

## GENERAL TERMS &amp; CONDITIONS

1. Area of Application. All orders accepted by Eurofins Food Assurance Certification US, LLC (“Eurofins”) will be governed by these General Terms & Conditions (the “Terms”), including orders placed by telephone, electronic message, electronic ordering systems, or Eurofins-approved purchase orders. A contract with these Terms comes into being with Eurofins when an order that has been placed with Eurofins is accepted by Eurofins. An order placed with Eurofins is considered accepted by Eurofins when (a) Eurofins proceeds to fulfill that order, or (b) Eurofins accepts the order in writing. All services provided by Eurofins are expressly limited to, and will only be provided on the basis of, these Terms, to the exclusion of all other terms and conditions, including any terms or conditions which customer may purport to impose, or which appear on, any web site, quotation, sales document, invoice, order confirmation, correspondence or other document or communication provided by customer, irrespective of their date of communication.
2. Entire Agreement. These Terms together with any proposal provided by Eurofins set forth the entire agreement between Eurofins and customer, and supersede all prior and contemporaneous negotiations, agreements, representations, understandings, and commitments with respect thereto. The parties agree that customer’s standard terms, conditions, and pre-printed provisions on any purchase order, acknowledgment, release or other purchasing document purporting to address the same subject matter as these Terms shall be null and void and of no force or effect, whether such terms conflict with or purport to add terms to these Terms. Eurofins hereby rejects any offer made by customer to purchase services, and objects to and rejects any additional or different terms proposed by customer with respect to the subject matter of these Terms, including, but not limited to, warranties of suitability, fitness or non-infringement, and requirements for Eurofins to indemnify customer, pay damages that are unlimited in amount or pay indirect damages of any kind (including, but not limited to, consequential, incidental, punitive or special damages, and damages for lost profits or revenue, loss of use, business interruption, loss of information or for the procurement of substitute services)
3. Fees.
  - a) Time requirements are estimated and are based on the information provided in the Service Request Form including the size and complexity of the facility. The time required to complete the audit may need to be adjusted by Eurofins at the request of the auditor if the size or complexity of the facility exceeds the information provided.
  - b) Auditor Daily rates include a minimum of 7 hours and a maximum of 9 hours, comprised of approximately 70% audit and 30% report preparation.
  - c) Times included for Document Review and/or Corrective Action Resolution can be either onsite or remote as warranted and are estimates. Corrective Action Resolution in excess of 4 hours will be billed at \$150.00 per hour.
  - d) Fees exclude travel fares & accommodation which are charged at cost. Mileage is billed at IRS rate, unless otherwise stipulated.
  - e) Auditor travel time in excess of 4 hours one way will be charged at \$125.00 per hour up to a maximum of \$750.00.
4. Pre-Billing. Eurofins reserves the right to bill for services prior to performance of the services. In cases where prepayment is required, a prebilling invoice will be issued approximately 35 days prior to the execution of the service including (1) Audit Cost; (2) Estimated travel expenses; (3) Travel Time, if applicable; and (4) other known certification expenses. Payment of the prebilling invoice is required before the audit will be executed. Within thirty (30) days following the completion of the audit, the prebilling invoice will be adjusted, if necessary according to the following conditions. To the extent the actual audit costs exceed 105% of the prebilling amount, Eurofins will issue a second invoice for the difference between actual costs and the prebilled costs, and such invoice will be due and payable consistent with the standard payment terms below. To the extent the actual audit costs are less than 98% of the estimate, Eurofins will provide a credit for the difference between the actual audit costs and the prepayment amount, with such credit to be applicable for a future audit.
5. Cancellations or Postponements. A postponement or cancellation can be made up to 30 days prior to the audit without penalty. For postponement or cancellation within 8 to 29 days of the confirmed audit date a fee equal to 75% of the total audit fee and any associated travel expenses will be incurred. For postponement or cancellation within 7 days or less of the confirmed audit date a fee equal to 100% of the total audit fee. Any associated travel expenses will be incurred regardless of timeframe.

