

# *Lab/Cor, Inc.*

*A Professional Service Corporation in the Northwest*

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## **LAB/COR, INC. TERMS AND CONDITIONS**

In consideration of the mutual promises contained on the reverse of this Lab/Cor, Inc. Invoice ("Invoice"), the receipt, adequacy and sufficiency is hereby acknowledged by the parties, the parties further agree as follows:

1. **SERVICES.** Lab/Cor, Inc. ("L/C") shall provide to client, for its sole benefit and exclusive use, analytical services set forth on the reverse of this Invoice. The parties agree that under no circumstances shall L/C be responsible for any liability, loss, or damage, arising out of or relating to the use of said analytical services for anyone other than Client of L/C. This Invoice is not assignable by Client. The parties agree that the services performed under this Invoice are of a commercial nature, and are not publicly available unless requested by Client.
2. **USE OF REPORTS.** Reports, recommendations and other materials, including electronically stored information arising out of or resulting from L/C's efforts are intended solely for the use of the Client. Any reuse by Client, or another, for any purpose outside of this Invoice, or any failure to follow L/C's recommendation shall be at the user's sole risk. The Client shall furnish such reports, data, studies, plans, specifications, documents, and other material and information deemed necessary by L/C for proper performance of L/C's services. Client warrants that all such material provided shall be true and accurate to the best of Client's knowledge. L/C shall justifiably rely on the accuracy and truth of the Client provided documentation in performing its services under this Invoice. However, L/C assumes no responsibility for the truth or accuracy of the Client provided materials.
3. **LICENSES.** All such Client provided documentation shall remain the property of Client. Client hereby grants L/C a non-exclusive license for the use of said material solely for L/C's use under this Invoice. All material generated and/or by L/C (including without limitation, field notes, calculations, estimates, and final reports) shall remain L/C's property.
4. **RECISSION FEE.** Client understands that L/C takes immediate steps upon execution of this Invoice to prepare and begin performing the services requested. In the event of a cancellation of this Invoice by Client after any order is placed or work is begun, Client shall pay to L/C all costs and expenses incurred to that date, including, but not limited to, the cost of any goods ordered, freight charges, the time spent for services, any commissions paid, and L/C's anticipated gross profit. In the event of a cancellation of this Invoice for any reason whatsoever, after Client's services have been rendered by L/C, Client shall pay to L/C the full amount of the Invoice.
5. **LIMITATION OF LIABILITY.** In the event of any Claims against L/C ("Claims" means any and all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorney's fees, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises, at law or in equity or otherwise, whether direct or indirect, known or unknown, which the releasing parties now own or hold, or have at any time heretofore owned or held, now or hereafter acquired, against L/C, its owners, employees, contractors, agents, and/or assigns, in any capacity, which (i) are related in any way, directly or indirectly, to work performed by L/C, and/or (ii) are or may be based upon any facts, acts, omissions, conduct, purchases, representations, contracts, agreements, claims, events, causes or matters of any kind occurring or existing at any time on or before the date of this Invoice), Client's damages shall be limited to the total amount billed by L/C to date or \$25,000 whichever is less. In no event shall L/C be liable for any incidental or consequential damages. Client agrees that L/C shall not be liable for any Claims in excess of L/C's insurance limits (no less than \$25,000 per occurrence).
6. **PAYMENT.** Time is of the essence of this Invoice. Notwithstanding the foregoing, upon failure of Client to make any payment or payments due under this Invoice (terms net 30 days), L/C shall be entitled to stop the performance of any/or all of its services until the amount owed is paid in full, recover the materials furnished or any part of them, file a mechanic's lien and/or retain any payments received as liquidated damages, in addition to any other remedy at law or equity to recover the full amount of the purchase price. In the event of default in any payment by Client, said Invoice shall incur a 12 percent per annum interest rate on the full amount of the Invoice from the date of Invoice. A failure to make any payment for a period of greater than thirty five (50) days shall be deemed a breach of this Invoice. Client agrees to pay to L/C all costs advanced or incurred by L/C in providing its services. Costs advanced,

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include but are not limited to hourly expenses for Scanning Electron Microscope services, technician time, film and sales tax on all costs.

