

# Terms & Conditions of Sale

## THE TERMS AND CONDITIONS BELOW CONSTITUTE THE AGREEMENT BETWEEN THE PARTIES

### 1. Offer and Acceptance

a) This document constitutes Wastequip, LLC's ("Wastequip") acknowledgement of the purchase order or other form of offer ("Order") issued by you ("Buyer") for the purchase of Wastequip provided products, materials, parts, components, systems or services described in the Order (each, and collectively, "Product"). By placing an Order, Buyer makes an offer to purchase the Product pursuant to these terms and conditions of sale ("Wastequip's Terms"), and no other terms. The term "Wastequip" shall include any and all of Wastequip, LLC's subsidiaries and their affiliates.

b) An Order is not binding on Wastequip until Wastequip accepts the Order in writing or starts to perform in accordance with the Order. Buyer's placement of an Order, and Wastequip's acceptance of, and commencement of performance pursuant to an Order is expressly conditioned on, and constitutes, Buyer's assent to all of the terms and conditions in Wastequip's Terms. Orders not accepted by Wastequip, as noted herein, shall be ineffective, null and void. The terms and conditions set forth in Wastequip's Terms will constitute the entire agreement relating to the purchase of the Products with respect to such Order, Buyer shall be deemed to have accepted all of Wastequip's Terms, and any different or additional terms in an Order are rejected. Unless otherwise specified in this or some other document signed by Wastequip, the terms and conditions of sale set forth in the Wastequip's Terms apply to all Product sold or provided to Buyer by Wastequip.

c) Any terms in an Order which purport to reject, amend or alter some or all of Wastequip's Terms, by virtue of standard form language or otherwise, shall not be sufficient objection to Wastequip's Terms. Buyer shall be required to set forth each objection to Wastequip's Terms in a separate writing signed and dated by Buyer and delivered to Wastequip prior to Wastequip's shipment of the Products. Wastequip's failure to object to provisions in an Order or any purchase order or other communication from Buyer (including, without limitation, penalty clauses or warranties of any kind), shall not constitute a waiver by Wastequip of Wastequip's Terms, nor an acceptance by Wastequip of any such provisions. Any terms in an Order or any other documents which are different from or in addition to Wastequip's Terms are rejected unless specifically accepted by Wastequip in a separate document signed by both Buyer and Wastequip, regardless of whether such other terms would materially alter these Wastequip Terms. No course of dealing, custom or usage, which is contrary to Wastequip's Terms or otherwise shall be relevant to, supplement, explain or apply to these Wastequip Terms.

d) Each Order shall specify (i) the amount of the purchased Products, (ii) the location to which the ordered Products are to be shipped and (iii) the requested ship date. Wastequip reserves the right to correct any typographical or clerical errors in prices, specifications, quotations, or acknowledgments and/or modify or revise an Order to comply with Wastequip's minimum order requirements, as communicated to Buyer.

e) The Wastequip Terms constitutes the entire agreement of the parties, and supersedes all prior written or oral representations made by the parties with respect to the subjects addressed in this agreement.

### 2. Prices, Shipment, Delivery, and Inspection

a) Prices are based on U.S. dollars and are F.O.B. Wastequip's designated point of shipment. If no price is included in Wastequip's acceptance of an Order, the Price shall be the price set out in Wastequip's published price list in force as of the date of the Order, as may be amended by

Wastequip from time to time, with or without notice. Pricing is based on Buyer's anticipated Order prior to the expiration of Wastequip's Quote, including product specifications, quantities and timing. Any differences to Buyer's Order may result in different pricing, freight or other costs. Due to volatility in petrochemical, steel and related Product material markets, actual prices and freight, are subject to change and will be confirmed prior to acceptance of an Order. Wastequip reserves the right, by providing notice to Buyer at any time before beginning Product manufacturing, to increase the price of the Product(s) to reflect any increase in the cost to Wastequip which is due to any factor beyond Wastequip's control (such as, without limitation, any increase in the costs of labor, materials, or other costs of manufacture or supply). Unless otherwise stated, materials and container sizes indicated on sales literature, invoices, price lists, quotations and delivery tickets are nominal sizes and representations – actual volume, Products and materials are subject to manufacturing and commercial variation and Wastequip's practices, and may vary from nominal sizes and materials. Prices may not include applicable freight or delivery charges, handling, loading, mounting, fuel surcharges, insurance, customs, duties, financing, fees, collection charges on draft of C.O.D. shipments or taxes (such as present or future sales, excise, use, ad valorem), brokerage fees, any export or import duties or any special arrangement for payment or shipment unless otherwise expressly noted. Any such charges may be prepaid by Wastequip and added to Buyer's invoice, and Wastequip reserves the right to change such prices and charges at any time prior to shipment. If Buyer is not tax exempt, final tax calculations are subject to change. If Buyer provides no carrier, routing or packaging instructions, Wastequip shall have sole discretion as to mode, routing and/or packaging of shipment.

