1. Interpretation

1.1 "Agreement" means the relevant agreement with the Customer which shall consist of a Quotation accepted by the Customer in accordance with clause 2.1 and these standard terms and conditions;

1.2 "Customer" means the company, organization or individual which accepts the supply of Goods and/or Services in accordance with these standard terms and conditions;

1.3 "Goods" means the goods, samples, equipment and materials including without limitation calibration verification services, reference materials, chemical reference materials, laboratory supplies, biological materials, proficiency testing samples, custom synthesis products, analytical data, data analyses, results and reports and related documentation to be provided to the Customer by MAINE STANDARDS COMPANY under the Agreement;

1.4 "Liability" means any and all liability (including liability for the acts or omissions of Personnel): (a) for any breach of the Agreement; (b) for any misrepresentation, misstatement, or tortuous act or omission, including without limitation, negligence arising under or in connection with the Agreement; (c) for the tort of slander of title; (d) for any breach of warranty, agreement or alleged product liability; and/or (e) otherwise arising in connection with the performance or completion of the Agreement; and/or any Goods delivered under the Agreement (including under indemnification provisions if any);

1.5 "Personnel" means any officers, employees, agents or contractors;

1.6 "Price" means the price agreed for the Goods and/or Services;

1.7 "Quotation" means an estimate or quotation given by MAINE STANDARDS COMPANY to the Customer for the supply of the Goods and/or Services;

1.8 "Services" means the services, including without limitation calibration verification services, custom synthesis services, analysis of data, interpretation of results, production of reports, consultation and training, transportation services, for advice supplied by MAINE STANDARDS COMPANY to the Customer are made in good faith.

1.9 "MAINE STANDARDS COMPANY" means MAINE STANDARDS COMPANY LLC, a limited liability company incorporated in the State of Maine with business address at 221 U.S. Route 1, Cumberland Foreside ME 04101 and "MAINE STANDARDS COMPANY GROUP" means any company controlled by, controlling or under common control or otherwise affiliated with MAINE STANDARDS COMPANY;

1.10 Unless the terms and conditions are expressly accepted by MAINE STANDARDS COMPANY in writing, no agreement or contract for the supply of Goods and/or Services is made and no contractual relationship is formed between the parties unless and to the extent that the Quotations, including any amendments thereto, are accepted by MAINE STANDARDS COMPANY or in accordance with the agreed INCOTERM. However, title to the Goods shall remain with MAINE STANDARDS COMPANY and shall not pass to the Customer until the full (in cash or cleared funds) has been received by MAINE STANDARDS COMPANY.

1.11 A reference to a particular law is a reference to it as in force for the time being, taking into account any subsequent amendment, application, interpretation, aggregation, and including any subordinate legislation for the time being in force made under it.

2. Orders and Quotations

2.1 Any Quotation is given by MAINE STANDARDS COMPANY on the basis that no agreement shall come into existence until the Customer has endorsed and returned it without amendment;

2.2 The Customer shall promptly supply to MAINE STANDARDS COMPANY any materials required by MAINE STANDARDS COMPANY to execute the Customer’s order for the supply of Goods and/or Services, and shall indemnify MAINE STANDARDS COMPANY and its Personnel from any claim or action brought by a third party in respect of any shortage of Goods, irrespective of any purported appropriation by the Customer.

2.3 MAINE STANDARDS COMPANY reserves the right at its sole discretion to refuse an order for Goods and/or Services and, in particular, to refuse an order for Goods that are not subject to the Agreement, or for Goods on a blanket order or otherwise.

2.4 Any Goods which are damaged, defective or incorrect when delivered to the Customer must be notified in writing to MAINE STANDARDS COMPANY within 30 days of delivery, failing which the Goods are deemed to be accepted by the Customer.

3. Delivery and Damage

3.1 MAINE STANDARDS COMPANY shall endeavour to supply the Goods and/or Services within the time agreed, and if no time is agreed, within a reasonable time.

3.2 Any dates specified by MAINE STANDARDS COMPANY for the supply of the Goods and/or Services are intended to be an estimate, and time for delivery shall not be made of the essence by the Agreement. In the event that MAINE STANDARDS COMPANY is unable to deliver the Goods and/or Services by the date specified, MAINE STANDARDS COMPANY shall endeavour to deliver the Goods and/or Services as soon as is practicable, and the Customer shall accept such instalments. In the event of any shortage of Goods, MAINE STANDARDS COMPANY may allocate available Goods among its customers in the order in which the orders are received.

3.3 Any liability of MAINE STANDARDS COMPANY for non-delivery of Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note against any invoice for such Goods.

3.4 Any Goods which are damaged, defective or incorrect when delivered to the Customer shall be returned to MAINE STANDARDS COMPANY immediately. MAINE STANDARDS COMPANY may at its sole discretion and absolute discretion to refuse to accept any and all Goods at its discretion, and including any subordinate legislation for the time being in force made under it.

