



FOREIGN TRADE SERVICE

Nationwide Sampling, Inspection and Analysis of Imported Foods
Food Science and Analytical Entomology
The Foreign Trade Service Corporation
614 Frelinghuysen Avenue, Newark, NJ 07114

p: 973.596.1040 f: 973-596-1275 e: orders@ftslabs.com

GENERAL TERMS AND CONDITIONS

I) SERVICES

- a) The Foreign Trade Service Corporation, trading as Foreign Trade Service and as FTS Sampling and Inspection Co., (hereinafter called "FTS") is a nationwide network of professional third party samplers, weighers, cargo supervisors, inspectors, investigators, cargo surveyors, commodity graders and food testing laboratory services.
- b) FTS is a third party sampling service that collects samples of foods and ingredients for physical, chemical and microbiological analyses. Foods and ingredients sampled by FTS include: Tree nuts, dried or dehydrated fruit and vegetables; fresh fruit and vegetables; Fruit juice concentrates; Cereal grain, flour and legumes; Fish and shell fish; Spices and herbs; Tea, coffee beans, cocoa beans, cocoa powder, cocoa butter, cocoa liquor; Edible seeds, beans and pulses; Natural and artificial sweeteners, honey, cane and beet sugar; Eggs and dairy products; Fats and oils; Processed foods: packaged, canned or frozen. Frozen meat and meat products; water and beverages; flavors, colors, proteins, vitamins and other food additives; foods, ingredients and other products on United States Food and Drug Administration (FDA) Import Alert and under FDA detention.
- c) FTS provides cargo supervision and inspection services that include supervision of the loading and unloading of trucks, shipping containers, rail cars, barges and ships; damaged cargo and insurance surveys.
- d) FTS certifies weights of bulk or packaged product; conducts draft surveys of barges and calculates weights of product in silos.
- e) FTS investigates complaints of tampering and pilfering of goods in storage or in transit.
- f) FTS inspects product and facilities for insect and rodent infestation and conducts warehouses sanitation inspections.
- g) FTS conducts collateral and inventory inspections.

II) GENERAL

- a) The Client is that individual, persons, company, agency, association, authority or other entity (hereinafter, the "Client") that issues sampling orders or other instructions requesting and buying services from FTS, and for whom FTS conducts those services. Unless otherwise agreed to in writing, by FTS and the Client, all services shall be governed by these general terms and conditions of service. Whenever the Client cancels an order or instruction to conduct a service after FTS has started the service, the Client will be responsible for paying not less than half the quoted fee or forfeit any advance payment of the fee for the service.
- b) Only the Client or FTS can request modifications to the scope of services and receive or authorize the release of FTS Reports, Certificates of Analysis (COA) or samples to a third party. In the case of a subpoena mandating release of FTS Reports, COA, related documents or samples, the Client hereby irrevocably authorizes FTS to release the Reports, COA, documents or samples.
- c) The Client agrees that it will not directly or indirectly contact, instruct, engage or attempt to hire employees or subcontractors that perform sampling, inspection, testing, weighing, and surveying or supervision services on behalf of FTS. The Client agrees that all contact, communications, orders and instruction will be made directly with the FTS operations managers or executives.
- d) Unauthorized comments, observations and opinions of samplers, inspectors, weighers and supervisors with respect to the quality and condition of goods are theirs alone and do not represent the opinion of FTS. Only those FTS Reports and COA signed and issued by an officer of the Foreign Trade Service Corporation, 614 Frelinghuysen Avenue, Newark, NJ 07114, are said to be a true and accurate statement of the quality and condition of the goods that were sampled and tested and substantially identical units.
- e) The FTS logo and the name Foreign Trade Service are a registered trade mark and trade name. Use of the name Foreign Trade Service or its registered marks for advertising or other purposes is not permitted without the prior written authorization of FTS.