- b) The Products subject to this sale and Buyer's Order shall be limited to those described in the Wastequip Invoice accompanying the Product and/or shipment.
- c) Sales Tax will be charged on all shipments unless a current exemption certificate is on file with Wastequip.
- d) Risk of loss or damage to the Product shall pass from Wastequip to Buyer upon delivery to a carrier at point of Wastequip's shipment, unless expressly agreed to in writing. Any claim against carriers or for other physical loss of or damage to the Product shall be the responsibility of Buyer, and for its own account. Buyer shall remain responsible for payment of Product, notwithstanding the foregoing. If any part of any shipment is damaged or missing when it arrives, Buyer is required to take delivery, have delivery carrier acknowledge damage or shortage, and make proper notation on the freight receipt (failure to have carrier acknowledge damage may void any warranty and continue Buyer's responsibility for payment in full).
- e) Any shipment, delivery, or performance date or associated fees stated in an Order, Wastequip Invoice or other contract document are an estimate and approximation only and does not constitute any guarantee of shipment, delivery, performance or fees on any particular date. Wastequip will not be liable for any or all damages resulting from any delay or early shipment, regardless of the cause of the delay or early shipment. Unless otherwise expressly stated, Wastequip shall have the right to make any delivery in installments, and/or may require Buyer accept shipments in full cartons/loads for some Products. Wastequip reserves the right to modify an Order based on Product availability. Further, any quotation of freight, transportation, shipping, handling or similar charges are estimates only; if such charges are included in the Price, any increase in rates becoming effective after the Order date shall be applied to the Order.
- f) Buyer shall inspect and accept conforming Product or reject nonconforming Product delivered by or for Wastequip upon delivery to carrier at point of Wastequip's shipment or Buyer's designated facility, whichever is applicable to the Order. If an inspection or testing of the Product has been agreed upon prior to shipping, such inspection or testing shall be made at Wastequip's plant or other source of supply before shipment of the Product, and Buyer approval or rejection shall be made promptly and in any event before shipment; no claims will be considered thereafter. All Product delivered shall be conclusively deemed accepted and to conform to contract requirements unless

rejection is made or specific objection or notice of nonconformity is given in writing to Wastequip upon such delivery.

g) On receipt of notification of rejection, Wastequip will arrange to receive back the Product for shipment and return. Wastequip may have an agent inspect the Product for nonconformity, including inspection made on return to Wastequip's point of shipment. If confirmed as nonconforming, Wastequip may thereafter ship conforming Product following the notice of rejection, unless Buyer earlier notifies Wastequip to forego this shipment.

h) The Product subject to this sale, and any related technology or software, which is exported from the United States, Mexico, and/or Canada, is done in accordance with, and subject to, the applicable regulations and statutes on economic sanctions and trade embargoes. Buyer diversion, export or re-export, other transfer, finance, or facilitation is at Buyer's own expense; and if contrary to applicable laws, statutes or regulations is expressly prohibited and at Buyer's own risk.

i) Buyer shall be familiar with and keep informed (without reliance on Wastequip) with regards to any hazards to persons and/or property involved in handling, use, storage and disposal of the Products. Buyer shall advise its employees, customers, contractors and others who handle, use, store or dispose of such Products of any such hazards. Buyer represents and warrants that the Products will not be used in connection with any applications where failure or malfunction could create a situation in which personal injury or death is likely to occur. Buyer shall ensure that Products are (i) installed, used and maintained in accordance with commercial standards and applicable laws, statutes, regulations and requirements; and (ii) not resold to members of the general public if Products are reasonably known to be for professional and/or commercial use only.

### **3. Payments, Title and Security Interests**

a) Payment shall be due as stated on the Wastequip Invoice for the Product. All payments shall be made in U.S dollars. All payments by Buyer shall be without deductions for back charges, set-offs, other accounts between Wastequip and Buyer and the like, which shall be settled independently of the payment of the Invoice, unless expressly allowed under an applicable Wastequip Credit Memo or alternate written approval; provided, however, that Wastequip reserves the right of set-off against Buyer and any affiliated entities thereof. Payment shall not prejudice claims on account of omissions or shortages in shipment, but no such claim will be allowed unless made upon receipt of the applicable shipment by Buyer.

b) Should Buyer delay payment beyond the date it is due, interest and/or service charges may be charged by Wastequip on the unpaid balance at the highest rate allowable by law. All dishonored checks will be assessed a service charge at the highest rate allowed by law. Wastequip expressly reserves the right to modify payment terms, credit terms and/or limits, restrict delivery and/or place accounts on C.O.D. or cash-only status at any time.

c) Notwithstanding that risk of loss passes to Buyer upon shipment, Wastequip shall retain and Buyer hereby grants to Wastequip a prioritized security interest in the Product and any proceeds therein until payment in full is received by Wastequip. At the request of Wastequip, Buyer shall sign all financing statements and other documents required to attach, perfect, file or otherwise protect such security interest.

d) Upon default by Buyer of the payment terms, or any other violation of the Wastequip Terms, Wastequip may exercise any or all of the following remedies with respect to the Product and/or purchases: (i) replevin or seizure by judicial process or otherwise; (ii) acceleration of remaining payments so that they are immediately due; (iii) cancellation, refusal to enter into or perform any Order; (iv) damages for any unpaid portions of the sales price, loss or for consequential or incidental damages; (v) indemnification from Buyer from and against loss, damages and expenses; (vi) interest, attorneys' fees and costs; and (vii) void all warranties as set forth in Section 8. This list of

remedies is not exclusive or exhaustive and shall be cumulative and in addition to any other remedies available at law.

#### **4. Modification or Cancellation**

a) Without Wastequip's written consent, neither modification nor cancellation of an Order, nor deferred delivery of Products, completed or in production, beyond the earlier of the scheduled or actual shipping date(s) is permitted by Buyer or Buyer's agents or representatives. Modification, cancellation or suspension of an Order after acceptance by Wastequip may be made only upon written acceptance of Wastequip and on terms which will compensate Wastequip for loss (including loss of profits) due to the cancellation and shall include payment for work already completed and/or materials already used or purchased. Modification, partial cancellation or suspension may subject an entire Order to price revision, in Wastequip's discretion.

b) Notwithstanding anything contained herein to the contrary, Wastequip may reject in writing any Order submitted by Buyer for any reason, including if Wastequip, in its sole discretion, determines that it cannot meet the quantity of purchased Products to be delivered or the requested shipment date specified in such Order.