4. Warranty and Indemnity

4.1 MAINE STANDARDS COMPANY warrants that all items in the Goods and/or Services are correctly identified and in good order, and have not to the best of its knowledge been tampered with or added to in any way by any person or other party, and to deliver and supply same to the Customer in good condition.

4.2 EXCEPT AS OTHERWISE EXPRESSLY STATED IN THESE STANDARD TERMS AND CONDITIONS, ALL EXPRESS AND IMPLIED WARRANTIES, REPRESENTATIONS, CONDITIONS, STATUTORY OR OTHER OBLIGATIONS, LIABILITIES AND OTHER TERMS WHETHER EXPRESS OR IMPLIED BY STATUTE OR CONTRACT OR OTHERWISE CONCERNING THE GOODS AND/OR SERVICES (INCLUDING WITHOUT LIMITATION ANY RELATING TO PERFORMANCE, CARE AND SKILL OR COMPLIANCE WITH REPRESENTATIONS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY EXCLUDED FROM THE AGREEMENT AND DISCLAIMED.

5. Price

5.1 The Customer and MAINE STANDARDS COMPANY shall comply with all applicable laws, regulations, guidelines and codes of practice relating to this Agreement.

5.2 Payment is made when monies are credited to MAINE STANDARDS COMPANY's account.

5.3 The Price shall become payable upon the earlier of performance of the Services and/or delivery of any Goods comprised in the Goods and/or Services or as otherwise set out in the Quotation. Payment in full (in cash or cleared funds) has been received by MAINE STANDARDS COMPANY.

5.4 If the Customer fails to pay MAINE STANDARDS COMPANY any sum due pursuant to the Agreement then, without limiting any other right or remedy available to MAINE STANDARDS COMPANY:

a) MAINE STANDARDS COMPANY may cancel the Agreement and all other agreements between the parties;

b) MAINE STANDARDS COMPANY may immediately demand payment of any other invoices not yet due, with liability to pay interest on sums due applying from the date of the demand;

c) MAINE STANDARDS COMPANY may take whatever steps are deemed necessary, including legal actions, to recover any outstanding amount due under the Agreement;

d) the Customer will be liable to pay MAINE STANDARDS COMPANY on such sum due together with interest at the rate of 1.5% per month or the maximum rate permitted by law, whichever is less, accruing on a daily basis until payment is credited to MAINE STANDARDS COMPANY’s account, whether before or after any adjudication.

6. Intellectual Property

6.1 Unless otherwise agreed in writing, the ownership of any and all rights in and to any data, results, reports, related documents, copyright, patents, designs, conceptual solutions, analyses, processes, techniques, methodologies, inventions, software, databases, know-how, ...
Standard Terms and Conditions for the Supply of Products and Services

confidential information, and any other rights in intellectual property (whether registered or unregistered) (“IP”), other than that of MAINE STANDARDS COMPANY providing the Goods and/or Services (“MAINE STANDARDS COMPANY IP”), including but not limited to any patent, trademark, copyright, and any applications or registrations therefor, all of which provisions shall remain the property of MAINE STANDARDS COMPANY. MAINE STANDARDS COMPANY providing the Goods and/or Services (“MAINE STANDARDS COMPANY”), the Customer shall:

1.2 The Customer shall not assign any Agreement or any part thereof without the written consent of the Customer. MAINE STANDARDS COMPANY reserves the right to terminate the Agreement forthwith by notice in writing if the Customer breach or default and will in no way affect the other terms or conditions of the Agreement.

1.3 If any term or condition of the Agreement is enforceable by any person who is not a party to the Agreement and MAINE STANDARDS COMPANY. The Customer shall bear all costs and expenses incurred in connection with any such action, and such cancellation shall not give rise to any claims by the Customer provided that the Customer shall remain liable to pay for the Goods and/or Services not then supplied or work not then done and such cancellation shall not give rise to any claims by the Customer provided that the Customer shall remain liable to pay for the Goods and/or Services not then supplied or work not then done.

1.4 If any waiver by MAINE STANDARDS COMPANY of any breach of, or any default under, any provision of any Agreement by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms or conditions of the Agreement.

1.5 No term or condition of the Agreement is enforceable by any person who is not a party to the Agreement and MAINE STANDARDS COMPANY and the Customer may exercise, without the consent of any third party, any rights they may have to amend or rescind the Agreement.

1.6 The construction performance and validity of the Agreement shall be governed by the internal laws of the State of Delaware applicable to contracts made and performed in that state, without regard to principles of conflicts of laws, and the parties submit and waive any objection to the exclusive jurisdiction of the state and federal Courts in Delaware for adjudication of any disputes relating in any way to the Agreement or any Goods or Services delivered pursuant to the Agreement. For any dispute, controversy or claim relating to this Agreement the Customer and MAINE STANDARDS COMPANY agree to promptly meet in good faith to resolve. If this meeting does not result in resolution for final settlement will be via mediation using the Centre for Effective Dispute Resolution model mediation procedure. For clarity nothing in this clause 14.7 shall be construed as prohibiting a party from applying to a court for interim injunctive relief.

