

## Sales Terms and Conditions

**1. APPLICABILITY.** These Terms and Conditions apply to all Price Lists, quotations, proposals, request for Analysis and other agreements between the Customer and PRECIMAT, a Division of PRECILAB, L.L.C. (referred hereunder as PRECIMAT).

**2. ACCEPTANCE.** The Customer's submission of a request for analysis shall constitute acceptance of these Terms and Conditions. PRECIMAT will not recognize any separate request form unless approved by PRECIMAT. NO MODIFICATION OF THIS AGREEMENT SHALL BE EFFECTED WITHOUT PRECIMAT'S ACKNOWLEDGMENT OR ACCEPTANCE OF CUSTOMER'S REQUEST CONTAINING TERMS OR CONDITIONS AT VARIANCE WITH THOSE SET FORTH HEREIN, THE PROVISIONS OF THIS INSTRUMENT BEING CONTROLLING.

**3. CONFIDENTIALITY.** All Manufacturing services and products, Analytical Services, Analytical Methods, Analytical Results and related information's herewith are considered confidential. Each party shall treat as confidential all information obtained from the other and shall not divulge such information to any persons (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the provided Manufacturing and Analytical Service, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious.

The foregoing obligations as to confidentiality shall survive any termination of the Request. PRECIMAT, at its sole discretion, may provide any and all information set forth on the face of this Request or in the Final Analysis, to the police or other investigating agencies to assist them in the investigation of any suspected violations of law, or to PRECIMAT's attorneys in the event of a violation or breach these terms of this Agreement. Excerpting material from this Request or the Final Analysis, or altering the information in the Final Analysis in any way, is strictly prohibited.

The Buyer agrees to maintain all these Prices, Terms and Conditions as confidential in addition to any information or documentation that is proprietary concerning PRECIMAT's Manufacturing and Analytical Services and has not been published or publicly known. Any disclosure by the Buyer of such information will be subject to full remedy as permitted by law.

**4. SPECIMEN SUBMISSION AND DELIVERY.** Specimens for manufacturing or analysis shall be delivered to PRECIMAT in appropriate conditions. Specimens shall be submitted to PRECIMAT's facilities by personal delivery or use of a common carrier. The projected final delivery date is set forth on the time of receipt of such Specimen at PRECIMAT facilities. Rush Manufacturing or Testing is offered contingent upon pre-notification and approval of PRECIMAT and a surcharge of the Specimen manufacturing or testing fee will be added to the invoice.

(a) Specimen may only be submitted to PRECIMAT in connection with the submission of a Request Form and through the terms herein. Customer must include all requested information contained in the Request hereof, including, but not limited to, product name, lot or Specimen Identification number, test or manufacturing requested, specification(s) or control limit(s). In addition, Specimen must be labeled with Customer's name, Specimen identification or lot number. Incomplete or incorrect information may cause a delay in the Delivery Due Date.

Unless prior arrangements have been made and agreed upon in writing between PRECIMAT and Customer, any portion of Specimen not used for analysis will be held by PRECIMAT after submission of the Final Manufacturing or Analytical results to the Customer.

Such unused portions of Specimen will be properly disposed of at a time and in a manner as solely determined by PRECIMAT, typically within 4 weeks from the submission of the final Manufacturing or Analytical results.

(b) Any Hazardous Specimen must be appropriately labeled for the protection of office and laboratory personnel. A Safety Data Sheet ("SDS") must be provided by the Customer to PRECIMAT for any Hazardous Specimen. PRECIMAT reserves the right to refuse any Hazardous Specimen determined to pose a risk to its employees.

