



# ***Applied Consumer Services, Inc.***

11890 NW 87th Court, Unit #8, Hialeah Gardens, FL 33018

Phone: (305) 821-1677 Fax: (305) 821-0155 E-mail: [info@appliedconsumer.com](mailto:info@appliedconsumer.com)

## **TERMS AND CONDITIONS**

These Terms and Conditions and any Quote or Invoice submitted with these Terms and Conditions (together, the “Agreement”) are between Applied Consumer Services, Inc. (“ACS”) and the client to whom the Agreement is delivered to (Client”).

### **SERVICES**

1. Client acknowledges that ACS performs analysis and testing services (the “Services”) only as specified in the Quote or Invoice sent to Client. ACS 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. ACS 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 ACS employees (as well as any independent contractors to whom Client information is provided) are required to sign a nondisclosure agreement which includes protective language regarding proprietary rights and confidentiality.
3. ACS provides independent contract analytical laboratory services on a transactional basis. Unless specifically provided for 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, ACS will, at its discretion, perform analyses for any entity requesting its services.
4. Samples and portions thereof not destroyed in the performance of the Services remain the property of the Client and are retained a maximum of 30 days after project completion, unless instructed otherwise in writing by the Client, and thereafter will be disposed of, returned to Client, or stored at the Client’s expense.
5. Unless otherwise specified therein in writing, nothing contained in any report issued by ACS shall be deemed to imply or mean that ACS conducts any quality control program for the Client to whom the report is issued.
6. Reports issued by ACS are for the exclusive use of the Client to whom they are addressed. Reports and the name “Applied Consumer Services, Inc.” are not to be used by or on behalf of the Client under any circumstances for any purpose whatsoever, including but not limited to use in advertising, publicity material or in any other manner without ACS’s prior written approval.
7. Reports issued by ACS apply to the standards or procedures identified therein and to the sample(s) tested.
8. ACS shall retain copies of reports for a period of 5 years, unless otherwise requested by the Client.
9. Deformation analysis of commercial products is provided for informational purposes only. ACS strongly recommends the Client undertake its own review of laws, both domestic and international, that may apply to the Client’s use of the analysis, prior to use of such information.
10. ACS reserves the right to subcontract Services to other laboratories. If subcontracting is necessary, samples will be sent only to laboratories meeting ACS’s qualification requirements.

### **LIABILITY**

1. ACS is not an insurer or guarantor. ACS represents that the Services shall be performed with the limits mutually agreed to, in writing, and in a manner consistent with the level of care and skill ordinarily exercised by providers of



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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 ACS's personnel, the Client must advise ACS if samples are known or suspected to contain hazardous substances. Safety Data Sheets (SDS) must be provided if available. The Client further warrants that any sample containing any hazardous substance which is to be delivered to ACS will be packaged, labeled, transported, and delivered properly and in accordance with applicable laws.
3. The Client understands and agrees that ACS, in entering into this Agreement and by performing Services, does not assume or undertake to discharge any duty or responsibility of the Client to any other party or parties. No one other than the Client shall have any right to rely on any report issued by ACS. The Client agrees, in consideration of ACS undertaking to perform the Services hereunder, to protect, defend, indemnify, hold harmless and exonerate ACS from any and all claims and damages, including lost profits, expenses, attorney's fees and court costs, either direct or consequential, for any and all injuries to persons, including the personnel of ACS, or property arising out of, or in consequence of the performance of the Services and/or the performance of the samples tested hereunder.
4. ACS is not responsible for the condition in which samples are collected, delivered, or shipped prior arriving to the laboratory. Samples must arrive with all required information including submission form and requisites for storage, to allow ACS conducting the testing safely and efficiently.
5. ACS will provide the Services on a "best effort" basis, and specifically disclaims any warranty on the Services performed for the Client. ACS offers no guarantees or refunds on work performed for the Client. UNDER NO CIRCUMSTANCES WILL ACS BE LIABLE TO THE 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.
6. Whenever performance by ACS 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 ACS, 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. Prior to initiation of the project, the Client must approve a retainer cost including, but not limited to, additional materials such as standards, columns, reagents, etc. The final cost will be provided upon completion of the project and may include some additional work that has been conducted by agreement between the client and ACS.
2. Unless prepayment is required, The Client agrees to pay all Invoices within 30 days of receipt.
3. In the event that payment is not received within 30 days of Invoice date, the Client agrees to pay a late payment charge on the unpaid balance equal to \$15 per month.
4. All costs associated with compliance with any subpoena(s) for documents, testimony in court of law, or for any other purpose relating to the Services performed by ACS for the Client, shall be paid by the Client. The Client shall also pay ACS's then existing standard fees for consulting, deposition and trial testimony and all expenses related thereto.
5. Project specific supplies including, but not limited to, standards, raw materials, shipping, columns and/or specialty tools and supplies required for execution of the Client's project will be purchased by ACS and billed to the Client as



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passthrough costs. If necessary, ACS 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.

- 6. ACS reserves the right to request a prepayment from the Client prior to initiating project work.
- 7. Should early termination of a project be permitted for all or a portion of the project after the project has been initiated, the Client will be liable to ACS 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 estimated project cost as a fee for ACS'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, the Client will not, directly or indirectly, solicit the employment or services of any employee or contractor of ACS 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 ACS.

## MISCELLANEOUS

- 1. This Agreement and all claims and disputes arising under or related to it shall be governed by and construed in accordance with the laws of the State of Florida, other than such laws, rules, regulations and case laws that would result in the application of the laws of a jurisdiction other than the State of Florida. Any suit to enforce any provision of this Agreement, or arising out of or based upon this Agreement, shall be brought exclusively in the United States District Court for the Southern District of Florida, Miami Division, or the state court in and for the city of Miami and the County of Miami Dade, State of Florida. Each party hereby agrees that such courts shall have in personam jurisdiction and venue with respect to such party, and each party hereby submits to the in-persona jurisdiction and venue of such courts.
- 1. In the event that ACS prevails in any dispute or claim, including the collection of monies from the Client, the Client agrees that the Client will pay any and all expenses, including collection costs, court costs and attorney fees, reasonably incurred in the prosecution or defense of such claim, dispute or collection.
- 2. The terms and conditions contained herein, together with ACS's Quote or Invoice, shall constitute the entire Agreement between ACS and the Client. Any conflicting terms contained in any document submitted by the Client shall be null and void.
- 3. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, ACS and the Client hereby authorize the court to modify such provision to the minimum extent necessary to effectuate the parties' intentions and the remaining provisions shall remain in full force and effect.

Read and Agreed by CLIENT:

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Printed Name of Client	Company Name
Client Signature	Title
	Date