

ERG ENVIRONMENTAL SERVICES – GENERAL TERMS AND CONDITIONS**1) CONTRACTUAL**

- 1.1. **ACCEPTANCE:** By signing and returning a copy of this proposal (Agreement), Client accepts the General Terms and Conditions and the Scope of Work/Services provided herein, subject to final credit approval by ERG Environmental Services (ERG) and incorporation of payment terms (see Item 1.4, below). This Agreement is and shall always remain that of independent parties to a contractual relationship. Client shall reimburse ERG for all costs and expenses of collecting any amounts owed to ERG, including, without limitation, court costs and reasonable attorney fees.
- 1.2. **SCOPE OF WORK/SERVICES:** ERG's proposed Scope of Work/Services and associated fee estimates and schedules are based on ERG's understanding of the Scope of Work/Services, including services to be performed, waste which requires management, etc. and ERG's Client (and/or Waste Generator's [Generator], if different than Client) needs and objectives.
- 1.2.1. Client (and/or Generator to Client, hereinafter Client/Generator) shall make available to ERG all information regarding the proposed work/waste and any relevant site conditions that may affect the Scope of Work that is known or readily accessible to Client/Generator that may be reasonably necessary for ERG's completion of the proposed service.
- 1.2.2. During the project, prior to waste removal, or at any time thereafter when new information becomes available to Client/Generator, same shall provide prompt, full, and complete disclosure to ERG of new information that could affect ERG's performance of the proposed services or could pose potential hazardous conditions or risk to the health or safety of ERG's employees, agents, and/or subcontractors.
- 1.2.3. If, as a result of knowledge gained by ERG during management of the services proposed herein, and/or other information becomes known and ERG determines that a change in level of effort or direction is warranted, ERG will inform Client of the proposed changes in the Scope of Work/Services so that negotiation can be accomplished.
- 1.3. **QUOTATIONS AND PROPOSALS:** Quotations and fee estimates will be honored for a period of thirty (30) days unless otherwise agreed upon. Unless expressly stated otherwise, quoted fees constitute our estimate based upon our understanding of the work to be performed and are subject to revision if the Scope of Work/Services is modified / redefined or subject to prevailing wage schedules, as applicable.
- 1.3.1. Verbal quotations are not binding until confirmed in writing and signed by Client.
- 1.3.2. Pricing provided for waste disposal is not considered final until ERG has evaluated a representative sample and/or performed a complete waste characterization review.
- 1.3.3. Pricing changes must be in writing and signed by ERG and Client to be considered binding.
- 1.3.4. Client/Generator must notify ERG prior to quotation if the proposed work is subject to prevailing (Davis-Bacon) personnel wage rates.
- 1.4. **PAYMENT:** Client shall pay ERG in full within thirty (30) calendar days from the date of each ERG invoice. Any amount not paid within thirty (30) calendar days of the ERG invoice date shall be charged interest at the rate of one and one-half percent (1-1/2%) per month, which shall be applied effective as of the date such payment was originally due. These payment terms are contingent upon ERG's review of Client's credit history; pre-payment or a retainer may be required prior to services being rendered.
- 1.4.1. ERG invoices are subject to a \$75.00 invoice minimum.
- 1.4.2. All hourly personnel, equipment and transportation rates are Portal-to-Portal from ERG's base of operations with a minimum four (4) hour charge per unit. For work performed on a time and materials basis, Straight Time (ST) rates will be invoiced for the first eight (8) hours of work performed between 7:00 am and 5:00 pm, Monday through Friday (not including holidays). Overtime (OT) rates will be invoiced: a) After the first eight (8) hours of ST work; b) For work performed between 5:00 pm and 7:00 am, Monday through Friday; c) All day Saturday.



Double Time (DT) rates will be invoiced for: a) Work performed all day Sunday; b) Work performed on the following Federal holidays (including the weekday observation of said holidays): New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

- 1.4.3. If pricing contained herein reflects transport of Generator's waste(s) on a Less Than Load (LTL) basis, transport will be on a combined shipment along with other waste generators, to be coordinated at ERG's scheduling convenience. LTL pricing includes one-half (1/2) hour of on-site loading time per vehicle; additional on-site time will be invoiced at a demurrage rate of \$135.00/hour/vehicle. If transport must be coordinated to meet Client/Generator's scheduling convenience, a dedicated transport event can be performed for an additional cost, with applicable demurrage costs, as specified above.
- 1.4.4. A fuel surcharge will be assessed on ERG's invoiced equipment and transportation rates. The applicable surcharge will be based on the petroleum pricing for the Midwest Region that appears on the following DOE website for the week the work is performed: <http://www.eia.doe.gov/oog/info/wohdp/diesel.asp>
- 1.4.5. Waste disposal surcharges, if any, may not be included in this proposal and may be invoiced separately from the base costs provided herein. Client/Generator must provide backup documentation in order to assist with proper waste characterization, including but not limited to recent laboratory analysis, product SDS's, product spec sheets, detailed waste generating process documents, etc. If analysis has not been conducted on spent waste streams within the calendar year, updated analysis may be required for approval.
- 1.4.6. Lamp Counts: Billing counts for Client's/Generator's lamps processed by ERG are ascertained by the gross weight of the shipment divided by the average unit weight of the type of lamp(s) shipped.
- 1.4.7. If a waste manifest is used to transport Generator's waste, an EPA-mandated E-Manifest of \$38.00 per manifest will be assessed to Client/Generator.

