

CONDITIONS OF TESTING

Bureau Veritas Consumer Products Services, Inc. ("BVCPS"), a Massachusetts corporation, or a subsidiary or affiliate of it, as identified in a written report (the "Test Report") issued by BVCPS or such subsidiary or affiliate (BVCPS or such subsidiary or affiliate being referred to herein as the "Company"), will conduct at the request of the Submitter ("Client"), the required tests specified on the reverse side of this Test Request Form in accordance with, and subject to, the following terms and conditions:

1. All orders for tests are subject to acceptance by the Company, and no order will constitute a binding commitment of the Company unless and until such order is accepted by it, as evidenced by the issuance of a written report ("Test Report") by the Company. The Test Report is issued solely by the Company, is intended for the exclusive use of Client and shall not be published, used for advertising purposes, copied or replicated for distribution to any other person or entity or otherwise publicly disclosed without the prior written consent of the Company. The Company shall not be liable for any loss or damage whatsoever resulting from the failure of the Company to provide its services within any time period for completion estimated by the Company. If Client anticipates using the Test Report in any legal proceeding, arbitration, dispute resolution forum or other proceeding, it shall so notify the Company prior to submitting the sample for testing.
2. The names, service marks, trademarks and copyrights of the Company and its affiliates, including the names "BUREAU VERITAS," "BUREAU VERITAS CONSUMER PRODUCTS SERVICES," "VERITAS" and "BVCPS", (collectively, the "Marks") are and shall remain the sole property of the Company or its affiliates and shall not be used by Client except solely to the extent that Client obtains the prior written approval of the Company and then only in the manner prescribed by the Company. Client shall not contest the validity of the Marks or take any action that might impair the value or goodwill associated with the Marks or the image or reputation of the Company or its affiliates.
3. The Test Report will set forth the findings of the Company solely with respect to the test samples identified therein and, unless specifically and expressly indicated in the Test Report, the results set forth in such Test Report will not be indicative or representative of the quality or characteristics of the lot from which a test sample will be taken. The Test Report will reflect the findings of the Company at the time of testing only, and the Company shall have no obligation to update the Test Report after its issuance. The Test Report will set forth the results of the tests performed by the Company based upon the written information provided to the Company as set forth in, or attached to, this Test Request Form. The Test Report will represent the entire understanding of the parties hereto with respect to the subject matter of the Test Report and no modification, variance, extrapolation or conclusion with respect thereto shall be permitted without the prior written consent of the Company.
4. The Company may, in its sole discretion, destroy samples which have been furnished to the Company for testing and which have not been destroyed in the course of testing. The Company may delegate the performance of all or a portion of the services contemplated hereunder to an affiliate, agent or subcontractor of the Company, and Client consents to such delegation.
5. Unless a shorter period is provided for on the reverse side of this Test Request Form, payment in full shall be due 30 days after the date of invoice. Client shall pay interest on any overdue amount from the due date until paid at an interest rate of 1.5% per month or, if less, the maximum rate permitted by law. The Company reserves the right, at any time and from time to time, to revoke any credit extended to Client. Client shall reimburse the Company for any costs it incurs in collecting past due amounts, including court costs and fees and expenses of attorneys and collection agencies. The Test Report may not be used or relied upon by Client if and for so long as Client fails to pay when due any invoice issued by the Company or any affiliate of it to Client or any affiliate or subsidiary of Client together with interest and penalties, if any, accrued thereon.
6. The Company may, from time to time, permit Client to access this Test Request Form, the Test Report and other communications by means of e-mail transmissions with the Company. Client acknowledges that any such transmission will not be encrypted and, hence, will not be confidential, that such transmissions may be read and intercepted by third parties and that the electronic version of a Test Request Form, Test Report or other communication could be modified inadvertently. The Company disclaims any and all responsibility or liability arising out of or in connection with e-mail transmissions of such information.
