and expenses arising out of the Client's use of sample containers and/or preservatives not provided by Suburban.

## 2. PAYMENT TERMS

2.1 Services performed by Suburban will be in accordance with prices quoted and later confirmed in writing or as stated in Suburban's then current price schedule. Where requested services on a group of samples received and logged in together at the laboratory total less than \$50 for routine TAT or \$100 for expedited TAT, there will be a minimum transaction charge of \$50 or \$100 respectively for the sample group, or as shown on any related quote from Suburban.

2.2 Invoices may be submitted to Client upon completion of any sample delivery group. Billing corrections must be requested within 30 days of invoice date. Payment in advance is required for all Clients except those whose credit has been established with Suburban. For Clients with approved credit, payment terms are net 30 days from the date of invoice by Suburban. 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. All fees are charged or billed directly to the Client. The billing of a third party will not be accepted without a statement, signed by the third party, which acknowledges and accepts payment responsibility.

2.3 Suburban may suspend work and withhold delivery of data under this work order at any time in the event Client fails to make timely payment of its invoices. Client shall be responsible for all costs and expenses of collection including reasonable attorney's fees. Suburban reserves the right to

refuse to proceed with work at any time based upon an unfavorable Client credit report.

### **3. CHANGE ORDERS, TERMINATION**

3.1 Changes to the Scope of Work, price, or result delivery date may be initiated by Suburban after sample delivery due to any condition which conflicts with analytical, quality assurance or other protocols warranted in these Terms and Conditions. Suburban 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.

3.2 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. Such a change will be documented in writing and may result in a change in cost and TAT commitment. Suburban's acceptance of such changes is contingent upon technical feasibility and operational capacity.

3.3 Suspension or termination of all or any part of the work may be initiated by the Client and Suburban will be compensated in full for all work completed. For work that is suspended or terminated while in progress but not complete, Suburban will be compensated for 75% of the total price for the analysis including any rush surcharges.

3.4 If the Client delivers a sample and requests that the sample be placed on hold a minimum \$10.00 charge per sample will be assessed. Suburban will not be responsible for monitoring holding times for samples placed on hold. Client agrees to hold Suburban harmless from all claims, damages, and expenses arising out of missed holding times associated with samples on hold.

### **4. WARRANTIES AND LIABILITY**

4.1 Where applicable, Suburban will use analytical methodologies which are in substantial conformity with published test methods. Suburban has implemented these methods in its Quality Manual and referenced Standard Operating Procedures and where the nature or composition of the sample requires it, Suburban reserves the right to deviate from these methodologies as necessary or appropriate, based on the reasonable judgment of Suburban, which deviations, if any, will be made on a basis consistent with recognized standards of the industry and/or Suburban's Quality Manual. Client may request that Suburban perform according to a mutually agreed Quality Assurance Project Plan (QAPP) or similar documented protocol however named. In the event that samples arrive prior to agreement on a documented QA protocol, Suburban will proceed with analyses under its standard Quality Manual then in effect, and Suburban will not be responsible for any resampling or other charges if work must be repeated to comply with a subsequently finalized documented QA protocol.

4.2 Suburban shall start preparation and/or analysis within holding times provided that sample delivery acceptance occurs within 24 hours of sampling or for samples with holding times of 2-14 days, no more than ½ of the holding time expired, whichever is less. Where resolution of inconsistencies leading to sample acceptance does not occur within this period, Suburban will use its best efforts to meet holding times and will proceed with the work provided that, in

Suburban's judgment, the chain-of-custody or definition of the Scope of Work provide sufficient guidance. Reanalysis of samples to comply with Suburban's Quality Manual will be deemed to have met holding times provided the initial analysis was performed within the applicable holding time. Where reanalysis demonstrates that sample matrix interference is the cause of failure to meet any Quality Manual requirements, the warranty will be deemed to have been met.

4.3 Suburban warrants that it possesses and maintains all licenses and certifications which are required to perform services under these Terms and Conditions provided that such requirements are specified in writing to Suburban prior to sample delivery. Suburban will notify the Client in writing of any decertification or revocation of any license, or notice of either, which affects work in progress.

4.4 The warranty obligations set forth in Sections 4.1, 4.2 and 4.3 are the sole and exclusive warranties given by Suburban in connection with any services performed by Suburban or any Results generated from such services, and Suburban gives and makes **NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED**. No representative of Suburban is authorized to give or make any other representation or warranty or modify this warranty in any way.

4.5 Client's sole and exclusive remedy for the breach of warranty in connection with any services performed by Suburban, will be limited to repeating any services performed, contingent on the Client's providing, at the request of Suburban 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. If resampling is necessary due to Suburban's negligence, Suburban's liability for resampling costs will be limited to actual cost or one hundred dollars (\$100) per sample, whichever is less.