#### **5. Product Return Policy**

a) All returns must be authorized by Wastequip prior to shipping and acceptance. Product must be returned in the same condition as shipped by Wastequip, which may include original packaging, and Buyer must include a copy of the Invoice with any return. Buyer must complete and return a Warranty Registration Form for some Products, where applicable. Product may not be returned by Buyer to Wastequip after 30 days of Invoice date, without applicable Warranty Registration or proof of purchase or ownership. Go To Parts' supplementary Return Policy can be found by clicking [here](#) a hard copy of which is available upon request. If there is any conflict between the Go To Parts Return Policy and the Product Return Policy contained in this Section 5, the terms of the Go To Parts Return Policy shall control.

b) A Return Authorization Number must be obtained from Wastequip within five (5) days of receipt of Product and before such Product may be returned for credit. No Product shall be returned to Wastequip without Wastequip's written consent. If any portion of the Product delivered to Buyer are defective or are otherwise not in accordance with contract specifications, Wastequip shall have the right in its discretion either to replace such defective Product or to refund the portion of the purchase Price applicable thereto. Any returned Product shall become the property of Wastequip; Buyer, Buyer's customer or end-user is not authorized to otherwise dispose of, sell or recycle such Product, parts or components. In no event shall Wastequip be liable for the cost of processing, lost profits, injury to goodwill or any other special incidental or consequential damages.

c) Buyer is responsible for prepayment of, and all other related freight costs associated with returning Products to Wastequip unless previously agreed to in writing by Wastequip. Buyer is responsible for any missing or damaged Product. Risk of loss or damage to Product shall pass from Buyer to Wastequip upon physical receipt by Wastequip.

d) Special order or non-stock items or other Product specified by Wastequip are not eligible for return.

e) Any and all Product claimed defective or as a warranty matter must include a written explanation of how the Product was stored, maintained, installed and/or operated, as further described herein. Buyer must complete a Warranty Claim Form, where applicable.

f) If, in Wastequip's judgment, a returned Product is not defective or not shipped in error, Wastequip may apply a service charge of 20% and/or a restocking fee up to 20% of the Product purchase price.

g) Wastequip reserves the right to dispose of, return to Buyer (at Buyer's cost of freight and related charges), allow Buyer retrieval within seven (7) calendar days, or any other remedy, in Wastequip's discretion, for any attempted Product returns in contravention of the Wastequip Terms.

## **6. Product Design and Intellectual Property**

a) Buyer acknowledges that materials, sizes, descriptions or illustrations indicated on Wastequip sales literature, invoices, price lists, quotations, delivery tickets, catalogues, price lists or advertising are nominal sizes and representations intended for general information only; actual volume, products, sizes and materials are subject to manufacturing and commercial variations and Wastequip's practices, and may vary from nominal sizes, descriptions, illustrations and materials. Further, changes and improvements in the design and specifications of Product may be made from time to time by Wastequip and/or third party manufacturers of the Product and Wastequip (i) may substitute such Product for the Order and (ii) has no obligation to provide notice thereof to Buyer.

b) The supply of Product hereunder shall not cause, vest, grant or establish any permission, license or right in Buyer, Buyer's customer or end users of any Wastequip Intellectual Property without Wastequip's prior written permission (or the permission of a third party owner, if applicable). "Intellectual Property" herein includes, but shall not be limited to, the Wastequip Product names, model numbers, logos, trade names, slogans, trademarks (registered or unregistered), distinctive shapes, service marks, patents, internet domain names, web addresses, web pages, website and URLs, works of authorship, expressions, designs and design registrations, (whether or not copyrightable), copyrights and copyrightable works, software and firmware, data, data files, databases, trade secrets, industrial and other intellectual property rights, specifications and documentation, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, now or hereafter owned or controlled by Wastequip.

c) Unless expressly authorized by Wastequip, Buyer shall not (i) use, grant or permit the use of any Wastequip Intellectual Property on, directly, or indirectly in connection with, any place of business or other facility; (ii) take any action that interfere(s) with any of Wastequip's rights in or to the Intellectual Property, including Wastequip's ownership or exercise thereof; (iii) challenge any right, title or interest of Wastequip in or to the Intellectual Property; (iv) make any claim or take any action adverse to Wastequip's ownership of the Intellectual Property; (v) register or apply for registrations, anywhere in the world, for Wastequip's trademarks or any other trademark that is similar to Wastequip's trademark(s) or that incorporates the Intellectual Property in whole or in confusingly similar part; (vi) use any mark, anywhere, that is confusingly similar to the Intellectual Property; (vii) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the Intellectual Property; (viii) misappropriate any of the Intellectual Property; (ix) alter, obscure or remove any of Wastequip's trademarks or trademark or copyright notices or any other proprietary rights notices placed on the Products, marketing materials or other materials that Wastequip may provide.

d) Irrespective of whether the Product manufactured or supplied hereunder is made to Wastequip or Buyer's drawings or designs, Wastequip shall be under no liability whatsoever to Buyer for alleged patent, trademark or other intellectual property infringement.

e) Buyer hereby represents and warrants to Wastequip that any request by Buyer or its agents to affix or install on or in any Product any licensed material ("Licensed Material") including, but not limited to, logos, trademarks, service marks, patents, or copyrighted material, that such request is made with permission from the lawful owner of the Licensed Material ("Owner"), that Buyer has the right to grant permission to Wastequip to use the Licensed Material, and that the use of such Licensed Material by Wastequip will not in any way infringe upon or violate any applicable law, rule or regulation, any contract with a third party of Buyer or any rights of the Owner or any other third party, including, without limitation, rights of patent, trade secrets, trademark or copyright. Buyer

agrees to defend, indemnify, and hold harmless Wastequip, its parent company, its subsidiaries, affiliates, successors and assigns, and their respective directors, officers, shareholders, employees, agents and assigns, from and against any and all claims, demands, losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind (including reasonable attorneys' and professionals' fees and costs), and the cost of enforcing any right to indemnification hereunder, arising out of or resulting from any claims that the use of the Licensed Material infringes or misappropriates any intellectual property rights of Owner or any third party.