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III) PERFORMANCE

- a) Unless instructed otherwise, FTS will at its discretion, follow an applicable official or industry specified sampling plan, including but not limited to sampling plans used by the FDA, United States Department of Agriculture-Agricultural Marketing Service (USDA-AMS); USDA Food Safety and Inspection Service (USDA-FSIS); International Commission on Microbiological Specifications for Foods (ICMSF); International Standards Organization (ISO); Meat Importing Council of America (MICA); American Spice Trade Association (ASTA); Coffee, Sugar and Cocoa Exchange (CS&CE); Association of Food Industries (AFI) and American Society for Quality (ASQ). Square root of lot and percent of lot sampling plans are statistically invalid and will not be used, unless instructed otherwise.
- b) FTS will make every effort to collect random samples, but will not be responsible for sampling errors due to non-homogenous lots, mislabeled lots or packaging units, restricted sampling, statistical error, sampling plans dictated by the Client that are not statistically based, or failure of the Client to provide adequate documentation or instructions to properly identify the lot.
- c) Unless instructed otherwise, FTS will at its discretion, use or direct subcontract laboratories to use current peer reviewed and official methods for physical, chemical and microbiological tests, including but not limited to: OMA-AOAC, AACs, FDA-BAM, FDA-MPM, AOCS, CMMEF, ASTA and MICA.
- d) Unless instructed otherwise, FTS will at its discretion, use appropriate grading methods and specifications that are official or specified by trade associations or that are custom-of-the-trade. Grading methods include but are not limited to those of USDA-AMS, USDA-FGIS, CS&CE, AFI, ASTA, ISO, CODEX, FTS or the standards, methods and specifications of the Client.
- e) In the case that the Client orders microbiological tests or as "micros" without specifying parameters, a standard set of indicator organism and pathogen tests will be performed that might include: Aerobic Plate Count, Total Coliforms (MPN), E. coli (MPN); Salmonella/375g (2x375g and 4x375g when applicable); Coagulase-Positive Staphylococci; Yeast and Mold Count.
- f) FTS may subcontract all or part of any service to a member of the its nationwide network of professional samplers, weighers, inspectors, cargo supervisors and accredited laboratories, in which case, the Client authorizes FTS to provide the subcontractor with all information necessary to perform the service.
- g) In the case of services conducted jointly with another third party inspection service, pursuant to a claim or evaluation, the Client agrees that FTS has the right to disagree with results or disengage from that service, if the third party is conducting itself in a manner that is not consistent with custom-of-the-trade or will not adhere to the sampling plans, specifications, methods, and procedures established by a trade association, contract or other authority, or agreed to by the Client.
- h) The Client agrees that FTS reserves the right at its discretion, to refuse audits by any party or any audit function that would compromise its proprietary information.
- i) The Client agrees that FTS is an independent third party that does not assume the responsibilities, obligations, nor assumes, abridges, abrogates or undertakes to discharge any duty of Client to any third party or that of any third party to Client.
- j) Certain lot samples that require tests outside of the scope of accreditation may be tested by an ISO 17025 accredited third party laboratory contracted by FTS, unless the Client designates the laboratory that will conduct the test. In either case, FTS will not be responsible for the methods of analysis used by the third party laboratory; the calibration, performance or condition of instruments, measuring devices or other laboratory apparatus used; the training, qualification, errors or omissions of the third party laboratory personnel or the accuracy and precision of tests and results.

IV) STANDARD OF CARE

- a) FTS provides professional third party sampling, weighing, cargo supervision, inspection, surveying, grading and food testing services using a reasonable standard of care and technical expertise. Services are provided in accordance with industry, trade association or official standards or as instructed by the Client and agreed to by FTS.
- b) To ensure that FTS inspectors, samplers and weighers can identify the lots that are inspected, sampled or weighed, the Client is responsible for providing FTS with copies of documents and exhibits as appropriate; such as, bills of lading, packing lists, production code lists, commercial invoices, customs entry documents, contracts, warehouse receipts, preshipment reports and



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control samples, photos, and Notice of FDA Action. The client will provide FTS with warehouse lot numbers, the number of units in the lot, the product, type and grade, and the marks and numbers that are said to appear on the packages.

