

Terms of Service

PhyloTech Inc.

The Terms and Conditions contained herein ("Terms and Conditions") shall govern all orders for purchases of products and/or services set forth in the accompanying Project Quotation ("Services") to be provided by PhyloTech, Inc. ("PHYLOTECH") to the customer identified on the Project Quotation ("CLIENT"). CLIENT's acceptance of any Quotation is subject to and expressly limited by these Terms and Conditions, and acceptance of Services shall be deemed agreement to these Terms and Conditions. These Terms and Conditions cannot be waived, modified or supplemented without the prior, express written consent of the duly named Officer, President of PHYLOTECH.

1. **Services.** PHYLOTECH will use reasonable commercial efforts to perform the Services described in the Quotation and subject to these Terms and Conditions.

PHYLOTECH will make and keep systematic records of Services performed under the Project noted in the Quotation. PHYLOTECH will provide access to such records for a period of 2 years after a Project has been completed at no additional charge. Thereafter, if CLIENT requests access, PHYLOTECH will make reasonable efforts to retrieve records and a retrieval fee will be imposed.

PHYLOTECH shall provide reasonable and limited general support as requested by CLIENT for limited technical consultation by email and/or telephone. Additional services may be provided on a fee per hour basis in accordance with the information provided by CLIENT on the PHYLOTECH Project Information Form and PHYLOTECH Consulting Services Agreement.

2. **CLIENT Representations and Warranties.** CLIENT represents and warrants that biological materials or other materials sent to PHYLOTECH ("Specimens") or its authorized agents are or will be properly collected, labeled, handled, stored, packaged and shipped. CLIENT is responsible for notifying PHYLOTECH of any special handling requests. All Specimens must be accompanied by a Specimen Submission Form ("SSF"), which confirms the services to be provided and provides a detailed inventory of the Specimens submitted for processing. Risk of loss of Materials shall pass to PHYLOTECH upon receipt of Specimens and Materials and determination that Specimens and Materials are in acceptable condition. If at any time PHYLOTECH becomes aware of any Specimens or Materials that do not meet quality requirements set forth in the Project or fail any portion of the laboratory protocol, PHYLOTECH shall promptly notify the CLIENT's designated manager via electronic mail. CLIENT shall then elect to (a) replace specimens and/or Materials that do not meet acceptable criteria, (b) continue with the contracted Service without replacing such Specimens/Materials, in which case the Project will be modified to reflect the change in number of Specimens and/or Materials. If CLIENT elects to proceed with the contracted Services without replacing the Specimens, CLIENT shall pay PHYLOTECH in accordance with the Project Quotation.

3. **Payments.** CLIENT agrees to pay PHYLOTECH for the Services in accordance with the Project Quotation. Generally, PHYLOTECH will invoice CLIENT upon completion of the Services. For Services that cover a period of more than a month, PHYLOTECH may submit invoices on a monthly basis for the portion of Services performed. PHYLOTECH may invoice CLIENT for arrays or other consumables purchased on behalf of CLIENT upon receipt. CLIENT is responsible for any tax, duty, custom or other fee of any nature, other than taxes on PHYLOTECH's income, imposed on the Services by any federal, state, local or foreign government authority in addition to the price quoted or invoiced. Unless otherwise authorized in writing by PHYLOTECH, invoices are due and payable within thirty (30) days of the date of the invoice. Payment shall be deemed late if not received within such time and shall be subject to interest equal to 1% percent per month (12% per year) or the maximum legal rate, whichever is less, of the amount due. All payments shall be made in U.S. dollars. In the event that any payment is more than thirty (30) days late, PHYLOTECH has the right to suspend performance, including provision of the Services, until all payments are made current.