## **7. Delays and Force Majeure**

- a) Wastequip shall not be liable or responsible to Buyer, Buyer's customers or end users, nor be deemed to have defaulted under or breached these Terms or an Order, for any failure of delay in fulfilling or performing any term of these Terms, for loss, damages, or nonperformance in whole or in part, including elimination or substitution of quantities affected, when and to the extent the failure or delay is caused by or results from acts beyond Wastequip's control, including the following Force Majeure events: strikes, labor disturbances, embargoes or blockades, material shortages, non-manufacturing conditions, delays or failures of Wastequip's suppliers (including Buyer, if applicable), carriers or communications, epidemics, fire, flood, storms, accident, riot, war, invasion, hostilities (whether declared or not), terrorist threats or acts, civil unrest, national or regional emergency, governmental requisition or priorities, acts of God, or other causes beyond Wastequip's reasonable control. Wastequip may, during any period of shortage due to any of said cause, prorate its supply of such goods among its customers under this and other orders and agreements in such manner as Wastequip may solely deem fair and practicable.
- b) Wastequip reserves the right to charge Buyer a storage fee for Products scheduled for pickup by Buyer or Buyer's customer, in the event such Product is not removed from Wastequip's designated shipment location upon the Wastequip designated shipment date.
- c) Time is not of the essence with respect to any times or dates. However, any dates for payments from Buyer to Wastequip and Product Returns noted herein are of the essence.

Buyer shall have no Force Majeure rights or remedies hereunder.

## **8. Warranty and Remedies**

Wastequip Product Limited Warranties, Disclaimers of Warranties, Limitation of Liabilities and Remedies and Limited Warranty Periods are collectively attached hereto, and incorporated by reference. There are no warranties, express or implied, which extend beyond the separate written warranty referenced herein. Non-payment sixty (60) days past the date of an Invoice shall void all warranties. Determination of the suitability of the Products for the use contemplated by the Buyer or Buyer's customer(s) is the sole responsibility of the Buyer in connection therewith. Buyer assumes all risk and liability for loss, damage or injury arising out of or incident to the use or possession of the Product furnished hereunder. If any sample, model or demonstration was shown to or provided Buyer, such sample, model or demonstration merely illustrates the general type and quality of Product, and is not to be construed as a representation or warranty that a Product will conform to such sample, model or demonstration.

## **9. Non-Waiver**

No failure by Wastequip to (a) exercise any right accruing to it by virtue of the Wastequip/Buyer relationship; or (b) enforce strict performance under Wastequip's Terms or under any contract of sale entered into with the Buyer, shall in any event operate as a waiver thereof or preclude the exercise of any other right or privilege by Wastequip. The rights and remedies reserved herein shall be cumulative and additional to all other rights and remedies available to Wastequip in law, equity or otherwise.

## **10. Confidential Information**

a) All non-public, confidential or proprietary information of Wastequip shall remain confidential, is solely for the use of performing and/or fulfilling an Order and may not be disclosed, copied or disseminated unless authorized by Wastequip in writing ("Confidential Information" includes, but is not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Wastequip to Buyer, whether disclosed orally, visually, or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with an Order). Wastequip shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by the Buyer on a non-confidential basis from a third party.

b) The supply of Product hereunder shall not cause, vest, grant or establish any permission, license or right in Buyer, Buyer's Customer or End Users of any Wastequip Confidential Information. Unless expressly authorized by Wastequip, Buyer shall not (i) use, grant or permit the use of any Wastequip Confidential Information; (ii) take any action that interfere(s) with any of Wastequip's rights in or to the Confidential Information, including Wastequip's ownership or exercise thereof; (iii) challenge any right, title or interest of Wastequip in or to the Confidential Information; (iv) make any claim or take any action adverse to Wastequip's ownership of the Confidential Information; or (v) misappropriate any of the Confidential Information.

## **11. Notice**

Any notice required or contemplated hereunder by one party to the other shall be in writing and delivered personally or sent by facsimile or by prepaid registered mail to Wastequip at the Invoice address or to Buyer at Wastequip's last known address for Buyer on file.

## **12. Limitation of Actions**

Any action by Buyer arising out of Wastequip's acceptance of an Order or arising out of Buyer's acceptance of the Product supplied must be commenced within one year after shipment of the Product. Buyer expressly waives and foregoes any right to trial by jury.

## **13. No Third-Party Beneficiaries**

Buyer's Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of Wastequip's Terms. The parties do not intend that the application of the Wastequip Terms shall create a right of enforcement in any third party and, in fact, the parties expressly intend that there be no third parties with standing to enforce any provision herein unless expressly agreed to in writing by Wastequip. In the event Buyer obtains funding from a third party, Buyer agrees that such third-party shall have no rights as a third-party beneficiary in any contract between Wastequip and Buyer.

