

GENERAL CONDITIONS OF SERVICE

1. General

(a) SAI, L.L.C., a Virginia limited liability company doing business as “Sampling Associates International, L.L.C.”, its affiliates, and/or any of their respective agents (each a “Company”) may perform services for persons or private, public or governmental entities (hereinafter the “Client”) that request or benefit from the services provided by the Company. The services the Company provides are the mechanical and manual sampling of solid mineral fuels, petroleum coke, industrial minerals and raw materials; and the maintenance and repair of the mechanical equipment used to extract such samples.

(b) All offers of services and all resulting service relationship(s) (collectively, the “Service Relationship(s)”) between the Company and the Client shall be solely governed by these general conditions of service (hereinafter the “General Conditions”) unless otherwise agreed to in writing, or except where the General Conditions violate (i) applicable regulations governing services performed on behalf of governments, governmental bodies or any other public entity or (ii) the mandatory provisions of local law. The Client’s rights, liabilities, responsibilities, and remedies of whatsoever nature, including, but not limited to, contract, tort, or otherwise, shall be exclusively those expressly set forth in the General Conditions which shall constitute the complete and exclusive terms and conditions governing the relationship between the Client and the Company. Any instructions directed to the Company by the Client, or its agents of Laboratory of Record (LOR), regarding the Company’s services to the Client shall constitute the Client’s acknowledgement of, and agreement to, the General Conditions, and, furthermore, the Client acknowledges that the General Conditions constitute an enforceable contract between the Client and the Company. The Company hereby objects to, and rejects, any terms proposed in the Client’s instructions, documents, or communications that add to, vary from, or conflict in any way with the General Conditions. Any such proposed terms shall be null and void. Any changes, modifications, amendments to, or waivers of, the General Conditions shall be effective only if reduced to writing and signed by the president of the Company.

(c) Unless the Company receives from the Client prior written instructions to the contrary, no other party shall be entitled to give instructions to the Company, including without limitation, instructions as to the scope of the services or the delivery of reports or certificates resulting therefrom (collectively, the “Reports of Findings”). The Client hereby irrevocably authorizes the Company to deliver the Reports of Findings to a third party where so instructed by the Client. If the Company’s fees are being split between more than one party, the Client authorizes delivery of the Reports of Findings to all parties for whom the Company is working.

2. Provision of Services

(a) The Company represents that it will perform the services using reasonable care and skill and utilizing personnel of required skill, experience and qualifications; and in accordance with the Client’s specific written instructions as confirmed by the Company or, in the absence of such written instructions, in accordance with the terms of any standard order form or standard specification sheet of the Company. Services will be performed in a professional and workmanlike

manner in accordance with generally recognized industry standards, and/or the relevant standards published by the American Society of Testing and Materials (ASTM) or International Organization for Standardization (ISO) and/or such methods as the Company shall consider, in its sole and absolute discretion, appropriate on technical, operational and/or financial grounds.

(b) Information set out by the Company in the Reports of Findings is derived from the results of sampling or inspection or carried out in accordance with the instructions of the Client, and/or the Company's assessment of such results based upon applicable technical standards, trade custom(s) or practice(s), or other circumstances which, in the Company's professional opinion, should be taken into account.

(c) All Reports of Findings, based upon and following the sample collection or inspection, contain the Company's opinion as to those samples only and do not express any opinion(s) as to the entire lot from which the samples were drawn.

(d) If the requirements of the Client specify the sampling, inspection or provision of services by any party other than the Company, the Company expressly disclaims any responsibility for any such sampling, inspection, testing, or services provided by any party other than the Company.

(e) Reports of Findings issued by the Company will reflect the facts as recorded at the time of Company's provision of services only and within the limits of the instructions received or, in the absence of such instructions, within the limits of the alternative parameters applicable as provided for in Section 2(a), above. The Company expressly disclaims any obligation to refer to, or report upon, any facts or circumstances which are outside the specific instructions received or alternative parameters applied.