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6. CPO Registration. For those audits that require registration in a CPO database, if customer does not complete such registration 30 days prior to the audit, customer permits Eurofins to register the site in order to permit the effective scheduling of the audit. This will result in the site being charged the applicable fee from the CPO along with a 30% convenience fee.
7. Annual Increases. Eurofins retains the right to increase the fees outlined in the proposal on an annual basis, at the greater of (i) 2.5% per year, or (ii) the percentage increase for the previous twelve (12) month period, using the index that is three (3) full months prior to the anniversary month, in the Consumer Price Index for All Urban Customers, U.C. City Average, all items, as published by the United States Department of Labor, Bureau of Labor Statistics (“CPI”). If the CPI is not published for any month pertinent to such calculation, the percentage adjustment shall be calculated with reference to the most recent month for which the CPI has been published.
8. Term; Termination.
- a) The initial term of this Agreement will continue in force until terminated by either party on not less than ninety (90) days prior written notice to the other party.
  - b) Notwithstanding the provisions of paragraph (a) above, this Agreement may be terminated in accordance with the following provisions:
    - i. Either party hereto may terminate this Agreement at any time by giving notice in writing to the other party, which notice will be effective upon delivery, should the other party file a petition under federal or state bankruptcy laws, be declared bankrupt, become insolvent, make an assignment for the benefit of creditors, go into liquidation or receivership, or be unable to pay its debts as they become due.
    - ii. Either party may terminate this Agreement, by giving notice in writing to the other party, in the event the other party is in material breach of this Agreement and shall have failed to cure such breach within thirty (30) days of receipt of written notice thereof from the other party; or
    - iii. By mutual written consent of the parties.
  - c) In the event of termination or expiration of this Agreement for any reason, the parties will have the following rights and obligations
    - i. Termination of this Agreement will not release Customer from the obligation to make payment of all amounts then or thereafter due and payable to Eurofins;
    - ii. Eurofins will have the right to immediately cease providing any or all Services; and
    - iii. The obligations and terms of Sections 7(c) will survive termination of this Agreement.
9. Confidentiality. Eurofins shall be responsible for the management of all information obtained or created during the performance of certification activities. Except for information that the client makes publicly available, or when agreed between Eurofins and the client (e.g. for the purpose of responding to complaints), all other information is considered proprietary information and shall be regarded as confidential. Eurofins shall inform the client, in advance, of the information it intends to place in the public domain. Eurofins shall be entitled to save and process customer’s data in any way, no matter whether such data stem from the customer directly or from a third party, and Eurofins shall use commercially reasonable efforts to keep such data confidential, in compliance with applicable law.

To the extent Eurofins is required by law to disclose confidential client information, Eurofins shall inform the client of the information to be disclosed, except where prohibited by law.

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10. Customer Acknowledgements. In accepting Eurofins' proposal, customer allows Eurofins to submit a report when required by a certification program owner (CPO) and agrees to the following:
- a) understanding that the certificate will be issued by Eurofins.
  - b) consent to have our certification of registration details (as outlined herein), displayed on the CPO's website for public display.
  - c) agree to adhere to the regulations set forth by the CPO which we are seeking recognition from.
  - d) agree to all state and federal laws pertaining to certification and auditing.
  - e) always comply with the relevant provisions of the certification program including implementing appropriate changes when they are communicated by the certification body and relevant CPO
  - f) if certification applies to ongoing production, the certified process continues to fulfill the requirements
  - g) provide necessary information to adequately prepare for an audit. This information could include a copy of the previous audit report and certificate.
  - h) make all necessary arrangements for the conduct of the evaluation and surveillance (if required), including provision for examining documentation and records, and access to relevant equipment, location(s), area(s), and personnel, and client's subcontractors, investigation of complaints, the participation of observers, if applicable.
  - i) make claims regarding certification consistent with the scope of certification which has been granted;
  - j) not use its product certification in such a manner as to bring the certification body and/or certification system into disrepute and lose public trust
  - k) if providing copies of the certification documents to others, the documents shall be reproduced in their entirety or as specified by the CPO
  - l) upon suspension, withdrawal, or termination of certification, to discontinue use of all advertising matter that contains any reference thereto, returns any certification documents as required by the certification body, and takes action as required by the certification scheme and takes any other required measures
  - m) use certification only to indicate that products are certified as being in conformity with specified standards;
  - n) not use or permit the use of a certificate document, certificate, report, or any part thereof is used in a misleading manner or misleading statement regarding certification;
  - o) not make any statement regarding its product certification which the certification body may consider misleading or unauthorized;
  - p) conforms to the requirements of the certification body and CPO when making reference to certification status in communication media such as the internet, brochures, or advertising, or other documents.
  - q) complies with any requirements that may be prescribed by the CPO relating to the use of marks of conformity, and on information related to the product