## **14. Equitable Remedies**

Buyer acknowledges and agrees that (a) a breach or threatened breach of any of its obligations hereunder would give rise to irreparable harm to Wastequip for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by Buyer of any obligations, Wastequip shall, in addition to any and all other rights and remedies that may be available to Wastequip at law, at equity or otherwise in respect of the breach, be entitled to adequate assurances of Buyer's performance, equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages do not afford an adequate remedy. Buyer agrees

that it will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of these Terms.

## **15. Governing Law**

These Wastequip Terms, and all related documents, rights and obligations of the Buyer and Wastequip, and the construction and effect of any contract or agreement formed between them shall be governed by the laws of the State of North Carolina, exclusive of choice of law provisions, and all claims arising out of the Wastequip Terms and all contemplated transactions or breach thereof, whether sounding in contract, tort, statutory or otherwise, shall be governed by the laws of North Carolina, excluding that State's choice of law principals. Buyer consents to, and agrees that it will not commence any action, litigation or proceeding of any kind against or by Wastequip in any way arising from or relating to the Wastequip Terms and all contemplated transactions or breach thereof, whether sounding in contract, tort, statutory or otherwise in any forum other than the US District Court for the Western District of North Carolina or, if such court does not have subject matter jurisdiction, the courts of the State of North Carolina, sitting in Mecklenburg County and any appellate court from any thereof, and, for the purposes of any action of the type described herein commenced by Wastequip, Buyer freely and voluntarily submits to the jurisdiction of the state and federal courts of and in North Carolina and consents to the exercise of jurisdiction by the same. Further, Wastequip expressly reserves the right, and may commence any action, litigation or proceeding of any kind against Buyer in any way arising from or relating to the Wastequip Terms and all contemplated transactions or breach thereof, whether sounding in contract, tort, statutory or otherwise, in any exclusive or permissive forum of Wastequip's sole choice, including, but not limited to, North Carolina. Buyer waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to these Terms, including any exhibits, schedules, attachments and appendices related thereto, or the transactions contemplated hereby. Buyer further waives any defense of forum non conveniens, the right to remove an action initiated in State court to Federal court, and the right to make a motion to transfer an action from one Federal court to another. Buyer agrees that a final judgment in any action, litigation or proceeding hereunder is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The United Nations Convention on Contracts for the International Sale of Goods shall have no applicability hereunder.

## **16. Entire Agreement and Amendments**

For purposes of its rights under this Agreement, "Wastequip, LLC" or "Wastequip" may include its subsidiaries, affiliates, parents and affiliated entities and subsidiaries thereof, in Wastequip's sole discretion. There are no other terms and conditions applicable to the purchase and sale of Wastequip's Product other than those contained herein. Without limitation of anything contained herein, Buyer acknowledges that neither it, nor any other person has relied on any other express or implied representation or warranty, either written or oral, on behalf of Wastequip, including any representation or warranty arising from statute or otherwise in law. No modification, amendment, waiver or other change of any provision of Wastequip's Terms shall be binding on Wastequip without Wastequip's express written consent. Invalidity of any provision of Wastequip's Terms shall not affect the validity of any other provision of this document and any invalid provision shall be severed from the valid provisions. Buyer shall not assign, transfer, delegate or subcontract any of its rights or obligations under an Order or these Wastequip Terms without the prior written consent of Wastequip. Any purported assignment or delegation in violation of this Section shall be null and void; and no assignment or delegation shall relieve Buyer of any of its obligations hereunder unless expressly agreed to by Wastequip. Wastequip may at any time assign, transfer or subcontract any or all of its rights or obligations under an Order without Buyer's consent. Wastequip reserves the right to change, modify, amend and/or discontinue these Terms at any time, with or without notice.

## **17. Survival**



These Wastequip Terms, which by their nature should apply beyond their terms will remain in force after any termination, expiration, completion or fulfillment of an Order. All rights and remedies provided Wastequip in these Terms are cumulative and not exclusive, and the exercise by Wastequip of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

#### **WASTEQUIP PRODUCT LIMITED WARRANTIES, DISCLAIMERS OF WARRANTIES, LIMITATION OF LIABILITIES AND REMEDIES, AND LIMITED WARRANTY PERIODS**

Wastequip warrants only Products of its manufacture, sold by Wastequip, or by a Wastequip authorized distributor, for normal and intended use and service and for specific periods against operational failure caused by proven defective material or workmanship. Wastequip's obligations under this warranty are limited to the repair, replacement or credit, as hereinafter provided at its option, of such Product and/or parts and components thereof. For Products (including parts and/or components) manufactured or supplied by other parties (including but not limited to engines, motor vehicles, special equipment, accessories, tires and fittings), Wastequip shall endeavor to provide such third-party manufacturer warranties, as applicable and to the extent such warranty is transferrable or assignable. All express or implied warranties are limited to those expressly provided herein; and Wastequip makes no other warranty or other duty of its own on any Product, including those warranted by any such third party, and expressly disclaims and does not obligate itself to any warranty on any Product, unless it delivers to Buyer a separate written certificate specifically warranting the Product. Buyer's must complete a Product Warranty Registration Form, where applicable (retaining a copy for Buyer's records) and provide proof of purchase or ownership.

Specific warranty periods are listed herein. Repair or replacement does not extend the warranty beyond the original period, and repaired or replaced parts are warranted for the balance of the original warranty period for the original part. Some states do not allow limitations on how long an implied warranty lasts, the exclusion or limitation of incidental or consequential damages, and any such limitations will conform these Wastequip warranties thereto (Buyers may also have other specific rights which vary from state to state).

