

- 1. Scope:** This document establishes Terms and Conditions of Service for K & D Laboratories, an Oregon corporation (dba Purity Laboratories (Purity)), which provides laboratory testing and other services to its customers (each a Customer).
- 2. Contract:** The Terms and Conditions of Service (Terms and Conditions) as described in this document are considered accepted by the Customer upon submission of an account application, Purity's LF1000 Analytical Request/Chain of Custody Form (Chain of Custody Form), or delivery of any sample to Purity and shall exclusively apply to all contracts between Purity and its customers. The Terms and Conditions described herein prevails over any Customer documents, except as agreed to by Purity in writing. Understanding Purity's Terms and Conditions is the responsibility of the Customer. The most current Terms and Conditions will be published by Purity on its website at www.puritylabsinc.com.
- 3. Submission of Samples:** To order services from Purity, the Customer must submit a completed Chain of Custody Form with each sample submitted for testing. The Chain of Custody Form is intended to record the movement of samples from collection to receipt at Purity and it also intends to serve as instructions and a purchase order for laboratory services. If the Chain of Custody Form is not filled out completely by the Customer or completed incorrectly, the sample will be set aside until the complete and correct information is obtained. Purity disclaims responsibility of testing delays that may occur because of receiving an incomplete or incorrect Chain of Custody Form from the Customer. To be a completed form, information regarding the following must be provided: Customer Name, Address, Telephone and Fax Numbers, Contact Person, Purchase Order Number, Unique Sample Description, Lot # and a detailed list of all tests that the Customer wants Purity to perform on the sample including the estimated analysis level(s) if known.
- 4. Sample Selection, Containment and Transport:** Customers are responsible for shipping samples to Purity to minimize contamination from containers or degradation from transport or improper handling also refrigeration, if required. The Customer should also ensure that samples submitted are representative of its product both in nature and in packaging. If multiple tests are required for the same lot of product, the Customer should provide multiple quantities of the sample as described on the Chain of Custody Form. The samples should be sent to Purity in air/leak proof protective containers. Any sample containing a potentially hazardous chemical should be sent in a container especially designed for protection specifically from that hazardous chemical. The Customer must receive Purity's written consent to receive a hazardous chemical for testing, prior to shipment and adhere to U.S. Food and Drug Administration (FDA) and/or U.S. Department of Agriculture (USDA) sampling guidelines where applicable.
- 5. Sample Acceptance:** Only samples received that meet Purity's criteria for acceptance will be processed and tested. Purity reserves the right to refuse or reject any sample and will notify the Customer should this occur. If the Customer requests that the rejected sample be returned, Purity will return the sample if possible. A handling fee for the return service may be charged.
- 6. Sample Retention:** Purity normally retains samples for 14 days from completion of testing and reporting of results. Purity retains the right to remove or dispose of samples that are rotten prior to the 14 days.
- 7. Testing Methods:** Purity testing is generally conducted by testing procedures established by AOAC, USP, FDA, USDA or EPA or other procedures that Purity has developed for the type of sample tested.
- 8. Test Reports:** After testing, Purity will send the Customer a test report by e-mail or if the customer prefers by mail or both. For some tests, tests reports are accessible on our website at www.puritylabsinc.com. Purity will follow guidance provided by the Customer on Purity's Chain of Custody Form to ensure that the Customer receives testing as ordered.
- 9. Turnaround Times:** Current turnaround times are available by calling Purity at 503.297-3636 or on our website at www.puritylabsinc.com. Rush fees may be applied for samples requested in 1-3 days. Turnaround times are estimates and Purity shall make commercially reasonable efforts to meet its estimated deadlines. If a test is delayed for more than 2 days beyond Purity's normal turnaround times, the Customer will be notified then or earlier if possible. If sample material is provided in insufficient amounts, Purity will contact the customer to request that additional material be provided. A new deadline for test results will be established based on the receipt of adequate sample material to conduct the requested test.
- 10. Rush Testing:** Rush testing is available, subject to laboratory capacity, for an additional surcharge, normally double the published price for the test or

- more if the rush will cause excessive disruption to Purity's business.