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- r) keeps records of all complaints made known to it relating to compliance with certification requirements and makes these records available to the certification body when requested and takes appropriate action with respect to such complaints and any deficiencies found in products that affect compliance with the requirements for certification, and documents the actions taken
- s) amend all advertising matter when the scope of certification has been reduced
- t) not allow reference to its management system certification to be used in such a way as to imply that the certification body certifies a product or process
- u) not imply that the certification applies to activities that are outside the scope of certification
- v) to the requirements for certification and to supply any information needed for evaluation of products to be certified.
- w) aware that the auditor may be accompanied by other personnel for training, assessment or calibration purposes. This activity may include the training of new auditors, routine witness audits of auditors, witness audits by accreditation bodies, witness audits by the CPO, or witness audits by a specifier where a specifier specific audit module is included.
- x) aware that we might be selected for the CPO's surveillance/integrity program in which case the CPO may accompany the auditor on the audit which we cannot refuse.
- y) aware that we might be selected for the Eurofins verification or training program in which case there may be another auditor accompany the auditor on the audit which we cannot refuse.
- z) aware that all documents shall be made available to the CPO upon request. All documents shall be copies of original documents. Documents are treated as confidential.
- aa) aware that the CPO reserves the right to conduct its own audit or site visit once certified in response to complaints or as part of the routine CPO compliance activity to ensure the integrity of the standard. Such visits may be announced or unannounced.
- bb) aware that certification status may be affected in the event that access to any parts of the site or process or requests to these points listed in the proposal/contract is unreasonably refused.
- cc) aware that the CPO may contact the site directly in relation to its certification status or for feedback on Eurofins Food Safety Systems performance, or investigation into reported issues.
- dd) aware that any specific requirements for additional audit modules must be followed in accordance with protocols for those modules. This includes any confidentiality of information.
- ee) aware that the CPO may require an unannounced audit which cannot be refused and all fees will apply; Notification shall be sent in advanced and the ability to select any blackout periods will be available.
- ff) acknowledge that certified facilities may be withdrawn at any time without prior notice.
- gg) accept that accounts which are due will be paid within 30 days of receipt of invoice.
- hh) obtain, upon request, publicly available information about (or reference to) the applicable certification program(s) including evaluation procedures; rules and procedures for granting, for maintaining, for extending or reducing the scope of, for suspending, for withdrawing, or for refusing certification.

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- ii) informs the certification body, without delay of changes that may affect its ability to conform with the certification requirements (examples of changes can include legal, commercial, organization status or ownership; organization and management; modification to the product of the production method; contact address and production sites; major changes to the quality management system).
  - jj) notify Eurofins within 24 hours in the event of a food safety incident (recall/withdrawal), any adverse publicity, or Government intervention in writing to auditing@eurofinsus.com.
11. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, EUROFINS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, IN CONNECTION WITH ITS PERFORMANCE OF SERVICES AND, TO THE FULLEST EXTENT PERMITTED BY LAW, EUROFINS SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
12. **Indemnification.**
- a) Customer agrees to indemnify, defend, and hold harmless Eurofins, its affiliates and their respective officers, directors, owners, managers, employees, agents and other representatives (“Representatives”) from and against any and all third party claims, liabilities, costs, damages, suits, actions, debts, charges and expenses (including reasonable attorneys’ fees, court costs and any amount paid in settlement) resulting from or related to the performance by Eurofins of the services outlined in Eurofins’ proposal. This indemnification liability will be reduced to the extent Eurofins’ negligence or breach contributed to or enlarged such third party claim, unless such negligence or breach has already been compensated by the award of damages to customer for Eurofins’ breach of these Terms.
  - b) Eurofins shall defend, indemnify and hold harmless customer and its employees, officers, directors, shareholders, agents, representatives, successors and assigns, from and against any and all third party claims, liabilities, costs, damages, suits, actions, debts, charges and expenses (including reasonable attorneys’ fees, court costs and any amounts paid in settlement) that customer shall or at any time may sustain, arising out of or in connection with a breach of these Terms by Eurofins to the extent arising out of the gross negligence or willful misconduct of Eurofins; provided, however, that Eurofins shall not be liable for any damages, losses, costs or expenses to the extent attributable to the negligence or willful misconduct of customer.
13. **Exclusive Remedy for Deficient Services.** In the event that any services are improperly or inadequately performed by Eurofins, customer’s sole remedy, and Eurofins’ sole obligation, with respect to such deficient services shall be for Eurofins, at its option, to either: (i) re-perform such improper or deficient services, at no additional charge to customer, or (ii) refund all amounts paid by customer to Eurofins for such improperly or inadequately performed services.
14. **Limitations of Liability.**
- a) Notwithstanding any provision of this Agreement to the contrary, in no event shall Eurofins be responsible for any indirect, consequential, incidental, punitive, non-compensatory or special damages (including, without limitation, damages for lost profits or revenue, loss of use, business interruption, loss of information, or for the procurement of substitute services) of customer or of any third party, even if it has been advised of the potential for such damages and whether such damages arise in contract, negligence, tort (including death or personal injury), under statute, in equity, at law or otherwise.
  - b) Notwithstanding any provision of this Agreement to the contrary, in no event shall Eurofins be liable pursuant to this Agreement for any amount that exceeds, in the aggregate, the lesser of (i) amount of fees paid under the applicable Work Order in the 12 month period immediately preceding the date of the event giving rise to the claim or (ii) \$50,000.