2) SITE CONDITIONS

- 2.1. **SITE HAZARDS, SURFACING MATERIALS, UTILITIES AND SUBSURFACE STRUCTURES.** All ERG field activities will be conducted in a safe and timely manner.
 - 2.1.1. All site work will to be performed under Level D health and safety conditions, unless specifically quoted otherwise. If Level D work is upgraded to Level C or higher, all pricing will be renegotiated. Prior to commencement of any activity on the site, Client agrees to inform ERG of hidden site conditions, features and hazards, both surface and underground, that are known to Client and may interfere with the planned activities, may be damaged by the proposed work activities, and/or may represent a health or safety hazard.
 - 2.1.2. If the existence of such conditions are unknown, ERG may, in its sole judgment and at Client's expense, perform or arrange with others for investigations to discover such conditions or hazards and the protection required thereof.
 - 2.1.3. Client shall be responsible for the identification of all utilities and subsurface structures within the property lines of the project site which are not identified by an independent utility marking service.
 - 2.1.4. During the use of heavy equipment (including but not limited to ERG service vehicles, vacuum tankers, heavy equipment trailers, subsurface probe's tractor/trailer, excavators, loaders, gravel/dump trucks, etc, as applicable), care will be taken to preserve the existing site surfacing materials (including but not limited to asphalt, concrete, gravel, bare soil, sand, landscaped grasses, etc). Due to the weight of the heavy equipment, ERG cannot guarantee site surfacing materials and/or other landscaping will not be impacted as a result of performing authorized services within the property lines of the project site.
 - 2.1.5. Client agrees to indemnify and hold ERG harmless from any and all claims, damages, losses, liabilities and expenses, including attorney fees, arising out of or resulting from any damage to:
 - 2.1.5.1. Site utilities and/or subsurface structures caused by ERG and/or its subcontractors that were not identified or misidentified by an independent utility marking service, Client and/or Others.
 - 2.1.5.2. Site surfacing materials and/or other landscaping caused by ERG and/or its subcontractors as a result of performing authorized services.



- 2.2. **ACCESS:** Client will arrange for and provide such access to all areas of the proposed work site (including roadways, buildings, railways, private property, etc.) as is necessary for ERG to perform its services contained within the Scope of Work/Services. Modifications to the site necessary to facilitate the work shall be at Client's expense. ERG will not be responsible for obtaining access nor permission to perform work on or off the subject property. ERG and its subcontractors will be provided unencumbered access to the site.

3) GENERATOR / WASTE MANAGEMENT

- 3.1. **OWNERSHIP OF WASTE / LABORATORY SAMPLES:** Samples from Client/Generator, submitted to ERG by the Client/Generator or residue thereof after analysis, shall remain the property and responsibility of Client/Generator for purposes of special handling, hazardous waste transport and/or disposal. Unless otherwise agreed, sample residuals shall be disposed of or returned to Client/Generator upon completion of analysis, at the discretion of ERG.
- 3.1.1. Samples will be analyzed under normal processing time of five (5) to ten (10) working days (not including Federal holidays). All samples will be retained for thirty (30) calendar days from date of collection unless an extension is requested in writing.
- 3.2. **WASTE SHIPPING REQUIREMENTS:** It is the responsibility of Generator to properly package, mark, and label their hazardous materials or hazardous waste in compliance with Department of Transportation (DOT) requirements.
- 3.2.1. Client/Generator acknowledges that while ERG may identify and/or provide waste packaging, marking and labeling materials, it is the sole responsibility of Generator to maintain compliance with DOT regulations. The same Generator responsibilities apply to bulk hazardous waste/material shipments.
- 3.2.2. All waste containers must be suitable for transport pursuant to DOT requirements or recovery drums will be provided and utilized by ERG, at a charge of \$245.00 per steel drum (\$295.00 per poly drum) to Client.
- 3.3. **SELECTION OF DISPOSAL FACILITY:** Client/Generator acknowledges that ERG has no responsibility for the selection of a waste treatment technology nor Treatment, Storage, and Disposal Facility (TSDF) for each of Generator's waste streams, as this is solely the responsibility of Generator.
- 3.3.1. Client/Generator further acknowledge that while ERG may identify potential TSDF's that are capable of managing Generator's waste(s), ERG will not select any specific TSDF for any waste stream on behalf of Generator.
- 3.3.2. Title and all other incidentals of ownership to the waste material shall pass directly from Generator to the TSDF designated by the Generator (or Client on behalf of Generator, if so authorized).
- 3.3.3. Testing facilitated by ERG and/or transportation of any waste material by ERG shall not relieve Generator of any of its obligations or liabilities under the Comprehensive Environmental Response, Compensation and Liability Act, 42USC 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 USC 9601 et seq.; or the Natural Resources and Environmental Protection Act, MCLA 324.181 et seq., and/or any other regulations which pertain to management of the site conditions / waste / etc. outlined herein, each as may be amended from time to time.
- 3.4. **RECYCLING:** Materials and/or wastes for which ERG has accepted title may be beneficially recycled through re-use, re-sale, secondary recycled feed stock, smelting, extrusion, and/or other acceptable methods, at the discretion of ERG. Recycling / recovery value remains with ERG.
- 3.5. **PCB MATERIALS:** Mineral oil for dechlorination must contain less than one percent (1%) water, less than 1% solids, and must pass saponification testing parameters or special pricing may apply. Analytical must be provided by Client/Generator for all PCB material prior to removal of PCB materials from Client's/Generator's site.
- 3.5.1. If Client's/Generator's analytical is greater than one (1) year old, ERG will obtain a sample and analysis of each item, and a charge of \$105.00 per sample will be invoiced to Client/Generator. ERG's pricing assumes a Storage for Disposal Date (SFDD) of less than one (1) month, otherwise disposal surcharges may apply.
- 3.5.2. PCB wastes destined for Environmental Recycling in Bowling Green, Ohio cannot contain RCRA constituents in excess of their individual regulatory limits.