4. Disclaimer. PHYLOTECH's standard quality assurance tests are intended to minimize errors that may occur during the preparation and processing of Specimens. Specimens that yield data outside PHYLOTECH quality metrics due to circumstances beyond the control of PHYLOTECH are not the responsibility of PHYLOTECH. PHYLOTECH does not guarantee results. CLIENT will be immediately notified if a Specimen does not pass PHYLOTECH's quality metrics and CLIENT will be responsible for advising PHYLOTECH on whether or not processing should continue. CLIENT is not exempt from charges incurred due to failed experiments through no fault of PHYLOTECH. PHYLOTECH will carry out troubleshooting efforts to cure samples as detailed in the Project Quotation, Ancillary Fees. Any Specimen deemed by PHYLOTECH to be insufficient, invalid, or degraded to the point of being unusable may be returned at CLIENT request. PHYLOTECH may elect to charge a fee at its standard rates for expenses related to Specimen preparation, quality testing and shipping fees for each returned Specimen as detailed in the Project Quotation, Ancillary Fees. CLIENT will be responsible for charges incurred in the processing of replacement Specimens. In the event a Specimen is caused to be unusable due to a failure of a third party consumable, PHYLOTECH will make a reasonable effort to obtain a replacement consumable to re-perform the analysis, but in the event that a replacement cannot be obtained or the analysis cannot be re-performed, PHYLOTECH accepts no responsibility for the loss of Specimens or unfinished analysis. In the event of subsequent preparation and testing, PHYLOTECH reserves the right to recover appropriate fees and costs, including the cost of additional Consumables for services provided.

5. Termination. The Services may be terminated by CLIENT upon thirty (30) days written notice to PHYLOTECH if PHYLOTECH materially breaches any of these Terms and Conditions or other PHYLOTECH obligations outlined in the Quotation. Termination shall become effective at the end of the thirty (30) day period unless PHYLOTECH has cured any such breach or default prior to the expiration of such thirty (30) day period. CLIENT remains responsible for the cost of any Services that PHYLOTECH has in process under the Quotation at the time of notification of Termination. The Services may be terminated by PHYLOTECH upon thirty (30) days written notice to CLIENT if CLIENT fails to pay the fees due to PHYLOTECH or breaches any of the Terms and Conditions or other CLIENT obligations outlined in the Quotation. Termination shall become effective at the end of the thirty (30) day period unless CLIENT has cured any such breach or default prior to the expiration of such thirty (30) day period. The Services may be terminated by either party without cause upon ninety (90) days written notice to the other party.

6. Notices. All notices to PHYLOTECH and associated with the Services shall be made by overnight commercial courier, addressed as follows:

PhyloTech, Inc.
1700 Owens Street, Suite 530
San Francisco, CA 94158

7. Assignment. This Agreement may not be assigned by PHYLOTECH without the prior written consent of CLIENT; provided, however, that PHYLOTECH may assign or transfer this agreement to any successor by way of merger, acquisition, or sale of all or substantially all of the PHYLOTECH's stock or assets without the prior written consent of CLIENT.

8. Entire Agreement. The Terms and Conditions, the Quotation or other pertinent documentation attached hereto, represent the entire agreement of the parties. No change or modification of this Agreement shall be effective unless it is in writing and signed by a duly authorized officer of PHYLOTECH and representative of CLIENT. PHYLOTECH will accept CLIENT purchase orders for administrative convenience, but any terms of



purchase orders must reference PHYLOTECH Terms and Conditions, and the Project Quotation. Purchase orders that purport to modify or supplement the terms of this Agreement shall have no effect.