7. The Company represents and warrants solely to Client that the Test Report will be free of any material error or omission caused by the negligence of the Company. If Client desires to assert a claim for breach of the foregoing warranty, it must submit a claim to the Company within 60 days after the date of issuance of the Test Report to Client in a writing that sets forth with particularity the basis for such claim. If the Company determines that the claim is timely and that a breach of the foregoing warranty has occurred, then the Company, at its option, may either (a) re-perform the deficient test, without charge to Client, or (b) refund to Client, without interest, the fee paid to the Company for such Test Report. Client waives any and all claims for breach of the foregoing warranty, including, without limitation, claims that the Test Report is inaccurate, incomplete or misleading or that additional or different testing is required, unless and then only to the extent that Client submits a written claim to the Company within such 60-day period.
8. The Company shall, to the extent of the limitation of liability set forth in Section 9, indemnify Client against third party claims asserting a loss arising exclusively from the negligence of the Company, but only if Client (a) notifies the Company of the assertion of such claim immediately upon its being notified and (b) provides to the Company the option to assume the defense of such claim or participate in such defense.
9. EXCEPT TO THE EXTENT OF THE LIMITED WARRANTY SET FORTH IN SECTION 7 OR AS MAY OTHERWISE BE AGREED TO IN WRITING BY THE COMPANY AND NOTWITHSTANDING ANY PROVISION TO THE CONTRARY CONTAINED HEREIN OR IN ANY TEST REPORT, NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, IS MADE. IN NO EVENT WHATSOEVER SHALL THE COMPANY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE SERVICES PROVIDED BY THE COMPANY HEREUNDER, INCLUDING WITHOUT LIMITATION LOSS OF OR DAMAGE TO PROPERTY, LOSS OF INCOME, PROFIT OR USE, OR CLAIMS OR DEMANDS MADE AGAINST CLIENT OR ANY OTHER PERSON BY ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THE SERVICES PROVIDED BY THE COMPANY HEREUNDER. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY CONTAINED HEREIN, UNDER NO CIRCUMSTANCES WHATSOEVER SHALL THE LIABILITY OF THE COMPANY IN RESPECT OF ANY CLAIM FOR LOSS, DAMAGE OR EXPENSE, OF WHATEVER NATURE OR MAGNITUDE, AND HOWEVER ARISING, EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF THE FEES PAID TO THE COMPANY FOR THE SPECIFIC SERVICES WHICH GAVE RISE TO SUCH CLAIM.
10. The Company shall not be liable for any loss or damage resulting from any delay or failure in performance of its obligations hereunder resulting directly or indirectly from any cause that is beyond the control of the Company, including, but not limited to, fire, flood, tornado, hurricane or other acts of God, war, casualty, accident, embargo, governmental actions, orders of courts or tribunals, non-performance of third parties, strike, lock-out, or other difficulties with employees, inability timely to obtain labor, material, equipment or services through the Company's usual sources or delays of carriers. If any such event occurs, the Company may immediately cancel or suspend its performance hereunder without incurring any liability whatsoever to Client.
11. These Conditions of Testing shall be governed by, and construed in accordance with, the local laws of the country where the Company performs the tests or, in the case of tests performed in the United States of America, the laws of the Commonwealth of Massachusetts. Client waives the right to interpose any counterclaim or setoffs of any nature in any litigation arising hereunder. Any proceeding related to the subject matter hereof shall be brought, if at all, in the courts of the country where the Company performs the tests or, in the case of tests performed in the United States of America, in the courts of the Commonwealth of Massachusetts.
12. These Conditions of Testing are available at the website <http://www.cps.bureauveritas.com>. If there is a discrepancy between the terms and conditions set forth in these Conditions of Testing and the terms and conditions set forth (a) at such website; (b) in the Test Report, (c) on the reverse side of this Test Request Form or (d) in any other writing other than a master agreement which expressly (i) provides that its terms and conditions shall take precedence over these Conditions of Testing and (ii) cross-references this Section 12 or the equivalent section at such website, the Conditions of Testing set forth at such website shall govern and any inconsistent provision of this Test Request Form or other writing, as applicable, shall be disregarded. If no Conditions of Testing are set forth at such website, then the Conditions of Testing set forth herein shall govern.

Locations



The Americas

Canada
Dominican Republic
Guatemala
Mexico
United States

Europe

France
Germany
Italy
Turkey
United Kingdom

Asia

Australia
Bangladesh
China
Hong Kong
India
Indonesia
Japan
Korea
Philippines
Singapore
Sri Lanka
Taiwan
Thailand

Americas

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*L – Laboratory S – Sales Office
Please see additional pages for more
locations*

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