



## Terms and Conditions

- 1. Parties**

Client agrees to retain the services of Envirocheck, Inc. (Envirocheck) under the terms and conditions set forth in this agreement.
- 2. Terms**

The term "Client" shall mean the individual, individuals, or entity, described on the chain of custody document. The term "Work" shall mean all work, including labor, materials, and equipment, to be performed by Envirocheck as described on the "Chain of Custody" form. The term "Hazardous Substances" shall mean those substances or materials that are defined as hazardous by the federal, state, and/or local law. The term "Invoice" shall mean any billing document or statement.
- 3. Ordering**

Client may order services by submitting a written "work order," a written "chain of custody," or a telephone order confirmed in writing.
- 4. Samples**

The Client must provide, together with the submission of their samples, a completed and signed "Chain of Custody" form with adequate instructions describing the type of analysis requested and a complete and thorough written disclosure of the known or suspected presence of any hazardous substances. The Client shall be liable and pay for all costs and damages resulting from the Client's failure to abide by any federal, state, and/or local law regarding the sample(s).
- 5. Payment Terms**

Envirocheck will bill the Client on a monthly or per-project basis for all services performed pursuant to this agreement, including, but not limited to fees for labor, analysis, materials, equipment, etc. Invoices are due upon receipt unless otherwise agreed upon in writing. Client agrees to promptly advise Envirocheck of any questions about, or objections to, an invoice. Client further agrees that if he/she/it has not informed Envirocheck of questions or objections within forth-five (45) calendar days after the date of the invoice, that invoice will be conclusively regarded as accepted and approved by Client, and that thereafter Client will not be entitled to object to that invoice. Client agrees to pay all fees as rendered on monthly invoices within thirty (30) days of the date therein. Envirocheck reserves the right to impose a service charge of 1.25 percent per month (a 15 percent annual rate) to all past due balances, commencing thirty (30) days after the date specified on each invoice, until the invoice is paid in full. Any payments made on past due invoices are applied first to the oldest outstanding statement unless otherwise specified in writing. Client agrees that Envirocheck may suspend services pending receipt of any past due payment or fees. Should any invoice remain outstanding for ninety (90) days or more, Envirocheck may discontinue services and/or demand a retainer prior to performing any additional work.
- 6. Lien**

Client hereby grants Envirocheck a lien on any sums received from Client's insurer, and/or any third parties, whether by arbitration award, judgment, settlement or otherwise. The lien shall be in the amount of Envirocheck's fee for services provided, or the reasonable value of these services, whichever is less. The amount of the lien shall be reduced by the amount of any deposit or payments received by Envirocheck. Client agrees to withhold from any sums received from its insurer, or third parties, the amount owed to Envirocheck, and to pay directly to Envirocheck all sums due for its services. Notwithstanding the foregoing, Client understands that he/she/it is directly responsible to make payment to Envirocheck, and that this provision is solely for the protection of Envirocheck in the event of nonpayment by Client. Client also understands that payment to Envirocheck is not contingent upon any settlement, insurance payment, verdict, or judgment. This provision does not limit or affect Envirocheck's right to obtain a mechanics lien, and shall not affect Envirocheck's ability to pursue other remedies.
- 7. Fees and Costs**

Client acknowledges that all analytical and laboratory fees will be charged in accordance with Envirocheck's current Fee Schedule. Envirocheck's Fee Schedule is subject to increase at the beginning of each calendar year. Envirocheck's services will be billed to Client at the rate in effect for the period during which the services are rendered.
- 8. Licenses and Certification**

The Client shall provide Envirocheck with notice in writing, prior to sample delivery acceptance, of all licenses and certifications that Envirocheck will require to hold during the performance of service of Envirocheck for Client. Envirocheck will notify Client of any revocation of such required license or certification.
- 9. Unforeseen Conditions or Occurrences**

Client acknowledges that during the course of Envirocheck's work, it may discover the existence of unanticipated conditions or hazardous materials which substantially alters the necessary services or risks involved in completing its services. This shall be referred to as a "changed condition(s)." Envirocheck shall promptly notify and consult with Client upon the discovery of such changed condition(s). Client agrees that the discovery of changed conditions mandates a re-negotiation of the scope of work or termination of services. Client agrees to compensate Envirocheck for all costs incident to the discovery of such unanticipated materials or conditions.
- 10. No Warranties**