(c) The parties agree that the Delivery Due Date is a "target" date and that time is not of the essence thereof. PRECIMAT shall not be liable to the Customer for loss or damages suffered by the Customer as a result of delay beyond the Delivery Due Date, if such delay in Manufacturing, Testing, shipment, supply or delivery, or non-delivery in whole or in part, is as a result of force majeure, fire, flood, riot, act of God, strike, or act of war or other act or event beyond the control of PRECIMAT (collectively, "Force Majeure Event"), and PRECIMAT may by written notice to the Customer postpone delivery until such Force Majeure Event shall have ceased or its effects have abated to a degree to reasonably permit PRECIMAT to resume its normal delivery schedule, unless the Customer by written notice cancels ("Cancellation Notice") this Request or part thereof affected by such Force Majeure Event, which Cancellation Notice may be effected at any time after thirty (30) days of the Delivery Due Date and so long as Final Analysis whose delivery has been delayed has not been delivered to the Customer.

Any quantities effected by such Force Majeure Event may be eliminated from this Agreement without liability, but this Agreement shall remain otherwise unaffected. PRECIMAT shall not be required to deliver any Final Analysis to the Customer if any invoice for previously shipped Final Analysis' remains unpaid for more than thirty (30) days after the Delivery Date thereof.

(d) Customer shall inspect the Final Manufacturing or Analytical results upon receipt for conformity with the information provided to PRECIMAT in this Request. No claim of any kind whether as to the Manufacturing, Testing, Final Analysis delivered or for non-delivery, including claims of erroneous product or analysis, and whether arising in tort or contract shall be greater in amount than the purchase price of said Manufacturing or Testing in respect of which such damages are claimed; and the failure to give written notice of any such claims within three (3) days from the date of delivery, or the Delivery Due Date, as the case may be, shall constitute a waiver by the Customer of all claims in respect of such Testing and Final Analysis. No charge, expense or set-off incident to any claim will be allowed unless previously approved by an authorized representative of PRECIMAT.

THE REMEDY HEREBY PROVIDED SHALL BE THE EXCLUSIVE AND SOLE REMEDY OF CUSTOMER. IN NO EVENT SHALL PRECIMAT BE LIABLE FOR SPECIAL, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES. PRECIMAT'S LIABILITY, WHETHER FOR NEGLIGENCE OR OTHERWISE, SHALL BE LIMITED TO REFUNDING THE AMOUNT INVOICED AND IN NO EVENT SHALL EXCEED THE MANUFACTURING OR TESTING FEE OF THE SPECIMEN IN RESPECT OF WHICH DAMAGES ARE CLAIMED.

(e) PRECIMAT's liability for damages prior to Delivery shall be limited to the return of any Deposit and, after Delivery, shall be limited to claims assertable under the PRECIMAT Limited Warranty, hereinafter described.

(f) F.O.B. is Buyer's location of origin. Quoted prices or list prices do not include freight costs for shipping Specimens and returning Buyer specimens when the Buyer is located outside the Dallas-Fort Worth Metroplex.

**5. QUALITY ASSURANCE.** The Manufacturing and Analytical methods have been developed within PRECIMAT and have been validated to ensure they meet appropriate quality standards.

PRECIMAT is not responsible for errors in the Final Products or Analysis as a result of misinformation provided in this Request by Customer. PRECIMAT cannot guarantee, and shall under no circumstances be held liable for any claims, representations, or warranties given to any and all third parties by Customer.

**6. WARRANTY.** PRECIMAT expressly warrants that its manufactured products or analytical results were obtained by following standard laboratory practices and that the information provided in its test reports are a true and accurate representation of the test values obtained by PRECIMAT on specimens provided by Buyer and the results are only representative of the specimens received by the laboratory. The foregoing express warranty is exclusive and is given in lieu of all other warranties, express or implied.

Any Manufacturing or Testing performed by PRECIMAT under proper technical direction (as solely determined by PRECIMAT) which are determined by Customer to be inaccurate and which after investigation by PRECIMAT are acknowledged in writing by PRECIMAT's Manufacturing and Testing Manager to be inaccurate, shall be re-Produced or re-Tested by PRECIMAT without charge to Customer, provided that Customer provides PRECIMAT with a written request for such investigation within two weeks after client knew or should reasonably have known of the inaccuracy. Customer may be required to provide PRECIMAT with an additional Specimen if necessary.