4.6 Suburban's liability for any and all causes of action arising hereunder, whether based in contract, tort, warranty, negligence or otherwise, shall be limited to the lesser amount of compensation for the services performed or \$50,000. All claims, including those for negligence, shall be deemed waived unless suit thereon is filed within one year after Suburban's completion of the services. Under no circumstances, whether arising in contract, tort (including negligence), or otherwise, shall Suburban 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.

4.7 In no event shall Suburban have any responsibility or liability to the Client for any failure or delay in performance by Suburban which results, directly or indirectly, in whole or in part, from any cause or circumstance beyond the reasonable control of Suburban. Such causes and circumstances shall include, but not be 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, power failures, equipment breakdown, matrix interference or unknown highly contaminated samples that impact instrument operation, unavailability of supplies from usual suppliers, difficulties or delays in transportation, mail or delivery services, or any other cause beyond Suburban's reasonable control.

**5. RESULTS, WORK PRODUCT**

5.1 Data or information provided to Suburban or generated by services performed under this agreement shall only become the property of the Client upon receipt in full by Suburban of payment for the whole work order. Ownership of any analytical method, QA/QC protocols, software programs or equipment developed by Suburban for performance of work will be retained by Suburban, and Client shall not disclose such information to any third party.

5.2 Data and sample materials provided by Client or at Client's request, and the results obtained by Suburban shall be held in confidence (unless such information is generally available to the public or is in the public domain or Client has failed to pay Suburban for all services rendered or is otherwise in breach of these Terms and Conditions), subject to any disclosure required by court or regulatory authority with competent jurisdiction.

5.3 Should the Results delivered by Suburban be used by the Client or Client's client, even though subsequently determined not to meet the warranties described in these Terms and Conditions, then the compensation will be adjusted based upon mutual agreement. In no case shall the Client unreasonably withhold Suburban's right to independently defend its data.

5.4 Suburban reserves the right to subcontract any portion of the services ordered by the Client to another laboratory or laboratories, if, in Suburban's sole judgment, it is reasonably necessary, appropriate or advisable to do so. Suburban will notify the Client in writing prior to subcontracting and may seek a mutually agreed upon change in price or result delivery date. Suburban will in no way be liable for any subcontracted services.

5.5 Suburban shall dispose of the Client's samples 30 days after the analytical report is issued, unless instructed in writing, to store them for an alternate period of time or to return such samples to the Client. Longer storage periods may be requested and may be accommodated as space allows for an additional charge. Any samples for projects that are canceled or not accepted, or for which return was requested, will be returned to the Client at his own expense. Suburban reserves the right to return to the Client any sample or unused portion of a sample that is not within Suburban's permitted capability or the capabilities of Suburban's designated waste disposal vendor(s). ALL DIOXIN, MIXED WASTE, AND RADIOACTIVE SAMPLES WILL BE RETURNED TO THE CLIENT, unless prior arrangements for disposal are made.

5.6 Unless a different time period is agreed to in any work order under these Terms and Conditions, Suburban agrees to retain all records for five (5) years.

5.7 In the event that Suburban is required to respond to legal process related to services for Client, Client agrees to reimburse Suburban for hourly charges for personnel involved in the response and attorney fees reasonably incurred in obtaining advice concerning the response, preparation to testify, and appearances related to the legal process, travel and all reasonable expenses associated with the litigation.

**6. INSURANCE**

6.1 Suburban 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 Suburban's employees who are engaged in the performance of the work. Suburban shall also maintain during such period, Comprehensive General and Contractual Liability (limit of \$2,000,000 per occurrence/aggregate), Comprehensive Automobile Liability, owned and hired, (\$1,000,000 combined single limit), and Professional/Pollution Liability Insurance (limit of \$2,000,000 per occurrence/aggregate).

**7. MISCELLANEOUS PROVISIONS**

7.1 These Terms and Conditions, together with any additions or revisions which may be agreed to in writing by Suburban, embody the whole agreement of the parties and provide the only remedies available. There are no promises, terms, conditions, understandings, obligations or agreements other than those contained herein, and these Terms and Conditions shall supersede all previous communications, representations, or agreements, either verbal or written, between the Client and Suburban. 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 Suburban's services are performed.

7.2 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. 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.

7.3 The obligations, liabilities, and remedies of the parties, as provided herein, are exclusive and in lieu of any others available at law or in equity. Indemnifications, releases from liability and limitations of liability shall apply, notwithstanding the fault, negligence or strict liability of the party to be indemnified, released, or whose liability is limited, except to the extent of sole negligence or willful misconduct.

IN WITNESS WHEREOF the undersigned acknowledges and agrees to these Terms and Conditions. Electronic and facsimile signatures shall be as effective as if originals.

\_\_\_\_\_  
Signature of Authorized Client Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company Name