



Waste and/or Materials for Recycling Terms & Conditions

(Last Revised March 15, 2020)

These terms and conditions, together with the applicable final proposal ("Proposal") form the entire contract between ERC Midwest, LLC (the "Company") and the client named in the Proposal ("Client"). All conflict or additional terms and conditions proposed by Client are rejected. Acceptance of services by the Client constitutes acceptance of these Terms & Conditions.

I. TITLE

Title to the Waste Material and/or Materials for Recycling ("Waste") shall remain with Client until such time that the Waste is delivered to and accepted by the designated facility identified in the Proposal and/or the manifest or bill of lading ("Designated Facility"), at which time title shall pass from Client to the Designated Facility. Title to and liability for any non-conforming waste shall remain with Client. In the event AMS-Elite discovers that Client has delivered to the Designated Facility non-conforming waste, AMS-Elite may return, and Client shall accept such waste.

II. FACILITY, SERVICES AND EQUIPMENT

- A. The Company will arrange all services and equipment necessary for transporting and/or arranging for the disposal of the Waste only at the Designated Facility. The Company represents and warrants that its or its subcontractors' facilities have all federal, state and local permits required to perform the work contracted for herein.
- B. The Company shall comply with all applicable federal, state and local laws, rules, regulations and permits in performing the work contracted for herein. Client shall comply with all applicable federal, state and local laws, rules, regulations and permits, as well as directives issued by the Company from time to time, governing the transportation, treatment and/or disposal of Waste, including, but not limited to all packaging, manifesting, containerization, placarding and labeling requirements.
- C. If the Waste is being delivered by Client to the Designated Facility, it shall be delivered by in a careful, workmanlike and lawful manner and in a manner that will not create a risk of harm to public health or the environment.
- D. Client acknowledges responsibility for appropriate and necessary repair charges resulting from damage, not caused by the Company or its subcontractors, to equipment furnished by the Company or its subcontractors for performing the work, including but not limited to tankers, roll off containers and, vacuum containers while located at Client's location or at an alternate location, as directed by Client regardless of duration.
- E. Client shall acknowledge completion and final approval of each project by signing the Company Job Summary Form. Signing the Job Summary Form will constitute Client's acknowledgment that the project is complete and that the Company, its subcontractors and all affiliates will not be responsible for, and are released from, all liability for claims relating to future product contamination, container reactions, container damages and/or other charges related to the project.

III. RATES AND ADDITIONAL CHARGES

The rate for the transporting and processing of Waste to the Designated Facility is set forth in the Proposal. Client agrees that the Company may increase the rates hereunder in proportion to any increase enacted by the Designated Facility. The Company may also proportionately adjust for any such increase in transportation costs due to changes in location of the Designated Facility.

- A. Non-Conforming Waste – The Company understands that the description of the waste in the Waste Profile is general because the precise composition of the Waste can be expected to vary with each shipment. If there is any material change in the characteristics of any Waste so as to change the treatment method, the Company will promptly notify Client. By written notice from Client within 24 hours, Client shall have the option to have the Waste returned to the originating generator and reimburse the Company for cost of transportation and additional handling or will agree to additional surcharges to treat non-conforming waste. Failure to election an option with 24 hours shall constitute Client's election to pay surcharges imposed by the Company.
- B. EIS Fee – The Company adds an Energy, Insurance and Security (EIS) Fee to the total of each client invoice. This fee is necessary to help offset a portion of those costs that are unique to the complex transportation, treatment, disposal and associated items related to the proper management of hazardous and non-hazardous wastes. These costs include, but are not limited to, fuel necessary to power the Company's transportation and waste processing equipment, excess liability and pollution insurance, and DOT-mandated security plans.

