

Evans Analytical Group LLC

810 Kifer Road
Sunnyvale, CA 94086

General Terms and Conditions

1. General. These Terms and Conditions embody the whole agreement of the parties in the absence of a signed and executed contract between the Evans Analytical Group LLC ("EAG") and Client. They supersede all previous communications, representations, or agreements, either verbal or written, between the parties. EAG specifically rejects all additional, inconsistent or conflicting terms, whether printed or otherwise set forth in any purchase order or other communication from the Client to EAG. 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 of the Terms and Conditions. No waiver by EAG of any provision, term or condition hereof or of any breach by or obligation of the Client hereunder shall constitute a waiver of such provision, term or condition on any other occasion or a waiver of any other breach by or obligation of the Client. This agreement shall be administered and interpreted under the laws of the State of California.

2. Scope and Compensation. EAG agrees to perform the services described in the proposal or agreement to which these Terms and Conditions are attached. Unless the parties agree in writing to the contrary, the duties of EAG shall not be construed to exceed the services specifically described. Payment terms are net thirty (30) days from the date of invoice. All overdue payments are subject to an interest charge of one and one-half percent (1-1/2%) per month or a portion thereof. Client shall also be responsible for costs of collection, including payment of reasonable attorney fees if such expense is incurred. The prices, unless stated, do not include any sales, use or other taxes. Such taxes will be added to invoice prices when required. EAG reserves the right to require payment prior to release of data. Until such time as Client invoices are paid in full, EAG has no obligation, and will not defend, reproduce, or supplement data results.

3. Prices. Compensation for services performed will be based on the current EAG Analytical Fee Schedule, or on verbal quotations agreed to in writing by the parties. Unless specifically indicated on the written confirmation of quotation, analytical turnaround times are not guaranteed.

4. Methods. Where applicable, EAG will use analytical methodologies which are in substantial conformity with industry standards. EAG reserves the right to deviate from these methodologies, if necessary or appropriate, due to the nature or composition of the sample or otherwise, based on the reasonable judgment of EAG.

5. Warranty. Recognizing that the nature of many samples is unknown and that some may contain potentially hazardous components, EAG warrants only that it will perform testing services, obtain findings and prepare reports in accordance with generally accepted analytical laboratory principles and practices at the time of performance of services. EAG makes no other warranty, express or implied. At EAG's sole discretion, preliminary results may be given in advance of the laboratory report. Such preliminary results are tentative, subject to confirmation and final review by EAG. Client's use of preliminary results in any manner shall be at Client's sole risk.

6. Limitations of Liability. In the event of any error, omission or other professional negligence, the sole and exclusive responsibility of EAG shall be to re-perform the deficient work at its own expense, and EAG shall have no other liability whatsoever. All claims shall be deemed waived unless made in writing and received by EAG within sixty (60) days following completion of services. EAG shall have no liability, obligation or responsibility of any kind for losses, costs, expenses or other damages (including but not limited to any special, indirect, incidental or consequential damages) with respect to EAG's services or results. All results provided by EAG are strictly for the use of its clients, and EAG is in no way responsible for the use of such results by clients or third parties. All results should be considered in their entirety, and EAG is not responsible for the separation, detachment, or other use of any portion of the results.

7. Hazard Disclosure. Client represents and warrants that any sample delivered to EAG will be preceded or accompanied by complete written disclosure of the presence of any hazardous substances known or suspected by Client. Client further warrants that any sample containing any hazardous substance, which is to be delivered to EAG, will be packaged, labeled, transported and delivered properly and in accordance with applicable laws.

8. Sample Handling. Prior to EAG's acceptance of any sample (or after any revocation of acceptance), the entire risk of loss of or damage to such sample remains with Client. Samples are accepted when receipt is acknowledged on chain of custody documentation. In no event will EAG have any responsibility or liability for the action or inaction of any carrier shipping or delivering any sample to or from EAG's premises. All shipment arrangements or overnight shipping requirements will be at Client's expense. Normal samples will be held for eight weeks after completion of analysis, after which they will be destroyed unless sample return or other handling has been requested in writing. Disposal of hazardous waste samples is the responsibility of the Client. If the Client does not wish such samples returned, EAG may add storage and disposal fees to the final invoice. Maximum storage time for hazardous samples is thirty (30) days after completion of analysis, unless modified by applicable state or federal laws. Client will be required to give to EAG written instructions concerning disposal of these samples. EAG reserves the absolute right, exercisable at any time, to refuse to receive delivery of, refuse to accept, or revoke acceptance of any sample which, in the sole judgment of EAG: (a) is of unsuitable volume, or (b) may be or become unsuitable for or may pose a risk in 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 EAG by Client.

