

General Terms and Conditions for Waste Services by TM Deer Park Services Limited Partnership

TMDP Form No. DPW080424

The following terms and conditions shall apply to all waste services performed by or under the control of TM DEER PARK SERVICES LIMITED PARTNERSHIP, including transportation, storage, treatment and disposal services.

1. Definitions

- 1.1. "Generator" shall mean TMDP's customer and/or any third party generator of Waste Material for which the TMDP customer is acting.
- 1.2. "Party" shall mean either TMDP or Generator or both.
- 1.3. "TMDP" shall mean TM Deer Park Service Limited Partnership, a Texas limited partnership.
- 1.4. "Waste Material" shall mean those solid, liquid, semi-solid, or contained gaseous materials which are generally described in, and which have physical, chemical, biological or radioactive constituents, characteristics and properties within the specifications stated in Generator's waste profile document. The term "Waste Material" also includes containers supplied by Generator containing Waste Material such as a barrel, drum, tank or box.
- 1.5. "Waste Services" shall mean the handling, packaging, transportation, storage, processing, treatment, reclamation, recycling, recovery, incineration and/or disposal of Waste Material by TMDP or its affiliates or subcontractor(s).
2. In no event shall any term or condition attached or made part of a future purchase order, shipping document, manifest or other document associated with the Waste Material and/or Waste Services have any controlling effect unless specifically adopted in writing by an authorized representative of both TMDP and Generator making specific reference to both these Terms and Conditions and their amendment, supplement or modification.
3. Upon delivery of the Waste Material to TMDP, Generator shall tender to TMDP those completed documents, shipping papers or manifests as are required for lawful transfer of the Waste Material to TMDP by valid and applicable statutes, ordinances, orders, rules or regulations of the federal, state or local governments.
4. TMDP shall have the right, but not the obligation, to inspect, sample, analyze or test any tendered Waste Material before accepting such Waste Material.
5. A Waste Material shall be considered to be non-conforming if
 - 5.1. the Waste Material is not materially in accordance with the specifications of the Generator's waste profile document, or
 - 5.2. the Waste Materials
 - (a) materially increases the nature or extent of the hazard and risk undertaken by TMDP in agreeing to provide Waste Services, or
 - (b) are such that TMDP's facility is not designated, permitted or authorized to provide the Waste Services by law, rule, or regulation.
6. If the Waste Material, any unit thereof, or the tender of delivery is non-conforming, TMDP may, at any time after its receipt of the Waste Material and at its exclusive option:
 - (a) reject all Waste Material tendered, or
 - (b) accept all Waste Material tendered; or,
 - (c) accept any unit or units of Waste Materials and reject the rest.

Unless TMDP specifically provides to the contrary in writing, failure of TMDP to reject non-conforming Waste Material shall not be deemed acceptance of the non-conforming Waste Material. Upon rejection of Waste Material, Generator shall be responsible for all costs incurred by TMDP prior to such rejection and all costs of returning the Waste Material so rejected to Generator. Such costs shall include, but not be limited to, equipment or facility damage, remediation or corrective action, administrative and/or legal costs, as well as any fines and/or penalties. Acceptance of the Waste Material, or any unit thereof, does not, however, impair, or operate as a waiver of, any right or remedy available to TMDP in the event the Waste Material are later discovered to be non-conforming. Without limiting any other remedy available, Generator shall make prompt arrangements for the removal of the non-conforming Waste Material from TMDP's Facility to another lawful place of disposition.

