

Precision TEM LLC
TERMS & CONDITIONS

SERVICES

1. Client acknowledges that Precision TEM LLC ("Precision TEM"), performs analysis and testing services (the "Services") only as specified by Client. Precision TEM does not design, warrant, supervise or monitor compliance of products or services except as specifically agreed to in writing prior to the performance of the Services. Client acknowledges that, by their very nature, the Services are limited in scope and subject to expected measurement variability.
2. Precision TEM treats all Client information as confidential and protects its Client's proprietary rights. Quality procedures are in place to assure the security of the Client's data and other information. All Precision TEM employees are required to sign a proprietary rights agreement which includes statements on proprietary rights and confidentiality.
3. Precision TEM provides independent contract analytical laboratory services on a transactional basis. Unless specifically called out in a mutually signed written retained engagement agreement that expressly identifies restrictions concerning the performance of specific services, during specific periods of time, for specific entities, Precision TEM will, at our discretion, perform analyses for any entity requesting our services.
4. Samples and portions thereof not destroyed in the performance of the Services remain the property of the Client, are retained for a minimum of 30 days after project completion, unless instructed otherwise by Client, and thereafter will be disposed of unless requested otherwise by Client. Return of samples is at Client's expense. A sample storage fee will be applied on requests for storage past the standard period after project completion.
5. Unless otherwise specified therein in writing, nothing contained in any report issued by Precision TEM shall be deemed to imply or mean that Precision TEM conducts any quality control program for the Client to whom the report is issued.
6. Reports issued by Precision TEM are for the exclusive use of the Client to whom they are addressed. Analytical results and the names Precision TEM or any of its laboratories or their seals or insignias, are not to be used for any marketing purpose whatsoever, including but not limited to use in advertising, publicity material or in any other manner, without Precision TEM's prior written approval.
7. Reports issued by Precision TEM apply only to the standards or procedures identified therein and to the sample(s) tested.
8. Precision TEM shall retain copies of reports for a minimum period of three years, unless otherwise requested by Client.
9. Unless specified in a written report, the analysis and testing results are not necessarily indicative or representative of the qualities of the lot from which the sample was taken or of apparently identical or similar products.
10. Deformation analysis of commercial products is provided for informational purposes only. Precision TEM strongly recommends review of state and federal laws, trademarks, copyrights and patent situations by the Client prior to use of such information.
11. Precision TEM reserves the right to subcontract Services to other laboratories. If subcontracting is necessary, samples will be sent only to laboratories meeting Precision TEM's qualification requirements.

LIABILITY

1. Precision TEM is not an insurer or a guarantor. Precision TEM represents that the Services shall be performed within the limits mutually agreed to in writing, and in a manner consistent with the level of care and skill ordinarily exercised by providers of similar services under similar circumstances. No other representations or warranties, express or implied, are included or intended in this agreement, or in any report, opinion or document related to the Services provided hereunder.
2. For the safety of Precision TEM's personnel, Client must advise Precision TEM if samples are known or suspected to contain hazardous substances. Material Safety Data Sheets (MSDS) must be provided if available. Client further warrants that any sample containing any hazardous substance which is to be delivered to Precision TEM, will be packaged, labeled, transported and delivered properly and in accordance with applicable laws.
3. Client understands and agrees that Precision TEM, in entering into this Contract and by performing Services, does not assume, abridge, abrogate or undertake to discharge any duty or responsibility of Client to any other party or parties. No one other than Client shall have any right to rely on any report issued by Precision TEM. Client agrees, in consideration of Precision TEM undertaking to perform the Services hereunder, to protect, defend, indemnify, save harmless and exonerate Precision TEM from any and all claims, damages, including lost profits, expenses, including attorney's fees, either direct or consequential, for any and all injuries to persons, including the personnel of Precision TEM, or property arising out of or in consequence of the performance of the Services and/or the performance of the samples tested hereunder.
4. The total aggregate liability of Precision TEM for this Contract under any and all theories of liability (including breach of contract, warranty, negligence, tort and strict liability) shall be limited to the lesser of the amount paid by Client for the Products, Services or Deliverables to which the claim relates during the twelve months immediately preceding the date of the initial claim delivered to Precision TEM that gave rise to the liability, or one million dollars (\$1,000,000). Under no circumstances will Precision TEM be liable to Client for any special, consequential, incidental, punitive, exemplary or indirect damages, including without limitation, loss of business revenue or earnings, lost data or lost profits.
5. Whenever performance by either party is delayed or prevented by war, insurrection, fire or other casualty, strikes or embargoes, shortage of transportation facilities or any other similar or dissimilar causes, beyond the control of such party, such delay or prevention shall be excused and the time of performance hereunder extended for the duration of the causative factor.

COSTS AND PAYMENT

1. Client agrees to pay all invoices within 30 days of invoice date.
2. In the event that payment is not received within 30 days of invoice date, Client agrees to pay a late payment charge on the unpaid balance equal to 1-1/2% per month.
3. All costs associated with compliance with any subpoena(s) for documents, testimony in court of law, or for any other purpose relating to Services performed by Precision TEM for Client, shall be paid by Client. Client shall also pay Precision TEM's then existing standard fees for consulting, deposition and trial testimony and all expenses related thereto.
4. Project specific supplies including, but not limited to, standards, raw materials, shipping, columns and/or specialty chemicals and supplies required for execution of a Client's project will be purchased by Precision TEM and billed to Client as pass-through costs. If necessary, Precision TEM may bill a waste disposal fee of up to 5% of total project cost or \$500.00, whichever is lower, to cover proper sample and chemical disposal.
5. Precision TEM reserves the right to request a prepayment from Client prior to initiating project work.
6. Should early termination of project be permitted for all or a portion of the project after the project has been initiated, Client will be liable to Precision TEM for all hours expended on the project up to the time of cancellation, at the current hourly consulting rate, plus all project specific supplies at cost, or a minimum of 25% of the estimated project cost as a fee for Precision TEM's mobilization on the project, whichever is greater. This cancellation charge is a fee for work performed and is not regarded as liquidated damages.

NON-SOLICITATION

1. During the period of, and for two years after the termination of the project, Client will not, directly or indirectly, solicit the employment or services of any employee or contractor of Precision TEM with whom the Client has had contact or who became known to it in connection with the provision of the Services, or encourage such employees or contractors to leave Precision TEM.

MISCELLANEOUS

1. This agreement and any and all claims and disputes hereunder or related thereto shall be governed by the internal laws of the State of California. Precision TEM and Client agree that exclusive jurisdiction and venue for any and all such claims and disputes shall be in Santa Clara County, California.
2. In the event that Precision TEM prevails in any dispute or claim, including the collection of monies from Client, Client agrees that Client will pay any and all expenses, including collection costs and attorney's fees, reasonably incurred in the prosecution or defense of such claim, dispute or collection.
3. The terms and conditions contained herein, together with Precision TEM's quotation and offer of Services to Client, and Client's acceptance of such offer, shall constitute the entire agreement between Precision TEM and Client. Any conflicting terms contained in any order or acceptance submitted by Client shall be null and void.