

## **1. Formation of Contract:**

Any term of Customer's order or release pertaining thereto or in any communication from Customer, which is in any way inconsistent with or in addition to the Terms and Conditions set forth herein is objected to and shall not be applicable hereto or binding upon IsleChem in any way. If Customer objects to any of these Terms and Conditions, such objections shall be in writing and must be received by IsleChem at the stated address prior to commencement of performance of services by IsleChem Customer's order for any of the products or services provided by IsleChem shall be conclusively deemed to be acceptance of all of these Terms and Conditions. Any references to purchase orders or to other oral or written requests for products or services are for purposes of description only and any terms therein shall not become part of these Terms and Conditions.

## **2. Pricing and Cancellations:**

Sample prices include log-in, sample preparation, analysis, log-out, standard reporting, sample storage for required time, archival of reports, and disposal of samples. Prices for the referenced tests, services and products shall be in conformance with the IsleChem price list in effect at the time the order is accepted. The price list is subject to change without notice. Any test, service or product that is not listed shall be sold at a price determined by IsleChem. If Customer cancels an order, Customer agrees to pay IsleChem any costs incurred by IsleChem prior to or as the result of the cancellation relating to work completed and materials used or purchased. Such costs will be determined by IsleChem and invoiced to Customer.

## **3. Taxes:**

Prices do not include any sales, use, value added or similar tax or any duty. All such taxes or duties, whether now in existence or hereafter enacted, applicable to any sales or services performed by IsleChem shall be paid by Customer. Such taxes and duties shall be added by IsleChem to the price hereunder, where applicable.

## **4. Turnaround:**

Sample turnaround time starts at the time the sample is received at the IsleChem facility. All samples and other requests for services submitted by Customer to IsleChem shall be processed by IsleChem in accordance with its normal scheduling procedures and are not guaranteed for any specific time or date. If IsleChem agrees to process Customer's order by a certain date or in accordance with a certain schedule, IsleChem shall make reasonable efforts to comply with such dates or schedules, but all such dates or schedules are estimated and time is not of the essence. IsleChem shall not be liable for any delay in performance, or for any non-performance, in whole or in part, caused by the occurrence of any contingency beyond the reasonable control of IsleChem, including, but not limited to, fires, floods, labor troubles, strikes, breakdowns, regulations, orders or requirements of any government, war (whether or not an actual declaration thereof is made), failure or delay in transportation, acts of any government or any agency or subdivision thereof affecting the terms of this contract or otherwise, judicial action, accident, explosion, and storm or other act of God. The occurrence of any such contingency shall excuse IsleChem from performance, and IsleChem's time for performance shall be extended for the period of the delay caused by the occurrence of such contingency and for a reasonable period thereafter.

## **5. Reports:**

Where IsleChem's contract with Customer so provides, IsleChem shall give Customer a written report of the results of the tests and other services performed on Customer's behalf. The extent, nature, form and content of the report shall be determined by IsleChem, at its sole discretion. IsleChem assumes no responsibility for Customer's use or interpretation of the tests and other results and reports provided to it by IsleChem. When requested, IsleChem will report preliminary test results by telephone or facsimile machine. Any turnaround time requested by Customer shall be considered to be satisfied with such contact. All such preliminary reports are subject to minor changes. Customer shall specify the recipient(s) of the preliminary reports and a telephone or facsimile number to which the reports shall be submitted. IsleChem will use its best efforts to attempt to contact the designated recipient(s) but is not responsible for delays resulting from the recipient's(s') failure to answer calls. Specialized reporting, including QA/QC, can be arranged if requested by Customer at a price determined by IsleChem.

## **6. Shipping / Receiving of Samples:**

Customer shall mark, label, package, and protect all samples sent to IsleChem, including a minimum of: unique sample numbers, type of analysis requested and turnaround time requested. IsleChem reserves the right to refuse samples for analysis that are obviously unsuitable due to damage, improper packaging, incorrect or insufficient labeling, or incorrect sample loading. IsleChem will contact Customer as soon as such a problem is identified and will discuss with Customer the course of action to be taken. All costs associated with the shipment or courier of samples to IsleChem or return of samples to Customer shall be paid by Customer. IsleChem shall not be obligated to keep any samples more than thirty (30) days after completion of the requested analysis, unless a prior written agreement to do so has been made between IsleChem and Customer. Customer shall have full control and responsibility for all samples when not at IsleChem's facilities. Customer shall comply with all applicable federal, state and local laws and regulations with respect to the shipping, handling and storage of the samples prior to delivery to IsleChem.