- 11. Hazardous Materials:** Hazardous materials include a wide range of materials identified by local, state and federal governments. As mentioned in paragraph 4, it is the Customer's responsibility to inform Purity of any hazardous material shipped to Purity to be tested or for any other reason. Any damages arising from or relating to a Customer's failure to disclose a hazardous material will be the will be financial responsibility of the Customer. This can include medical expenses, clean-up and recovery expenses and administrative expenses relating to the damages caused by the Customer's failure to disclose a potentially hazardous material it sends to Purity.
 - 12. Fees for Services:** Lab tests are charged at current published rates unless Purity agrees to other negotiated prices in writing and signed by the Lab Manager, CEO or President of Purity. Purity's current price list should be available on Purity's website at www.puritylabsinc.com. Pricing for tests that are not listed but may be available or developed for a Customer will be quoted, in writing by Purity.
 - 13. Payment Terms:** Payment is due on receipt of Purity's invoice to a Customer, unless approved for Net 30 day terms by Purity. To qualify for Net 30 day terms, a Customer must complete and submit Purity's Application for Credit Form for review and approval by Purity. If credit terms are extended to a customer, Purity will confirm those terms in writing to the customer by e-mail or mail.
 - 14. Invoices and Payments:** All prices quoted or otherwise specified by Purity are exclusive of taxes. If Purity is required to collect any taxes from a Customer with respect to the services, such amounts will be added to the Customer's invoice. Purity will invoice a Customer following approval for release by its QC department. Purity will charge interest on past due amounts at the rate of one and one-half percent (1 1/2%) per month or the maximum rate allowed by law, whichever is less. Delinquent accounts (those with unpaid invoices over 90 days old) may be referred to an outside collection agency and/or attorney, and Customer shall pay all associated collection expenses, including agency fees, attorneys' fees, and court costs.
 - 15. Warranties:** Purity warrants that it will report test results "as is" and without additional warranties of any kind. If the Customer requires specific detection limits, it is the Customer's responsibility to ensure that Purity can meet those limits before submitting the sample to be tested. The Customer's sole and exclusive remedy for any breach by Purity will be to have a sample retested, providing Purity has adequate material for the retesting or if not, the Customer provides additional sample material to test.
 - 16. Subcontracting:** Purity may subcontract Services to third party laboratories to meet all a Customer's requirements for testing. Use of subcontractors must be approved by the Customer. All warranty disclaimers, limitations of liability and other restrictions in this agreement will apply to any subcontractor's test results and other services.
 - 17. Litigation Costs:** The Customer will reimburse Purity for all costs incurred by Purity and/or its subcontractors, for responding to any subpoena or any other legal process relating to the test results or other services provided to the Customer. Costs for time spent will be calculated based on the hourly rate schedules for any of Purity's employees, officers, contractors or advisors.
 - 18. Indemnity and Insurance:** The Customer agrees to defend, indemnify, and hold harmless Purity, its affiliates, its subcontractors, their respective successors and permitted assigns, and all of their respective directors, officers, shareholders, members, employees, representatives, and agents (collectively, the "Indemnitees") from and against any and all claims, actions, suits, proceedings, demands, losses, fines, damages, costs, (including, without limitation, reasonable attorneys' fees, expert witness fees, and court costs), and other remedies of any kind or nature (whether based on tort, contract, warranty, products liability, strict liability, trade, regulatory, or other law) arising from or otherwise relating to any Customer product or service, including without limitation any claim or allegation that any Customer product or service was or is dangerous; defective in design, ingredients, manufacture, production, bottling, packaging, or otherwise; unsafe; unfit for consumption or use; otherwise unfit; defectively or otherwise improperly labeled, packaged, shipped, or otherwise transported; negligently, fraudulently, or otherwise improperly advertised, marketed, or promoted; or otherwise injured, harmed, or damaged any person or property in any way (individually a "Claim" and collectively "Claims"). Purity agrees to (i) provide its Customers with notice of a Claim within ten (10) days after being formally served therewith; (ii) provide the Customer the opportunity to defend and settle the Claim, except that the Customer shall not settle the Claim without the prior written consent of Purity, and (iii) provide reasonable assistance to the Customer, at the Customer's request and expense, to defend against the Claim. Purity will have the right, in its sole discretion, to participate in the
-

defense of the Claim, at its own expense, through counsel of its own choosing.

