

# WearCheck Oil Analysis Service

Terms & Conditions

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## TERMS & CONDITIONS

The following are the terms and conditions under which Wear Check USA and WearCheck Canada Inc. ("WearCheck") provides fluid and filter analysis services ("the Agreement") to the customer ("Customer").

**1. PROVISION OF SERVICES.** WearCheck shall carry out the services promptly, diligently and in a professional manner in accordance with generally accepted analytical laboratory test methods. WearCheck shall comply with all applicable federal, provincial and municipal laws in relation to the services.

**2. RUSH SERVICE.** Rush service is available for fluid and filter analysis. A surcharge of 100% will be applicable for services rendered within four (4) hours of receipt of samples. When deemed necessary by WearCheck, an hourly rate of not less than four (4) hours will be applicable for services conducted outside of normal business hours.

**3. SAMPLE SUBMISSION.** Samples should be taken according to accepted industry standards for fluid analysis. WearCheck may be unable to provide accurate analysis on samples that are taken incorrectly. The Client should supply as much information as possible about each Sample in order to ensure timely and accurate sample results. Where information relating to the Sample is incomplete or incorrect this may lead to a delay in providing sample results. WearCheck may apply an additional surcharge for handling of hazardous samples.

**4. SAMPLE STORAGE.** The Customer shall provide WearCheck with any specific instructions regarding the storage, return or disposal of samples upon submission of samples to WearCheck for the services. Storage fees or other charges may be applicable. All samples will be stored by WearCheck for a period of no less than thirty (30) calendar days following provision by WearCheck to the Customer of the report regarding the results of the services. Following this period, samples will be disposed of at WearCheck's discretion unless alternate instructions are received by WearCheck from the customer prior to the time of disposal. Samples that are classified by WearCheck as hazardous substances will either be disposed of by WearCheck or returned to the Customer following this period and additional fees may apply.

**5. PAYMENT.** The Customer agrees to pay to WearCheck the applicable fees for all services the Customer has requested. A minimum fee for service may be applicable. Fees may be subject to change without notice. The Customer will pay all invoices in Canadian funds without any deduction. Payment is due upon receipt of invoice. All applicable taxes will be automatically added to invoices. WearCheck retains the right to withhold test results unless all fees have been paid in full.

**6. CONFIDENTIALITY.** All data, reports and other information relating to the services shall be treated by WearCheck as the confidential property of the Customer. The obligation of confidentiality set out in this section shall not apply to any information that: (i) is required by law to be disclosed; (ii) was in WearCheck's possession prior to receipt from the Customer; (iii) was lawfully obtained by WearCheck from a third party under no obligation of confidentiality to the Customer; or (iv) is or becomes part of the public domain through no act or failure of WearCheck. All reports provided by WearCheck to the Customer regarding the results of the services are the confidential property of the Customer. WearCheck shall be entitled to retain a copy of all data and reports relating to the services provided always that the obligations of confidentiality set out in this Agreement shall continue to apply for so long as WearCheck retains a copy of such data or reports.

**7. PUBLICITY.** The Customer shall not use WearCheck's name, logo, or other identifying marks in any news release, public statement, or announcement or in connection with any sale, offer for sale, advertisement or promotion of any article, product, or company, except with the prior written consent of WearCheck.

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**8. LIMITATION OF LIABILITY / WAIVER OF WARRANTIES.** WearCheck sample materials will be replaced with unused materials if defective in manufacture, labeling, or packaging, or if lost by us or any associate company even though by negligence or other fault. WearCheck shall not be liable or responsible for the future performance or failure of any engine, piece of equipment or material involved in any test or sample. The Company makes no warranties, representations or guaranties with respect to the performance of any such engine, piece of equipment or material. WearCheck's liability shall be limited to, at WearCheck's option, repayment of the amount paid by the Customer for the services that are proven to be defective or re-performance of the services claimed by the Customer to be defective. The Customer accepts the results of the services as is and acknowledges that any use or interpretation of the information contained in any report provided by WearCheck is at the Customer's own risk. IN NO EVENT SHALL WEARCHECK BE LIABLE TO THE CUSTOMER FOR LOST PROFITS, PUNITIVE DAMAGES OR OTHER INDIRECT OR CONSEQUENTIAL DAMAGES.

**9. INDEMNITY.** Customer agrees to protect, defend, release, hold harmless and indemnify WearCheck from any and all demands, claims, causes of actions and expenses arising or resulting from reliance on or use of WearCheck's test results.

**10. FORCE MAJEURE.** Either Party shall be excused from performance of any obligations under this Agreement when and to the extent that performance is delayed or prevented by any cause, except lack of finance, beyond its reasonable control.

**11. TERMINATION.** This Agreement may be terminated by either party by giving one (1) days prior written notice, at which time any services completed to the date of termination will become due and payable together with any other costs incurred by WearCheck in respect of the services undertaken and expenses incurred up to the termination date.

**12. GOVERNING LAW.** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada as applicable and the parties shall attorn to the exclusive jurisdiction of the Courts of the Province of Ontario and all courts competent to hear appeals therefrom.

**13. ENVIRONMENT.** The Customer shall comply with all applicable environmental legislation, including labeling all hazardous samples to comply with Workplace Hazardous Materials Information System and Transportation of Dangerous Goods regulations and shall provide appropriate material safety data sheets that include the nature of the hazard and the contact name and phone number for further information. The Customer shall indemnify for loss and damages, including any fines or cost of complying with an order of any government authority in respect of Customer's breach of the regulations.

**14. SAVINGS CLAUSE.** In the event any provision herein shall be judicially interpreted or held to be void or otherwise unenforceable as written, it shall be deemed to be revised and modified to the extent necessary to make it legally enforceable, and the remaining terms of this Agreement shall not be affected thereby.

**15. SURVIVAL.** The obligations in Sections 8, 9, 13 and 14 shall survive termination of this Agreement.



THE LEADER IN OIL ANALYSIS

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