## **7. Payment Terms:**

Unless specified to the contrary in a writing signed by IsleChem, terms of payment shall be net thirty (30) days after date of invoice. After the due date, the lesser of two percent (2%) of the unpaid balance (annual rate of 24%) or the maximum late payment penalty charge permitted by law shall be added for each month or part thereof that payment is delayed. IsleChem has the right, at any time, to change the amount of credit or terms of payment or to withdraw credit and require partial or full payment in advance as a condition of performing further services. Payments shall be made regardless of the results of the testing or other services performed by IsleChem.

## **8. Warranties:**

a) Laboratory Services: IsleChem warrants that it will perform all laboratory testing in accordance with such standards and procedures as IsleChem believes, in accordance with IsleChem's best scientific and professional judgement, to be applicable or appropriate under the circumstances, unless IsleChem agrees in a writing signed by an officer of IsleChem to use another specifically designated standard or procedure.

b) Limitations: IsleChem's warranties and services extend to Customer and to no other person or entity. Customer shall be solely responsible for the use and the interpretation of IsleChem's report and test results. IsleChem has no duty or obligation to provide services that it has not expressly agreed in writing to provide.

**c) The foregoing express warranties of IsleChem are in lieu of all other warranties, express, implied or statutory, including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose, and in lieu of any other warranty obligation on the part of IsleChem**

## **9. Limitations:**

a) IsleChem is solely responsible for the performance of this contract, and no parent, subsidiary or Affiliate Company, or any of its directors, officers, employee's agents or subcontractors shall have legal responsibility hereunder, whether in contract or tort, including negligence.

b) In no event shall IsleChem be liable to anyone including Customer, whether in contract, strict liability, or tort, including the negligence of IsleChem or its employees, agents or representatives, for any incidental, consequential, special or indirect damages of any kind or character, under or arising out of any contract between the parties.

c) IsleChem's maximum liability under or arising out of this contract shall be the contract price of any service improperly performed, or nonconforming product. Liability or injury to persons arising out of this work shall be limited to the amount covered by the general comprehensive liability insurance carried by IsleChem.

## **10. Waiver:**

In the event of any default or breach by Customer, IsleChem has the right, among other rights, to refuse to provide additional services to Customer. IsleChem's failure to enforce at any time or for any period of time any provisions of this contract shall not constitute a waiver of such provisions or of the right of IsleChem to enforce each and every such provision.

## **11. Independent Contractor:**

Customer agrees that IsleChem shall perform services for Customer as an independent contractor and shall not be considered an employee of Customer.

## **12. Period of Limitation of Action:**

No action for any breach of this contract shall be brought by Customer more than one (1) year after the accrual of such cause of action.

## **13. Indemnification:**

Customer shall indemnify, defend and hold IsleChem LLC, and its officers, directors and employees harmless from and against any and all liabilities, losses, costs and expenses, including but not limited to, attorneys' fees and disbursements arising out of or incurred in connection with (i) any project with respect to which IsleChem is providing consulting, compliance recording, analysis services, field sampling and analysis services, or other such services or (ii) Customer's interpretation or use of the tests and other results and reports provided by IsleChem. This indemnification shall survive the termination or completion of services provided to Customer by IsleChem.

## **14. Subcontracting**

Some portions of services provided by IsleChem may be subcontracted when the testing is beyond the scope of IsleChem's accreditations or services. This may include dioxins, drinking water volatiles, some asbestos testing, certain sampling techniques and engineering services. Subcontracting of laboratory services will be clearly identified on any laboratory analysis reports or the original laboratory report will be submitted to the customer.

## **15. Disputes.**

Any controversy or claim arising out of, relating to or in connection with this Agreement shall be submitted to arbitration before a single arbitrator to be selected by the parties. Said arbitration shall be conducted in Buffalo, New York under and in accordance with the arbitration rules of the American Arbitration Association then in effect.