

## TERMS AND CONDITIONS

### 1. ENTIRE AGREEMENT

The terms and conditions set forth herein below constitute the entire agreement between Quantex Laboratories, Inc., hereinafter "Quantex", and "Client" ( meaning the individual, partnership, corporation, firm, association, or other person or entity listed or designated as the "Client" on Quantex's Sales and/or Price Quotation forms(s), Request For Analysis document, Work Authorization document, Credit Application or any other form or document submitted to Quantex. Any and all transactions and business conducted by and between Quantex and the Client shall be governed by and subject to these Terms and Conditions, and there are no promises, representations, understandings, or warranties of any kind except as expressly set forth herein.

### 2. CONFLICT OF TERMS

Notwithstanding any provisions herein to the contrary, no terms or conditions in Client's purchase order, acknowledgment form, confirmation, or any other documents issued by Client or on behalf of Client which conflict with or in any way differ from the condition and terms set forth herein, or which increase Quantex's obligations hereunder, shall be binding on Quantex. Any conflicting terms contained in any order or acceptance submitted by Client shall be null and void.

### 3. ACCEPTANCE

Submitting to Quantex by the Client of Client's purchase order, Client's sample(s), Quantex's Analysis Request Form document completed and/or executed by the Client, Quantex's Work Authorization form document completed and/or executed by the Client, Quantex's Credit Application, completed and/or executed by the Client, for Client to obtain open account with Quantex, or receipt by Client of Quantex's analytical report, services, or invoiced items, whichever first occurs, shall constitute Client's agreement and assent to the terms and conditions set forth herein, whether additional to or different from those contained in Client's purchase order or any other form or document heretofore or hereafter supplied by the Client to Quantex. By executing acceptance of Quantex's Proposal, Client agrees that in all instances Quantex's Terms and Conditions shall prevail irrespective of any terms and conditions contained in any order, acceptance or other writings submitted by client.

### 4. SERVICES

- a. Client acknowledges that Quantex performs analysis and testing services only as specified in writing by Client. Quantex does not design, warrant, supervise or monitor compliance of products or services except as specifically agreed to in writing prior to testing and analysis. Client acknowledges that, by their very nature, analysis, testing and other Quantex services are limited in scope and subject to expected measurement variability.
- b. Samples and portions thereof not destroyed in testing remain the property of the Client, and are retained a maximum of thirty days, and thereafter may be disposed of or returned to Client, at Client's expense.
- c. Unless otherwise specified in writing, nothing contained in Quantex's Reports shall be deemed to imply or mean that Quantex conducts any quality control program for the Client to whom the report is issued.
- d. Quantex Reports are for the exclusive use of the client to whom they are addressed. Reports and the name of Quantex, or its seals or insignia, are not to be used by or on behalf of Clients under any circumstances for any purpose whatsoever, including but not limited to use in advertising, marketing and/or sales materials, publicity materials or in any other manner without the prior written approval of Quantex.
- e. Quantex Reports apply only to the standards and procedures identified therein and to the sample(s) tested.
- f. Unless specified in a Report in writing, the analysis and testing results are not indicative or representative of the qualities of the lot from which the sample was taken or of apparently identical or similar material or product.
- g. Quantex shall retain copies of Reports for a period of five years after which such reports will be destroyed.
- h. Quantex reserves the right to subcontract samples to other laboratories. If subcontracting is necessary, samples will be sent only to laboratories meeting Quantex's qualification requirements.
- i. Deformulation analysis of commercial products is provided for informational purposes only. Quantex strongly recommends that Client review state and federal laws, trademarks, copyrights and patent situations prior to the use of such information.

## **5. PAYMENT**

- a. Client agrees to pay all invoices within 15 days of the date of issue.
- b. In the event that payment is not received within 15 days of the invoice date, client agrees to pay a late payment charge on the unpaid balance equal to of 1.75% per month
- c. Prior to the physical receipt of sample(s) by Quantex at its premises the Client may cancel, by notice to Quantex, any or all of the services ordered by the Client. Client shall be responsible, in the event of cancellation, only for the costs, expenses or charges incurred by Quantex, on Client's behalf, prior to the date of cancellation.
- d. In the event that Client requests or causes a cancellation, suspension or delay in any services ordered from Quantex after the physical receipt of Client's samples by Quantex, the Client shall be responsible to pay Quantex for all costs incurred by Quantex for work and services started and in progress on the Client's samples, including but not limited to, any costs, expenses and commitments incurred by Quantex in the performance of services on Client's sample(s), up to the date of receipt of notice of such cancellation, suspension or delay, including a reasonable allowance for overhead and profit.
- e. In the event that Quantex finds it necessary to refer payment collection to an attorney or an agent for collection of delinquent accounts, Client shall pay all costs of collection including all attorney's fees reasonably incurred.
- f. Should Client become delinquent in the payment of any sum due hereunder, Quantex will not be obligated to continue performance.