Wastequip does not warrant or make any representations concerning Product when the Product is not installed and/or used in strict accordance with good installation, service and maintenance practices or operating instructions. Wastequip does not warrant Product that has been altered, disassembled or re-designed; improperly installed, serviced, maintained, handled or repaired; combined with unapproved non-Wastequip products without Wastequip authorization; contaminated with or exposed to oil, grease, water (including salination), chemicals or solvents; damaged or fails to perform as a result of accident, acts of God, lack of reasonable and proper protection during storage or use, overheating, negligence, misuse, vandalism, damage from wildlife, loading or exceeding the manufacturer's rated or recommended capacity; damage from automated grasper; in contravention of specifically excluded use or any other unauthorized use other than originally intended, authorized, instructed or beyond the control of Wastequip. This warranty does not apply to normal operating costs and adjustments, including but not limited to adjusting pressure settings, limit switches, timers, relays, fuses, loss of hydraulic oil, cable or filter replacement or normal cosmetic or mechanical wear and tear. Wastequip does not warrant any used Products, which are sold "as is" unless otherwise expressly noted by Wastequip. Further, Wastequip does not warrant any Products that have had serial numbers removed, altered or defaced. Wastequip shall have no liability for any special, punitive, incidental, liquidated or consequential damages, including but not limited to loss of profits, damages to other parts or equipment, cost of capital or interest, any claim for authorized labor charges incurred in diagnosing or replacing a defective Product, towing charges, travel costs, meals, lodging, telephone charges, fuel, storage, loss of use, loss of hydraulic oil, unauthorized repairs, or injury to person or property, to the maximum extent allowable under applicable law. If Wastequip, without separate compensation therefore, furnishes Buyer, Buyer's customer or end user with advice or other assistance concerning any Product or equipment in which the Product may be

installed, the furnishing of such advice or assistance will not subject Wastequip to any liability whether in contract, tort (including negligence and strict liability) or otherwise. If any sample, model or demonstration was shown to or provided Buyer, such sample, model or demonstration merely illustrates the general type and quality of Product, and is not to be construed as a representation. If Wastequip authorizes any labor costs associated herewith, such will be solely in accordance with Wastequip established labor rates. Authorization for repairs or related work on Products other than at a Wastequip facility or authorized service center must be through prior written consent by Wastequip; failure to obtain such prior consent shall void this warranty. All claims for reimbursement must be filed with proper documentation no later than forty-five (45) days after occurrence. Travel time approved in advance by Wastequip for authorized service work is limited to two (2) hours maximum per service call.

As the exclusive remedy, in accordance with the Wastequip Terms and provided such Product is manufactured by Wastequip and deemed by Wastequip to be defective, Wastequip shall, at its sole option (i) repair or replace the defective Product, parts or component(s) thereof at our factory or elsewhere (in our discretion); (ii) provide Buyer with a credit on its account in an amount equal to the original purchase Price of the defective Product; and/or (iii) require that Buyer tender any such claims to the third party manufacturer or supplier of the Product, as applicable, upon which Wastequip may endeavor to assist Buyer or Buyer's customer in resolution. Wastequip will accept warranty claims only from the Buyer or in the event of Buyer's resale, redistribution, installation or other similar action, unless otherwise noted, from Buyer's customer, end user or third party that directly purchased the Product through a legitimate action. Wastequip reserves the right to examine all Product to determine whether or not the warranted Product qualifies for the exclusive remedy set forth in these Wastequip Terms. No benefits or remedies are available under this limited warranty while the Invoice for the Product remains outstanding.

In any action brought against Wastequip, regardless of the form or forum, Wastequip shall not be liable to Buyer, end user, customer or any third party for special, consequential, incidental, liquidated or punitive damages and, under no circumstances shall any award against Wastequip in favor of Buyer, end user, customer or any third party exceed the amount paid to Wastequip by Buyer for the Product, to the extent allowed by law. Wastequip shall not indemnify Buyer, end user, customer or any third party from potential claims by or against a third party manufacturer or supplier. Further, Wastequip shall not indemnify Buyer, Buyer's customers, end users or any third party against any claims, including but not limited to product liability claims or workers compensation claims. The parties agree that the foregoing remedy is reasonable and does not cause the Wastequip's Terms to fail of its essential purpose.

In the event of Buyer's resale, redistribution, installation or other similar action of any of the Products sold hereunder, in whatever form unless otherwise expressly notified by Wastequip, Buyer shall merely and solely pass the applicable Wastequip limited warranties herein on to Buyer's customer, end user or third party, as applicable, but make no warranty on its own binding Wastequip, third party manufacturer or supplier or any others, and shall notify such purchaser, customer, end user or third party of these Wastequip Terms and disclaimer of any Wastequip warranty, in writing or otherwise.

Buyer and Buyer's customers, end users or third parties assume all risk and liability for loss or damage resulting from the handling, use, storage, disposal or application of the Products delivered hereunder. Further, Buyer and as applicable, Buyer's customers, end users or third parties shall defend, indemnify and hold harmless Wastequip (and Wastequip's parent company, its subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees, individually and collectively "Indemnified Parties") against any and all claims, demands, judgments, loss, injury, death, damage, liability, deficiency, actions, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers arising out of or occurring in connection with the Products purchased from Wastequip and involving

Buyer's and/or Buyer's customers', end users', or third parties' acts, omissions, negligence, misconduct, breach of Wastequip's Terms; or relating to a breach or non-fulfillment of any representation, warranty or covenant under this Agreement by Buyer or Buyer's personnel; or alleging or relating to any bodily injury, death of any person or damage to real or tangible personal property caused by the acts or omissions of Buyer or its personnel and/or Buyer's customers, end users, or third parties; or relating to a purchase of a Product by any person or entity purchasing directly or indirectly through Buyer and not directly relating to a claim of Limited Warranty breach; or relating to any failure by Buyer or its personnel and/or Buyer's customers, end users, or third parties to comply with any applicable laws or regulations. The right of Indemnified Parties to be indemnified and held harmless under the foregoing shall not be exclusive, but shall be in addition to any and all other rights and remedies to which Indemnified Parties may be entitled under this Agreement or otherwise.

