



## **ANALYTICAL SERVICES** **STANDARD TERMS & CONDITIONS**

All analytical services provided by The National Food Laboratory, Inc. (“The NFL”) are subject to the terms and conditions stated herein. As our client, you (“Client”) understand and agree that submission of an Analytical Request Form (“ARF”) or substitute to The NFL constitutes acceptance of the terms and conditions as stated herein. To the extent that any Client order contains any terms or conditions that vary from the terms and conditions stated herein, all such additional or varying terms and conditions shall be of no force or effect and shall not be part of the Client/The NFL relationship or contract, even if The NFL performs the service requested.

**CONFIDENTIALITY:** Confidentiality is maintained by The NFL in all interactions with Clients. Each party shall protect Information of the other party, using the same degree of care, but no less than a reasonable degree of care, as such party uses to protect its own confidential information. Each party shall disclose the other's Information only to its employees or contractors who have a need to know and are bound by obligations of confidentiality.

**SAMPLE SUBMISSION:** Samples should be submitted to The NFL with a completed ARF and shipped to The NFL in accordance with the instructions on the ARF. Chemistry samples will be held for two (2) weeks from the date of the final report, and microbiology samples will be held for one (1) week from the date of the final report, except (1) where samples have been used for testing and fully consumed; (2) where micro samples are destroyed; (3) where suspect samples have been autoclaved; (4) where samples are returned early at the request of the Client; (5) where storage for the stated amount of time will compromise the integrity of the sample, e.g., chemistry's fresh produce samples are held for seven (7) days from the date of the final report; or (6) where circumstances exist that prevent samples from being held for the stated amount of time. The Client shall reimburse The NFL for the cost of returning samples.

**PAYMENT TERMS:** Payment terms are Net 30 days from date of invoice. Prices are subject to change without notice.

**RETEST ANALYSES:** Retests performed at the Client's request may be charged to the Client if the retest confirms the original result. If the retest results are significantly different from the original result, the Client will not be charged for the retest.

**BILLING:** All fees are charged directly to the contact indicated under Invoice Information on the ARF.

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**HAZARDOUS SUBSTANCES AND PATHOGENS:** Any package containing a sample containing or suspected of containing a pathogen or hazardous substance must be clearly identified as such and communicated to The NFL prior to shipping. The NFL reserves the right to refuse any shipment or sample that may pose a risk to its employees. The Client shall bear all extraordinary costs for adequate disposal of hazardous waste resulting from the sample(s) submitted, whether or not described as hazardous waste.

**LITIGATION:** If Client information is subpoenaed in response to any court of law or regulatory body having jurisdiction, The NFL will make best efforts to notify the Client in advance of such subpoena deadline and allow Client to take appropriate steps to protect its information. All costs associated with litigation or dispute, including copying and submission of all documents subpoenaed, for oral or written testimony or preparation of same, or for any other purpose related to work provided by The NFL in connection with the analyses/reports performed/completed for the Client, shall be paid by the Client. Such costs include, but are not limited to, hourly charges, travel, accommodations, mileage, counsel and all other expenses associated with said litigation or dispute.

**RELATIONSHIP OF THE PARTIES:** The NFL and Client agree that The NFL is an independent contractor to Client and will not act as Client's employee, agent, representative or sponsor under the terms and conditions stated herein.

**WARRANTY:** The NFL warrants that all services will be performed in a timely manner by competent personnel. The NFL makes no warranty as to the results to be obtained by the Client from the use of any services or information provided by The NFL under the terms and conditions as stated herein and there are no expressed nor implied warranties of merchantability and fitness for a particular purpose.

**JOINT PROMOTION:** The NFL and Client reserve the right to use the other's name in its promotional materials, but may not use the results of services provided without the prior written approval of both parties.

**LIABILITY:** The NFL and Client each agree to indemnify and hold the other party (including its affiliates, officers, directors, employees and agents) harmless from all liability, loss or expense, including property loss or damage, bodily injury, sickness or death to the extent such is caused by a party's negligence or willful misconduct in performing services under the terms and conditions as contained herein. The NFL is not liable, by reason of its performance under this agreement, for any loss of profits, claims against the Client by any third party or any consequential damages even if The NFL is advised of the possibility of such loss, claims or damages. The Client agrees that The NFL's liability hereunder for damages, regardless of the form of action, shall not exceed the total of all charges paid by the Client to The NFL for the services rendered.

**GOVERNING LAWS and JURISDICTION:** Any dispute arising from the relationship between the Client and The NFL shall be governed and determined by California law. Any dispute that arises (whether in contract, tort or both) shall be resolved in the appropriate state or federal court having jurisdiction in Alameda County, California, and the parties expressly

waive any right they may have otherwise have to cause any such action or proceeding to be brought or tried elsewhere.

**INTELLECTUAL PROPERTY:** The NFL operates under “need to know” principles within its organization to further protect its clients’ information. The NFL reserves the right to decline service to a client if the nature of the work presents a potential conflict of interest with other work either currently underway or previously completed for another party. The NFL also operates under the principle that the outcome of its work is owned by the receiving client unless previously agreed to in writing between the parties.

**FORCE MAJEURE:** Neither party shall be liable for damages due to delay or failure to perform any obligation under this Agreement to the extent such delay nor failure results directly or indirectly from circumstances beyond the control of such party. Such circumstances shall include, but shall not be limited to, acts of God, acts of war, civil commotion's, riots, strikes, lockouts, acts of the government in either its sovereign or contractual capacity, perturbation in telecommunications transmissions, inability to obtain suitable equipment or components, accident, fire, water damages, flood, earthquake, or other natural catastrophe.

**WAIVERS:** No waiver of a breach, failure of any condition or any right or remedy in or granted under these Terms and Conditions will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing so specifies.

**SEVERABILITY:** Any provision of this Agreement that in any way contravenes the law of any state or country in which this Agreement is effective will, in that state or country, to the extent the law is contravened, be considered separable and inapplicable and will not affect any other provision or provisions of this Agreement.

**SUCCESSORS & ASSIGNS:** This Agreement will inure to the benefit of, and be binding on, the successors and assigns of The NFL and the Client.

**ENTIRE AGREEMENT:** These Terms and Conditions constitute the final, complete, and exclusive statement of the terms of the agreement between the parties and supersede all prior and contemporaneous understandings or agreements of the parties. No party is relying on any representation or warranty outside those expressly set forth in this Agreement.

**PARAGRAPH HEADINGS:** All paragraph headings are for convenience only and shall not be construed as a limitation of the scope of the particular sections to which they refer.