

GENERAL TERMS and CONDITIONS

Article 1 - Services, ENERGY ASSURANCE, LLC ("Energy Assurance" or "EA") will:

- 1.1 Act for Client in a professional manner, using the degree of care and skill ordinarily exercised by and consistent with the standards of **the profession.**
- 1.2 Provide only those services that lie within the technical and professional areas of expertise of ENERGY ASSURANCE and which ENERGY ASSURANCE is adequately staffed and equipped to perform.
- 1.3 Perform all technical services in substantial accordance with the generally accepted laboratory testing principles and practices.
- 1.4 Promptly submit formal reports of technical services performed indicating, where applicable, compliance with specification or other contract documents. Such reports shall be complete and factual, citing where appropriate the technical services performed, methods employed, and values obtained
- 1.5 Employ instrumentation which has been calibrated within a period not exceeding the manufacturer's recommendation by devices of accuracy traceable to the National Institute of Standards and Technology of the United States Department of Commerce.
- 1.6 Consider all reports to be the confidential property of the Client, and distribute reports only to those persons, organizations or agencies designated by the Client or his authorized representative.

Article 2 - Client's Responsibilities, Client or his authorized representative will:

- 2.1 Provide ENERGY ASSURANCE with all product related information necessary for the proper performance of technical services.
- 2.2 Designate a person to act as Client's authorized agent with respect to ENERGY ASSURANCE'S services to be performed under this Agreement: such person or firm is to have complete authority to transmit instructions, receive information and data, interpret and define Client's policies and decisions with respect to the project and to order, at Client's expense, such technical services as may be required.
- 2.3 Designate a person who is authorized agent to receive copies of ENERGY ASSURANCE's test reports.
- 2.4 Secure and deliver to ENERGY ASSURANCE, without cost to ENERGY ASSURANCE, representative samples of product for technical evaluation, together with any relevant data.
- 2.5 Furnish such labor and equipment necessary to handle sample product at ENERGY ASSURANCE and to facilitate the technical evaluation, if required.

Article 3 - General Conditions

- 3.1 This agreement may be terminated by either party with ten days written notice or by mutual agreement. If this agreement is terminated by either party, ENERGY ASSURANCE shall be paid in full for all services performed through the termination date, and the Client shall be provided with a complete report of the results of evaluation conducted prior to the termination.
- 3.2 The only warranty made by ENERGY ASSURANCE in connection with its service performed hereunder is that it will use that degree of care and skill as set forth in Article 1.1 and 1.3 above. No other warranty, expressed or implied, of merchantability or fitness for particular purpose is made or intended for services or products provided hereunder.

- 3.3 Where ENERGY ASSURANCE indicates that additional testing is advisable to obtain more valid or useful data, and where such testing has not been authorized in writing, Client agrees to view such test reports as inconclusive and preliminary.
- 3.4 ENERGY ASSURANCE shall supply technical service and prepare a report based solely on the product sample submitted to ENERGY ASSURANCE by the Client.
- 3.5 ENERGY ASSURANCE agrees to exercise ordinary care in receiving, preserving and shipping any sample to be tested, but assumes no responsibility for damages, either direct or consequential, which arise or are alleged to arise from loss, damage or destruction of the sample due to the act of examination, modification, testing, technical analysis, or circumstances beyond ENERGY ASSURANCE's control.
- 3.6 The Client recognizes that test samples of products subject to ENERGY ASSURANCE's review and test procedures may be damaged or destroyed.
- 3.7 The Client recognizes that generally accepted error variances apply and agrees to consider such error variances in its use of test data.
- 3.8 It is agreed between ENERGY ASSURANCE and Client that no distribution of any test, reports, etc. shall be made to any third party without the prior written consent of authorized agents for both parties.

Article 4 - Indemnity

- 4.1 Client shall indemnify and hold harmless ENERGY ASSURANCE, its officers, directors, employees and/or agents from any claims of any kind whatsoever, including attorney's fees and related expenses, in any manner caused by, arising from, incident to, or growing out of the Services to be performed under this Agreement including, but not limited to, patent and copyright infringement, contractual claims, use or misuse of the information provided by EA, other than those claims caused solely by EA'S gross negligence or willful misconduct.

Article 5 - Payment

- 5.1 Client will pay ENERGY ASSURANCE for services and expenses. ENERGY ASSURANCE invoices will be presented at the completion of its work and will be paid within thirty (30) days of receipt by Client or his authorized representative or as otherwise agreed between Client and ENERGY ASSURANCE and stated in the Quote.
- 5.2 ENERGY ASSURANCE shall be paid in full as described in Article 5.1 and in addition, shall be paid in full for any services authorized orally or in writing by an employee or agent of the Client pursuant to Article 2.2.

Article 6 - Extent of Agreement

- 6.1 The agreement, including attached Quote, these Terms and Conditions and the Schedules attached hereto, represent the entire agreement between Client and ENERGY ASSURANCE and supersedes all prior negotiations, representations or agreements, written or oral. The Agreement may be amended only in accordance with this Agreement or by written instrument signed by the Client and ENERGY ASSURANCE.