Buyer and/or Buyer's customers, end users, or third parties agree to familiarize itself and keep informed (without reliance on Wastequip) with regards to any hazards to persons and/or property involved in handling, use, storage, disposal or application of the Products. Buyer and/or Buyer's customers, end users, or third parties shall advise its employees, customers, independent contractors and others who handle, use, store, dispose or apply such Products of any such hazards. Buyer and/or Buyer's customers, end users, or third parties represent and warrant that the Products sold by Wastequip will not be used in connection with any applications where failure or malfunction could create a situation in which personal injury or death is likely to, or could occur.

**THESE LIMITED AND CONDITIONAL WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WRITTEN OR UNWRITTEN, EXPRESS OR IMPLIED REPRESENTATIONS, SPECIFICATIONS, WARRANTIES AND REMEDIES, HEREIN OR ELSEWHERE, OR WHICH MAY ARISE UNDER LAW OR EQUITY, OR PURSUANT TO ANY COURSE OF DEALING OR CUSTOM OR USAGE OF TRADE, AND WASTEQUIP EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR, SPECIFIED OR INTENDED PURPOSE OR USE OF THE PRODUCT, EXCEPT FOR WARRANTY OF TITLE. THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, WHICH EXTEND BEYOND THE SEPARATE WRITTEN WARRANTY REFERENCED ON THE FACE HEREOF. NON-PAYMENT SIXTY (60) DAYS PAST THE DATE OF AN INVOICE MAY VOID WARRANTY. DETERMINATION OF THE SUITABILITY OF THE PRODUCT COVERED BY THIS AGREEMENT FOR THE USE CONTEMPLATED BY THE BUYER OR BUYER'S CUSTOMERS IS THE SOLE RESPONSIBILITY OF THE BUYER IN CONNECTION THEREWITH; BUYER ASSUMES ALL RISK AND LIABILITY FOR LOSS, DAMAGE OR INJURY ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCIDENT TO THE USE OR POSSESSION OF THE PRODUCT FURNISHED UNDER THIS AGREEMENT, OR THE SUPPLYING OF PRODUCTS TO BUYER OR ANY SERVICES PROVIDED TO BUYER, ANY THIRD PARTY RIGHTS IN THE PRODUCTS OR ANY USE OF THE PRODUCTS OR THE RESULTS OR DECISIONS MADE OR OBTAINED BY USERS OF THE PRODUCTS, EVEN IF WASTEQUIP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**BUYER'S AND/OR BUYER'S CUSTOMERS', END USERS' OR THIRD PARTIES' SOLE AND EXCLUSIVE REMEDY AGAINST WASTEQUIP SHALL BE THE REMEDY OF DEFECT IN PRODUCT DELIVERED HEREUNDER AS PROVIDED BY, AND WITHIN THE TIME PERIOD SPECIFIED IN WASTEQUIP'S LIMITED WARRANTY SET FORTH HEREIN. WASTEQUIP'S LIMITED WARRANTY CONSTITUTES THE SOLE REMEDY OF BUYER AND BUYER'S CUSTOMERS, END USERS OR THIRD PARTIES, AS APPLICABLE WITH RESPECT TO OR ARISING OUT OF THE EQUIPMENT, PRODUCT OR SERVICES OF WASTEQUIP, WHETHER BASED ON CONTRACT, MANUFACTURER, SALE, ALTERATION, USE, REPAIR, REPLACEMENT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE. NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF, IN NO EVENT SHALL WASTEQUIP BE LIABLE TO BUYER, BUYER'S CUSTOMER, END USER OR THIRD PARTY, WHETHER**

**ARISING UNDER PERFORMANCE OF THE WASTEQUIP TERMS (OF WHICH THIS LIMITED AND CONDITIONAL WARRANTY IS A PART), OR BREACH OF SUCH TERMS, OR MANUFACTURE, SALE, ALTERATION, USE, REPAIR, REPLACEMENT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY OR OTHERWISE), FOR LOSS OF ANTICIPATED PROFITS, LOST SALES, INJURY TO PERSONS OR PROPERTY, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION, FORCE MAJEURE OR INCREASED EXPENSE OF OPERATION, SERVICE INTERRUPTIONS, CLAIMS OF CUSTOMERS, END USERS OR THIRD PARTIES OF BUYER AND BUYER'S CUSTOMERS', END USERS' OR THIRD PARTY'S COST OF MONEY, LOSS OF USE OF CAPITAL OR REVENUE, OR FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND WHATSOEVER.**

## **LIMITED WARRANTY PERIODS**

### **Cusco Fabricators Products**

The warranty period for all Cusco Fabricators Products manufactured and provided by Cusco or a Cusco authorized distributor is for a period of twelve (12) months from date of shipment from the Wastequip designated shipping point, unless otherwise specifically indicated in authorized Wastequip or Cusco documentation provided directly to Buyer.