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15. Intellectual Property Ownership.

- a) Customer hereby acknowledges and agrees that any and all inventions, discoveries, trade secrets, know-how, improvements, methods, systems, software programs, practices, procedures and processes, and proprietary materials including, but not limited to, structural and functional information and other data repository, formulations and techniques, whether or not patentable or copyrightable (“Intellectual Property”), that is owned or controlled by Eurofins as of the date hereof, or that is developed, conceived or reduced to practice outside of the performance of the proposal by Eurofins, and all modifications or improvements thereto, shall vest in, be the property of, and shall be owned solely and exclusively by, Eurofins (“Eurofins Background IP”).
- b) Customer hereby acknowledges and agrees that any and all Intellectual Property that is developed, conceived or reduced to practice during the Term by Representatives of Eurofins in the performance of the services outlined in Eurofins’ proposal, and that is (i) within the field of the Eurofins Background IP, (ii) does not rely on or incorporate customer materials or confidential information, is not part of the work product or deliverables, and shall vest in and be the sole and exclusive property of, Eurofins.

16. Affiliates. In no event shall a Party or any of its Affiliates be jointly and severally liable with one another in any respect, and a Party and its Affiliates shall not be deemed to have any obligation with respect to one another’s performance or non-performance of any obligation. For purposes of the foregoing, “Affiliate” shall mean, with respect to the party in question, any corporation or other business entity directly or indirectly controlled by, controlling, or under common control with such party. The term “control” (including, with correlative meaning, the terms “controlled by,” “controlling” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities, by contract or otherwise, or such other relationship as, in fact, constitutes actual control.

17. Governing Law. The construction, validity and performance of these Terms shall be governed by the laws and the courts of the State of Delaware, which shall have exclusive jurisdiction.

18. Force Majeure. Eurofins shall not be liable for any failure to perform its obligations under these Terms caused by events or circumstances which are beyond Eurofins’ reasonable control, or which result from compliance with governmental requests, laws and regulations.

19. No Waiver. Failure by either party to exercise their rights under these Terms shall not constitute a waiver or forfeiture of such rights.

**Website Consent:**

By accepting Eurofins’ proposal, we consent to have our Certification of Registration details (as outlined herein), accessible by our customer(s) via the CPO web site: Customer/retailer name, Supplier name, state/province country, Certificate type and number, Certification expiry date, Certification Level Food Sector Category(s), Scope, Product(s) covered by the Certificate of Registration, Company representative name and contact details, Modules implemented, Audit rating, Name of Certification Body, Auditor name, Audit frequency, date of last Audit, date of next Audit.

All information submitted in the service request form and this document are true and correct to the best of my / our knowledge. I am / we are authorized by the company / firm to sign this application, to accept your credit terms, and to grant permission to your organization to refer this application for CPO references.