19. **Insurance Coverage:** Without limiting the generality of the previous paragraph, the Customer represents and warrants to Purity that (i) the Customer has and will maintain products liability insurance with an A.M. Best A+ or better rated carrier providing protection and adequate coverage with respect to any and all claims, liabilities, damages, costs, and expenses arising out of or otherwise relating to any defects or alleged defects in Customer's products; (ii) such products liability insurance includes coverage for additional insureds that include the Indemnitees; and (iii) the Customer will notify Purity within ten (10) days of any cancellation, modification, or reduction of such insurance coverage. In addition to any other remedies available, Purity reserves the right to terminate all Services for Customer in the event of any breach of the foregoing warranties or for the cancellation of any such insurance coverage or any gap in such coverage.
 20. **Assignment:** Neither party may assign this agreement without the other party's written consent, which shall not be unreasonably withheld. This agreement shall be binding on and inure to the benefit of each of the parties' successors and permitted assigns, if any. The Customer will inform Purity of any change of ownership or control of Customer, whether by merger, stock sale, or otherwise, and Purity shall have the right, in its sole discretion, to terminate this agreement or revoke Customer's credit account.
 21. **Relationship of the Parties:** The relationship of the parties established by this agreement is that of independent contractors, and nothing contained in this agreement shall be construed (a) to give either party the power to direct and control the day-to-day activities of the other, (b) to constitute the parties as partners, joint venturers, co-owners, or participants in any joint or common undertaking, or (c) to allow either party to act as an agent of the other or otherwise to create or assume any obligation on behalf of the other party.
 22. **Notices.** Notices shall be made in writing, shall be sent by email, facsimile, certified mail, hand delivery, or express carrier, and will be effective upon receipt.
 23. **Compliance with Laws:** Each party agrees to comply with all federal, state, and local laws applicable to its performance of this agreement.
 24. **Non-Waiver:** Any failure or delay by either party to exercise or partially exercise any right, power or privilege under this agreement shall not be deemed a waiver of thereof.
 25. **Severability.** If a court of competent jurisdiction finds any provision of this agreement to be void, invalid, illegal or unenforceable, the provision will be limited, modified, or if necessary severed, to the extent necessary to eliminate its violability, invalidity, illegality, or unenforceability, and the other provisions hereof shall remain unaffected. Any void, invalid, illegal, or unenforceable provision will be replaced by the parties by a legal and enforceable closest in operation and effect to the void, invalid, illegal, or unenforceable provision.
 26. **Force Majeure:** A party's failure to perform in timely fashion shall not be a breach of this agreement if such failure to perform results from circumstances beyond the party's reasonable control, including, but not limited to, labor disputes, civil disturbances, acts or non-actions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather, fire, earthquakes, Internet outage, Acts of God, or default of a common carrier. This provision shall not apply, however, to the Customer's payment obligations to Purity.
 27. **Governing Law:** This agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon, excluding its conflicts of law rules. Exclusive jurisdiction and venue for any disputes arising or relating to this agreement shall be in the federal and state courts sitting in Portland, Oregon and each party irrevocably consents to such jurisdiction and venue. The party that substantially prevails in any action or proceeding brought with respect to this agreement will be entitled to recover, in addition to any other relief, its costs and reasonable attorneys' fees. Each party irrevocably waives the right to a trial by jury in any and all actions or proceedings brought under or with respect to this agreement.
 28. **Survival of Terms:** The provisions of the agreement that by their nature extend beyond the termination of this agreement will survive and remain in effect until all obligations are satisfied.
 29. **Entire Agreement.** This agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all prior written and oral communications, agreements, representations, warranties, statements, negotiations, understandings, and proposals, with respect to such subject matters.
-