

TRANSIT TEST REQUEST FORM

THIS TEST REQUEST IS SUBJECT TO THE CONDITIONS OF TESTING SET FORTH BELOW.

By submitting your request for service to MTS you are consenting that your records where relevant to the scope of the laboratories accreditation status may be disclosed to the accreditation body to assess our competence and compliance with the relevant accreditation criteria. And you acknowledge the inherent risks that the test results/reports are transmitted by electronic means such as by phone, fax, and email. To minimize these risks, we will pay particular attention to the security, confidentiality and integrity of the information being transmitted. If you oppose said methods, please write to us.

TERMS AND CONDITIONS FOR TESTING

1. The Modern Testing Services, LLC ("MTS") will in accordance with and subject to the terms and conditions herein contained (hereafter referred to as "the Terms and Conditions") conduct such of the within written tests for the Client.
2. It shall be the responsibility of the Client to ascertain and notify MTS of the standards with which any sample submitted must comply in any country or territory in which the sample concerned is intended to be sold. In absence of specific instructions, MTS will adopt the test methods and standards, which in its sole and absolute discretion are considered appropriate.
 - (i) The Terms and Conditions are the only conditions upon which MTS is prepared to deal with the Client and they shall govern this contract to the entire exclusion of any other expressed or implied conditions
 - (ii) The Terms and Conditions may only be modified by a variation expressed in writing and signed on behalf of MTS by a Director and no other action on the part of MTS or its employees or agents shall be construed as an acceptance of any other conditions.
 - (iii) The Terms and Conditions (as modified in accordance with paragraph (ii) together with the matters referred to on the face hereof) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications.
4. MTS will subject to the Client's requirements, test any sample submitted to it or sampled by MTS from bulk (the quantity of the bulk from which the sample shall be taken and the sample shall be agreed between the Client and MTS) to ascertain its conformity or otherwise with contract description or sample (such contract description or sample are to be provided by the client). In no circumstances will MTS render any opinion as to the description, quantity, or the fitness of any sample for the purpose for which it is said to be intended unless in any specific case MTS is required so to do and agrees so to do in writing.
5. The risk and property in the goods shall remain at all times in the Client.
6. A Test Report issued by MTS shall refer only to the sample actually tested and shall not refer or be deemed to refer to the bulk from which such a sample may be said to have been obtained. In the event that MTS shall be requested to survey and test any bulk quantity of samples against contract description or sample, MTS, shall in the absence of contrary written instructions cause a random sampling of bulk for testing purposes. The Client shall notify MTS by advance notice in writing if they require a specific percentage of the bulk to be tested. In no circumstances shall MTS's responsibility extend beyond testing and reporting upon the samples actually drawn from bulk and tested by MTS and any inference to be drawn from the result of such testing shall be entirely in the discretion and at the responsibility of the Client.
7. Test Reports prepared by MTS are issued subject to the conditions that they are not to be made public or used in connection with or for the purpose of any advertising promotional or publicity undertaking or material whatsoever without the prior expressed consent in writing of MTS thereto.
8. Unless otherwise agreed in writing with the Client any times specified by MTS on the face hereof for performing the services are business estimates only and MTS will not be liable to the Client for any loss or damage whatsoever sustained by the Client as a result of MTS failure to comply with such times.
9. In the event that any Test Report issued by MTS is required for use in connection with or for evidence in any Court or Arbitration proceeding by the Client, MTS will render all assistance and explanations reasonably required in connection therewith but all costs and expenses incurred by MTS in giving such assistance, including court appearance, expert testimony, or explanations shall be for the account of the Client to whose order the Test Report in question was prepared.
10. In no circumstances will the issuing of any Test Report by MTS operate or be deemed or purport to involve MTS as a party or agent or in any other way in any relationship contractual or otherwise between the Client for whom the Test Report shall have been prepared and any other party whomsoever.
11. In the event that Test Report shall be proved to be inaccurate and that the inaccuracy thereof shall have been caused by the error, negligence or willful default or act of MTS or its servants or agents then and in any such case the liability of MTS shall be limited to refunding to the Client for whom the Test Report shall have been made, free of interest the fee paid to MTS for making such Test Report, and in no circumstances shall MTS be liable to compensate or indemnify the Client for whom such Test Report shall have been made or any third party whomsoever for or in respect of any consequential loss or damage by such party as a result of the inaccuracy of such Test Report and no matter from what cause such inaccuracy shall have arisen. The Client agrees to indemnify MTS for all losses.