### **Galbreath Products**

The warranty period for all Galbreath Products manufactured and provided by Galbreath or a Galbreath authorized distributor is for a period of twelve (12) months from date of shipment from the Wastequip designated shipping point, unless otherwise specifically indicated as follows:

- Galbreath Roll-Off Hoist – 12-months from date of shipment from the Galbreath designated shipping point; 24-months from date of shipment from the Galbreath shipping point for the oil reservoir, pump, hydraulic control valve and hydraulic cylinders.
- Galbreath Compaction Equipment – 180-days from initial installation or 270-days from date of shipment from the Galbreath designated shipping point, whichever occurs first.
- Galbreath Pak Force Series Compaction Equipment – 24-months from initial installation or 30-months from date of shipment from the Galbreath designated shipping point, whichever occurs first.
- Galbreath Material Handling Product/Hoppers – 90-days from date of shipment from the Galbreath designated shipping point.
- Galbreath New Vehicle/Body – 12-months from date of shipment from the Galbreath designated shipping point; 90-days from date of shipment from the Galbreath designated shipping point for bearings, linings, drums, air relay valves, tandem bushings and lighting.
- Galbreath Service Parts – 30-days from date of shipment from the Galbreath designated shipping point.

### **Mountain Tarp and Pioneer Products**

The warranty period for all Mountain Tarp and Pioneer Products manufactured and provided by Mountain Tarp and Pioneer or a Mountain Tarp and Pioneer authorized distributor is for a period of twelve (12) months from date of shipment from the Wastequip designated shipping point, unless otherwise specifically indicated as follows:

- Mountain Tarp™ tarp fabric – 6-months on workmanship from date of shipment. All other tarp fabrics are not warranted Products.
- Pioneer Rack 'n Pinion™ Strong Arm (RP4500SA) models (excluding tarp fabric) – 36-months from date of shipment if shipped prior to 8/1/2017; 5 years from date of shipment if shipped on or after 8/1/2017
- Motors (1.1 HP 60:1 and 1.3 HP 90:1) – 36-months from date of shipment

- Motors (Chain Drive) – 12-months from date of shipment.

### **Go To Parts/Parts Place Products**

The warranty period for all Go to Parts/Parts Place Products manufactured by Wastequip and provided by Go To Parts/Parts Place or a Go to Parts/Parts Place authorized distributor is for a period of twelve (12) months unless a different limited warranty period is specifically stated herein; 90 days for Steel Bottoms. All dates from the date of shipment from the Wastequip designated shipping point. The warranty period for all other Products shall be for a period set forth in the third-party manufacturer's warranty, unless otherwise specifically indicated in authorized Wastequip or Go to Parts/Parts Place documentation provided directly to Buyer; all dates from the date of shipment from the Wastequip designated shipping point.

### **Toter Containers and Products:**

The warranty for all Toter Containers and Products manufactured and provided by Toter or a Toter authorized distributor is only available to the original purchaser of the Product, and is not transferable through resale, redistribution, installation or other similar action, as follows:

- Toter Wheeled Containers (Residential Wholesale/Municipal) – Rotomolded Container Body only – 12 Years from the date of original purchase; All other components - 10 years from date of original purchase.
- Toter Wheeled Containers (Industrial/Commercial/Institutional) – 2 years from date of original purchase; 90-days' from date of original purchase for casters, frames, tow hitches and locks.
- Toter Wheeled Containers (Residential Retail) – 10 years from date of original purchase
- Toter Bear Tight Containers – 3 years from date of original purchase; 90-days' from date of original purchase for steel components, including locking mechanism.
- Toter Atlas Containers – 2 years from date of original purchase.
- Toter Composter Containers – 2 years from date of original purchase.
- Toter Front Load Containers (2, 3 and 4 cubic yard) – 3 years from date of original purchase for body, lids, lift pockets and fasteners; 90-days from date of original purchase for casters and non-plastic components; provided, that replacement after the first 12-months shall be subject to a pro-rata replacement cost (plus freight).
- Toter Automated Litter Containers (Residential) – 2 years from date of original purchase for body, lid, hinges, base and fasteners.
- Toter Cart Lifter/Dumpster Units – 1 year from date of original purchase.

### **Wastequip Manufacturing Company Products**

The warranty period for all Wastequip Manufacturing Company Products manufactured and provided by Wastequip Manufacturing Company or a Wastequip Manufacturing Company authorized distributor is for a period of twelve (12) months from date of shipment from the Wastequip Manufacturing company designated shipping point, unless otherwise specifically indicated as follows:

- Self-Contained Compaction Equipment
  - 265XP, 265 XPHT, and 265IP – 5 years structural, 2 years parts, 1 year labor; all dates from date of shipment from the Wastequip designated shipping point.
  - 365XSEE Super Energy Efficient Models – 3 years structural, 3 years parts, 1 year labor; all dates from date of shipment from the Wastequip designated shipping point.
  - All Other Self-Contained Models – 3 years structural, 2 year parts and 1 year labor; all dates are from date of shipment from Wastequip designated shipping point.
- Standard Compaction Equipment with Solid State Controller

- APC, 445XHD-PC, 445HXD-7-PC, 645HXD-PC/15, 45XHD-7-PC/20/30, 645XHD-D-72 thru 1250XHD, Precrusher and Transfer Station Models – 1 year structural, parts and labor; all dates from date of shipment from the Wastequip designated shipping point.
- All other Stationary Compactor Models – 3 year structural, 1 year parts and labor; all dates from date of shipment from the Wastequip designated shipping point.
- Vertical Baler, Vertical Compactor, Container Lifters and Dehydrator Models - 1 year structural, parts and labor; all dates from the date of shipment from the Wastequip designated shipping point.
- Steel Containers – 12 months from date of shipment from the Wastequip designated shipping point.

(WQ Rev. 1/15/2020)