9. Intellectual Property/Ownership. CLIENT represents and warrants that any information, technology, supplies, specifications, designs and materials it supplies to PHYLOTECH will not infringe the intellectual property rights of any third parties. All intellectual property rights in the technology used to perform the Services will at all times remain vested in PHYLOTECH. CLIENT will not provide proprietary information that is unnecessary for the execution of the project by PHYLOTECH Services. Proprietary know-how or other information disclosed by CLIENT to PHYLOTECH in connection with the provision of Services, as well as any deliverables supplied to CLIENT by PHYLOTECH will remain the sole property of CLIENT and will not be disclosed by PHYLOTECH to any third party without CLIENT's prior written consent, except where such disclosure is necessary to properly carry out the provision of the Services in question. CLIENT will not use or disclose to any third party any confidential or proprietary information of PHYLOTECH, including prices and price schedules, without PHYLOTECH's prior written consent, except as expressly authorized in these Terms and Conditions. The following types of information will not be subject to the foregoing provisions: (i) information which is or becomes publicly available; (ii) information which is lawfully obtained by the receiving party from a third party; and (iii) information which is required to be disclosed by a legal or regulatory authority. This paragraph 9 will survive any termination or expiration of the Agreement. CLIENT retains all rights and title in and to CLIENT Specimens. Any and all Specimens supplied to PHYLOTECH that are not utilized in the performance of the Services will be destroyed sixty (60) days after completion of the Services. Upon CLIENT's request, CLIENT Specimens can be returned or stored for future use. Specimens that are returned or stored on CLIENT's behalf will incur fees as outlined in the Quotation or in accordance with PHYLOTECH's standard rates.

10. Safety and Environmental. In carrying out its responsibilities under this Agreement, PHYLOTECH agrees that the Services will be conducted in compliance with all relevant environmental regulations in force at the U.S. Federal, State and local levels.

11. Limited Warranty. Other than as expressly set forth in these Terms and Conditions, PHYLOTECH makes no representations, warranties or guarantees regarding the Deliverables supplied by PHYLOTECH to CLIENT, or the use of, or the results of the use of such Deliverables, or the performance of the Services. PHYLOTECH AND ITS AFFILIATES DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. CLIENT'S EXCLUSIVE REMEDY UNDER PHYLOTECH'S WARRANTY IS, AT PHYLOTECH'S SOLE OPTION, A CREDIT FOR, OR REPERFORMANCE OF, THE SERVICES IN QUESTION. IN NO EVENT WILL PHYLOTECH OR ITS AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR PROPERTY DAMAGE SUSTAINED BY CLIENT FROM THE USE OF, OR INABILITY TO USE, ANY RESULTS, EVEN IF PHYLOTECH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AS TO ANY PHYLOTECH LIABILITY NOT LEGALLY SUBJECT TO THE FOREGOING, PHYLOTECH'S MAXIMUM LIABILITY WILL NOT EXCEED THE AGGREGATE AMOUNT PAID BY CLIENT TO PHYLOTECH FOR THE SERVICES IN QUESTION.

12. Force Majeure. PHYLOTECH will not be liable for delay or non-performance of any of its obligations hereunder or its performance of the Services to the extent that such performance is prevented, prohibited or delayed by any circumstance for reasons beyond its control including, without limitation, strikes, lock-outs or labor disputes, fire, flood, natural disaster, war, blockade, military operations, riot, civil commotion, plant



breakdown, power outage, and computer or other equipment failure, provided that PHYLOTECH completes the contract within a reasonable time after such circumstances are resolved.

13. Agents. No agent, employee or other representative has the right to modify or expand PHYLOTECH's standard warranty applicable to the Services or to make any representations concerning the Services other than those set forth in this Agreement or a written amendment thereto. Any such affirmation, representation or warranty, if made, should not be relied upon by CLIENT and does not form a part of the Quotation or these Terms and Conditions.

14. Miscellaneous. PHYLOTECH is an independent company and nothing in the Terms and Conditions or the Quotation shall be construed to create a partnership, joint venture or employment relationship between the parties. If any provision of the Terms and Conditions shall be determined to be invalid or unenforceable, such determination shall not affect the validity of the other provisions of the Terms and Conditions. Waiver by either party or the failure by either party to claim a breach of any provision of the Terms of Conditions shall not be deemed to constitute a waiver or estoppel with respect to any subsequent breach of any provision of the Terms of Conditions. In the event and to the extent that PHYLOTECH may perform Services on CLIENT's premises, PHYLOTECH agrees to indemnify, defend and hold harmless CLIENT, its officers, agents and employees from any and all liabilities arising out of injury or damage to tangible property as a result of negligence or willful misconduct of PHYLOTECH personnel, including but not limited to reasonable attorney's fees, cost of litigation, and damages awarded against CLIENT. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.