7. Except as required by law, title to and ownership of the Waste Material shall at all times remain with Generator.
8. TMDP warrants and represents to Generator that:
 - 8.1. TMDP is engaged in the business of and has developed the requisite expertise for providing Waste Services. All Waste Services provided by TMDP shall be performed utilizing the same standard of due diligence and reasonable care demonstrated by other companies within the industry providing similar Waste Services. All TMDP personnel, employees, agents and contractors engaged in providing the Waste Services shall be appropriately skilled and, where necessary, licensed to perform the work to which they are assigned; and,
 - 8.2. Each facility, vehicle or any equipment in which TMDP provides Waste Services pursuant to these Terms and Conditions shall be in full compliance at all relevant times with all applicable environmental, health and safety legal requirements, including statutes, regulations, ordinances and common law; and,
 - 8.3. TMDP will provide Waste Services in a safe and workmanlike manner and in full compliance with all valid and applicable statutes, ordinances, orders, rules, regulations, and common law of the federal, state and local governments in whose jurisdictions such activities are performed; and,
 - 8.4. No Waste Services will infringe any patent, trademark, copyright, trade secret or other intellectual property right owned or controlled by any other corporation, firm or person or other third party; and,
 - 8.5. TMDP makes no other warranty, expressed or implied, other than as is specifically set forth above and none shall be implied. The warranties set forth above are exclusive and are given by TMDP and accepted by Generator in lieu of any and all other warranties, whether expressed or implied, all such warranties being hereby expressly disclaimed and waived by Generator.
9. Generator warrants and represents to TMDP that:
 - 9.1. The description and specifications of the Waste Material in the Generator's waste profile document is or shall be true and correct in all material respects, that they fairly advises TMDP of the hazards and risks known by Generator to be incident to the Waste Services as requested by Generator and are otherwise in full compliance with all materials description requirements of valid and applicable statutes, ordinances, orders, rules and regulations of the federal, state and local government in whose jurisdictions such Waste Material is to be tendered to TMDP; and
 - 9.2. Generator will immediately disclose to TMDP any and all information known to Generator relating to the Waste Materials that presents or may present a hazard or risk to persons, property, the environment or the ecosystem whether such information is received or developed by generator before or after delivery of the Waste Material to TMDP; and,
 - 9.3. Generator will comply with all valid and applicable statutes, ordinances, orders, rules and regulations, of the federal, state and local governments in whose jurisdiction such Waste Material is to be tendered to TMDP, pertaining to Generator and the Waste Material and the Waste Services; and,
 - 9.4. Unless otherwise specified in writing, Generator has sole title to the Waste Material which will be tendered to TMDP, and is not under legal restraint, statutory, regulatory, administrative or judicial, which prohibits the transfer of possession or title to such Waste Material to TMDP; and,
 - 9.5. Except as specifically set forth in the applicable waste profile document, the Waste Material delivered to TMDP shall be free of all toxic, radioactive or hazardous chemicals, compounds or organisms and all medical waste which, if present in any waste stream, would bring the waste stream under the regulatory classification of hazardous or toxic within the meaning of any Federal, state or local law or regulation or the rules, regulations or otherwise present an risk or hazard to persons, property, the environment or ecosystem. The provision of this representation and warranty shall survive, for all purposes, the acceptance of or the failure to reject the Waste Material by TMDP.
10. Indemnification Provisions
 - 10.1. Each Party agrees to defend, indemnify and hold the other Party and their respective affiliates and subsidiaries, and the respective affiliates, directors, officers, partners, members, employees and agents, harmless from and against any and all claims, liabilities, suits, proceedings, judgments, orders, fines, penalties, damages, losses, costs and expenses (including, without limitation, costs of defense, settlement and reasonable attorneys' fees and expenses) (all of the foregoing herein collectively called "Liabilities, Proceedings and Damages"), arising out of (i) the indemnifying Party's active or passive negligence, gross negligence or willful misconduct; and/or, (ii) failure of the indemnifying Party or any of its employees or agents to observe or comply with any of the indemnifying Party's duties or obligations under these Terms and Conditions, including, without limiting the generality of the foregoing, any failure to observe or comply with any applicable Federal, state or local laws, ordinances, codes, orders, rules or regulations; violation or breach of the warranty provisions in these Terms and Conditions. The foregoing obligations of indemnity will include, but not be limited to, any and all Liabilities, Proceedings and Damages for or relating to (i) injury to or death of any person (including, without limitation, employees or agents of the Parties), (ii) damage to or loss or destruction of any property (including, without limitation, property of the Parties, or their respective employees or agents), and (iii) any spill, release or leak of any hazardous substance or

waste or any contamination of, injury or damage to, environmental impairment of or adverse effect on persons, animals, aquatic and wild life, biota, vegetation, waters, other natural resources, or the environment. Provided, however, the indemnifying Party shall be liable only for that percentage of total Liabilities, Proceedings and Damages that corresponds to the indemnifying Party's percentage of total active or passive negligence, gross negligence, willful misconduct or other fault as herein described above as it is compared to that of the indemnified Party.