**NO warranty, express or implied, of merchantability or fitness is made or intended in connection with the work to be performed, or by the furnishing of written or oral reports by Envirocheck.**
- 11. Choice of Laboratory**

Unless the client has specified, in a timely manner, a particular location where services are to be performed for the Client, Envirocheck retains the right to subcontract services required by the client to another laboratory or laboratories.
- 12. Use of Report**

Client agrees that any consulting advice provided by Envirocheck, including reports, is exclusively limited for use on the project identified in the "Chain of Custody." Client shall not apply Envirocheck's findings and recommendations to any other projects without the prior review and written approval of Envirocheck.
- 13. Limit on Liability**

Client agrees that Envirocheck's liability to Client, or any third party, for any claims and/or suits, including negligence, errors and omissions, strict liability, or breach of contract, whether arising out of or in any way related to the project, the samples, or this Agreement, shall not exceed the amount paid by client to Envirocheck under this contract, or \$5,000 whichever is less.
- 14. Third Party Indemnity**

Client shall, to the fullest extent permitted by law, defend, indemnify, protect and hold harmless, Envirocheck, its partners, all subsidiary or affiliated companies of Envirocheck, and all employees, partners, stockholders, officers, directors, executors, administrators, successors and assigns from and against any and all claims, demands, debts, causes of action, liabilities, losses, damages, costs, expenses, including actual attorney fees, costs, penalties, fines, or judgments arising out of the performance of Envirocheck's work, except for such damages which are the result of the sole negligence or willful misconduct of the party to be indemnified.
- 15. Entire Agreement**

This Agreement, including any attachments and schedules attached hereto, constitutes the entire and fully integrated agreement between the parties concerning the subject matter hereof and cancels and supersedes any prior understandings and agreement between the parties relating to the subject matter hereof. There are no representations, warranties, terms, conditions, undertakings or collateral agreements expressed, implied or statutory, between the parties other than as expressly set forth in this Agreement. Any changes, additions, deletions, amendments or addenda to or modifications or corrections of the Agreement shall be null and void unless the same be in writing and signed by Client and Envirocheck.
- 16. Attorneys Fees and Costs**

In the event any action is brought concerning this Agreement, or the enforcement thereof, the prevailing party in such action shall be entitled to recover, in addition to other damages, his/her/its reasonable attorney's fees and costs, including expert witness fees.
- 17. Savings Clause**

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. However, should any provision of this Agreement be rendered invalid by a court or government agency of competent jurisdiction, the remaining provisions shall nevertheless remain in full force and effect.
- 18. Governing Law**

This Agreement shall be governed by the laws of the State of California. Any action to enforce this Agreement shall be commenced in the California Superior Court, for the County of Orange.
- 19. Termination**

Upon default or breach by a party to this Agreement, Envirocheck may by notice to Client elect to terminate this Agreement. Such termination shall be effective as of the date of such notice, unless Envirocheck specifies a later date, in which case the termination date shall be such later specified. Such election to terminate shall be in addition to any other rights and remedies which Envirocheck may have under this Agreement or otherwise. An event of default occurs if Client fails to abide by the terms of this Agreement, follow Envirocheck's recommendations, fails or refuses to comply with his/her/its material duties and obligations under this Agreement, and/or fails to cooperate with Envirocheck.
- 20. Sample Disposal**

Samples will be disposed of in 60 days unless the client requests otherwise.
- 21. Asbestos Bulk Samples**

Bulk asbestos samples may be split into individual layers in order to fulfill required government regulations.
- 22. Privacy Policy**

Other than information provided to entities that are authorized by the client or information release that is otherwise compelled by law or made publicly available by the client or in relevant response to information that is in the public domain, Envirocheck will maintain the privacy of the client information obtained or created during the performance of laboratory and/or consulting activities it conducts and consider such information to be proprietary property of Envirocheck and regard it as confidential and will not release such information without advanced notice to client.