PRECIMAT will not be liable for its failure to perform hereunder if said performance is made impracticable due to equipment breakdown or any occurrence beyond its reasonable control, including among other things, acts of God, injuries, floods, accidents, labor shortages or disputes, wars, inability to obtain equipment, or governmental laws, ordinances, rules and regulations.

IN NO EVENT WILL PRECIMAT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR SPECIFIC DAMAGES OR FOR ACTS OF NEGLIGENCE THAT ARE NOT INTENTIONAL OR RECKLESS IN NATURE, REGARDLESS OF WHETHER PRECIMAT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THIS WARRANTY AND THE REMEDY SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL EXPRESS OR IMPLIED WARRANTIES (INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE DISCLAIMED). ALL LIABILITY OF PRECIMAT WITH RESPECT TO THIS AGREEMENT OR INFORMATION FURNISHED HEREUNDER, WHETHER IN CONTRACT, OR IN TORT, OR OTHERWISE, IS LIMITED TO THE AMOUNTS PAID BY BUYER TO PRECIMAT HEREUNDER. THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE. PRECIMAT SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

**7. PRICES.** The prices under this agreement are F.O.B. point of shipment and exclusive of all sales, use, excise or other taxes. The prices set forth shall be in effect until notice in writing from PRECIMAT. PRECIMAT reserves the right to adjust prices at its discretion with proper notice to Customer.

Unless expressly agreed to in writing to the contrary, Manufacturing or Testing are subject to being completed by PRECIMAT at the prices in effect at the time of completion of the Final product or Analytical results. If Customer requests changes to its the original demand after the manufacturing or analytical process have been initiated, Customer agrees to accept all additional payment responsibilities.

**8. TAXES.** Manufacturing or Testing prices quoted to the Customer do not include any sales, use, excise, ad valorem or like taxes or any customs duties, imposts or surcharges which may now or hereafter be imposed by federal, state or local governments by reason of PRECIMAT's Agreement with the Customer. The Customer shall deliver to PRECIMAT evidence of exception from tax and the Customer shall reimburse PRECIMAT for all taxes, excises or other charges which PRECIMAT may be required to pay to any Government (National, State or Local) upon the sale, production, delivery or transportation of the Final Product or Analysis provided hereunder.

**9. PAYMENT TERMS.**

(a) **STANDARD PAYMENT TERMS:** Payment in United States Dollars (USD) is due thirty (30) days from the date of Delivery, terms net cash, unless otherwise indicated and previously approved in writing by PRECIMAT. The Customer agrees to pay a late charge of one and one-half (1-1/2) percent per month on any past due account balances. If payment is made by wire transfer, all bank charges shall be at Customer's expense and a service charge therefore will be added to the invoice.

(b) **REMITTANCE:** All remittances hereunder, including interest payments, shall be made payable in USD to PRECIMAT by cash or good check without deduction for exchange fluctuations, customs or foreign government assessments (taxes, stamps, or similar charges).

(c) **NEW CUSTOMERS:** Payment in advance is required for new customers whose credit has not been established with PRECIMAT. New customers who wish to open an account with PRECIMAT must complete a Credit Application Form, which Form must be approved by PRECIMAT prior to the extension of any credit.

(d) **SPECIAL TERMS OF PAYMENT:** In the event the Customer fails to fulfill PRECIMAT's terms of payment, or in case PRECIMAT shall have any doubt at any time as to Customer's financial responsibility, PRECIMAT may decline to complete further Manufacturing or Testing except upon receipt of cash or satisfactory security.

(e) **COSTS OF COLLECTION:** If any invoice is not paid when due, Customer agrees to pay to PRECIMAT all costs of collection, including reasonable attorney's fees and court costs.