- C. Waste Inventory -- Client shall be responsible for any additional costs incurred as a result of packaging and disposal of additional items or quantities not listed on the original inventory.
- D. Suitable Packaging -- All waste materials shall be packaged by Client in containers that meet current DOT/UN specifications and are in good, clean condition suitable for transportation by highway. Repackaging or over-packing of drums will result in additional costs for labor and materials, payment for which is the responsibility of the Client.
- E. Restricted Wastes -- Company employees or agents may refuse to package, ship, receive or process any materials that contain pathological agents, biological wastes, PCBs, dioxins, radioactive wastes, explosives or that possess other hazards that make the waste unsafe or illegal for handling or shipping.
- F. Used Oil -- Wastes meeting the definition of Used Oil as defined in 40 CFR 279 are presumed to be hazardous wastes unless a generator can rebut that presumption. (See ERC Midwest Used Oil Management Policy at www.ercmidwest.com.)
- G. Minimum Charges -- Materials quoted on a per-gallon or weight basis may be subject to minimum weight charges.
- H. Demurrage -- Quoted rates include the loading and unloading time specified. All additional loading and unloading times (demurrage) may result in additional charges.
- I. Wash-Out / Dig-Out -- Client acknowledges that, in cases where Client's waste will not dump and/or wash out of a Company or contractor vehicle, additional wash-out/dig-out or other charges may apply.
- J. Noncompliance. The Company has the right to refuse any hazardous drum that exceeds its legal DOT rating, any non-hazardous drum exceeding 950 pounds or any pallet exceeding 2,400 pounds.

IV. INDEPENDENT CONTRACTOR

The work and labor herein provided for shall be performed and furnished by the Company as an independent contractor and under the sole supervision, management, direction and control of the Company in accordance with the terms and conditions of this Agreement.

V. FORCE MAJEURE

Neither party hereto shall be liable for its failure to perform in whole or in part hereunder due to contingencies beyond its reasonable control, including, but not limited to, strikes, riots, war, fire, acts of God, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any other governmental body or any instrumentality thereof, whether now existing or hereafter created.

VI. PAYMENT

Client agrees to pay the Company's invoice within thirty (30) days after date of service. Client agrees to pay finance charge of 1½% per month service fee on all balances 30 days past invoice date, and all collection and attorney costs incurred in collection.

VII. INDEMNITY AND LIABILITY LIMIT

- A. Indemnification by Client -- Client agrees to indemnify, save harmless, and defend the Company, its employees, agents and affiliates from and against any and all claims, causes of action, suits, penalties, losses, damages, injuries, judgments, costs, expenses and other liabilities of any kind (including, without limitation, costs of defense, settlement and reasonable attorney, consultant or other professional fees and the reasonable costs of investigation, containment and cleanup and any remedial actions required by law, whether currently in effect or enacted in the future), which any or all of them may suffer or incur as a result of the gross negligence, willful misconduct or violation of any law by Client, its employees, agents, or subcontractors in the performance of this Agreement.
- B. Indemnification by Contractor: -- The Company agrees to indemnify, save harmless, and defend Client, its employees, agents and affiliates from and against any and all claims, causes of action, suits, penalties, losses, damages, injuries, judgments, costs, expenses and other liabilities of any kind (including, without limitation, costs of defense, settlement and reasonable attorney, consultant or other professional fees and the reasonable costs of investigation, containment and cleanup and any remedial actions required by laws, whether currently in effect or enacted in the future) which any or all of them may suffer or incur as a result of the gross negligence, willful misconduct or violation of any law by the Company, its employees, agents, or subcontractors in the performance of this Agreement.
- C. Except for the Company's liability under X. B. above, the Company's liability to Client or anyone claiming through Client on any theory, in contract or in tort or otherwise, shall not exceed the fees paid by Client to the Company for the work giving rise to the liability in the prior 12 months. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT SERVICES AND/OR EQUIPMENT PROVIDED HEREUNDER. The Company shall be responsible for all performance of subcontractors, and Client releases all rights to claim directly against subcontractors.

VIII. DOCUMENTS

Accompanying all invoices for services rendered pursuant to this Agreement, the Company shall provide Client with copies of all completed and executed documents related to all Waste processed by the Company for Client for the period covered by the invoice.

IX. MASTER SERVICES AGREEMENT

If Client has a valid and current Universal Services Agreement or Master Services Agreement on file with the Company, the terms and conditions of said Agreement shall control in the event there is any conflict with the terms and conditions contained herein.

X. NOTICES

All notices hereunder shall be given in writing and addressed to the party at its address shown in the Proposal.

XI. PRIOR AGREEMENT

Except as specified in Item IX above, the terms and conditions herein supersede and replace any previous or existing agreement, quotation for services, scope of work, purchase order or understanding, written or oral, between the parties.

XII. GOVERNING LAW

This agreement shall be governed by and construed in accordance with the substantive laws of the State of Wisconsin.