14.7 The construction performance and validity of the Agreement shall be governed by the internal laws of the State of Delaware applicable to contracts made and performed in that state, without regard to principles of conflicts of laws, and the parties submit and waive any objection to the exclusive jurisdiction of the state and federal Courts in Delaware for adjudication of any disputes relating in any way to the Agreement or any Goods or Services delivered pursuant to the Agreement. For any dispute, controversy or claim relating to this Agreement the Customer and MAINE STANDARDS COMPANY agree to promptly meet in good faith to resolve. If this meeting does not result in resolution for final settlement will be via mediation using the Centre for Effective Dispute Resolution model mediation procedure. For clarity nothing in this clause 14.7 shall be construed as prohibiting a party from applying to a court for interim injunctive relief.

11.2 Where the Goods and/or Services (or any part thereof) supplied by MAINE STANDARDS COMPANY to the Customer are for the provision of custom synthesis services (“Synthesis Services”) the Customer acknowledges that occasionally certain Synthesis Services can be difficult to perform. In the event that MAINE STANDARDS COMPANY is unable to perform and/or complete all or any part of the Synthesis Services for any reason (including without limitation due to technical and experimental difficulties) then MAINE STANDARDS COMPANY reserves the right at its sole and absolute discretion to cancel such Synthesis Services at any time and terminate the Agreement without liability to the Customer. Where MAINE STANDARDS COMPANY exercises its right to cancel under this clause 11.2, MAINE STANDARDS COMPANY shall notify the Customer in writing as soon as reasonably practicable, and (a) if the Quotation provides for a fixed Price and/or timeframe, then the Customer shall not be liable for payment for such Synthesis Services; or (b) if the Quotation provides an estimate of Price and/or timeframe, then the Customer shall be liable only for payment of the Synthesis Services or part thereof performed by MAINE STANDARDS COMPANY as at the date of such cancellation notice.

12. Termination

12.1 MAINE STANDARDS COMPANY may terminate the Agreement forthwith by notice in writing if the Customer is in material breach of the Agreement and, where such breach is remediable, the Customer fails to remedy the same within 30 (thirty) days of the receipt of a written request from MAINE STANDARDS COMPANY to do so.

12.2 MAINE STANDARDS COMPANY may terminate the Agreement at its discretion if the Customer fails to accept supply of the Goods and/or Services at the time agreed or if no time is agreed within a reasonable time, then the Customer shall be liable for (without prejudice to any other rights of MAINE STANDARDS COMPANY) and shall indemnify and keep indemnified MAINE STANDARDS COMPANY against any resulting loss, damage or expense or additional costs incurred by MAINE STANDARDS COMPANY in connection with the supply of the Goods and/or Services including without limitation the cost of any services, material, plant or tools used or intended to be used therefor and the cost of labor and other overheads, including a percentage in respect of profit.

12.3 The termination of the Agreement shall be without prejudice to the rights and duties of either party accrued prior to termination. The clauses in the Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination. The Customer shall pay the Price in respect of any Goods and/or Services (or part thereof) supplied prior to termination, regardless of the reason for termination.

13. Force Majeure

13.1 If MAINE STANDARDS COMPANY is unable (whether temporarily or permanently) to procure any services or goods necessary to enable it to supply the Goods and/or Services or if the supply of the Goods and/or Services is prevented or hindered by reason of any cause beyond MAINE STANDARDS COMPANY’s reasonable control (which shall include acts of God, governmental action, war or national emergency, acts of terrorism, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, currency restrictions, strikes or other labour dispute, or restrictive or delays arising as a result of MAINE STANDARDS COMPANY’s business being appointed over or taking or attempting to take possession of any the party’s assets; (e) takes or suffers any steps that would lead to the appointment of any insolvency officer holder; or (f) undergoes any analogous occurrence under foreign law.

14. General

14.1 The Customer shall not assign any Agreement or any part thereof without the written consent of MAINE STANDARDS COMPANY or any of its successors. Each right or remedy of MAINE STANDARDS COMPANY under the Agreement is without prejudice to any other right or remedy of MAINE STANDARDS COMPANY whether under the Agreement or not.

14.2 Each right or remedy of MAINE STANDARDS COMPANY under the Agreement shall be unreasonably withheld. If any provision of the Agreement shall be held to be illegal, invalid or unenforceable in whole or in part, either under enactment or rule of law, such provision or part shall to that extent be deemed not to form part of the Agreement but the legality, validity and enforceability of the remaining provisions of the Agreement shall not be affected unless the absence of the unenforceable provision would materially affect MAINE STANDARDS COMPANY’s rights or remedies in which case MAINE STANDARDS COMPANY shall have the right to immediately terminate the Agreement.