**10. INDEMNIFICATION RESPONSIBILITY AND EXCLUSION.** (a) Indemnification by Customer. The Customer agrees to indemnify and hold PRECIMAT harmless from and against any claim, demand, debt, suit, cause of action, loss, damage, expense, liability, obligation, or cost (including, without limitation, reasonable attorney's fees) claimed against or suffered by PRECIMAT in the defense, settlement, or satisfaction thereof, for any injury, death, loss or damage to persons or property and kind whatsoever arising out of, or as a result of: (i) any breach of the representations, warranties, covenants and agreements of the Customer contained herein; (ii) the negligent acts or omissions of the Customer, its employees or representatives, resulting from or with respect to the storage, use, or handling of the Specimen prior to its delivery by PRECIMAT; and (iii) the negligent acts or omission of the Customer, its employees or representatives, resulting from or with respect to the use of the information contained in the Final Analysis after its receipt by Customer.

**11. RELATIONSHIP OF PARTIES.** Nothing herein shall be construed to create any partnership between the parties or to authorize the Customer as an agent or legal representatives of PRECIMAT for any purpose whatsoever; and it is understood between the parties that the Customer is in no way authorized to make any contract, agreement, warranty or representation on behalf of PRECIMAT. Under no circumstances shall either party be liable for any act, omission, debt or any other obligation of the other.

**12. DEFAULT.** In the event the Customer shall fail or refuse to perform an act required of it hereunder, the Customer shall be deemed to be in default hereof. A failure or refusal to cure such a default within thirty (30) days after receipt of written notice by PRECIMAT of such default shall constitute an uncured default ("Event of Default"). At any time after an Event of Default by the Customer and prior to its being cured by the Customer, PRECIMAT shall have the right to terminate this Agreement by written notice to the Customer and the right to retain any deposits, to recover the amount of any unpaid invoices from the Customer, and to recover any damages relating to said default.

**13. SPECIAL CONDITIONS OF SALE.** In addition to the standard conditions of sale set forth herein, any special conditions of sale set forth in PRECIMAT's written price quotations for Testing, if any, covered by this Agreement shall apply and are incorporated by reference herein.

**14. SOLICITATION.** Buyer specifically agrees that it will make no attempt to solicit, recruit, or hire, and that it will not hire, employees of PRECIMAT, without PRECIMAT prior written consent.

**15. CANCELLATION.** PRECIMAT may cancel the Agreement formed by these terms and conditions at any time in the event that Buyer shall fail to perform or observe any term or condition hereof by giving the Buyer ten (10) days written notice of cancellation. Cancellation hereunder shall not prevent PRECIMAT from pursuing any other remedy available to Seller by law or from seeking all such damages to which Seller may be entitled.

**16. COMPLETE AGREEMENT.** This Agreement contains all of the terms and conditions with respect to the sale and purchase of the Specimen and supersedes any of previous date. No modification shall be effected by the acknowledgment or acceptance of Request forms stipulating different conditions. The Customer's delivery of the Specimen if these Terms and Conditions are not accepted in writing by the Customer shall be equivalent to such written acceptance hereof. The Customer understands and agrees that no representation or promise has been made by PRECIMAT or any of its agents, representatives or employees concerning the subject matter of this Agreement, except as expressly set forth in this Agreement, and that all agreements and understandings between the parties concerning the subject matter of this Agreement are embodied and expressed in this Agreement. This Agreement shall supersede all prior or contemporaneous agreements and understandings among the Customer and PRECIMAT, whether written or oral, express or implied, with respect to the Manufacturing or Testing.

**17. ASSIGNMENT, SUCCESSORS AND ASSIGNS.** The Customer shall not assign, sell, transfer, delegate, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights or obligations under this Agreement. Any such purported assignment, transfer, or delegation shall be null and void.

**18. GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

**19. SEVERABILITY.** If any provision of this Agreement, or its application to any person, place, or circumstance, is held by a court of competent jurisdiction to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

**20. ENFORCEMENT OR INTERPRETATION.** In any legal action or proceeding brought to enforce or interpret the terms of this Agreement or otherwise with respect to the rights and obligations of the parties involving or arising out of the Request or Testing to the Customer hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the non-prevailing party.

**21. AMENDMENTS; WAIVERS.** This Agreement may not be amended except by an instrument in writing, signed by each of the parties. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement by PRECIMAT shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof by PRECIMAT or the exercise of any other right, remedy, or power provided herein or by law or in equity.