(f) The Company acts solely as an independent contractor in the performance of the services. The Client acknowledges that the Company may, upon notice to the Client, delegate the performance of all or part of the services to an agent or subcontractor, and the Client authorizes Company to disclose all information necessary for such performance to the agent or subcontractor. The Client agrees that all such delegated or subcontracted Services shall be governed by these General Conditions.

(g) Should the Company receive documents reflecting engagements contracted between the Client and third parties or third-party documents, such as copies of sale contracts, letters of credit, bills of lading, etc., such documents are considered to be for information only, and do not extend or restrict the scope of services or obligations accepted by the Company.

(h) Client acknowledges that the Company, by providing the services, neither takes the place of the Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of the Client to any third party or that of any third party to the Client.

(i) Unless specific arrangements are made in advance, all samples shall be retained for a maximum of two (2) months (or such other shorter time period as the nature of the sample permits) and then disposed of at the Company's sole and absolute discretion, after which time the Company shall cease to have any responsibility for such samples.

(j) The Company shall be entitled to use any and all Client information, including, but not limited to, records, instructions, samples or other related documents, within the Company's control, for the purpose of offering any necessary defense against any legal or administrative controversy that a Client or any other third-party may be a party to when the Client or third party relies on or uses the Company's work product or report as part of their claim.

(k) To the maximum extent permitted by law, the Company negates and disclaims all other express and implied warranties whatsoever, including, without limitation, all implied warranties of merchantability, condition, durability, design, capacity, operability, workmanlike performance, results, or fitness for a particular purpose.

3. Obligations of Client

The Client shall:

(a) ensure that reasonably sufficient information, instructions and documents are given in due time (and, in any event not later than 48 hours prior to the desired services) to enable the required services to be performed;

(b) procure all necessary access for the Company's representatives to the premises where the services are to be performed and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the services;

(c) inform the Company in advance of any unusual hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons; and:

(d) fully exercise all its rights and discharge all its liabilities under any relevant sales or other contract with a third party and at law.

4. Fees and Payment

(a) Fees not established between the Company and Client at the time the order is placed shall be at the Company's standard rates (which are subject to change) and all applicable fees, taxes, and surcharges (if any) shall be to the account of, and payable by, the Client.

(b) Unless a different period is established in the invoice or agreed to in advance of the provision of services by the Company, the Client will promptly pay all fees due to the Company

not later than thirty (30) days from the relevant invoice date or within such other period as may be established by the Company in the invoice (the “Due Date”). In the event payments are made by wire transfer, the Client is also responsible for fees incurred or assessed by the Client’s bank or other wire transferring entity. In the event the Client were to fail to make timely payments, interest on any unpaid balances shall accrue at a rate of one-point five percent (1.5%) per month (or such other rate as may be established in the invoice) from the Due Date up to and including the date payment is actually received.

(e) The Client shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, counter-claim or set off which it may allege against the Company.

(d) The Company may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.

(e) The Client shall pay all of the Company’s collection costs, including reasonable attorney’s fees and all related costs.

(f) The Company reserves the right to withhold future reports or collected samples in the case where the Client has not paid its invoices in accordance with these General Conditions, or other agreement. Company will provide a minimum of three (3) business days notice in writing of its intent to exercise this right in order to allow Client to make any necessary arrangements to avoid its implementation.

(f) In the event any unforeseen problems or expenses arise in the course of carrying out the services, the Company shall endeavor to inform the Client of such problems or expenses as quickly as is reasonably possible, and the Company shall be entitled to charge additional fees to cover extra time and costs necessarily incurred to complete the services.

(g) If the Company is unable to perform all or part of the services for any cause whatsoever outside the Company’s control, including failure by the Client to comply with any of its obligations provided for in Section 3, above, the Company shall nevertheless be entitled to payment of:

1. the amount of all non-refundable expenses incurred by the Company; and
2. a proportion of the agreed fee equal to the proportion of the services actually carried out.