4) ERG and CLIENT UNDERSTANDINGS

- 4.1. **STANDARD OF CARE:** Pursuant to the terms and conditions of this Agreement, ERG will perform services using the standard of care commonly used by environmental professionals and hazardous waste transporters practicing in the States of Michigan and Ohio. This agreement shall be governed by the laws of the State of Michigan.
- 4.2. **REFERENCE TO CLIENTS:** ERG shall have the right to utilize Client's name and a general description of the services provided as reference to other potential clients, unless instructed otherwise by Client. ERG will not use any documents, photos nor specific references to Client, Client's projects nor facilities unless authorized to do so in any sales, advertising or company brochures.
- 4.3. **OWNERSHIP OF DOCUMENTS:** ERG shall have rights of ownership of all data, project records, work products, reports, and/or instruments of service resulting from the proposed Scope of Work/Services and such materials shall remain in the possession of ERG for a period of seven (7) years. Client shall have reasonable access to original such materials during normal business hours.
- 4.4. **CONFIDENTIALITY:** ERG agrees to maintain in confidence all information gathered and formulated as part of the authorized Scope of Work/Services except where disclosure is mandated by law. ERG further acknowledges that the information presented in proposals and reports is exclusively for the use of Client/Generator (as applicable). ERG will not distribute nor publish reports without the consent of Client except as required by law or court order. Client acknowledges that all reports filed with State and/or Federal regulatory agencies on behalf of Client or Generator, by authorization to ERG, become public records subject to dissemination through the Freedom of Information Act.
- 4.5. **CONCLUSIONS:** Conclusions made by ERG are statements of professional opinion based in part on the interpretation of data from discrete samples and reasonable interpolation of conditions between sample points. Data and conclusions are not transferable to third parties, different sites, and/or different regulatory circumstances.
- 4.6. **GENERAL INDEMNIFICATION:** ERG will indemnify and hold Client harmless from and against demands, damages, and expenses caused solely by ERG's negligent acts and omissions, and breach of contract and those acts, omissions, and breaches of persons for whom ERG is legally responsible. Client will indemnify and hold ERG harmless from and against demands, damages, and expenses caused by Client's negligent acts and omissions, and breach of contract and those acts, omissions, and breaches of persons for whom Client is legally responsible (including persons for whom Generator is legally responsible, if Client is acting on behalf of Generator).

5) DELAYS AND TERMINATION

- 5.1. **DELAY OR TERMINATION:** In the event of delay and/or termination at the request or direction of Client prior to the completion of the agreed upon services, ERG shall be compensated for services performed up to the date of delay and/or termination and ERG shall bear no legal nor financial liability for the site, waste, or any other conditions which result from the decision by Client to delay or terminate the project.
 - 5.1.1. Compensation to ERG shall include labor and expenses for completion of specific analyses and activities underway at the time of notification, as well as all costs, expenses and damages resulting from the delay or termination.
 - 5.1.2. ERG shall not be responsible for delays in performance nor cancellation of contracts resulting from causes beyond the control of ERG, labor disputes, acts of God, global pandemics and/or acts of third parties.
- 5.2. **THIRD PARTY DELAYS:** Waste loading and/or transportation delays experienced at Client's/Generator's facility and/or at the Generator-designated TSDf that are not the fault of ERG will be billed at a demurrage rate of \$135.00 per hour for each waste transport vehicle; additional ERG personnel affected by said delays will be invoiced at the applicable unit hourly rates for that project.
- 5.3. **PRICING:** Unless otherwise specified herein, ERG's price quotations provided prior to completion of ERG's services are estimates only and final invoicing may vary accordingly. Disposal and/or recycling prices contained herein may vary without notice from the designated TSDf to ERG.

END OF GENERAL TERMS & CONDITIONS