12. In the event that MTS shall suffer any loss or damage as a result of MTS and/or its servants and/or its agents carrying out or providing the testing services to the Client or on goods supplies by or at the direction of the Client otherwise than as a result of its error, negligence or willful default then the Client shall indemnify MTS against and compensate MTS for such amount of loss or damage suffered.
 - (a) In the event that MTS is found liable for any loss, damage or destruction of the goods that are subject to be tested by MTS caused by the error, negligence or willful default or act of MTS or its servants or agents then and in any such case the liability of MTS shall be limited to the lesser of (i) the invoice price of the goods or (ii) three times the fee paid in relation to the testing services provided by MTS, free of any interest.
 - (b) In no circumstances whatsoever shall MTS be liable to compensate or indemnify the Client or any third party whomsoever for or in respect of any consequential loss or damage sustained by such party as a result of the loss, damage or destruction of the goods no matter from what cause such loss, damage or destruction shall have arisen.
 - (c) Nothing in clause 13(a) or (b) above shall limit or exclude any liability of MTS for any death or personal injury suffered as a result of its negligence or willful default to the extent that the same cannot be excluded or limited by law.
14. Without prejudice to MTS's lien and other rights under Clause 21 hereof, samples not destroyed in course of testing may at the sole discretion of MTS deemed abandoned and/or destroyed at the expiration of a period of 30 days from the date of the Test Report unless special arrangements have been made in advance with the Client in writing in regards to the disposal thereof.
15. Payment Terms: Net Cash.
16. In the event of the Client's to pay the whole of any sums owing under any invoices upon being invoiced, MTS reserves the right to withhold issue of any Test Report until payment of all sums owing to MTS under the aforesaid invoice(s) together with interest thereon.
17. The Test Report shall not be reproduced except in full without prior authorization from MTS.
18. Any testing is carried out to the best of the knowledge and capability of MTS. The Test Report reflects the findings of MTS at the time of testing and do not relieve sellers, manufacturers from their contractual liabilities or prejudice buyers' right for compensation for any apparent and/or hidden defect during the testing carried out by MTS or occurring thereafter.
19. Any dispute, difference or claim arising out of or in connection with the Terms and Conditions, or the breach, terminations or invalidity thereof if not settled between the parties shall be settled by arbitration. The parties hereto may agree to the appointment of an arbitrator or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitration, either party may request the Hong Kong International Arbitration Centre ("HKIAC") to appoint an arbitrator. The place of arbitration shall be in Hong Kong SAR at HKIAC. There shall be only one arbitrator. The language to be used in the arbitral proceedings shall be English.
20. The arbitration award shall be given in writing and shall be final and binding on the parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all matters thereto. Judgment upon the award rendered may be entered into any court having jurisdiction or application may be made to such court for a judicial recognition of the award or an order of enforcement thereof, as the case may be.
21. The agreement and contracts to which these terms and conditions apply shall be construed in accordance with and governed by the laws of Hong Kong Special Administrative Region and for the purpose of legal proceedings this agreement shall be deemed to have been in Hong Kong and to be performed there.
22. Without prejudice to all or any right MTS may have at Common Law, MTS has the following rights in the event of non-repayment or otherwise as set out below:-
 - (a) MTS has a general and particular lien over all samples delivered to be tested for all claims and money owing by the client to MTS under any contract whatsoever and in any other way whatsoever.
 - (b) Until the contract sums together with interest has been received, during the currency of the said lien, MTS is entitled to be paid reasonable storage charges for samples retained in MTS's custody.
23. In case any lien not satisfied within a reasonable time from the date upon MTS first gave notice of the exercise of their line to the client, the samples in its custody may be sold and the proceeds of sale applied towards the satisfaction of every such lien and all interest, other charges and expenses in relation thereto.
24. MTS shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond MTS's control including but not limited to an Act of God, war, civil disturbance, requisitioning, governmental or parliamentary restrictions of any kind; import or export regulations, strike lockout or trade dispute (whether involving its own employees or those of any other persons); difficulties in obtaining workmen, breakdown of machinery; fire or accident. Should any such events occur, MTS may cancel or suspend the contract in question without incurring any liability whatsoever for any loss or damage thereby occasioned.