5. Suspension or Termination of Services

(a) The Company shall be entitled to immediately and without liability either suspend or terminate provision of the services in the event of:

1. failure by the Client to comply with any of its obligations hereunder and such failure is not remedied within ten business (10) days of Company’s providing written notice of such failure to the Client; or

2. any suspension of payment, bankruptcy, insolvency, receivership or cessation of business by the Client.

(b) In the event of termination by the Company, the Client shall be responsible to the Company for immediate payment of all the Company's outstanding invoices plus interest, if any. In addition to any payment owed for services already invoiced, the Client shall also be responsible to the Company for all services performed by the Company for which an invoice has not yet been issued.

6. Liability and Indemnification

(a) Limitation of Liability:

1. The Company is neither an insurer nor a guarantor and disclaims all liability in such capacities. Any Client seeking greater protection from loss or damage than is provided for in the General Conditions should obtain appropriate insurance at the Client's sole expense and discretion.
2. Reports of Findings are issued on the basis of information, documents and/or samples provided by, or on behalf of, the Client and solely for the benefit of the Client who is solely responsible for taking whatsoever actions it sees fit on the basis of such Reports of Findings. Neither the Company nor any of its officers, employees, agents or subcontractors shall be liable to the Client or any third party for any actions or omissions taken by the Client on the basis of and in response to such Reports of Findings nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Company.
3. The Company shall not be liable for any delayed, partial or total non-performance of the services arising directly or indirectly from any event outside the Company's control including failure by the Client to timely comply with any of its obligations hereunder.
4. The liability of the Company, if any, in respect of any claim for commercial loss, damage or expense arising out of, or related in any way, to the services provided by the Company to Client shall under no circumstances exceed a total aggregate sum equal to ten (10) times the amount of the fee paid by Client in respect of the specific service which gives rise to such claim or US \$40,000 (or its equivalent in local currency), whichever is lesser.
5. Neither party shall be liable for any indirect, punitive, special, or consequential damages including, without limitation, and solely by way of example, loss of profits, loss of business, delay, loss of opportunity, loss of goodwill, cancellation of future or existing contracts, storage charges, business charges, demurrage charges, business interruption, and cost of product recall.
6. The Company shall further have no liability for any loss, damage, or expense arising from the claims of any third party (including, without limitation, product

liability claims) that may be incurred by the Client. The Company shall have no liability for litigation expenses or other fees, including without limitation, attorney's fees, court costs, and/or pre-judgment interest, post-judgment interest, or any other expenses or costs incurred by the Client or any other party in litigation against or involving the Company, even if the Client is the prevailing party.

7. In the event of any claim, the Client must give written notice to the Company within thirty (30) days of discovery of the facts alleged to justify such claim and, in any case, the Company shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought, or arbitration is commenced within one (1) year from:
 - i. the date of performance by the Company of the service which gives rise to the claim; or
 - ii. the date when the service should have been completed in the event of any alleged non-performance.

(b) Indemnification: Client shall indemnify, defend, and hold harmless the Company, its parent and/or affiliated companies, and their respective officers, directors, employees, contractors, subcontractors, vendors, invitees, licensees and agents, except any of the foregoing which are the Client, (hereinafter, collectively, the "Company Group"), from and against any and all claims, demands, causes of action, suits, liabilities and costs of whatever nature asserted against the Company Group for the acts or omissions of any of one or more of the Company Group, whether or not such acts or omissions are alleged to be negligent, and which arise out of or in connection with the Service Relationship(s) or the performance of services by the Company (as well as any such expenses incurred by the Company in enforcing these General Conditions). The Client expressly agrees that its defense obligation in favor of the Company includes responsibility for the Company's attorneys' fees, court costs, expert witness fees, and investigative expenses. The parties intend for the Client's indemnity obligations to apply in all instances, to the fullest extent of the applicable law including, without limitation, personal injury and death claims, contamination claims, third party claims, fines or penalty assessments of any nature, whether or not caused or contributed to by the sole, concurrent, joint, comparative, active or passive negligence or fault of the Company Group or any member thereof.