7. NO WARRANTIES. L/C MAKES NO EXPRESS WARRANTIES HEREIN. ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES ARE EXCLUDED.
8. HOLD HARMLESS. If the Client uses the services in a manner other than that recommended by L/C, Client does hereby release, hold harmless and discharge L/C from any and all liability for loss or damage arising out of, or in connection with, Claims arising out of or relating to the services performed by L/C. Once Client has accepted the services performed, the parties agree that L/C shall not assume any liability or responsibility for the services performed, or the quality of the materials. Client does hereby release, discharge, indemnify and hold harmless L/C from any and all liability for any Claims as defined above arising out of or in connection with the order once accepted. The making and acceptance of final payment shall constitute a waiver of any and all claims by the Client against L/C.
9. EQUIPMENT Use. L/C does not assume control over nor responsibility for any equipment during L/C's lease of said equipment, the person leasing said property to L/C, or other persons not in the employ of L/C. Client shall be responsible for the safe operation of any equipment used by Client, while Client is operating, or in custody of, said equipment. Client shall be responsible for returning said equipment to L/C in the same condition as when presented to Client. If any piece of equipment or part thereof breaks or fails during Client's use, operation or time of possession of said equipment, Client shall be responsible for any and all replacement or repair costs to bring equipment to its original condition before client use or possession. L/C shall not supervise or be responsible for the site safety. L/C shall not be responsible for other parties not in L/C's employ.
10. FORCE MAJEURE. L/C shall not be responsible for errors, delays, failures, or omissions, under this Invoice due to any cause beyond its control, including but not limited to, subcontractor acts and/or omissions, labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays of carriers, interference by civil or military authorities, acts of God, perils of the sea and the like. L/C shall not be responsible for any incidental or consequential damages incurred by Client as the result of any type of error or delay.
11. ENTIRE AGREEMENT; SEVERABILITY. This Invoice contains the entire understanding of the parties hereto with respect to the subject matter hereof and the transactions contemplated hereby. This Invoice supersedes all prior and concurrent oral statements and representations and is the final and integrated intent of the parties. This Invoice may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought. This Invoice shall be interpreted and enforced in accordance with the laws of the State of Washington. If there is a determination by a court of competent jurisdiction that one or more of the Invoice clauses are found to unenforceable, illegal, or contrary to public policy, the Invoice will remain in full force and effect except for the clauses found to be unenforceable.
12. WAIVER, WASHINGTON LAW; ATTORNEY'S FEES. No act, omission or delay by L/C in enforcing any right under this Invoice shall waive any right under or breach of this Invoice by the Client. L/C's waiver of a breach of any provision of this Invoice with respect to the Client shall not operate or become construed as a waiver of any subsequent breach by the Client. This agreement shall be governed by the laws of the State of Washington. Any and all claims by Client against L/C shall be brought within two (2) years from the date of the occurrence or the date by which L/C completed its services, whichever is earlier. For any controversy or claim arising out of, or relating to this Invoice, or its breach, all parties shall submit and not object to jurisdiction and venue in the King County Superior Court, State of Washington, Seattle Division. The parties agree to waive the rule of construction which construes the Invoice against the drafter thereof. Should it be necessary for L/C to contact an attorney to enforce the terms of this Invoice, L/C shall be entitled to attorneys' fees and costs (including the fees and expenses of expert and fact witnesses) reasonably incurred or made by the L/C in its collection efforts prior to suit, preparing for suit, during suit, on appeal, on petition for review, and in enforcing any judgment or award, from the party or parties who do not substantially prevail. Client shall also be responsible for any of L/C's costs in sending Client to collection.

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13. SURVIVAL OF TERMS. The terms contained herein shall take precedence over any inconsistent or contradictory terms contained in any proposal, contract, purchase order or other document regarding L/C's services. All terms and conditions of this Invoice shall survive the completion of L/C's services to Client and/or any termination of the parties relationship.
14. GUARANTY. The person signing the reverse of these Terms and Conditions in a representative capacity, also acknowledges that he/she is signing as a guarantor, and not a surety, of any and all amounts owed as a result of the work performed by Lab/Cor as requested on the reverse.

By signing below, the Client acknowledges that it has received and read a copy of the terms and conditions agrees to abide by these terms and conditions.

\_\_\_\_\_  
Laboratory Director/Principal  
Lab/Cor, Inc.

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)