10.2. Neither Party shall have any liability to the other Party for any indirect, incidental, aggravated, exemplary, punitive, or consequential damages incurred by the other Party, whether brought on an action for breach of contract, breach of warranty, tort, strict liability, or otherwise and irrespective of whether caused or allegedly caused by either Party's negligence, gross negligence or willful misconduct and none shall be awarded by any tribunal against a Party hereto in favor of a Party hereto; provided, however, that the limitations on liability contained in this Section 10.2 shall not apply to damages which are part of a third Party claim for which a Party hereunder is claiming an indemnity obligation under these Terms and Conditions from the other Party and the Party entitled to indemnity protection under these Terms and Conditions is seeking an indemnity or other relief against the payment of such damages from the Party required to provide such indemnity or other relief.

10.3. Those provisions of these Terms and Conditions which by their nature are intended to survive the termination, cancellation, completion or expiration of these Terms and Conditions shall continue as valid and enforceable obligations of the Parties, notwithstanding any such termination, cancellation, completion or expiration. Such provisions include, but are not limited to, provisions concerning warranties and indemnifications.

11. Whenever entering onto a TMDP facility, any employee, common carrier or other agent or representative of Generator shall comply with all reasonable requirements of TMDP imposed for purposes of safety, indemnity and/or insurance protection. Generator shall be responsible for any and all demurrage charges arising from the transportation of Waste Material.

12. Generator will pay the TMDP invoice within thirty (30) calendar days following its actual receipt by mail, fax or electronic transmittal. TIME IS OF THE ESSENCE for the payment of all invoices. At its option, TMDP may require that payments be made via Electronic Funds Transfer through the Automated Clearing House (EFT/ACH) or similar electronic transfer protocol. Interest on all overdue accounts shall accrue until paid at the lesser rate of (i) twelve percent (12%) per annum or (ii) the lesser of the highest interest rate chargeable under the laws of the Texas for such transactions. Should any portion of any TMDP invoice(s) be disputed by Generator, Generator will pay the undisputed portion within the time period set forth above and shall, within said time period, provide TMDP with notice of the disputed portion of the invoice and the reasons therefor. In no event shall Generator withhold payment of the undisputed portion of a TMDP invoice based on the set-off of a Generator claim against TMDP or as a back-charge for monies claimed to be owed Generator by TMDP. Nothing herein shall be construed as a requirement that TMDP extend credit at any level to Generator.

13. All fees and charges for Waste Services as may be set forth in any quotation, bid, service and pricing agreement, work order or purchase order are exclusive of any and all federal, state or local sales, excise, value added, environmental and/or use taxes (or other similar taxes). Payment (or reimbursement) of any such tax shall be the responsibility of Generator.

14. TMDP shall not be considered in default in the performance of its obligations or be subject to any liability if such performance is prevented or delayed on account of causes beyond the reasonable control of TMDP, including without limitation, war, hostilities, revolution, civil commotion, strike, epidemic, rain, fire, wind, earthquake, flood, major equipment failure, labor dispute or because of any law, order, regulation or ordinance of any government, or of any subdivision thereof, or because of an Act of God.

15. TMDP shall consider all information received from Generator to be confidential and shall not disclose any such information to any third party except as required by law or as Generator may request or otherwise permit.

16. If any section or clause of these Terms and Conditions shall be adjudged illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of these Terms and Conditions as a whole or of any section, subsection, sentence or clause hereof not so adjudged.

17. These Terms and Conditions may be changed, modified or terminated only by a writing signed by both Parties. Any prior verbal agreements or understandings between the Parties pertaining to the Waste Services covered hereby are hereby terminated and/or superseded by these Terms and Conditions. The waiver of a breach of any term or condition shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition hereof.

18. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Texas without reference to the choice of law doctrine of such state. Any suit brought by either Party against the other Party for claims arising out of these Terms and Conditions and/or the Waste Services shall be brought in the courts of Galveston County, Texas, and the Parties hereto consent to the exclusive jurisdiction of such courts in respect of such action or proceeding. In the event of any litigation between the Parties arising from the Waste Services or these Terms and Conditions, the prevailing Party shall be awarded its costs of suit, including reasonable attorney's fees.

19. The relationship of TMDP to Generator is that of an independent contractor.