## **6. LIABILITY**

- a. Quantex is not an insurer or guarantor. Quantex represents that the Services shall be performed within the limits mutually agreed to in, in writing as stated in Quantex's Proposal, and in a manner consistent with the level of care and skill ordinarily exercised by other providers of similar services under similar circumstances. No other representations or warranties, express or implied, are included in this agreement, or in any Report, opinion or document related to the Services provided hereunder. QUANTEX EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OF SAID REPORTS, DOCUMENTS AND/OR DATA FOR A PARTICULAR PURPOSE.
- b. Client understands and agrees that Quantex in entering into this Contract and by performing services hereunder 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. Client agrees, in consideration of Quantex undertaking to perform the test(s) or program hereunder to protect, defend, indemnify, save harmless, and exonerate Quantex from any and all claims, damages, including lost profits, expenses, including attorney's fees, either direct indirect or consequential, for any and all injuries to persons, including the personnel of Quantex, or property arising out of or in consequence of the performance of the testing hereunder and/or the performance of the materials and/or products tested hereunder.
- c. It is agreed that if Quantex should be found liable for any losses or damages attributable to the services hereunder in any respect, its liability shall in no event exceed the amount of the fee paid by Client for such services and the Client's sole remedy at law or in equity shall be the right to recover up to such amount. Client acknowledges and agrees that in no event will Quantex be liable for consequential or incidental damages or expenses, including but not limited to lost profits.
- d. In the event that Quantex prevails in any dispute or claim, Client agrees that Client will pay any and all expenses, including attorney's fees, reasonable incurred by Quantex in the prosecution or defense of such claim or dispute.
- e. For the safety of Quantex's personnel, Client must advise Quantex if samples are known or suspected of containing hazardous substances. Material Safety Data Sheets must be provided if available.
- f. Whenever performance by either party is delayed or prevented by war, insurrection, fire or other casualty, strikes or embargoes, shortages, 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.

## **7. EXCLUSIVE REMEDIES**

The remedies provided for herein are the client's sole and exclusive remedies. Quantex shall not be liable for any direct, indirect, special, incidental, or consequential damages, whether based on contract, tort or other legal theory arising out of the use, interpretation or in connection with the test results, reports, data or other services provided by Quantex.

**8. INDEMNITY**

The Client expressly assumes all liability for the use of all data, results and reports provided by Quantex. The Client shall indemnify, hold harmless and defend Quantex from and against any and all claims, actions, damages, demands, suits, judgments, liabilities, expenses, payments, taxes, duties, fines and/or all other costs arising from the use, interpretation or in connection with Quantex's test results, reports, data and or other services provided by Quantex.

**9. SEPARABILITY**

The invalidity or unenforceability, in whole or in part, of any provision, term or condition hereof shall not affect in any way the validity and enforceability of the remainder of such provision, term or condition or of any other provision, term or condition. If any court finds that a provision, term or condition is unenforceable, but that by limiting such provision, term or condition, it would become enforceable, then such provision term or condition shall be deemed to be written, and enforceable as so limited.

**10. CAPTIONS**

The Captions of the sections of these Terms and Conditions are intended solely for convenience of reference and shall not define, limit or affect in any way the provisions, terms and conditions hereof or in their interpretation.

**11. APPLICABLE LAW**

This agreement and any and all claims and disputes hereunder or related thereto shall be construed and governed in accordance with the laws of the State of New Jersey. Quantex and Client agree that the exclusive jurisdiction and venue for any and all such claims and disputes shall be in Middlesex County, New Jersey. In the event that Quantex prevails in any dispute or claim, Client agrees that Client will pay any and all expenses, including attorney's fees, reasonable incurred by Quantex in the prosecution or defense of such claim or dispute.

**12. ASSIGNMENT**

Any attempt by the Client to assign, transfer or delegate any of the rights, duties or obligations herein shall render such attempted assignment or transfer null and void.

**13. NON WAIVER**

Quantex's failure to exercise any of its rights shall not constitute or be deemed a waiver or forfeiture of such rights.