9. Legal Responsibility. EAG is solely responsible for performance of this contract, and no affiliated company, director, officer, employee, or agent shall have any legal responsibility hereunder, whether in contract or tort, including negligence.

10. Data Deliverables. Unless specifically requested by Client, EAG will produce electronic data representing services performed hereunder, subject to the following specific understanding between the parties: EAG will supply Client with electronic data using a medium as defined by EAG. Electronic data provided under this agreement is deemed to be the project deliverable for the purpose of fulfilling obligations under the Agreement. Except with regard to any limited warranty as specifically set forth below, EAG disclaims and excludes all warranties express or implied with regard to the creation, transmittal or use of electronic data hereunder. The limited warranty in this Agreement replaces all other warranties, express or implied, including any warranties of merchantability or fitness for a particular purpose. EAG's electronic data transfer is derived in part from or is created using third party software, and no such third party warrants or assumes any liability regarding use of or undertakes to provide support information relating to EAG's electronic data. EAG will utilize anti-virus programs on a best efforts basis in preparation of the electronic data transfer, but EAG makes no warranty as to the effectiveness of such screening. In addition to indemnities contained in the underlying agreement between EAG and Client, Client shall hold EAG harmless from any claims, suits or liability arising from or related to electronic data supplied pursuant to this Agreement. Any reuse of original or altered files by Client shall be at Client's risk and without liability or responsibility to EAG, but shall entitle EAG to additional compensation for such unauthorized reuse. In no event will EAG's liability for electronic data include any special, incidental or consequential damages, whether or not EAG has knowledge of the potential for loss or damage.

11. Ownership of Data/Ownership of EAG Protocols, Methods, etc. Data or information provided to EAG by the Client shall remain the Client's property. Upon full payment to EAG for all services provided by EAG, data or information generated by EAG for the Client shall become the Client's property. EAG shall at all times retain exclusive ownership of any and all analytical methods, QA/QC protocols, and equipment developed by EAG for performance of work by EAG.

12. Choice of Laboratory. Unless the Client has specified, in a timely manner, a particular location where EAG is to perform its services for the Client, EAG may perform services for the Client at any laboratory in its network. EAG retains the right, at its discretion, to subcontract services ordered by the Client to another laboratory or other laboratories in its network.

13. Records Retention. EAG will retain records pertaining to the work performed for the Client for a period of three (3) years following the issuance of a work report. Should Client desire that EAG maintain the records for more or less than three (3) years, the Client must obtain an agreement with EAG in writing. The Client, in accordance with EAG's fee schedule, will owe an additional record handling charge in effect at the time of the request.

14. Litigation Services. The Client will be required to pay and/or reimburse EAG for all costs incurred, including the time spent by EAG employees and officers, should EAG 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 EAG 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 EAG 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 EAG for the litigation services and costs referenced above shall remain in full force and effect for ten (10) years from the last date that EAG completes providing services for the Client.

15. Force Majeure. EAG shall have no responsibility or liability to the Client for any failure or delay in performance by EAG, which results in whole or in part from any cause or circumstance beyond the reasonable control of EAG. Such causes and circumstances shall include, but not be limited to, acts of God, acts of Client, acts or orders of any government authority, strikes or other labor disputes, natural disasters, accidents, wars, civil disturbances, difficulties or delays in transportation, mail or delivery services, inability to obtain sufficient services or supplies from EAG's usual suppliers, or any other cause beyond EAG's reasonable control.

16. Use of EAG's Name. Client shall not use EAG's name or trademark in any marketing or reporting materials, press releases or in any other manner ("Materials") and shall not attribute to EAG any test result, tolerance or specification derived from EAG's data ("Attribution"), unless EAG consents, in writing, prior to such Materials or Attribution. To request EAG's consent, Client shall provide copies of the proposed Materials or Attribution and describe Client's proposed use of such Materials or Attribution. EAG will have discretion to disapprove the use of its name or trademark in any Materials or Attribution. EAG may reasonably charge Client for its time in reviewing such requests.

Evans Analytical Group, LLC is an Equal Opportunity Employer