- c) For the purpose sampling and testing, a “lot” is defined as that quantity of product representing one run, batch or chop of product, of the same origin, type and grade, produced by one manufacturer, and identically labeled for traceability.
- d) The results of tests performed by FTS, on lot samples that were collected by FTS, are true and accurate for the lot samples that were tested and substantially identical units. Certain lot samples that require tests outside of the scope of accreditation will be tested by an ISO 17025 accredited laboratory contracted by FTS, unless the Client designates the laboratory. In either case, FTS will not be responsible for the methods of analysis used by the private laboratory, the calibration or condition of instruments, measuring devices or other laboratory apparatus used, or the training, qualification, errors or omissions of third party private laboratory personnel or test results.
- e) FTS collects samples into appropriate containers from all types of packaging, bulk storage and transport systems, including: Bags, cases, cartons, drums, retail packages, bulk boxes, super sacks, tanks, silos, railcars, barges, ship holds, trucks and containers. Samples for microbiological tests are collected using aseptic procedures. When required, aseptic samples are packed in cooler boxes with chill packs and forwarded to laboratories by overnight courier. When required and practical, the sample or the packages from which the samples were collected or the package in which samples are shipped to the laboratory, are secured with tamper evident seals.
- f) FTS will at its discretion, sample, inspect, test and report results, observations and evaluations, based on applicable specifications, standards, methods, custom of the trade, or other appropriate specifications and technical standards of the Client. Observations, evaluations, test results or opinions documented in an FTS Report or COA are based on the quality and condition of the lot samples at the time the product was sampled, inspected and tested, and are not a statement of the opinion of FTS with respect to the lot from which the samples were collected.
- g) With respect to issues of food safety and public health, FTS reserves the right to refuse to resample or retest lots into compliance. When test results indicate that “there is a reasonable probability that the use of, or exposure to, an article of food will cause serious adverse health consequences or death to humans or animals,” as in the case that a test for pathogens is confirmed positive, FTS reserves the right to refuse to retest the retention sample or to test new samples collected from the lot.

V) RETENTION OF SAMPLES AND FILES

- a) FTS will retain a portion of lot samples for a maximum of 1 month, with the exception of preshipment, arbitration and forensic samples which might need to be held for a longer period. Samples will only be returned to Client when specifically requested in writing, in advance of the service. Otherwise, samples will be disposed of at the discretion of FTS, after which FTS shall cease to have any responsibility for such samples. The Client agrees that if it wishes to retain samples for a period longer than 1 month, such samples may be sealed and transferred to a public warehouse and any storage charges will be paid by the Client.
- b) Files containing documents pertaining to a service performed for a client, other than an FDA detention or legal proceeding, are retained for a maximum of 3 years. Files pertaining to an FDA detention are retained as required by FDA. The Client must notify FTS in writing, if certain files must be retained for a longer period.

VI) CLIENT’S RESPONSIBILITY TO IDENTITY AND RELEASE PRODUCT

- a) The Client will provide in writing the required information, contacts, locations, instructions and documents necessary for the performance of the services ordered.
- b) The Client will ensure that FTS inspectors are permitted access to the warehouse or facility where the services are to be performed and will release product, authorize and provide for the movement and positioning of pallets and of trucks or containers where necessary, to facilitate unrestricted sampling and inspection.
- c) The Client agrees to authorize the party storing, handling, processing or transporting the product to provide FTS with copies of warehouse receipts and tallies, bills of lading or inventory documents stating the actual quantity of product declared to be present in the lot at the time it is sampled, inspected, weighed or surveyed.