(c) Insurance: At all times while these General Conditions remain in force, the Client shall maintain sufficient and adequate insurance coverage, including general liability insurance (CGL), Worker's Compensation, Employer's Liability, Comprehensive Automobile Liability Insurance, to comply with all applicable laws and to respond for any losses arising out of or connected in any way with the Service Relationship(s) and the Company shall be deemed to be an additional insured under any and all such policies. The limit of such insurance shall not be less than US \$1M per occurrence. All deductibles under such insurance policies of the Client shall be for the account of the Client.

7. Miscellaneous

(a) If any one or more provisions of these General Conditions were to be found or determined to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(b) During the course of providing the services and for a period of one (1) year after the Company last provides services to the Client, the Client shall not directly or indirectly entice, encourage, recruit (directly or indirectly) or make any offer to any of the Company's employees to leave their employment with the Company.

(c) Each of the Parties agrees that use of the other party's business name or registered marks for advertising purposes is not permitted without the other Party's prior written authorization.

(d) Each of the parties agrees that each such party shall not disclose, divulge or use for its own benefit or the benefit of any person any Confidential Information received from the other party without the prior written consent of such other party, which consent may be given or withheld in sole and absolute discretion of such other party. "Confidential Information" means customer lists, supplier information, any trade secret or confidential information, or any other data of or pertaining to or concerning the Company or Client, as the case may be, or any affiliate of the Company or Client, their respective businesses or financial affairs, or their products and services. Confidential Information does not include any information that (1) is a matter of public knowledge, has become ascertainable or obtainable from public or published information, or has otherwise become generally known to the public or known in the industry other than as a result of a violation of this Agreement, (2) was independently developed by such party, or (3) is required to be disclosed by law.

(e) The Company shall not be responsible to the Client for any delay, cost, damage or failure resulting from Acts of God, action of the elements, warlike action, insurrection, revolution or civil strife, piracy, civil war or hostile action, strikes, acts of public enemies, application of federal or state laws, or rules and regulations of any governmental authorities having jurisdiction in the premises; acute and unusual labor, material or equipment shortages, or any other causes beyond the control of either party.

(f) Should the Company or any member of the Company Group be called to testify (whether at a trial, deposition, administrative proceeding, or other use), participate in discovery, or otherwise assist in any dispute between the Client and any third party with respect to the Company's work or services, and whether or not any member of the Company Group have been subpoenaed to testify or assist, the Client shall pay the Company's then current applicable rates, charges and other fees for such services.

8. Governing Law, Jurisdiction and Dispute Resolution

(a) The parties shall attempt in good faith to resolve any dispute arising out between them promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of

business. Within fifteen (15) days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within thirty (30) days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place.

(b) Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of executives described above ("First Meeting"). Such closure shall not preclude continuing or later negotiations, if desired.

(c) All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

(d) At no time prior to the First Meeting shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by the Rules of Arbitration of the International Chamber of Commerce or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Section 8(a).

(e) All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Sections 8(a) and (b) are pending and for fifteen (15) calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

(f) Except for the Company's right to bring a collection suit pursuant to Section 4(d) above, all disputes arising out of or in connection with the Service Relationship(s) hereunder shall be governed by the substantive laws of the Commonwealth of Virginia, exclusive of any rules with respect to conflicts of laws, and be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the such rules, each party to bear its own costs and attorney's fees, except as provided elsewhere in these General Conditions. All arbitrators shall have operational experience in the sampling, inspection, and testing of minerals, or shall be a member of The Minerals, Metals & Materials Society (TMS), or shall be a member of ASTM International (American Society for Testing and Materials). Any arbitration shall take place in Hampton, Virginia.

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