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VII) TERMS OF PAYMENT

- a) At the Client's request, a fee will be quoted in writing prior to the commencement of the service. In order for FTS to give a firm quote, all facts and instructions pertaining to the service must be disclosed and provided to FTS. Any changes made by the Client after the quote has been provided or the service has started might result in additional fees. The Client agrees that FTS retains the right to quote an additional fee prior to incorporating changes to the service or instructions, after the service has begun. In the absence of a specific quote, FTS will bill the Client at our current standard fee for the service.
- b) The Client is responsible for payment of all handling, special packaging and shipping charges for forwarding of samples. The Client agrees to provide FTS with the Client's shipper account number for the designated courier, in advance of the start of service, for the courier the Client instructs FTS to use for shipping of samples, except that samples shipped with dry ice must be sent via FedEx. For samples or documents shipped outside of the United States of America, the Client agrees to pay any customs duty, taxes, document preparation or special handling associated with the parcel.
- c) The Client agrees that it is responsible for paying terminal or warehouse handling and labor charges associated with making goods available for sampling, inspection, weighing, surveying, supervision or inspection; including but not limited to drivers, forklift operators and other labor charges associated with the movement, positioning, unloading or loading, stacking, opening and sealing, of containers, trucks, vessels, silos, tanks, pallets, sacks and bins.
- d) If the Client instructs FTS to ship frozen or chilled samples on Friday, the Client agrees to pay for Saturday delivery and to ensure that the receiver will be present at the delivery address to accept the parcel on Saturday.
- e) The Client will promptly pay in full not later than 30 days from the date of the invoice. Late fees will apply at a rate of 1.5% per month from the due date up to and including the date payment is actually received.
- f) The Client shall not be entitled to retain or defer payment of any sums due to FTS while the Client is awaiting reimbursement from a third party.
- g) The Client shall not be entitled to retain or defer payment of any sums due to FTS because of any dispute or counter claim which it may allege against FTS.
- h) After a period of 90 days, FTS may send unpaid bills for the collection, in which case the Client shall pay all of FTS's collection costs, including attorney's fees and related costs.
- i) Clients with a history of late payment will be required to pay in advance for services.
- j) The Client alone is responsible for paying for the services ordered and may not transfer responsibility for payment of an FTS invoice to a third party, without the written permission of FTS.
- k) In the case that the Client failed to provide proper documentation, instructions, locations, notifications, releases or other necessary provisions of the Client's responsibilities (VI) resulting in unanticipated expenses or additional time due to logistical or technical problems that arise while performing a service, FTS shall notify the Client and FTS shall be entitled to charge additional fees to cover extra time and cost incurred to perform the service.
- l) FTS shall be entitled to immediately and without liability either terminate or suspend any services in the event that the Client failed to comply with any of these terms and conditions, its obligations or cessation of business by Client.

VIII) LIMITATION OF LIABILITY

- a) FTS Reports and COA document services, test results and observations based on inspection or testing of samples collected from lots identified using documents and instructions provided by the Client or an agent of the Client. Neither FTS nor any of its officers, managers, employees, or subcontractors shall be liable to the Client nor any third party for any actions taken or not taken on the basis of an FTS Report or COA nor for any incorrect statements or results arising from incomplete, misleading, erroneous or false information provided to FTS. FTS shall not be liable for any delay or failure to provide services arising directly or indirectly from any event outside of its control including failure by the Client, an agent of the Client or the party holding, handling, transporting or processing the goods, to comply with any of its obligations.



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- b) FTS shall have no liability for any loss of profits, business, or opportunity or the cost of product recall. It shall further have no liability for any loss, damage, or expenses arising from the claims of any third party product liability claims that may be incurred by the Client.
- c) In the event of any claim, Client must give written notice to FTS within 30 days of discovery of the facts alleged to justify such claim and, in any case, FTS shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought within one year from the date of performance by FTS of the service which gives rise to the claim or the date when the service should have been completed in the event of any alleged non-performance.
- d) The Client shall guarantee, hold harmless and indemnify FTS and its officers, managers, employees, agents or subcontractors against all claims by any third party for loss, damage or expense including all legal expenses and related costs relating to the performance, purported performance or non-performance, of any services.
- e) Unless specifically agreed otherwise, all disputes arising out or in connection with contractual relationship(s) hereunder shall be governed by the substantive laws of the United States of America. All arbitrations will be conducted in the State of New Jersey in accordance with the rules of the Association of Food Industries, Inc. If any one or more provisions of these General Conditions are found 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.

